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Extra-Territorial Zoning in North Dakota

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THE UNIVERSITY OF NORTH DAKOTA
EXTRA-TERRITORIAL ZONING IN NORTH DAKOTA

AN INDEPENDENT STUDY SUBMITTED TO
THE POLITICAL SCIENCE DEPARTMENT AS A
PARTIAL REQUIREMENT FOR THE DEGREE OF

MASTERS OF PUBLIC ADMINISTRATION

BY
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GRAND FORKS, NORTH DAKOTA
JUNE 1977

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INTRODUCTION

In March 1975 the North Dakota legislature passed Senate Bill 2395. This Bill amended the chapters of the North Dakota Century Code relating to zoning and subdivision regulations. The basic intent of this legislation was to grant extra-territorial zoning authority to cities to use in conjunction with subdivision regulations. This expanded authority was to provide the cities with the power to insure that future exurban development would be controlled and directed according to each city's development goals.

The main purpose and nature of this independent study is to determine if the objective of Senate Bill 2395, as stated above, is being achieved by selected North Dakota cities. A simple hypothesis has been chosen as a basis for testing the attainment of this objective. It is stated as follows: If a city chooses to implement the extra-territorial zoning authority, then development in the urban-rural fringe area will be controlled. In order to gather information to prove or disprove this hypothesis, a sample survey was conducted of twenty-three North Dakota cities.

The city of Grand Forks, North Dakota by virtue of its accessibility to the writer serves a very important function in this study. Other than just being one of the twenty-three cities that was surveyed, Grand Forks is used in this paper to clarify certain points. Even as this paper is being written, the city of Grand Forks is working out problems with its extra-territorial zoning authority. The city is

SECTION I

THE SHORT HISTORY AND GENERAL NATURE OF ZONING

The first attempt to control land use in the United States was in New York City. There in 1916 the first zoning ordinance was implemented. The purpose of the ordinance was for the regulation of use and the location of buildings. But this was not the first zoning ordinance enacted in the world. Cities in Germany began adopting zoning ordinances to control the growth of cities in 1860. However, since that first United States zoning ordinance, zoning has become the planner's biggest business and consumes a major portion of his time.

Early planners in the United States saw zoning as a tool that could generally control land speculation, property value fluctuations, overcrowding, and the future development of urbanized areas. As a result, the concept of zoning was accepted by planners and housing reformers with great enthusiasm.¹

In 1924 the United States Department of Commerce enacted legislation establishing the Standard Zoning Enabling Act, which became the basis for future zoning legislation. This authority was now a basic power of the states to do with as they wished. Each state must then in turn pass enabling legislation in order for cities and counties to have zoning authority. In granting this authority, the state usually sets down guidelines for its implementation. For example, the North Dakota Century Code, which is very similar to other states, contains a very straight forward paragraph enabling cities to zone. Please see Appendix I for a reprint of

North Dakota's enabling legislation. One can readily see by examining this document that the guidelines are specific in implementing zoning powers.

By definition, zoning divides a geographic area into districts and promulgates regulations within those districts pertinent to:

- (1) height and bulk of buildings and structures;
- (2) the area of a lot that can be occupied and the area of open spaces or yards;
- (3) population density; and
- (4) the use of buildings and land for business, industry, homes, and other purposes.

According to Land Use Planning and Zoning by J. R. Dilworth, "Zoning is a legal device to implement the comprehensive plan, especially the land-use plan, and it must be based on a carefully conceived land-use plan to be legally acceptable."² Therefore, in theory, the zoning ordinance ought to be the legislative expression of the land-use plan. However, in practice, zoning ordinances are occasionally developed by planners without a plan. A more practical definition of zoning can be found in the International City Manager's Association's Principles and Practice of Urban Planning text. This planning manual says that zoning is a means of insuring: (1) land uses are properly situated in relation to one another; (2) adequate space is provided for development; (3) the control of development density; (4) the provision of adequate services of property such as streets, schools, recreation areas, and utilities; (5) new growth is directed into appropriate areas; and (6) existing property is protected.³ Zoning has the characteristics of stabilizing property values and only being indirectly concerned with achieving aesthetic ends. However, zoning is being used more and more by planners for aesthetic reasons. In essence, zoning is the exercise of legal power to control land-use in order to promote and protect health, safety, moral, and general welfare by imposing restrictions on the use of

its use for the same private purpose. Once a zoning ordinance has divided a city into different districts there are other restrictions to local power. Within a district the regulation has to be uniform. There must be a reasonable basis for classification of the type of use authorized in each district. The ordinance must cover the entire city. Finally, the regulations must be reasonable to particular properties. For zoning to work, of course, it must be put into law by a legally binding ordinance, which is the topic of the next paragraph.

The following provisions are common to most zoning ordinances, or at least should be according to Mr. Dilworth. The ordinance usually: (1) complies with community objectives; (2) provides for preservation of the area's natural resources i.e., prime agricultural lands and open spaces; (3) does not have excessive areas zoned for intensive uses, such as multi-family housing; (4) preserves the integrity and character of residential districts; (5) makes use of buffer zones; (6) promotes public safety, health, convenience, and welfare; (7) provides for aesthetic standards, such as sign control and landscaping; (8) provides for adequate offstreet parking provisions; (9) applies air-pollution standards; (10) discourages strip commercial zoning; (11) provides for the concept of "planned unit development"; (12) encourages clustering of commercial centers; and (13) excludes residential uses from industrial districts.⁶ In complying with these provisions, as much as possible, the ordinance divides the city into districts comprised of residential, commercial, industrial, or agricultural type structures and uses.

Other special types of zoning not usually concerned with urban development, which might be concerned with exurban development, are available to the planner. These types of zoning deal with rural areas, which are usually handled by the county. These include rural zoning for

SECTION II

PROBLEMS ASSOCIATED WITH GROWTH

Zoning as described in section one was historically limited to land within the city limits. It should be pointed out that early zoning enabling acts were very restrictive because they only granted zoning authority to a city to exercise within the city's boundaries. This limitation over a period of time has been recognized as inadequate for the proper control of the eventual development into the urban-rural fringe area. The urban-rural fringe area can be defined as the unincorporated area surrounding and adjacent to the city limits in which there has been, or may be in the future, some development closely associated with the existing city. The reason for the inadequacy of traditional zoning for this area stems from the fact that a zoning ordinance will have little effect if it cannot be applied to new areas of growth as well as the developed areas within the city limits. There should be consistency of land utilization between the incorporated areas of the city and the adjacent area which is outside the city limits. As stated in the International City Manager's Association's Principles and Practice of Urban Planning text, "A municipality will be concerned with the detailed control of development appropriate to an urban environment, and with the protection of its peripheral areas from undesirable and uncontrolled development in the surrounding county area."⁷ Without the authority to control growth in this area either by zoning or other means, problems will usually follow. The next paragraph will point out in detail what is generally

acknowledged as undesirable and uncontrolled development within the urban-rural fringe area.

There are disadvantages for the community's inhabitants, which are generally attributed to uncontrolled or unplanned development adjacent to the city. These problems, of course, are not common to all cities, but are considered by most academians to be prevalent in many modern cities. The main problem or disadvantage usually associated with uncontrolled development is "leapfrog" growth.

"Leapfrog" growth usually begins with scattered, single-family housing on relatively large lots (one to five acres) along city or county roads. Occasionally, small subdivisions follow, often locating in or near scenic areas. Then large clusters of housing and subdivisions follow. Tract developments generally locate where land is expansive, relatively flat, and inexpensive. Once residential development creates a sufficient market and labor, commercial and industrial growth takes place. Major industrial development usually occurs in planned industrial parks, where accessibility is good and utilities and other services are available. Commercial development often locates in diversified shopping centers. This growth seldom follows an orderly pattern, but rather skips around, often taking place some distance from existing urban development. There are relatively simple reasons for this type of development. One is that the most scenic and attractive areas for residential development are often located some distance from existing development. Second, land located away from existing development usually is cheaper, which interest speculators. Once these speculators own land, they can pressure local governments to rezone it for residential, industrial, or commercial development, which inflates its value. The land also may not have been zoned in the first place. Cities often give in to this pressure, mainly because their community

lacks a comprehensive plan or zoning ordinance to enforce the plan. Sometimes the local officials are not even aware of the consequences associated with this type of development. Finally, "leapfrog" growth is often reinforced by public officials who adopt aggressive growth policies for their communities.⁸ Now that there is an understanding of the basic nature and causes of "leapfrog" growth, it is necessary to consider the more detailed problems encountered by cities experiencing this phenomenon.

The principal side effect of "leapfrog" growth is urban sprawl. This fact of nature has many facets, which will be considered one by one. First, there is a pressing problem in how to provide such urban services as fire and police protection to areas when the property tax base is low. Secondly, developments that attract young couples with children heavily burden school districts, which must provide added facilities. The result is high property taxes for city residents, especially in districts that have not yet attracted substantial industrial or commercial development. Thirdly, communities in many cases are also under pressure by developers and homeowners to extend sewer and water facilities to serve these "leapfrog" developments. Fourthly, taxes on agricultural land often rise because of increased property appraisals brought about by the sale of adjacent land to speculators. Fifthly, "leapfrog" development results in permanent loss of valuable land for parks and open spaces, because its value increases so much that it becomes too expensive for governmental agencies to acquire. Sixthly, there are large amounts of vacant land that result from speculation and overzoning for industrial and commercial development. Many communities zone large areas for industrial use because of pressures from speculators and the overoptimism of community leaders in their ability to attract industries.⁹

Other problems associated with uncontrolled development are listed

here for the readers information. Some of these are directly related to "leapfrog" growth and others only indirectly related. Prime agricultural land may possibly not be preserved, or the land will be used unwisely. Travel distances will be greater leading to more reliance on the automobile. This accounts for more energy consumption and makes public transportation infeasible. City utilities and services cannot efficiently serve some new developments leading to environmental degradation from septic tanks and undesignated land fills for depositing waste. Also uncontrolled development may not provide the protection of the rural character of the areas beyond the city limits.¹⁰ It should now be apparent to the reader the problems faced by expanding cities in dealing with growth and development, when there are no effective means available to regulate and direct the growth pattern. Most, if not all, of the problems mentioned above can be reduced through existing methods of control. These will be examined in the following section.

SECTION III

METHODS FOR GROWTH CONTROL IN THE URBAN-RURAL FRINGE AREA

The methods or techniques employed by planners in controlling development within the urban-rural fringe area vary according to the particular development policies of each individual city. Some methods are better suited for cities with wide open development policy goals, and others are more suited to cities that desire little or no development. When one speaks of controlling growth in the urban-rural fringe area, the city, county, and region may all have vested interest in the area concerned. Depending on such things as the size of a city for example, this controlling can be done by one or a combination of these three governmental units. The methods of control discussed below could be implemented by any one of the three.

If a city is large, and especially if it has an aggressive growth policy, then it probably will want to exercise control over the development of its own fringe areas. This is known as extra-territorial authority since it concerns land outside of the traditional jurisdiction of the city (city limits). This type of authority is a relatively new concept. Section IV is devoted entirely to this subject. Therefore, it will not be discussed at this time.

More than half of the states have enacted enabling legislation giving counties zoning authority. The main advantage of the county zoning authority is it affords a broader geographic coverage rather

certain planning methods. Some of these will be discussed in the following paragraphs of this section.

The methods or techniques used or advocated by planners representing the three concerned governmental units are numerous. The methods may either be directly or indirectly related to zoning authority. For the purpose of this paper, only a few of the more popular methods are discussed here. The first is agricultural or large lot zoning. This is currently the most popular method used in the tri-state area (North and South Dakota and Minnesota) according to Gunnar Isberg, the director of the Dakota County Planning Department.¹³ Usually only large lot sizes from one to five acres are allowed in these districts. The theory behind these large lot districts is that the cost of the large lots tends to discourage development. These districts are usually considered holding areas, where development should be temporarily discouraged but eventually allowed. Some jurisdictions concerned with protecting unique agricultural land have adopted agricultural zoning districts where only agriculture is allowed. In these areas only agricultural uses and closely related agricultural enterprises are permitted. While this method may be effective in rural areas not subject to development pressures, it tends to be ineffective in areas under intense development pressures and may create undesirable side effects. For example, when should rezoning be allowed for development? In some cases it may be premature. However, the advantages without development pressures include less expensive farm land and preservation of prime farm land. When land is zoned exclusively for agricultural uses, the market value of the land will move toward its value in agriculture, which is less than its value for speculative development. Hence, the property taxes are much less, which is another benefit to the farmer. As pressures from developers

increase and zoning changes are sought after, the land price increases along with taxes. One final note, it is unlikely that land zoned for exclusive agricultural purposes in the urban-rural fringe will stay that way very long.

The next method employed by some planners is the planned-unit-development (P. U. D.) concept or New-Towns developments. This method has also been called cluster zoning. The theory behind this concept is to cluster development in more dense, tightly structured patterns while leaving a good deal of useable open space for residents. This type of development requires that a large tract of land be developed at one time with only a fixed percentage of the acreage having buildings. The buildings are clustered on a specified minimum acreage, say twenty-five percent of the total. The remaining seventy-five percent must be left in either open space or agricultural use.

Unlike other zoning regulations, clustering may not penalize the original land owner. If the open space adds to the attractiveness of the residential development, the cost of maintaining this open space may be passed on to the new homeowners in the form of higher home prices. The degree to which this cost can be shifted from the original landowners to new homeowners depends on the value new homeowners place on open space and also on local market conditions. However, the public cost of utilizing this type of control method is usually low.

If properly designed, these developments can create a desirable living environment, save natural resources, and aid in controlling development in the urban-rural fringe area. However, this concept still faces resistance by many small developers who would rather build conventional subdivisions and by many local officials who would rather deal with conventional subdivisions where standards can easily be applied.

These new-towns projects also seem to suffer from the fact that they require an immense amount of front-end capital. Eventhough the federal government is currently providing a substantial amount of aid to about ten new-towns projects, it is unlikely that many such developments will be constructed in the near future. Even enthusiastic advocates recognize that new-towns cannot completely replace conventional urban expansion.¹⁴

Tax deferral and abatement laws are the next method to be discussed. A number of states have authorized tax deferrals on agricultural land. These laws permit an owner of agricultural land to apply for a special classification that allows his land to be taxed on its value for agricultural production rather than its market value. When the land is sold or converted to urban uses, the landowner must then pay the taxes that were deferred originally. The basic purpose of this method is to encourage the farmer to stay on his land longer than he might normally and thereby encourage orderly urban expansion. The laws are based on the theory that a farmer sells his land prematurely because of rising property taxes caused by encroaching urbanization. Some states have tax abatement laws for agricultural land. However, these laws seem less justified and more subject to abuse in terms of equity than tax deferral laws, which merely defer taxes for a period of time.

The success of tax deferral or abatements as controlling devices depends largely on a farmer's willingness to use the law. The effectiveness of the law also depends on the willingness of local governments to promote their use. Many apparently are reluctant to do so for fear their tax base will be reduced.

The next method of control is utility extension policies. Since the construction of roads and such major utilities as sanitary sewer and

planner. One reason for "leapfrog" development is housing developers search for scenic areas. These areas should be saved for parks and open spaces. In order to do this, definite policies and programs for local, metropolitan, and regional parks and open space acquisition must be adopted at an early stage in the urban development process.

Floodplains, wetlands, or wooded areas often suffer the same fate as the open space or park lands. If these natural resources are to be protected, steps must be taken early to leave these areas open. Control over these areas could be used to guide urban development both in terms of geography and timing.

Staged growth planning is the next concept to be discussed. Much interest has been expressed by local officials and planning professionals in the staged growth concept approach ever since it was upheld as legal by the New York supreme court in 1972. Modified versions have been adopted by many communities in Minnesota.¹⁶ An explanation of this approach is derived from the experiences of Marshan Township, Minnesota.

Once the city realized that some control over future development was essential and desirable, they began to inquire into possible control methods. Through the help of a planning advisory commission they began to work on their planning project. The first action recommended by the planning staff was to pass a resolution declaring a moratorium on all development proposals in the community until a development plan could be devised. The planning staff made it clear from the outset, that it was to only provide technical planning assistance and that the local elected officials would determine development policy. The first decision made by the town officials concerned the overall growth policy for the community. The local officials chose "staged or timed" development instead of "wide open or little or no" development.

The first zone was designated the single-family zone. This was the one closest to the city limits. In this area the minimum lot size was established at one and one-quarter acre. This was the area where development would be encouraged and would be the area pointed out as open to development to those critics who might claim that the plan or zoning ordinance was too restrictive. Prospective developers were also required to indicate how the lots would be further subdivided in the event central sewers were extended into this area in the future.

The second major zone, which extended to one mile from the city limits, was the agricultural holding zone. This area was provided to avoid a sharp break between the urban and agricultural zones. The minimum lot size in this zone was established at five acres.

The third zone was the exclusive or semi-permanent agricultural zone. This zone extended to the city's zoning jurisdiction line, which was two miles from the city limits. This is the way that Marshan Township elected to use their extra-territorial zoning authority, which will be discussed in more detail in the next section. To continue, in this area there were pockets of natural resource areas included within the zone. Agricultural production would be encouraged in this zone. In order to discourage scattered residential development, the minimum lot size established in this zone was ten acres. The owners of the land were also encouraged to apply for agricultural property taxation. It was recognized that not all of this area could be farmed. Thus the minimum lot size was later dropped to five acres for those areas which could not be tilled such as woodlands and scrub-land. With this plan, the officials felt that by providing for orderly staged development they could provide urban services in a more efficient manner and with an adequate tax base. They also felt that the agricultural zone would afford some

degree of protection for those farmers who wanted to continue farming. The township officials also recognized that this zoning ordinance would be the cause of great future controversy, especially from the speculative farmer, other land speculators, and developers.¹⁸

Other less used methods for control are agricultural districting, the use of transferable development rights, the public purchase of development rights, and land bank programs. These will not be discussed in this paper. In the preceding paragraphs we have examined several methods, which are being used by planning officials for either zoning the urban-rural fringe directly or by using related methods for control. The following section contains a detailed discussion of extra-territorial zoning as a method of controlling and directing development.

SECTION IV

EXTRA-TERRITORIAL ZONING AS A METHOD OF CONTROL

In this section there is a two part discussion of extra-territorial zoning as a method of controlling and directing growth in the urban-rural fringe area. The first part will be a general discussion of extra-territorial zoning. The second part will be a discussion about the implementation and use of this authority in the state of North Dakota. The city of Grand Forks will provide an example of how one particular city in North Dakota has implemented and is using this authority.

Cities have frequently been given the authority to establish subdivision regulations outside of their territorial boundaries. This type of control has been of some value in preventing developments of a type which might constitute a financial burden to the city upon annexation. To a lesser degree, it has been a help in preventing the building of structures which are not in harmony with the comprehensive plan. In a few jurisdictions, cities have been granted extra-territorial zoning powers to prevent the development of inharmonious land uses in their urban-rural fringe areas. Omaha, Nebraska, for example, may zone for a distance of three miles beyond its corporate limits. Some cities have been given zoning authority extending for as much as five miles beyond their boundaries.¹⁹

It has become more common recently for states to enable cities to have zoning jurisdiction over the urban-rural fringe area. This authority is usually in conjunction with subdivision authority outside

of opinion. Extra-territorial zoning around cities which are not hemmed in by other incorporated areas is a concept that appears to be gaining some public acceptance. However, still few states have enabled cities with this power. Zoning jurisdiction of those having such power ranges from distances of one-quarter mile to five miles beyond the city limits. Describing extra-territorial jurisdiction in this manner has not proved to be very satisfactory because urban growth does not always occur within these lines. Some developers just go out further in the county to build.²¹ We will see in later discussion that this is probably the greatest problem with extra-territorial zoning.

The authority for cities to zone extra-territorially is usually granted by special act or by general law applicable only to cities of a given class. Population is the most general determinant of a cities class. In North Carolina, for instance, certain cities have been given authority by special act to zone the urban-rural fringe for a distance of one mile beyond their corporate limits. Nebraska has conferred extra-territorial zoning powers upon the city of Omaha under an act providing such authority for cities of metropolitan class. The state of Kentucky has empowered the city of Louisville to zone all land lying within five miles of the city limits providing zoning authority has not been exercised by Jefferson County.²²

It is basic legal principle that cities cannot exercise extra-territorial zoning powers unless they are specifically conferred by the legislature or by the state constitution. Nevertheless, in some states such authority has been implied from the language of the planning enabling act and the grant of police power authority. The state of Alabama furnishes an illustration of this point. In that state the

municipal planning commission is empowered to make and adopt a master plan for the physical development of the municipality, including any areas outside its boundaries which, in the commissions' judgment, bear relation to the planning of such municipality. The enabling statute declares that the master plan shall be made for the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the municipality and its environs. It confers upon the municipality such powers as may be necessary to enable it to fulfill its functions, promote municipal planning, and carryout the purpose of the statute. No zoning powers are specifically provided for, but subdivision control is specifically authorized over areas within five miles of the corporate limits. On the basis of the objectives set forth in the planning and subdivision enabling acts, the attorney general of Alabama has ruled that since planning would be of little use without zoning authority, it is to be presumed that extra-territorial zoning authority was intended by the legislature within those areas in which subdivision control is exercised.²³

The above examples indicate some measures that have been taken in some jurisdictions and may be taken in others to meet the need for fringe area zoning control. In the aggregate, however, their constructive effect has been negligible. It seems probable that political and practical objections are likely to continue to restrict the use of extra-territorial zoning by municipalities. On the other hand, there is little encouragement that the solution will come from county zoning. Although counties more frequently exercise zoning power in unincorporated areas than cities do, county zoning is usually less comprehensive and often not oriented to urban problems.²⁴

While the counties are mostly concerned with rural objectives, they

have a definite responsibility to help guide the development of the urban-rural fringe area. The most practical solution for many communities is cooperative action between cities and counties. The adoption of uniform regulations by counties and municipalities in the metropolitan region will simplify the problem of administration and enforcement for all units of government and will make it easier for builders and real estate owners to understand and comply with the laws. Under some circumstances, cooperative action in establishing uniform zoning controls may be facilitated by the creation of a joint city-county planning commission. If several units of government in the area have zoning powers, all should be represented on a regional planning commission. Such commissions can aid in the formulation of an overall land-use plan and in securing the adoption of uniform zoning ordinances through parallel action.²⁵

We have seen in the first part of this section how extra-territorial zoning is being implemented and used by other cities and states. Problems that are being encountered were also touched on. In the second part of this section the North Dakota use of extra-territorial zoning power will be examined. We will also see that the problems mentioned in the first part of this section are almost the same ones that North Dakota cities are experiencing, especially Grand Forks.

Prior to March 1975 North Dakota cities were only authorized subdivision authority outside of the city's corporate limits. This presented few problems until the larger cities realized that the growth of their cities would require the added authority of extra-territorial zoning. For the same reasons stated in the first part of this section, North Dakota cities decided it was time to request enabling legislation

for the extra-territorial zoning authority. Support for this type of legislation was gathered and presented to State Senator Frizzel from the Grand Forks district. (Most of the initial support for this legislation came from the Grand Forks area.) When the Bill was introduced into the North Dakota Senate in its original form, it called for extra-territorial zoning authority in conjunction with the existing extra-territorial subdivision authority for development control. The existing subdivision authority at that time gave the city jurisdiction up to six miles from the city limits. The draft bill called for the same six mile limit for zoning. Because of opposition to this much zoning control, a compromise was reached in committee. The amended Bill now called for subdivision and zoning authority to be coincidental but limited to only a one-half to two mile jurisdiction based upon each city's population. The Bill was passed in March 1975. Senate Bill 2395 has been added to this paper for inspection by the reader. Please see Appendix II. In Appendix III one can see how the Bill actually amended the Century Code pertaining to a city's authority to zone extra-territorially.

The remainder of this section will give a specific example of how one North Dakota city is using its new extra-territorial zoning authority. The other twenty-two cities which were surveyed will be looked at in the next section of this paper. The city of Grand Forks, North Dakota can be used to provide an excellent example of how one city has implemented, dealt with, and has had problems with its new authority. Some of the information included in the remainder of this section, especially the quotes of Grand Forks' residents and the discussion of the Columbia Park project, was extracted from articles written by Herschel Kenner and Greg Dawson, staff writers for the Grand Forks Herald, which

appeared in that paper between March 1, and April 30, 1977.²⁶

By virtue of Grand Forks' size, the city has the authority to establish zoning and subdivision ordinances within a two mile "urban fringe area ring". Please see figure #1 to see how this ring is drawn around the city of Grand Forks. The city responded to its new authority by establishing a zoning ordinance in this fringe area in August 1975. Grand Forks elected to place about ninety percent of the two mile ring in an agricultural zone that did not allow residential development. This can be compared to the Marshan Township plan when they originally placed a moritorium on development in their urban-rural fringe area. This initial ordinance remained in effect until April 1977. At that time the city adopted a new and more complex proposal.

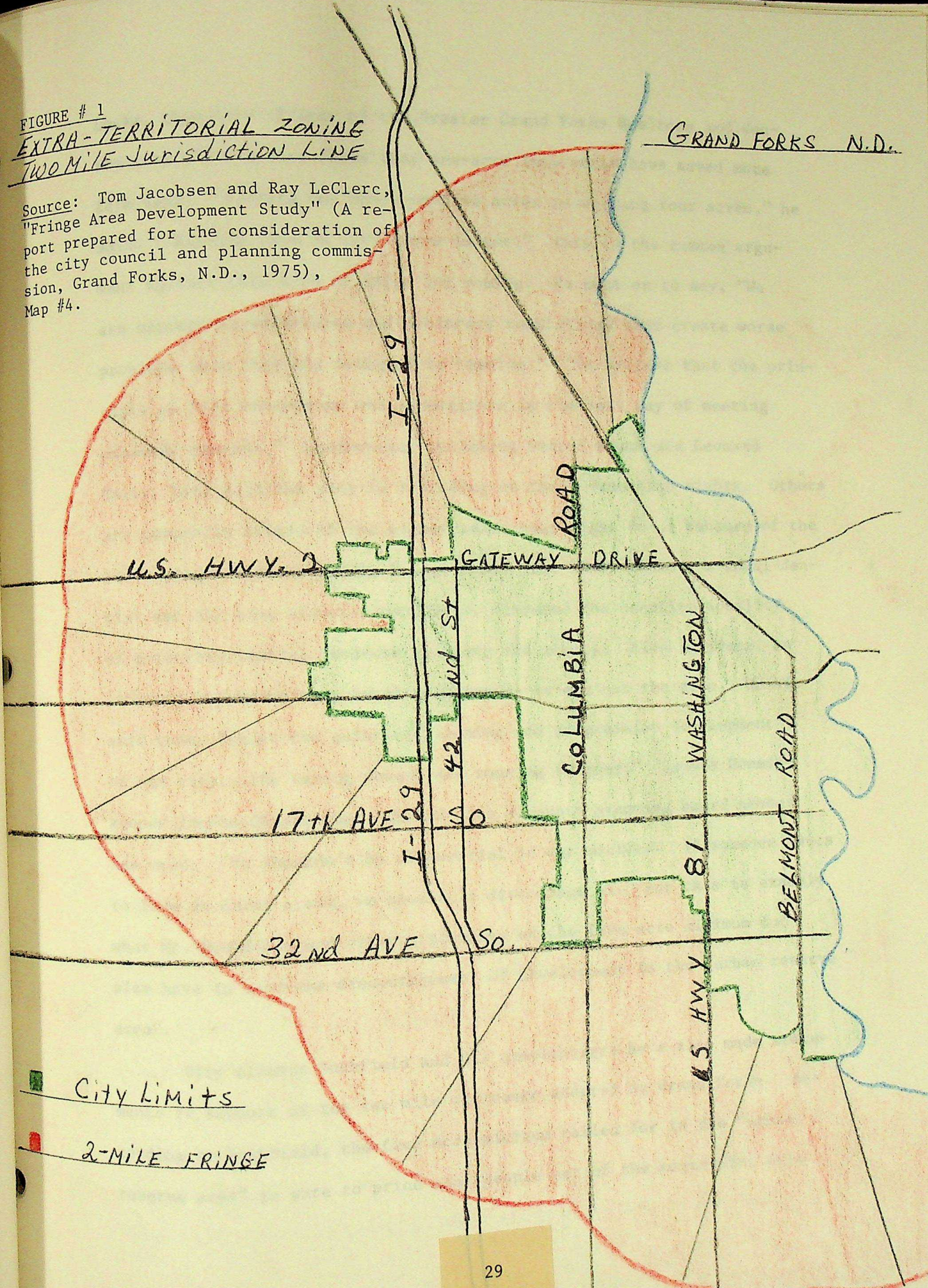
The proposal developed by Grand Forks city planner Bob Bushfield calls for the 18,250 acre area to be divided into two distinct zones for development purposes. The 3,650 acres closest to the city is designated the "urban growth area". City officials generally expect this area will be completely developed and annexed by the year 2000. The same zoning ordinance (residential) that is used within the city limits applies in this "urban growth area". This portion of the 18,250 acres is not controversial and is welcomed by local developers. The remaining 14,600 acres in the two mile fringe ring is designated the "urban reserve area". Here development is restricted to homes on five acre minimum lots. This concept that Mr. Bushfield has used is very similar to the staged growth concept employed by the Marshan Township officials in Minnesota that was discussed earlier in the paper.

There has been many objections by speculators, developers, and some farmers over the size of lots required in the "urban reserve area". Some of their statements are recorded here as a matter of interest. Lionel

FIGURE # 1
EXTRA-TERRITORIAL ZONING
TWO MILE JURISDICTION LINE

GRAND FORKS N.D.

Source: Tom Jacobsen and Ray LeClerc,
 "Fringe Area Development Study" (A report prepared for the consideration of the city council and planning commission, Grand Forks, N.D., 1975),
 Map #4.



Locke, executive officer of the Greater Grand Forks Realtors and Contractors Association, feels that one-acre lots would have saved more farm land. "Putting one house on five acres is wasting four acres," he said. "Putting five on five acres is not." This is the common argument against this type of large lot zoning. He went on to say, "We are opposed to burdensome and arbitrary regulations that create worse problems than they are designed to resolve." "We believe that the principle of free enterprise and competition is the best way of meeting consumer demands." Landowners, including Darrel Adams and Leonard Kelly, have said the city is intruding on their ownership rights. Others are generally afraid of the higher taxes that might occur because of the new zoning ordinance in the fringe area. Dr. Jerry Gasser, a local dentist and one time alderman candidate, disputed the constitutionality of extra-territorial land-use planning and zoning. Alan Larivess, an attorney representing a local speculator, is against the plan. He has said that, "under the guise of planning and progressive development of our city...the taxing powers are running rampant." County Commissioner Emmons Christopher, who is also a county planning board member has said, "We shouldn't be dictatorial in our motives. If someone wants to live in rural areas, we shouldn't discourage it." But this is exactly what Mr. Bushfield and other proponents of the five acre minimum lot size have in mind—the discouragement of development in the "urban reserve area".

City planner Bushfield and his sympathizers have also made statements in support of the two mile ordinance adopted by Grand Forks. According to Bushfield, the five acre minimum called for in the "urban reserve area" is sure to price many people out of the market for this

land. In this way wide open development will be discouraged in this area. Mr. Bushfield believes development should occur on that land closest to the city where it is easier and cheaper to provide city services. The 3,650 acres that he has designated the "urban growth area" is the ideal area, he believes, for development in the next twenty-five years. If Bushfield had his way the five acre minimum in the 14,600 acre "urban reserve area" would be raised to a much higher minimum. Frank Orthmeyer, city engineer, is another advocate in the city government of zoning to protect farmland from subdivision development. Mr. Orthmeyer wanted no building in the "urban reserve area" save for farm buildings. "You really should limit it to farm construction unless it's next to the city. That way you wouldn't lose any of that valuable land," Orthmeyer has suggested. Jerry Waletzko, a local environmentalist, believes that even a five acre minimum is an "inducement to developers". He would like to see the minimum raised to forty acres. He said this is a standard which has been adopted by other states. Former State Representative Eliot Glassheim had 175 petition signatures backing Mr. Bushfield's plan, which he said is important to keep land in agricultural production. Marilyn Korbach of the League of Women Voters said that group is "strongly in favor of an orderly development plan...that keeps prime agricultural land in production." Charles Bateman of Brenna Township and his wife, who is a member of the Grand Forks planning and zoning commission, are both in favor of Bushfield's plan for the "urban reserve area".

We have seen in the above paragraphs the difference of opinions concerning extra-territorial zoning that were alluded to in the previous section. This difference of opinions has recently come to a head in Grand Forks over a 381 acre planned unit development. Part of this development

is in the city limits, but much of it is in the urban-rural fringe area. This was the first big test of extra-territorial zoning for the city of Grand Forks. The arguments that took place between the owner/developer and the city planner have provided this writer with an excellent insight into the management of the urban-rural fringe area in the light of the new zoning authority.

The area where the planned unit development is to take place is without a doubt within the city's zoning and subdivision jurisdictions. This area lies within the "urban growth area" which was mentioned previously. You will remember that this area was designated primarily for residential development calling for homes on one acre lots. The planned unit development calls for predominantly commercial development. Please see figure # 2 for a better understanding of the proposed zoning plan. Notice the large amount of commercial zoning. Here is where the controversy begins.

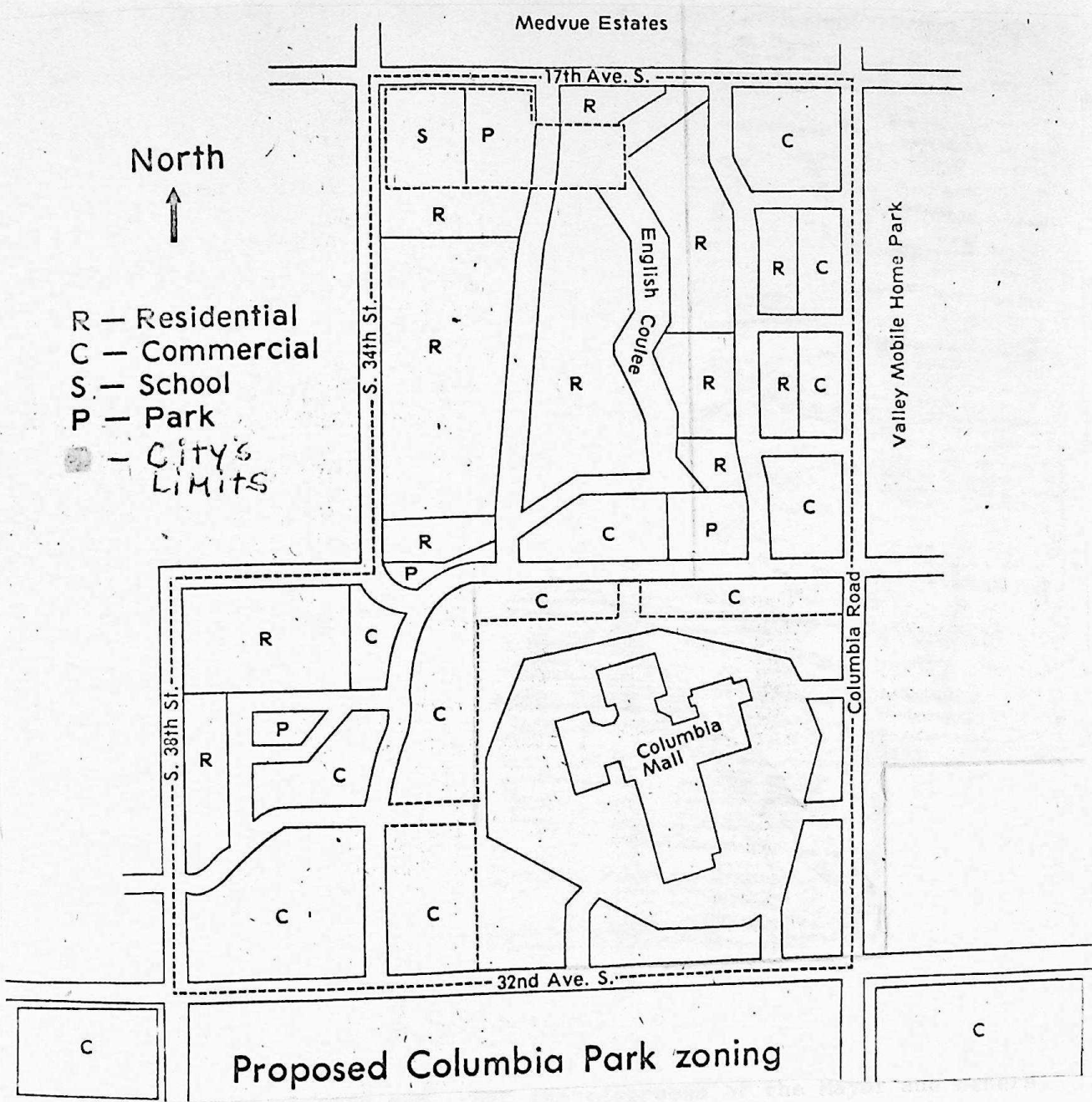
Of the 381 acres only 111 acres are planned for residential development. According to the city planner, Mr. Bushfield, this would be a giant step towards urban sprawl. He would liked to have seen more single-family and multi-family residential development and less emphasis on the commercial aspect. Bushfield calls this much commercial development on the skirts of the city limits premature. He feels commercial land closer to the center of the city should be developed first. He has also stated that there will be a high cost to the city to provide services to a commercial area of this magnitude that far from the central city area.

The planned unit development is to be called Columbia Park. The "center piece" of this development is to be Columbia Mall. The mall is being developed and designed as a one-hundred acre shopping center by the Dayton-Hudson Development Company. The remainder of the park is

FIGURE # 2

"Proposed Columbia Park Zoning"

Source: Herschel Kerrner and Greg Dawson,
Grand Forks Herald, March 30, 1977.



being developed by a local farmer and businessman, who owns the majority of the land where all this development is to take place.

The landowner/developer had requested that the city rezone this area to accommodate his commercial developments. The city council granted the request with only minor compromises even after impassioned arguments against it by Mr. Bushfield.

There is much speculation as to why the city council decided to ignore Mr. Bushfield's objections, warnings, and pleadings and allow the "excessive" commercial development of this area. The answer may be in the proposed widening and beautifying of 32nd Avenue South. This road will be the main access way to the Columbia Park project from Interstate Highway # 29. The mayor and several other influential residents of the city want the renovation of this Avenue very badly.

Twenty percent of the total cost of redoing 32nd Avenue South will be covered by special tax assessments against property owners which own land adjacent to the Avenue. The Columbia Park developer owns much of the land on either side of the Avenue and would have to pay assessments running into the tens of thousands of dollars. However, in order for the land to be assessed, it must first be annexed by the city. The developer has indicated that he will not readily agree to annexation unless the city gives him the commercial zoning he wants for his development.

One can readily see, that the eagerness of the Mayor and others for the renovation of an avenue and the desire to have a new shopping center probably influenced the decision to zone this area for primarily commercial development. One lesson that can be learned from this experience is that the authority to zone is not as important as the willingness to zone properly. In this case the city council had the authority

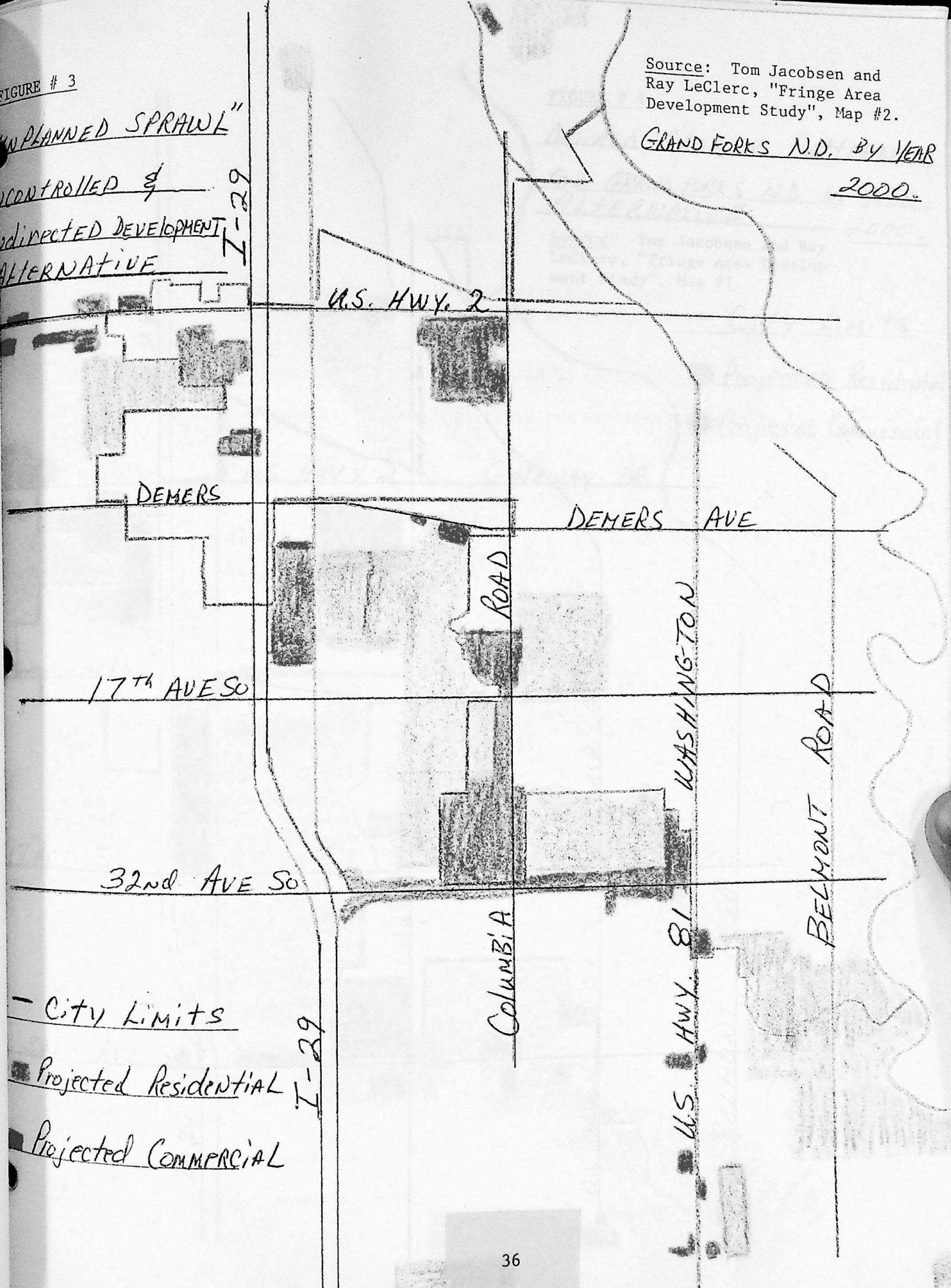
to limit and control urban sprawl, but they elected to allow development that might possibly not be in the best interest of the entire community. A city's development goals in this case were somewhat manipulated by the developer and not by the city planner, whose job it is to propose plans that should be in the best interest of the community.

Two illustrations have been added to the end of this section to give an indication of how extra-territorial zoning is supposed to promote a desired growth pattern. The city of Grand Forks has been chosen again to illustrate this point. In figure #3 the development of the Grand Forks area is shown as it will probably appear in the year two-thousand if no development controls such as extra-territorial zoning are imposed and enforced. This map was drawn two years ago. It is interesting to note how accurate the map was in predicting and depicting uncontrolled commercial development along Columbia Road and 32nd Avenue South. The Columbia Park project that has just been discussed seems to conform exactly to the uncontrolled alternative shown here. Figure # 4 shows how development should take place by the year two-thousand. This map is based on a controlled and directed planning alternative using such controls as extra-territorial zoning.

UNPLANNED SPRAWL"
UNCONTROLLED &
REDIRECTED DEVELOPMENT
ALTERNATIVE

Source: Tom Jacobsen and
Ray LeClerc, "Fringe Area
Development Study", Map #2.

GRAND FORKS N.D. BY YEAR
2000.



- City Limits
Projected Residential
Projected Commercial

SECTION V

SURVEY CONCERNING EXTRA-TERRITORIAL ZONING AUTHORITY IN SELECTED NORTH DAKOTA CITIES

The law enabling North Dakota cities to zone extra-territorially is now two years old. In an attempt to prove the hypothesis stated in the introduction, a sample survey has been conducted using North Dakota planning officials as the units of analysis. This section deals with the survey in three parts. The first part contains the methodology used in conducting the survey.

A cross-sectional survey of twenty-three cities was initiated. The number twenty-three has no special significance. The number was arrived at by selecting the four cities in North Dakota with over twenty-five thousand in population, the nine cities over five thousand in population, and the next ten most populated cities. The population divisions used correspond to the zoning and subdivision jurisdiction authority mentioned in the North Dakota Century Code. Please see Appendix III to see how the law is written. The contact in each of the twenty-three cities was a city planner, if the city had one, or the chairman of the planning and/or zoning commission.

A letter introducing and explaining the survey (see figure #5) and a questionnaire (see figure #6) were mailed to one of the above mentioned planning officials in each of the cities. A combination of eight open and closed ended questions were placed on the questionnaire. The questions were designed to elicit responses that would hopefully prove

The University of North Dakota

GRAND FORKS 58202

April 29, 1977

TELEPHONE: (701) 777-3831

DEPARTMENT OF POLITICAL SCIENCE

Dear Sir:

I am a graduate student at the University of North Dakota. I am conducting a survey of North Dakota planning officials.

The purpose of this survey is to obtain answers to questions and other information pertaining to the use of "extra-territorial" zoning as a method of controlling development in selected North Dakota cities.

Since March 1975, North Dakota cities have been authorized to extend their zoning authority to adjacent unincorporated territory located within a specified distance of the city limits. This authority is known as "extra-territorial" zoning. The unincorporated territory is normally referred to as the "urban-rural fringe" area.

Your time and effort in completing the attached questionnaire will be a tremendous aid in compiling the necessary information needed for this survey.

After completing the questionnaire, place it in the enclosed envelope, and mail it at your earliest convenience.

Thank you.

Sincerely,

Lawrence R. Wright

Lawrence R. Wright
1267-C Randolph Ave.
Grand Forks, ND 58205

"EXTRA-TERRITORIAL" ZONING QUESTIONNAIRE

For each of the following questions place your answer in the space provided. Some questions will require that you mark an (X) in the appropriate box, and others will require a narrative answer. Please be frank, and if more space is required use the opposite side of this sheet.

1. HAS YOUR CITY IMPLEMENTED THEIR AUTHORITY TO ZONE "EXTRA-TERRITORIAL" IN THE "URBAN-RURAL FRINGE" AREA?

- () YES IF YES, WHEN? _____
- () NO IF NO, WHY NOT? _____

2. IF YOU ANSWERED NO TO QUESTION #1, WHAT AGENCY CONTROLS AND DIRECTS DEVELOPMENT WITHIN THE "URBAN-RURAL FRINGE" AREA?

- () REGION () COUNTY () CITY

3. IF YOU ANSWERED NO TO QUESTION #1, WHAT METHOD OF CONTROL IS USED FOR CONTROLLING AND DIRECTING DEVELOPMENT WITHIN THE "URBAN-RURAL FRINGE"?

NOTE: IF YOU ANSWERED NO TO QUESTION #1, THIS COMPLETES YOUR PARTICIPATION.

4. APPROXIMATELY HOW MANY BUILDING REQUEST HAVE BEEN APPLIED FOR IN THE "URBAN-RURAL FRINGE" AREA SINCE YOU IMPLEMENTED "EXTRA-TERRITORIAL" ZONING?

5. HAS THE CITY EXPERIENCED ANY PRESSURE FROM DEVELOPERS WANTING TO BUILD STRUCTURES IN THIS AREA WHICH DO NOT COMPLY WITH THE ZONING ORDINANCE?

- () NONE () SOME () A GREAT DEAL

6. HAS THE ZONING ORDINANCE BEEN LEGALLY CHALLENGED BY DEVELOPERS AND LAND SPECULATORS?

- () YES IF YES, GIVE OUTCOME _____

() NO

7. IN YOUR OPINION, IS THE NEW ZONING AUTHORITY SUCCESSFUL IN HELPING YOUR CITY TO CONTROL AND DIRECT DEVELOPMENT WITHIN THE "URBAN-RURAL FRINGE" AREA?

8. WHAT SPECIFIC PROBLEMS HAVE BEEN ENCOUNTERED WITH THIS NEW AUTHORITY?

or disprove the stated hypothesis. The questions were derived from a set of tentative suspicions or curiosities obtained from the academic research. The responses to the questions were to provide for the collection of empirical data which would be relevant to the analysis of the hypothesis. The questions were designed primarily to achieve responses that would indicate the following: (1) if the extra-territorial zoning authority had been implemented, and if so, when?; (2) the number of building requests applied for since implementation of the authority; (3) if any pressure had been applied by developers in opposition to the new authority; and (4) the relative success or failure of extra-territorial zoning in controlling development in the urban-rural fringe area.

The second part of this section contains the actual responses and results received from the twenty-three planning officials. Of the twenty-three cities surveyed sixteen (about seventy percent) responded. This included: (1) all four of the cities over twenty-five thousand in population; (2) six of the nine cities with less than twenty-five but more than five thousand in population; and (3) six of the ten cities with less than five thousand in population. The results of the survey are depicted in figure #7.

By looking at this figure, one can see that of the sixteen cities that responded, twelve have or are in the process of implementing the extra-territorial zoning authority. The dates of implementation vary from as early as August 1975-to as late as "in the process of implementation". As one might have expected, the four largest cities have implemented the authority. Of the cities with over five thousand in population, only Williston has not yet implemented the zoning authority. According to the city planner, the city of Williston is trying to implement a new city "Development Guide" which implies the use of extra-territorial

FIGURE # 7

| CITY | QUES. #1 | QUES. #2 | QUES. #3 | QUES. #4 | QUES. #5 | QUES. #6 | QUES. #7 | QUES. #8 |
|-----------------|----------------------------|----------|-----------|--|-----------------|----------|-----------------------|----------------------|
| Bismark | Yes Aug '75 | -- | -- | 127 | Some | No | Very Helpful | See body of paper |
| Dickinson | Yes May '76 | -- | -- | 35 | None | No | Yes | None |
| Fargo | Yes July '76 | -- | -- | No answer | None | No | Yes | See body of paper |
| Grafton | Yes July '75 | -- | -- | 10 | None | No | Yes | See body of paper |
| Grand Forks | Yes Aug '75 | -- | -- | None-- See body of paper for reason | A great deal | No | Yes | See body of paper |
| Minot | Yes Did not say when | -- | -- | 20 | Some | No | Not yet determined | See body of paper |
| Mayville | Yes Jan '76 | -- | -- | 10 | None | No | Yes | See body of paper |
| New Rockford | No Not enough | County | No answer | | | | | |

helping. Two of the three said it was too early to tell, and one indicated that it helped to a limited degree. Therefore, no one actually said that the authority was not helpful!

Some specific problems with the new authority were reported by the respondents. The chairman of the Bismark planning and zoning commission noted that the conversion of present county zoning to city zoning districts was a problem. He feels that rezoning in the urban-rural fringe area from county to city classifications is quite cumbersome. The Fargo city planner reported problems with determining the exact boundaries of jurisdiction between the city and surrounding townships located in the fringe area. He indicated that the issue concerning joint-jurisdiction would have to be resolved. The chairmen of the planning and zoning commissions in both Grafton and Mayville stated that they have experienced problems with people building in the fringe area without permits. The main reason given by the builders was that they were not aware of the new zoning jurisdiction the cities had over the fringe area. The Grand Forks city planner reported that there is a definite lack of cooperation between the city and county planning programs that may cause problems in the future. The city of Grand Forks, as mentioned earlier, has established a staged growth concept for future development. In the "urban reserve area" any building has to be on a minimum of a five acre lot. The county, however, has adopted a resolution to decrease the minimum lot size in the remainder of the county to two and one-half acres. Therefore, builders are encouraged to build at the boundary of the city's two mile zoning jurisdiction. The Minot planning commission chairman stated that themapping and applying the proper zones to this large of an area is his biggest problem. Another problem he discussed was the city having to issue building permits and do all the inspections in the new jurisdiction

area. He indicated that to have legal control was one thing, but to handle and enforce the ordinance was too large a project for his small staff. He said that, "The willingness of the city to control its fringe will be decided by its ability to spend the time and the money to do the job." The Devils Lake city planner stated that his biggest problem with the new jurisdiction involved the controlling of zoning around the Lake. Devils Lake is a strong "magnet" for new development, especially residential, and most of the Lake is outside the city's one mile zoning jurisdiction. The lower tax assessment for rural land has been an incentive to build just outside the one mile ring of jurisdiction. So, having control just up to one mile has not been of very much help.

The third part of this section is a short discussion of the conclusions the writer has made based on the reported results of the survey. Generally, there seems to be little disagreement among the respondents that the extra-territorial zoning is of some help in controlling the development in the urban-rural fringe area of their cities. The degree to which it has aided the cities in directing and controlling growth seems to vary from city to city. The respondents also seem to be indicating that they generally agree that it is better to have this authority, even with its problems, than not to have it. Some have indicated that the new zoning authority is not enough to control development. The reason for this problem probably stems from the fact that there is no clear definition or understanding of the city's urban-rural fringe area. The fringe area idea is a state of mind that is perceived differently by individuals. To the city the fringe extends past the jurisdictional limits given it by the state, and to the farmer, speculator, or developer the fringe area should be nonexistent. In other words, any thing outside of the city limits should not be considered as part of the city, nor should the city

have any influence over the area, cries the speculator.

If the intent of Senate Bill 2395 was to give the cities more control over development in the urban-rural fringe area, then the new jurisdiction has had some limited success to this point. Therefore, the simple hypothesis stated at the paper's beginning can be proven based on the objective results received in the survey. However, the problems encountered by the cities point out some of the limitations of this type of zoning authority.

Another conclusion that can be made based upon the survey and academic research is that the extra-territorial zoning authority has to be used properly to be effective. The authority was granted to cut down on undesirable development in the urban-rural fringe area. The meaning of undesirable development might not mean the same thing to everyone involved in the city's planning process. In this case the extra-territorial zoning authority might foster the very thing it was designed to alleviate. This is definitely true where the speculators and developers are so powerful that they convince the city council or planning and zoning commission to zone an area for the developer's benefit. The final section will provide a short summary and some possible recommendations.

SECTION VI

SUMMARY AND RECOMMENDATIONS

The final section of this paper has a two fold purpose. The first part of this section contains a short summary of the study. In the second part some recommendations will be made based on the academic research and the survey.

As stated in the introduction, this paper was to provide the reader with some background information and a basic understanding of zoning as a development control tool. The first three sections of the paper covered the history, general nature, and problems concerning zoning. The paper was also to provide a specific examination of zoning as it is being applied extra-territorially to include a survey concerning this subject. Section IV began this examination with a general explanation of this relatively new concept. The discussion continued with an analysis of the extra-territorial zoning authority in the state of North Dakota and the city of Grand Forks. The state of North Dakota was used because it had just recently decided to enact legislation granting this zoning power, and the city of Grand Forks provided an excellent example because of its accessibility and unique experiences with extra-territorial zoning.

In attempting this independent study the writer has come to certain conclusions. These conclusions are based upon the academic research, past courses taken concerning zoning and planning, and the survey that was conducted. Some of these conclusions were revealed in the discussion of

the survey in the previous section. Other conclusions arrived at will be used in the following paragraphs to provide a basis for some recommendations.

This entire paper has been concerned with zoning. It has been pointed out that zoning is the most commonly used tool by planners to control growth. The majority of the comments about zoning have been positive. The premise behind the supporters of extra-territorial zoning is that this power will enable a city to control and direct growth in the fringe areas. The survey, in fact, indicated that this power was helping, even if to a limited degree. The writer does not necessarily agree. Granted, the new authority has given the city the authority to zone in the fringe areas, but is this the final answer or solution to unplanned growth? It is only a partial answer. Some believe as James Rouse that, "...with the powers and processes that now exist in local government and in the home building industry, it is impossible to provide, in an orderly and intelligent way, for the metropolitan growth that we know lies ahead."²⁷ He also believes that zoning has become almost a guarantee of sprawl rather than protection against it.²⁸ This is what is seen happening in Grand Forks right now. People just move out past the two mile ring to build. This results in the scattering of houses throughout the county causing sprawl over an ever widening area. Another point made by Mr. Rouse seems to have been proven in Grand Forks. He states, "Our cities grow by accident-by whim of private developers and public agencies."²⁹ This has been seen in the Columbia Park project. A developer here in Grand Forks has somewhat directed how a certain area is to be zoned in order to advance his causes. Therefore, one can see that just the authority to zone will not necessarily insure proper (desired) growth. Zoning is just a small part of the essentials to proper planning.

Recommendations concerning the idea of proper planning will conclude this study.

For the planning process to be successful it must begin with a strong commitment by local officials to the entire planning program. All local officials should actively participate in developing growth policies, not just the planner or planning commission. Public officials must be willing to stand by the comprehensive plan and its zoning ordinance when under pressure by developers to alter them. If sufficient effort and patience is provided by the planning staff, and if the local officials are willing to make controversial decisions, local officials can play a meaningful role in the planning process. In far too many instances the local officials have had a minimum input in the planning process with the result that a planning consultant or another planning professional has in effect developed the comprehensive plan. This usually results in plans and ordinances that are not relevant to the decision making process and therefore are totally, or at least partially, ignored by the local officials. This is why the staged growth concept can be so beneficial. One of the big advantages to this approach is that it is directly relevant to the existing or proposed developments and therefore can be of great assistance to the local elected official in the day-to-day problems. This is much different from a comprehensive plan which indicates an end use plan indicating development that might not be realized until twenty or thirty years in the future. The basic problem in dealing with this type of time frame is that many of the projections become very speculative to the point of being meaningless. In this respect therefore, the comprehensive plan is not of much assistance to the local officials in the decision making process. The comprehensive plan that calls for staged growth only plans ten or fifteen

years into the future. In addition, this approach is much more flexible and can take into account future technological break-throughs since the plan is modified periodically.

There also has to be cooperation between adjacent cities and the county for any urban-rural planning program to be successful. The planning programs of the county and its cities have to be closely related. In some cases a regional planning agency can coordinate the different plans into one master plan. The counties development goals have to be consistent with the development goals of its member cities.

Another major issue of effective planning is the need for communication with the citizens of the city and surrounding areas. Programs other than just public hearings need to be developed to provide more effective citizen input to the planning process at all levels of government. A questionnaire to collect citizen input is much better than public hearings. The hearings are not always well publicized and are usually pacted with a very voicetrous minority. The people that attend the public hearings do not necessarily reflect the consensous attitude of the citizens. These are just a few recommendations that might improve the directing and controlling of development in the urban-rural fringe area. This concludes the study of extra-territorial zoning authority in North Dakota.

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ENDNOTES

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²J. R. Dilworth, Land Use Planning and Zoning (Corvallis, Oregon: Oregon State University Press, 1971), p. 74.

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¹⁹ Donald H. Webster, Urban Planning and Municipal Public Policy (New York: Harper and Bros., Publishers, 1958), p. 62.

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