

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1338

2005 HOUSE NATURAL RESOURCES

HB 1338

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1338

House Natural Resources Committee

☐ Conference Committee

Hearing Date: January 21, 2005

| Tape Number                                   | Side A | Side B | Meter #   |
|---|--------|--------|-----------|
| 1   |        | x      | 1000-3500 |
| 2   | x      |        | 0-3500    |
|   |        |        |           |
| Committee Clerk Signature <i>Karen Bonnet</i> |        |        |           |

**Chr. Nelson:** I will open the hearing on HB 1338. Bill was read. Because of the length of the first hearing, we will limit testimony to be fair, on both sides of this issue to ½ hour to each side.

**Rep. James Kerzman, Dist. 31:** HB 1338 is a property rights issue. Many rural residents have spent much time, many generations, much money and energy to build up the property they own and manage. I realize that urban property owners have made similar efforts to obtain their possessions. Property rights need to be respected, urban and rural, and treated accordingly. Just because someone is carrying a firearm, should they be able to trespass on your property at will? A number of states already have some form of no trespass laws. Why should rural residents have to post their property to protect their rights and property? We take a good deal of time posting signs, updating signs, straightening signs, clipping around signs for better visibility, etc. In many areas of our part of the state, signs are almost impossible. Private land commingles with federal, tribal and state. If we don't post our lands, we have no control over what goes on. Hunters trudge through seeded fields and late crops like corn and sunflowers, and leave gates open. I have often questioned why the G & F posts land that wouldn't need posting according to

the current law. I refer to the PLOTS program. They are already practicing what we are asking for. If the landowner or lessee doesn't care if you trespass hunt and doesn't want to be bothered, post the land for open hunting. Right now, the landowner bears the burden of posting. Should not the person wanting the use of my property have the burden of asking permission? **Chr.**

**Nelson:** Are there any questions?

**Rep. Porter:** You state at the bottom that hunters trudge through crops, isn't there already a law against that?

**Kerzman:** There may be, but they do it. I'm not sure what the law is. We've had instances where we talk or confront a number of people carrying guns and you try to turn it in, it's your word against theirs. It's a tough situation.

**Chr. Nelson:** Any further questions of Mr. Kerzman? Seeing none, thank you for your testimony.

**Kerzman:** I have information from surrounding states. **(Written testimony attached)**

**Chr. Nelson:** Would you give that to the clerk and we will distribute it to the committee. Are there questions of Mr. Kerzman?

**Rep. Rod Froelich, Dist. 31:** I have one thing to ask. Mr. Hildebrand has asked for resolution to this issue of HB 1343 and 1338. I would lay this on the table today; I would like resolution also. Would Mr. Hildebrand join with me and others in asking for the opinion of the Attorney General on HB 1343 and HB 1338? This should satisfy anybody who wants clarification of the law.

**Chr. Nelson:** Any questions of Rep. Froelich? Seeing none, thank you, Rod. Is there further testimony in favor of HB 1338?

**Carol Two Eagle, landowner:** I have 330 acres, and 3 ½ miles of fence to post. That's expensive in terms of time, maintenance and patrolling. Since we don't have land rush laws any more, we're not opening up any reservations, we don't have any of that kind of thing anymore. It should be automatically assumed that land is owned. You can't traipse through my house, you can't go in my garage, my barns, my outbuildings without permission. Why can you traipse all over my land, (bother) my livestock, trample my crops, wreck my fences? I've found guys out there cutting lumber, or logs. I think we need to pass the law and if you need an attorney general's opinion, then fine. We need to do something that doesn't require the landowner to suffer all the burden.

**Chr. Nelson:** Thank you for your testimony. Are there questions of Ms. Two Eagle? Is there further testimony in favor of HB 1338?

**Sen. Robert Erberle, Dist. 28:** My constituents are in favor of passage of this bill. As a private rancher, the issue is of great concern to me for many years. I enjoy hunting and meeting hunters but it is definitely a property rights issue and I think we need to look at it like that. The present law simply does not work. I think we need to look at what other states have done. I see this law as being a great step toward improving hunter/landowner relationships. I think this is a good law and be a lot easier for people who want hunters to post it. For myself, I post the land, if anyone asks, I've never turned them down unless we currently hunting land in that region. Examples of why I don't see it working: A friend came to duck hunt on *my* place. At the slough where we went to set up our decoys, there were decoys already in place-other hunters were already there. They came in through crop country, but my land was all posted. My son and I had posted during deer season, too. We saw people approaching our land who took offense at me because I was

walking through prime brush cover. They thought I was disturbing something that they were to hunt until they found out that they were on my land. Did it make a difference that my land was posted? It didn't, and I had it posted legally. Later on in the day, there was a gentleman in a big 4-wheel drive truck driving/sliding down one of the steepest hills in my pasture that I have never driven down. I confronted him and he was going after game that he had shot on my property. According to him he had come through some draws and not seen my signs. I asked him how he got to his vehicle to retrieve his game. He then asked if I was Robert Erbele, then said that he came through a gate "back there" by a cornfield. It was the gate that I had wired shut and posted. My name, phone number, and address didn't mean anything. That is awfully disturbing to me and I don't want to be a policeman. The law does not work as we currently have it. I think this is a matter of property rights. A neighbor told of a car stopping in a hayfield across the road from his house. The people got out, spread a picnic lunch, and the kids started playing ball and jumping around on the hay bales. That was kind of neat, they were enjoying the great outdoors in ND. But I would not have that same right to drive into any one of our cities and stop to sit in the shade of a tree in a city yard. What's fair for one should also be fair for us in rural ND.

**Chr. Nelson:** Thank you, Sen. Erbele.

**Rep. Drovdal:** In your research in support of this bill, we are requiring every land to be posted if we want to hunt on that land in ND. If this passes, how does that apply to the federal land that we have in ND? Are they going to be required to post their land, too? How does this work in other states where they've passed this law?

**Sen. Erbele:** Federal law would apply to the federal land; I wouldn't see where they would need to post that. We're talking about private land.

**Drovdal:** The law is the same on all our land. Federal allowed ND's right to manage the game on that land. Are we going to write an exception in for that land so they don't have to post it?

**Erbele:** I don't have an answer for that.

**Rep. Porter:** In the stories that you gave us, were the authorities notified in any of those cases and charges pressed in any of those cases?

**Erbele:** No, I did not do that. The people were red-faced and apologetic that I felt that I had made my point strong enough that I didn't want to pursue legal action although I was well within my rights to do so.

**Porter:** In cities, the first 25' of a person's lot is public domain. If I had a tree on the first 25' of my property, although I have to shovel that sidewalk and pay liability insurance in case you slip and fall, I can't stop you from walking on the sidewalk. You can come sit under my tree in my front yard. I'm paying taxes and actually insuring you. As a landowner, we've given you immunity from that. Shouldn't we extend the same immunity into the city?

**Erbele:** I don't quite understand what you mean by immunity because if you come on my property, step in a badger hole and break you leg you could sue me, as I understand it.

**Porter:** No, you can't. There is distinct immunity in the law for that.

**Chr. Nelson:** Further questions for Sen. Erbele? Seeing none, thank you, Senator. Is there continuing testimony in support of HB 1338

**Rep. Chuck Damschen, Dist. 10:** Urge do pass. (Written testimony attached.)

**Chr. Nelson:** Are there questions of Rep. Damschen? Seeing none, thank you, Rep. Damschen. Is there further testimony in support of HB 1338?

**Dennis Miller, farmer:** Urges do pass. (Written testimony attached.)

**Chr. Nelson:** As an astute person, you knew he was breaking the law. Why wouldn't he also violate a new law?

**Miller:** As Mr. Hildebrand testified, he's in the law to inform people that land is open to hunting. I think just that attitude of Mr. Hildebrand gives hunters the confidence to stretch the law. I feel this law would swings the pendulum back to private property. HB 1338 would work very well. Those people who want hunting could post their land and it would go a long way toward good hunter/landowner relations.

**Chr. Nelson:** In publications, radio spots, in public announcements before & during hunting seasons, I've heard or read every one of them, I think. In each case, Dir. Hildebrand, has always included in them to respect the rights of private landowners, and I would take exception with that statement that he is promoting misuse of private property. He continually makes that point in those (advertising) spots, that responsible hunting activity is what the Department expects and what the people of ND expect from sportsman. I don't know how that could be more clear.

**Miller:** I do agree that Mr. Hildebrand does seek to be far-reaching in his efforts to promote good hunter/landowner relations.

**Rep. Porter:** In the instances that you gave examples of, were the law enforcement officials notified and charges pressed against these individuals?

**Miller:** I lifted my cell phone to call the authorities and the battery went dead. By the time I got to a phone, I had cooled off. It's not my belief that we need to cry to the authorities every time I have a personal problem.

**Porter:** If the law is changed to what is presented in HB 1338, and you don't call law enforcement when there is someone on you land, what's gained by changing the law? There's



already a law, people are breaking it, you aren't reporting them. If we change it and the same thing results what has changed?

**Miller:** I think the change will be in the attitude of hunters. As a hunter from Cambridge, Minn. said, "If you're too lazy to post, I'm going to hunt there." I think a change in this law will change the attitude of the hunters we're having trouble with.

**Rep. Nottestad:** I've listened to the horror stories about violations and as Rep. Porter asked, did you call in, were they prosecuted? Don't you think that they make good testimony. If some of these would have been prosecuted, don't you think it might have done more good? Word of mouth gets out, it would influence hunters.

**Miller:** I agree. That would be my last resort. I will take that under advisement.

**Nottestad:** It may be the last resort, but it makes continuous testimony that we here the same thing of over and over. They should be prosecuted; these slobs have no right to get away with it.

**Miller:** I agree 100%. These occurrences are during harvest when I'm (extremely busy). I just don't want to take the time, but I might have to.

**Rep. Charging:** I just clarified with the Game & Fish Dept. In regard to Rep. Nottestad's opinion as well. If we as citizens were to report them, they wouldn't continue. In fact, trespass is subject to \$1,000 fine and mandatory loss of hunting rights. That would sure eliminate a lot of problems. You could help the law that is working right now and reduce or get rid of the problem.

**Miller:** I agree that maybe we should start prosecuting and I'm learning something here today, too. But, it's a growing sentiment among hunters that they have spent \$100 a day on motel,

license, and it's my right to be here. They forget that people live here. I will reiterate that I think this bill is necessary to turn the pendulum back in favor of landowners.

**Chr. Nelson:** Thank you. Are there further questions of Mr. Miller? Is there anyone else who wants to testify in support of this bill? We're crunching the timeline.

**Eric Aasmunstad, ND Farm Bureau:** (Written testimony attached.)

**Chr. Nelson:** Are there questions of Eric?

**Rep. Keiser:** As I read the opinion, Judge Hagerty implies that the Legislature may have already addressed this issue and the court would not uphold the current legislative position. Is that your interpretation of it?

**Aasmunstad:** I'm not an attorney, that is not my opinion nor thought. My thought was that Judge Hagerty said that we asked the wrong question. As I stated in my testimony, in her opinion, the Governor and the Game & Fish director have interpreted the law correctly as it's put to them. However, had she been able to reach the ultimate question that the state legislature may have gone beyond the bounds of property rights with their actions. That is my understanding.

**Keiser:** We have many areas where the strict interpretation of property rights are expanding. For example, water. If what you're saying is true, Burleigh County would sure like to claim the Missouri River and no one else could. Would you support that?

**Aasmunstad:** There are very specific laws pertaining to western water law. Each state is different. I'd have to sit down and review the ND statutes that relate to water law and what political subdivisions rights are to stream flows in their subdivision.

**Keiser:** Then who owns the game in the state of ND?

**Aasmunstad:** Does any one person own the game? No. I think everybody agrees with that.

The interpretation that we've been given by a couple of different attorneys in their opinion, is that when you look at the question of who owns the game ... In our 50 states, 49 of our states' laws are based on British law, with the exception of Louisiana which is based on French code. British Common Law goes back to the Magna Carta. Different circumstances, people had to hunt to eat. When the English people forced the sovereign to let them own property, someone was on the ball. So the documents stated that the state or sovereign has the responsibility to set up bag limits, seasons, etc. with the responsibility of managing the game for *good of all citizens*. I don't that speak's of ownership, I think it speaks of management.

**Norland:** Do you farm or ranch?

**Aasmunstad:** Yes.

**Norland:** Do you lease land?

**Aasmunstad:** For farming, yes.

**Norland:** Do you control hunting on that leased land?

**Aasmunstad:** Yes, I do.

**Norland:** If you do, do you believe that you have the right to that?

**Aasmunstad:** Unless the hunting rights or subordinate rights to the land are maintained by the owner of the property they convey to the leaseholder, under our laws.

**Norland:** I understand that. Let's go one step further. Let's take all the CRP land in ND. Do you have CRP?

**Aasmunstad:** No.

**Norland:** I had CRP. The federal government pays for that CRP, they lease that land from you.

What gives the farmer the right to post that?

**Aasmunstad:** The CRP issue is...

**Chr. Nelson:** I will that question out of order. How many people are here to testify on HB 1317? The people who still want to testify in support of HB 1338, can we do it very quickly? I don't like limiting testimony, but we're on a timeline. We go into session at noon, today. I have to give the opposing side on this bill as much time as the supporting side. How many do we have left, four left. Can we make this very brief? Thank you Mr. Aasmunstad.

**Wade Moser, ND Stockmen's Assoc.:** We support this legislation. Our association has over the years, a standing policy supporting property rights. We view this more as a property rights issue versus a hunting right. Whether you have No Hunting or No Trespassing signs, we think those property rights need to be recognized. Rep. Kerzman had stated if there is a problem with people not wanting to be hassled or bothered by someone asking permission you could certainly have the right to post For Hunting. We also understand that there is a problem with absentee owners. In most cases the lessee have some rights or access to give that permission. In almost every case that I'm aware of, if there has been a good working relationship made with some landowners in the area you can find out who the neighboring landowners are. It takes effort, but isn't impossible. Hope for Do Pass.

**Chr. Nelson:** Thank you, Mr. Moser? Any questions? Is there further support?

**Larry Lewis, Park River:** At my place in NE ND, we found out that when the hunting signs are removed, the land is open to hunting. So two years ago, we had to replace them seven times, because they were being removed between and 3 a.m. at a time when I wasn't patrolling. We

have an instance from 2003, an incident of shooting the wrong sex, posted land, after hours. That bill is sitting in the Walsh Co. States Attorney's office. Nothing is being done & I don't know why. Those people should have lost their hunting privileges but that law goes into effect at the court date. It hasn't been to court, so they hunted 2003 with fines in \$3,000 range. They hunted 2004 because they haven't been to court, yet. They should lose their license.

**John Enderle, Taylor, ND: (Written testimony attached)**

**Chr. Nelson:** Are there questions of Mr. Enderle? Thank you. Is there further support to HB 1338?

**Lyle Peltz:** I support this bill. In the western part of the state 95-98% of the land in our area is posted. Just addressing the issue of people caught hunting where it was posted and didn't prosecute. Has anybody in this committee tried to prosecute somebody? I have, four times. It's a lot of work. It is time consuming. I've gone to the court house at least two times per case, testify, file the complaint. It would be easier for us to prosecute if we could call the game warden out, sign a complaint and get it taken care of at the time of the event. I think it would solve these problems.

**Chr. Nelson:** Any questions of Mr. Peltz? Seeing none, thank you. I will take opposing testimony to HB 1338 up to noon to be fair.

**Dennis Daniel:** I oppose the whole bill. Section F, "quoted," is a problem. I have a letter of opinion from the 1996 section line law. Within the last three months, near my place, the fence was moved from where it originally was when it was installed probably 50-60 years ago. Checking the siting on it, it wasn't put in the section line. They moved it 1-1 1/2 feet off the landowners property, past the 33 ft. to the center line. Last summer the owner evidently had it

survey. He put his fence dead center. He did not leave a gate, he didn't put in a cattle guard. Do (any) of you have a section line that is illegally closed? The attorney generals ruling says that any obstruction, be it fence, trees, locks that tie up a section line is an obstruction. There is PLOTS land nearby and some of the best hunting land in the Heart River drainage. On the west end is a pivot system with a Game & Fish ... to keep the game out of the hay. The only way to get to that land to hunt is to crawl over a fence, because from every direction. This land is also fee-owned. If it's fee-owned, I can't legally *carry* a shotgun (enroute) to hunt there-as this bill is written. You have to change that (bill) or this doesn't make sense.

**Chr. Nelson:** I can't get a ruling today, but I *think* you would be able to carry your gun to the property that you're hunting.

**Daniel:** I would like to believe I was, but he filed a complaint, I could be stopped and have to go to court to defend my right to walk on the section line.

**Chr. Nelson:** Are there questions for Mr. Daniel? Seeing none, thank you.

**David Munsch:** I called Game & Fish on the same type of issue, they advised me to call the landowner. The guy who doesn't prosecute (trespassers) dumps them on the next guy. "Slobs" aren't hunters. I'm against the bill.

**Chr. Nelson:** Thank you. I would remind those who testify to sign in. Is there further opposition to HB 1338?

**Dean Hildebrand, ND Game & Fish:** All the information I've given previously applies to what we're talking about here. When land is automatically posted or not automatically posted, and I refer to SD which is running about 70 arrests for trespassing per year in violation of their automatic trespassing bill. In ND we're running about 45 arrests, regardless if the land is

automatically posted or posted as an individual as presently exists. As the bill presently exists, you need to prosecute. Once you prosecute, it's out of our hands. We interpret and carry out the law that you pass then it goes to the states attorney, then the judge. You set the laws.

**Drovdal:** I have voted against this bill time and time again. Many of my constituents are for it. I have to have a reason when I go home. I post my land so that I know who is on it. I seldom turn anyone down and the only ones I kick off is somebody who didn't ask first. The reason I post it is also because I don't want guides and outfitters on it making money off my land. The question the landowners there ask me is, "Why should I have go through the expense and time to post my land? It's my land and it costs me money, time, and signs every year." How do I answer that question?

**Hildebrand:** I think you can place the blame back on me. We interpret those two chapters in the law that land left unposted is open to the public to hunt. It is extra work if you want to have people ask permission to hunt on your land.

**Drovdal:** I tell them that and they tell me that I'm the lawmaker.

**Chr. Nelson:** Are there further questions. Seeing none, thank you, Dean. Further opposition to HB 1338?

**Mike Donahue, United Sportsmen Of ND and the ND Wildlife Federation: (Written testimony attached.)** This bill doesn't stop the requirement to post, it just shifts the purpose.

**Chr. Nelson:** Are there further questions. Seeing none, thank you, Mike Further opposition to HB 1338?

**Bill Helphrey, ND Bowhunters Assoc.: (Written Testimony attached.)**

**Chr. Nelson:** I would like a clarification. Doesn't the bill say that the owner or lessee can give permission to hunt?

**Helphrey:** Yes.

**Keiser:** You cited Wyoming and Montana. What portion is BLM or Forest Service land?

**Helphrey:** I don't know for sure.

**Chr. Nelson:** Any questions? Thank you, Bill. Further opposing testimony?

**Harold Neameyer, Cass Co. Wildlife Club: (Written Testimony attached.)**

**Chr. Nelson:** Questions of Mr. Neameyer? Seeing none, thank you. Is there further opposing testimony?

**John Kopp, Pres., ND Wildlife Federation:** My personal view as a lifetime resident of ND and a landowner, I tend to agree with a lot of what the committee has brought up as far as the infractions of trespass. I believe trespassing would be worse by not having signs posted. I have several neighbors who take some (considerable) time to post for some of the same reasons that were discussed here today just so they know who's on there land. We post. I take restricting access as part of being a landowner. I can't see adopting new laws when we don't prosecute people for breaking the present ones, nor how another bill will help our current situation.

**Chr. Nelson:** Committee and members of the audience. Mr. K does bring up a good point with the mention of the Landowner/Sportsmen Council sign that allows hunting on a walk in basis with permission. That has been utilized in the state on a basis that does promote responsible use of the land. Are there any questions? Seeing none, thank you. Further testimony opposing HB 1338?



**Keith Groven, landowner & hunter, Grand Forks Co.:** This issue has come up time and again. It's one that I hope gets put to rest soon. I take restricting access as part of the burden of being a landowner. As far as considering land to be posted no matter what and how that has affected hunting in other states, it was mentioned earlier today that it has not ruined hunting in other states. I think if you asked some of the SD citizens they would disagree with you vehemently. I've spent a lot of time in SD the last two years and know many sportsmen there.

A gentlemen who owns a retail gun store has given up upland hunting altogether because access in the western half of the state is non existent for private land now. Most private land is leased up. I can see the landowners right. But there is no place for him to hunt. If he has to hunt the public land, it is so overrun that the quality of hunting is poor. Passing this bill will be a detriment to our hunting. Hope do not pass.

**Chr. Nelson:** Questions of Mr. Groven? Further opposition to HB 1338?

**John Enderle, landowner, Taylor, ND:** (Written testimony attached.)

**Linda Rauser, Keene, ND, landowner:** (Written testimony attached)

**Chr. Nelson:** Questions of Mr. Enderle? Seeing none, close the hearing on HB 1338. There was testimony from Linda Rauser who wasn't here to testify but her written comments are in the public record.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1338

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 11, 2005

| Tape Number                                   | Side A | Side B | Meter #  |
|---|--------|--------|----------|
| 2   |        | x      | 3835-End |
|   |        |        |          |
|   |        |        |          |
| Committee Clerk Signature <i>Karen Bonnet</i> |        |        |          |

Minutes: **Chr. Jon O. Nelson:** We'll take up HB 1338. Does any one have any amendments?

**Rep. Todd Porter: I move a do not pass on HB 1338.**

**Chr. Nelson:** A do not pass motion has been moved, is there a second?

**Rep. Lyle Hanson: Second.**

**Chr. Nelson:** Second by Hanson. Committee discussion?

**Rep. Dorvan Solberg:** If this passes, there are people in my country who think that the landowners rights are really being ignored. The thing that really takes over here is that if this bill passes, that would virtually shut down hunting, wouldn't it?

**Rep. Nottestad:** As we know it today, it would.

**Chr. Nelson:** Further discussion? Seeing none, Karen, call the roll on:

**Do not pass vote:**

**8-Yeas; 3-Nays; 3-Absent; CARRIER: Porter**

✓ Entered

Date: 2/11/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1338 - hunting/private lands

House NATURAL RESOURCES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number :

Action Taken : Do not pass

Motion Made By : Porter Seconded By : Hanson

| Representatives               | Yes | No | Representatives     | Yes | No |
|-------------------------------|-----|----|---------------------|-----|----|
| Chairman - Rep. Jon O. Nelson | ✓   |    | Rep. Lyle Hanson    | ✓   |    |
| Vice Chairman - Todd Porter   | ✓   |    | Rep. Bob Hunsakor   | ✓   |    |
| Rep. Dawn Marie Charging      | Abs |    | Rep. Scot Kelsh     | Abs |    |
| Rep. Donald L. Clark          | ✓   |    | Rep. Dorvan Solberg |     | ✓  |
| Rep. Duane DeKrey             |     | ✓  |                     |     |    |
| Rep. David Drovdal            |     | ✓  |                     |     |    |
| Rep. Dennis Johnson           | ✓   |    |                     |     |    |
| Rep. George J. Keiser         | ✓   |    |                     |     |    |
| Rep. Mike Norland             | Abs |    |                     |     |    |
| Rep. Darrell D. Nottestad     | ✓   |    |                     |     |    |
|                               |     |    |                     |     |    |
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Total (Yes) 8 No 3

Absent 3

Floor Assignment Porter ✓

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

**REPORT OF STANDING COMMITTEE (410)**  
February 11, 2005 3:05 p.m.

**Module No: HR-28-2632**  
**Carrier: Porter**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1338: Natural Resources Committee (Rep. Nelson, Chairman) recommends DO NOT PASS (8 YEAS, 3 NAYS, 3 ABSENT AND NOT VOTING). HB 1338 was placed on the Eleventh order on the calendar.**

**2005 TESTIMONY**

HB 1338

Mr. Chairman Representative Jon Nelson  
Members of the <sup>Natural</sup> National Resources Committee

HB1338 is a property rights issue. Many rural residents have spent much time (possibly generations), energy, and money to build up the property they own or manage. I realize urban property owners have made similar efforts to obtain their possessions.

Property rights need to be respected, urban or rural, and treated accordingly. Just because someone is carrying a firearm should they be allowed to trespass on your property at will?

A number of states already have some form of no trespass laws. Why should rural residents have to "post" their property to protect their rights and property? Our operation is probably considered mid-size and on a portion of our property we have good signage. We still spend a good share of time replacing signs, uprighting signs, straightening signs, and clipping around signs to improve visibility. In many areas in our part of the state signage is almost impossible – private land commingled with federal, tribal and state.

If we don't "post" our land we have no control of what goes on. Hunters trudge through seeded fields and late crops like corn and sunflower, spook livestock, leave gates open, etc. They may shoot towards people,

mostly unknowingly, that are out in the field harvesting, doing fall work, or even checking livestock.

I have often questioned why Game & Fish is "posting" land that wouldn't need posting according to present law. I refer to their "PLOTS" program. They are already practicing what we are asking for. If the landowner or lessee doesn't care if you trespass to hunt and doesn't want to be bothered, "post" the land open to hunting.

Landowners now carry the burden of posting. Should not the person wishing to use my property have the burden of asking before he uses my personal property?

Thank you,

Representative James Kerzman

House Bill 1338

Summary: HB 1338 provides that public hunting access onto another's land without express permission of the landowner or lessee is lawful only if the land has been posted as open to public hunting.

FOUNDATION FOR THE LEGISLATION

1. Private property is reserved to its owner for private use. Among the elements of a private landowner's property rights, the right to exclude others is one of the most essential. This is not a radical idea – it is established under decisions of the U.S. Supreme Court. One example is Nollan v. California Coastal Commission, 483 U.S. 825 (1982).
2. Under the current legislation, the Governor and the Department of Game and Fish have argued that the only legally permissible way to exclude others is to post land against public entry, or to confront trespassers and demand that they leave.
3. Because of this situation, the public and some state officials have developed the attitude that any hunter has a legal right to enter any private land, even if it is abundantly clear that the land he is entering is private, that it is owned by another, and that no permission has been obtained either expressly or by implication. This turns the common law rights of private property owners on their heads.
4. North Dakota landowners are entitled to legislation that protects their right to the exclusive use of their own private property, and cannot be interpreted to grant the public a generalized right of access to any unposted private land to pursue recreational interests.
5. This Bill fixes North Dakota law, by clearly establishing that private land is closed to public recreational use, unless the landowner grants permission, or otherwise makes it clear to the public that his land may be used without permission.
6. Any opponents of this bill, especially among those who call themselves politically conservative, ought to be ready to explain to their landowner constituents why the legislature of South Dakota has provided the private landowners of South Dakota with this protection since 1973, and the legislature of North Dakota believes that public access rights are paramount. Why are the property rights of South Dakotans protected by the legislature, and why are the property rights of North Dakotans trampled.
7. In fact, the legislature provides sanctions against trespass on state lands, NDCC section 15-08-20, that it does not provide to private landowners. Again, the legislature has turned constitutionally-guaranteed property rights on their head. Publicly-owned land has more protection against public trespass than privately-owned land!



Comment: The defect in this bill is that generally the misdemeanor of trespass requires an element of notice, related to notice to the trespasser that he is on the land of another. Compare Minnesota, Montana and Wisconsin. On the other hand, South Dakota has had such a law on the books since 1973, and it has not been overturned.

Minnesota makes it a trespass to enter unposted "agricultural land" without permission. Minn. Stats. 97B.001. Minnesota defines agricultural land to include land that is plowed or tilled, that has standing crops or crop residues, within a maintained fence for enclosing domestic livestock, that is planted native or introduced grassland or hay land, or that is planted to short rotation woody crops. The constitutionally required notice is provided by the alteration of the land or the enclosing of the land for ag purposes.

In Montana where posting is still required, but the elements of posting have been relaxed (for example, an orange spray-painted fencepost constitutes posting. (Montana Code Annotated section 45-6-201).

In Wisconsin, the statute defines criminal trespass to enter any enclosed, cultivated, or undeveloped land of another without the express or implied consent of the owner or occupant. Wis. Stats. 943.13. Undeveloped land is defined so that notice is required if the land is an inholding of another, or abuts land owned by the US, the state, or a local government.

Also in Wisconsin, implied consent is defined to exist if the alleged trespasser can prove implied consent based on the following circumstances: the owners have acquiesced to previous entries by that person, if the land is customarily used for hunting without permission, and if the owner has represented to the public that the land can be entered for hunting purposes.

IN SOUTH DAKOTA, the state Circuit Court recently decided the constitutionality of provisions of SDCL section 41-9-1.1(2) insofar as it allow hunting of small game in flight over private land. Benson et al v. State, Civil 03-121, Sixth Judicial Circuit, State of South Dakota. In 1973, the South Dakota legislature criminalized any hunting on private lands, outside of road rights-of-way, without permission of the landowner. This competed a gradual change over the previous 75 years from open hunting unless landowners affirmatively denied access to a requirement that hunters obtain permission in most instances. SDCL section 41-9-1.1(2) redefined allowable hunting without landowner permission to include shooting at or taking small game in flight over private land if the hunter is in the public right-of-way. The SD court decided that this statute took away the landowner's right to exclude hunters from private property, making it an unconstitutional taking of private property requiring just compensation.

House Natural Resources Committee

1/21/05

TESTIMONY IN FAVOR OF **HB1338**

Chairman Nelson, members of the House Natural Resources Committee:

For the record my name is Chuck Damschen and I represent District 10 which is made up of most of Pembina, all of Cavalier, and about 2/3 of Towner Counties.

I appear in support of HB 1338 for the simple reason that it is good common sense.

I believe most of us feel that if we buy a car we have a right to decide who drives it or rides in it. If we purchase a house we have a right to decide who lives or visits in it. If you own a lot in a city you have a right to decide who will access it, especially if it's your back yard or your place of business or source of income. These are obvious examples, I know, of rights of ownership.

But what is less obvious about rural property examples? Do access control rights diminish proportionately with the increase in the amount of property owned? Do we want less rights of ownership for one who is paying taxes on more acres?

I don't believe that is the attitude of this committee, other legislators, or ND in general, for the most part. Yet current law requires a rural landowner to claim a right through posting that most urban property owners assume through ownership.

I trust this committee will take these points into consideration and give HB 1338 a "do-pass" recommendation.

Thank you, and I would be glad to attempt to address questions from the committee.

Testimony in Support of HB 1338  
House Natural Resources Committee  
Jan. 21, 2005

Mr. Chairman and Committee Members

My name is Dennis Miller and I rise to support this bill. I am past president of LAND but am speaking on my own behalf.

I have numerous reasons why I support this bill and all of them center around the growing disregard that a growing number of hunters have for No Hunting Signs. An example that I remember is the Fargo SUV with license "Black Lab" that skidded past my bright fluorescent no hunting poster to hunt and then say, "I didn't see the sign". I have heard every excuse from "You are too young to own this land" to "I have permission from Joe Cool" when confronting wayward hunters.

The opening weekend of the 2003 season was about as bad as I have experienced. An out of state hunter, of which the vast majority are kind and polite, was hunting in my back yard. When I told him to leave, he became belligerent and called me every name in the book using vulgar language to the nth degree. He had the audacity to accuse me of starting the disagreement, "because he and his companion were so kind". He said he "knew the ---- law and was within the covering of the ---- law's protection, (even though he was hunting in unharvested crops within a quarter mile of occupied buildings). If I was too ---- lazy to post, he would hunt wherever the ---- he wanted."

The very next day, on our way to church, we saw a group of hunters come waltzing out of my sunflower field. When I confronted them about hunting in unharvested crops, they asked "What are unharvested crops?".

I ask you to give this bill a do pass before property owners are forced to bear arms to protect themselves from a growing belligerence in hunters.



**Administration:**  
1101 1<sup>st</sup> Ave N  
Fargo, ND 58102  
P.O. Box 2064  
Fargo, ND 58107-2064  
701-298-2200 • 1-800-367-9668  
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Bismarck, ND 58502-2793  
701-224-0330 • 1-800-932-8869  
Fax: 701-224-9485

By: Eric Aasmundstad  
Pg 1 of 3

## **North Dakota Farm Bureau**

[www.ndfb.org](http://www.ndfb.org)

**Testimony of North Dakota Farm Bureau  
House Bill 1338  
House Natural Resources Committee  
January 21, 2005  
Eric Aasmundstad, President**

Good morning, Mr. Chairman. My name is Eric Aasmundstad. I am the president of North Dakota Farm Bureau, and a farmer from the Devils Lake area. I am here this morning representing North Dakota Farm Bureau in support of House Bill 1338.

Farm Bureau believes property rights are among the human rights essential to the preservation of individual freedom. The fifth amendment of the United States Constitution guarantees the right of property ownership to every citizen. The fourteenth amendment prohibits the states from infringing on this right. Within this most basic of human rights, is the right to exclusive use of the property by the owner. In *Nolan v The California Coastal Commission*, United States Supreme Court Justice Antonin Scalia in the majority opinion stated; "Perhaps because the point is so obvious, we have never been confronted with a controversy that required us to rule upon it, but our cases' analysis of the effect of other governmental action leads to the same conclusion. We have repeatedly held that, as to property reserved by its owner for private use, 'the right to exclude [others is] 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'" The United States Supreme Court has decided these issues are "obvious". Then why is North Dakota statute silent and so resistant to something that is clearly obvious to the highest court in the land?

Under current law the only legally permissible way to exclude others is to post land against public entry, or to confront trespassers and demand that they leave. If a landowners exclusive right to their property is a constitutional guarantee, why are signs needed to state just that? North Dakota statute very clearly states posted land cannot be accessed without permission, and the statutes layout the requirements for posting.

**20.1-01-18. Hunting on posted land and trapping on private land without permission unlawful - Penalty.** No person may hunt or pursue game, or enter for those purposes, upon legally posted land belonging to another without first obtaining the permission of the person legally entitled to grant the same. No person may enter upon privately owned land for the purpose of trapping protected fur-bearing animals without first gaining the written permission of the owner or operator of that land. A person who violates this section is guilty of a class B misdemeanor for the first offense and a class A misdemeanor for a subsequent offense within a two-year period.

**20.1-01-17. Posting of lands by owner or tenant to prohibit hunting - How posted -**

**Signs defaced.** Only the owner or tenant of any land may post it by placing signs alongside the public highway or the land giving notice that no hunting is permitted on the land. The name of the person posting the land must appear on each sign in legible characters. The signs must be readable from the outside of the land and must be placed conspicuously not more than eight hundred eighty yards [804.68 meters] apart. As to land entirely enclosed by a fence or other enclosure, posting of signs at or on all gates through the fence or enclosure constitutes a posting of all the enclosed land. No person may in any manner deface, take down, or destroy posting signs.

Because of the situation developed by these statutes, some have developed the attitude that anyone has a legal right to enter any private land, even if it is clear that the land they are entering is private, and that it is owned by another, and no permission has been given to enter, either expressly or implied. Why is North Dakota statute silent on the rights of landowners to the exclusive use and control of their property? Furthermore, why do rules only seem to apply to open rural areas and not urban areas? It would seem the rules favor one class of property own to another.

North Dakota Century Code is not silent on the States right to control access and activity on State owned property, and describe the penalty for such action.

**15-08-20. Willful and casual trespass - Civil action for damages.** Any person who commits any trespass upon any of the surface or subsurface lands and resources controlled by the board of university and school lands is liable in treble damages in an action to be brought in the name of the state, if the trespass is adjudged to have been willful, but single damages only may be recovered in the action if the trespass is adjudged to have been casual and involuntary.

**15-08-21.1. Willful trespass - Penalty.** Any person who willfully trespasses upon any of the lands subject to control of the board of university and school lands, either by cutting down or destroying any timber or wood standing or growing thereon, or by carrying away any timber or wood therefrom, or by mowing or cutting or removing any hay or grass standing or growing or being thereon, or who injures or removes any buildings, fences, improvements, or other property belonging or appertaining to the land, or who unlawfully breaks or cultivates any of the lands, or who unlawfully tampers with any portion of the subsurface estate, or aids, directs, or countenances a trespass or other injury, is guilty of a class A misdemeanor.

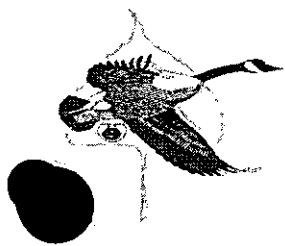
It would seem that our constitutionally guaranteed rights have been thrown aside by the State. It just does not seem right that public land in North Dakota has more protection from public trespass than privately held land! It would seem to us that the legislative body would want to clear this issue, rather than the courts.

North Dakota landowners are entitled to legislation that protects their right to the exclusive use of their own property. HB 1338 remedies a shortcoming in North Dakota statute by establishing that private land is closed to public use, unless the landowner grants permission to access the property in question.

In an opinion rendered by District Judge Gail Hagerty (*Rodney J. Froelich and Kathryn M. Froelich v. John Hoeven, Governor of State of North Dakota, and Dean C. Hildebrand Director of the Game and Fish Department, State of North Dakota*) dated May 3, 2004, Judge Hagerty stated; "If there is a common law action for civil trespass the Governor and the Director of the Game and Fish Department cannot take the claim away from the Froelich's, although the legislature may have done so in enacting Sections 20.1-01-17 and 20.1-01-18."

HB 1338 will remove all doubt in this situation and resolve once and for all what has become a very contentious issue. Therefore we respectfully request a "Do Pass" on HB 1338, and support the ownership private property and those that pay the taxes on that property.

Thank you, I would entertain any questions.



# United Sportsmen of North Dakota

By: Mike Donahue

Post Office Box 272

Bismarck, ND 58502

www.unitedsportsmen-nd.org

E-mail: info@unitedsportsmen-nd.org

## TESTIMONY REFERENCING

### HB 1338

By Mike Donahue, Lobbyist #275

House Natural Resources Committee

January 21, 2005

The United Sportsmen of North Dakota and the N.D. Wildlife Federation do not support HB 1338 and ask for a **Do Not Pass**.

Well, here it is again—a form of automatic posting. In past sessions we have heard that many landowners do not post and do not wish to use that privilege.

The current system has worked just fine. Most people are happy with the system. Only a few keep bringing this matter back to the table.

In our opinion, if you want to hurt the small towns, this is the way to do it. This will really hurt the non-resident hunter's ability to locate the landowner.

**Please, DO NOT PASS HB 1338.**

HB 1338

Good morning Mr. Chairman and members of the Committee

My Name is Bill Helphrey and I represent the North Dakota Bowhunters Association.

We ask that you to defeat this bill.

Those that support this legislation probably ask if it is too much for the hunter to drive in the yard or call them and ask permission to hunt on private land. Our reply to that is no. We are not against this bill because we don't want to ask permission to hunt on private land. We respect the rights of the landowner and prefer to have a good working relationship with them. We want to be return year after year and not have to always look for a new place to hunt. We are however, against this bill because it would require us to find the landowner to get this permission; and that finding is the problem. Without any posters with the landowner's name, it is a real challenge just finding the landowner.

BOX 374  
BISMARCK  
NORTH DAKOTA  
58502

Without the aid of a no hunting sign with the land owners name on it, and even with the aid of a county map and atlas, finding the owner in order to ask permission is in many cases difficult if not impossible.

I have randomly selected a page from such an atlas to demonstrate this point. Let's take a look at township 142N-R88W in Mercer County. This is an area in unit 9-C which is open to Antelope hunting.

I do not know what year this atlas was published, however the cost then was \$84.00. Even if it were brand new, there is no guarantee of accuracy.

According to this County Atlas, there are 57 landowners that own that entire township of 36 sections. Single individuals own only two of those sections in their entirety. Many of the sections have as many as four owners, each owning part of the section. Of the 57 owners listed, only 20 are listed as even living in the township. A search of the Beulah, Hazen and Center telephone listings produced 30 of the 57 names; slightly over 50%. This leaves the remaining 27 landowners location unknown.





Those that support this bill will claim that it works in Montana and Wyoming. It does. However, as shown in my example, it is not unusual for North Dakota Landowners to own land that is broken up into pieces that are scattered across the area and there are quite a few landowners that live outside the state. This Bismarck Tribune article sites an individual that owns 300 acres and lives in Wisconsin. How are we going to find him? The land in Montana and Wyoming is generally contiguous in nature and the landowner usually lives on that land. When one gets permission to hunt in those other states they are usually hunting on a piece of property that is all in one block, and large enough to spend some time on. The average size of the farm or ranch in Wyoming is 3692 acres, in Montana it is 2414 acres and in North Dakota it is 1290 acres. These numbers come from the Economic Research Service, United States Department of Agriculture.

In many cases North Dakota land is just too broken up to make finding the landowner an even moderate task at best.

All we are asking for is a realistic chance of being able to contact the proper person so we can ask. If the land isn't posted, the owner is telling us that it is OK to hunt on that property. If it is posted, we at least have a name to start with. Don't take away the only practical tool we have for asking permission to hunt.

Thank you for your time and please defeat this bill.

What are your questions of me?

| Last Name   | First Name            | Live In Twsp |
|-------------|-----------------------|--------------|
|             |                       |              |
| Ballensky   | Herbert               | Y            |
| Boeckel     | Leonard & Ruby        | Y            |
| Boehler     | Twila                 | N            |
| Bundy       | Dennis & Peggy        | Y            |
| Burkhaelt   | Ella                  | N            |
| Erickson    | Leland                | Y            |
| Erickson    | Evangeline            | N            |
| Erickson    | Delmar                | N            |
| Fischer     | LeRoy & Penny         | N            |
| Fischer     | Reuben                | Y            |
| Fischer     | Raymond               | Y            |
| Fischer     | Matt                  | N            |
| Flemmer     | Berry & Bernhardt     | N            |
| Flemmer     | Bernhardt & Brieaetta | N            |
| Flemmer     | Wilbert & Eleanor     | Y            |
| Flemmer     | Jeanette & Alvin      | N            |
| Flemmer     | Clarance              | N            |
| Flemmer     | Elsie                 | N            |
| Flemmer     | Larry                 | N            |
| Frank       | Emil                  | N            |
| Goetz       | John & Rosa           | N            |
| Goetz       | Sandy & Steve         | N            |
| Goetz       | Clifford & Marlene    | Y            |
| Gramm       | Milo & Stella         | Y            |
| Gunsch      | Virgil & Lalue        | N            |
| Helm        | Noel & Jack           | N            |
| Huber       | Darwin & Sue          | Y            |
| Huber       | David                 | N            |
| Jochim      | John                  | Y            |
| Kusler      | John                  | N            |
| Lapp        | Emil                  | N            |
| Mahin       | Leslie & Judy         | Y            |
| McLane      | Grace                 | N            |
| Orth        | Rueben                | N            |
| Orth        | Marie                 | N            |
| Pochart     | Ruth                  | N            |
| Scheidt     | Gladys                | N            |
| Schidt      | Herbert & Ester       | N            |
| State of ND |                       |              |
| Strom       | Mabel                 | N            |
| Strom       | Rick L                | N            |
| Swenson     | James & Darlene       | Y            |
| Voegel      | Delmar & Cassanda     | N            |

|         |                       |   |
|---------|-----------------------|---|
| Voight  | Donald                | N |
| Vollar  | Patty                 | N |
| Welk    | Tom & Aileen          | Y |
| Welk    | Richard & Tabea       | Y |
| Winkler | Howard and Bernadette | Y |
| Winkler | Albert                | N |
| Winkler | John                  | Y |
| Winkler | Gustaf                | N |
| Winkler | Paul & Elma           | Y |
| Winkler | Edwin                 | Y |
| Winkler | Henry                 | N |
| Winkler | Bernice               | N |
| Winkler | John                  | Y |
| Winkler | Martha                | N |

57 owners listed

20 Listed as living in Township

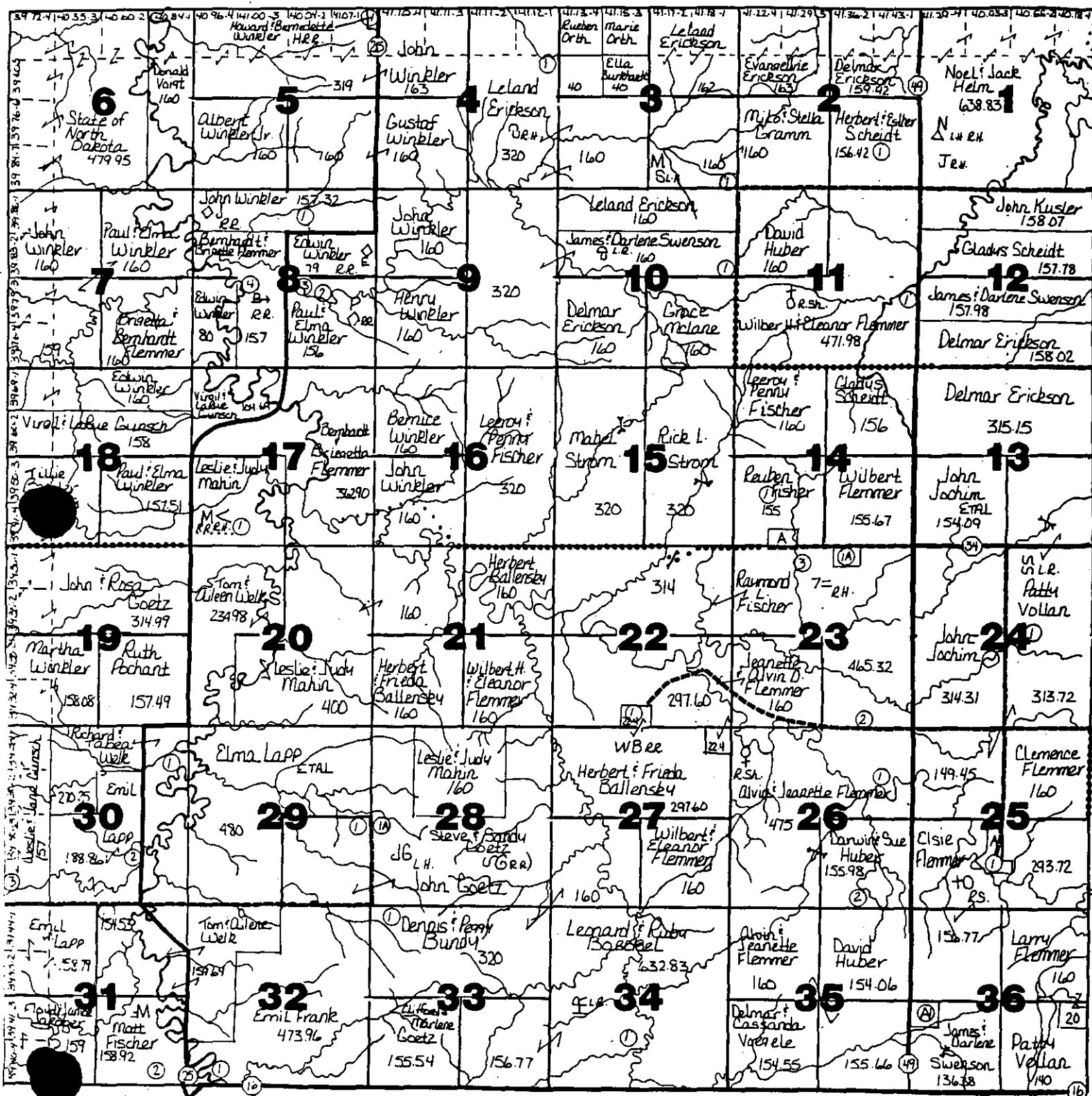
Largest single block is 640 acres

640 acre ownership appears twice out of 36 sections

# MAP OF: TWP 142N-R88W

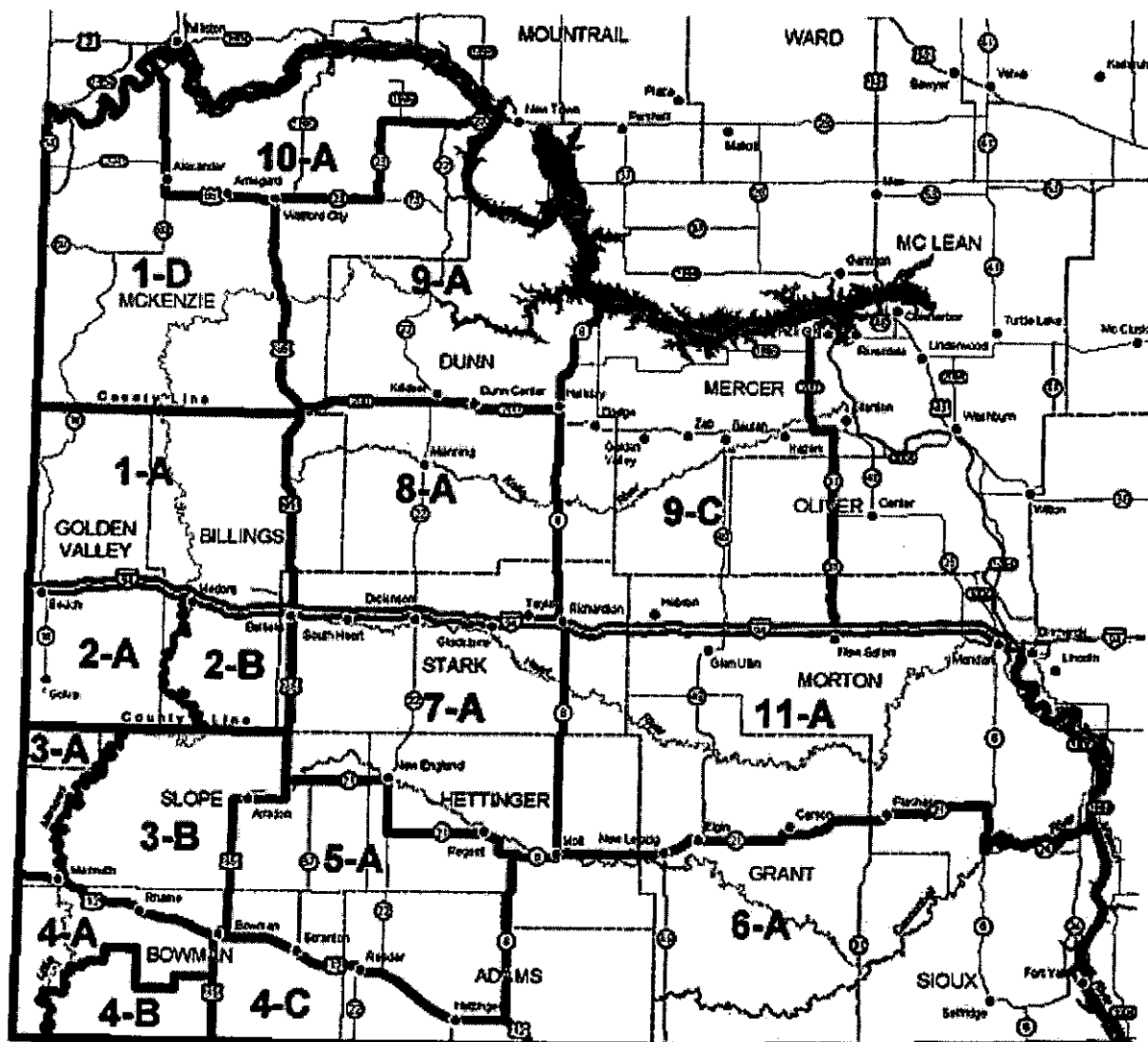
TOWNSHIP: 142N CODE: D

RANGE: 88W



- 15 R. LeRoy & Penny Fischer 5
- 25 R. Larry & Lora Gust 5
- 25 R. Frank & Penny Eide Jr. 188
- 25 R. Elsie & Marie Goetz 28
- 25 R. Lapp & Emmet 25

|                          |                          |                          |                          |                         |
|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------|
| T102-000<br>J<br>MAP 22  | T102-000<br>II<br>MAP 21 | T102-000<br>FF<br>MAP 25 | T102-000<br>EE<br>MAP 26 |                         |
| T102-000<br>DD<br>MAP 20 | T102-000<br>CC<br>MAP 20 | T102-000<br>BB<br>MAP 17 | T102-000<br>AA<br>MAP 18 | T102-000<br>X<br>MAP 24 |
| T102-000<br>W<br>MAP 23  | T102-000<br>V<br>MAP 22  | T102-000<br>U<br>MAP 21  | T102-000<br>T<br>MAP 20  | T102-000<br>Q<br>MAP 17 |
|                          | T102-000<br>O<br>MAP 16  | T102-000<br>N<br>MAP 14  | T102-000<br>M<br>MAP 13  | T102-000<br>R<br>MAP 16 |
| T102-000<br>I<br>MAP 9   | T102-000<br>H<br>MAP 8   | T102-000<br>G<br>MAP 7   | T102-000<br>L<br>MAP 12  | T102-000<br>S<br>MAP 10 |
| T102-000<br>F<br>MAP 6   | T102-000<br>E<br>MAP 5   |                          | T102-000<br>K<br>MAP 11  | T102-000<br>J<br>MAP 10 |
| T101-000<br>C<br>MAP 3   | T101-000<br>B<br>MAP 2   | T101-000<br>A<br>MAP 1   |                          |                         |



# THE BISMARCK TRIBUNE



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 12-18-2004: news-letters

## Tough for nonresident hunters

By KENT J. ALBRECHT, Oconomowoc, Wis.

I am a native North Dakotan, born in Minot, my family going back to homesteaders at the turn of the century. I have relatives spread over the state — ranchers, farmers, teachers and businessmen. I own more than 300 acres in North Dakota and make three or four trips each autumn, hunting with family, friends and the many out-of-state guests whom I introduce to the great state of North Dakota.

The problem:

First, the state penalizes us by closing PLOT land the first two weeks of pheasant season — a serious financial error for the pheasant communities needing out-of-state dollars. (Local residents do not spend equal money.) Next, the license is broken into a 10-day period or two five-day periods. Impractical for a two- or three-day weekend hunt. Thus, wasted days are paid for, which limits the possession available and requires several license purchases for only six to eight days of actually hunting.

So, now I am paying several hundred dollars in license fees for a limited possession, due to time, each hunt. OK, North Dakota has forced many of my friends back to South Dakota or Iowa, etc.

Next, I enjoy deer hunting — archery and rifle — so, what now? In my unit, there are three nonresident tags available. There are deer everywhere, but I can't get a tag — not even on my own land, not to mention on thousands of acres of neighboring ranches that would allow me to hunt. Thus, the goal of reducing the deer population was unrealized on approximately 12,000 acres that I directly know of.

I do not want to shoot a doe; there is plenty of meat available where I live at inexpensive prices. But I do enjoy the challenge of a trophy rack, of which there are plenty in our areas. Unfortunately, I can't get a tag. Explain the concept of many does available but restrictions on what many hunters seek, the buck. One buck will continue to reproduce for many does, so why not make them more available?

The final insult:

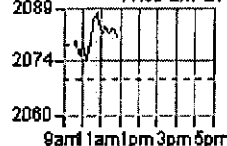
After years of no gun tag, I continue to enjoy bowhunting, so my next trip is planned for the weekend of Dec. 17-19. But now I read that I will be competing with doe hunters and require blaze orange. So much for enjoyment of a quiet, late-season bowhunt with undisturbed deer.

Perhaps I'll just cancel the trip and stay home. North Dakota doesn't seem to want me or my travel expenses that much, anyway.

**Bismarck Tribune MarketWatch**  
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**Market Watch**

NASDAQ Jan-14-2005  
 11:50 am ET



| Index     | Last Trade | Change |
|-----------|------------|--------|
| NASDAQ    | 2082.02    | 11.46  |
| DOW       | 10537.18   | 31.35  |
| AMEX      | 1396.07    | -4.53  |
| Russ 2000 | 614.22     | 4.09   |
| SP 500    | 1181.57    | 4.12   |
| NYSE      | 7048.96    | 20.29  |
| DOW Util  | 331.04     | 1.34   |

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Cass County  
**WILDLIFE CLUB**  
Box 336  
Casselton, ND 58012

By: Harold Neameyer



**TESTIMONY OF HAROLD NEAMEYER**  
**CASS COUNTY WILDLIFE CLUB**  
PRESENTED TO THE HOUSE NATURAL RESOURCE COMMITTEE

ON

**HB 1338**  
JANUARY 20, 2005

Mr. Chairman and Members of the Committee:

The CCWC opposes this bill. One of the biggest issues is that of access to the private land, and there is no proof that posting all land improves the situation.

We believe that most landowners who allow hunting don't want to be bothered daily by hunters asking permission.

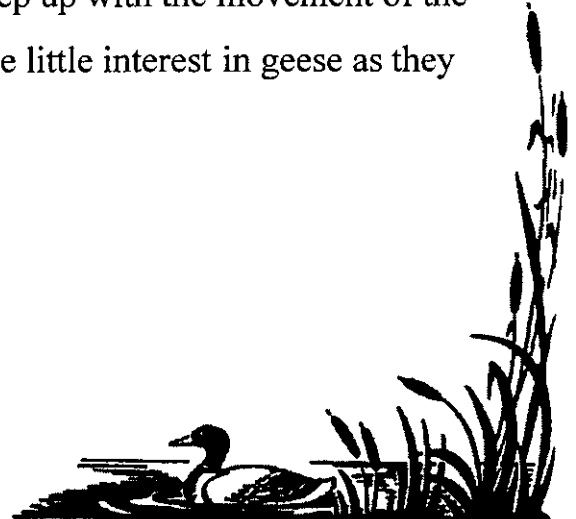
The Club doesn't believe that the current posting rules are unreasonable.

Many of the non residents come to North Dakota because of our no-posting law. It would seem that posting would be a disadvantage to the small rural communities who want the hunters business.

As hunters we find that it is very difficult to find landowners in order to ask permission. It is rumored that up to 1/3 of landowners are not living on the land.

It is extremely difficult for waterfowl hunters to keep up with the movement of the birds and then find landowners. Many landowners have little interest in geese as they make short stops in their fields.

Please oppose this bill.





Good morning Chairman Nelson and members of the Natural Resource Committee. My name is John Enderle, I farm near Taylor North Dakota, and I am here in support of House Bill 1338.

My support of this bill is not through a desire to deny anyone a day of hunting. On the contrary, I do not presently post my land and I try to be helpful to people when they ask to hunt on my property, except for the guy who shot at my house. I support this bill because my land is mine. Just the same as a person from town can claim his house and yard to be his. Should I be driving past his house and need the bathroom or laundry room, I don't have a state agency giving me permission to walk in. Even though my need at the moment may be greater than this gentleman's need to hunt on my property. I simply don't have the right. Nor should I. Why then are my private property rights handed out without my permission and with so little regard?

If this bill is passed the howl and cry will go up that this will destroy hunting in North Dakota. Nonsense. It hasn't destroyed hunting in surrounding states, why should it here? I find it hard to believe that a person would purchase an expensive shotgun, dogs, a vehicle, a license and a trip with lodging but cannot make proper arrangements for where to hunt. The people who come to my land often call me for permission before coming. There would be a lot more land available if this simple courtesy were extended. As to the contention that it would be difficult to simply stop in the middle of the road and blast away because that's where the birds are, I would suggest that that is one of the reasons so much land is posted now.

I have been involved in this issue for a long time and I realize the pressure involved. Many groups and organizations have brought their influence to this issue. How can landowners compete with the massive public relations blitz brought by North Dakota Game and Fish and the various hunting lobbies? How can the legislature be

expected to act against such a deluge? What recourse do you have?

The Constitution of the United States. Because it is the right thing to do.

Chairman Nelson

Members of the Natural Resources Committee

Thank you very much

Posting Bill Testimony HB 1338  
House Natural Resources Committee  
January 21, 2005

Mr. Chairman and Members of the Natural Resources Committee,

As a good neighbor and a responsible landowner, I need to know who is on my property and what they are doing there. This is my right to enjoy and my responsibility to bear. If you are on my property I need to know it. I need to know your intentions. Are you picking berries? Making meth? Picnicking? Watching birds? Hunting? Gathering historical artifacts? Most states recognize this right and responsibility year around.

In ND, this right is interrupted. Perhaps it is a throw back to a time when survival depended on the hunting of food. Perhaps it is the political power of one particular sport. Perhaps it is a desperate attempt at economic development at the cost of landowner rights. Whatever the reason, in ND, at various times of the year, in order to retain my landowner rights, I need to go through the process of posting my boundaries with un-inviting signs. I shouldn't need to do this and you can help by voting 'yes' on this bill.

This is not an 'anti-hunting' bill so don't get caught up in 'pro-hunting' sentiment. Families will still be able to spend quality time together enjoying the sport of hunting. In reality, if this bill is passed, public respect of private property would be re-captured. And with that, increased 'open doors' to hunters.

The opposition has legitimate concerns such as CRP land and absentee landowners that can be addressed other ways. If you vote no on this bill, you are punishing those of us who actually live on and work our land.

A 'yes' vote on this bill makes my landowners rights constant. A 'yes' vote means any trespasser must know where he is at and make contact with the owner whose property he is on. Is this more than any ND urban property owner would ask? I don't think so.

Thank you,

Linda Rauser  
Keene, ND