

2011 HOUSE FINANCE AND TAXATION

HB 1253

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1253
January 26, 2011
#13475

Conference Committee

Committee Clerk Signature *Mary Bruck*

Explanation or reason for introduction of bill/resolution:

A Bill relating to reassessment of property that has been sold for less than its most recently assessed true and full value; and to provide an effective date.

Minutes:

Representative Dave Weiler: I move a DO NOT PASS.

Representative Patrick Hatlestad: Seconded.

Representative Dave Weiler: I understand what this bill is attempting to do. In a way I agree with some of what it is attempting to do but I think that the opposition was very compelling and their argument in the inequities that it would most certainly create. I don't doubt them one bit. It's pretty easy to see that there would be inequities with this. I would hope the committee would support the Do Not Pass.

**A roll call vote was taken: YES 11 NO 1 ABSENT 2
MOTION CARRIED—DO NOT PASS.**

Representative Dave Weiler will carry HB 1253.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1253
January 26, 2011
#13450

Conference Committee

Committee Clerk Signature

Mary Brucke

Explanation or reason for introduction of bill/resolution:

A Bill relating to reassessment of property that has been sold for less than its most recently assessed true and full value; and to provide an effective date.

Minutes:

See attached testimony #1, #2, #3

Representative Koppelman: Sponsor. Support. HB 1253 is a bill that deals with your real estate taxes and how they relate to the sales price of a home. I admire the people who try to determine what property values are worth because it's not an easy process. They have to go through quite a process to do comparable sales tabulations and look at the condition of property and look at all kinds of other things to try and figure out what that property is worth. However good they are at that process it's still a guessing game for them to figure out exactly what your home is really worth. It seems to be that there is no better way to figure out what something is worth than what a willing buyer is willing to pay and a willing seller is willing to sell it for. That is simply what this bill does. It says that if a piece of property is sold in an arms length transaction which means you're not selling it to your brother-in-law or your son or daughter or something like that but it's a normal market kind of sale. If your property is valued for taxation purposes at a number higher than that it must be brought down to that level. It can't be any higher than the number it sold for. I don't think people should ever pay tax on something that is more than what they actually own. One of the co-sponsors of the bill mentioned to me that happened to him twice. He said he bought a piece of property and the taxable valuation was here and the price he bought it for was here. he went in to complain about it and they told him that he got a good deal and I was going to keep paying taxes at what it was worth. I would advocate passage of HB 1253.

Dustin Gawrylow, Executive Director of ND Taxpayers Association: Support. We've all heard antic dotes of people who have said if the county thinks our house is worth that much they should cut us a check for it today. This concept is fairly noninvasive as far as a future component to larger property tax reform and it should be passed forward with the intent of it being included in larger property tax reform.

Representative Wayne Trottier: What about in the case of fire sales where someone passes away or it's an airman that has to leave for another destination and they quickly have to sell the house, does that make any difference?

Dustin Gawrylow: I hadn't thought of that. Maybe that has to be included as some sort of clarification of a definition of the arms length transaction. Emergency situations where it's so far below market value where maybe there is a red flag for that and I'm sure that there could be something added that would put a percentage under market value or previous sale or something like that.

Kevin Ternes, City Assessor of Minot: Opposition. Please refer to attached testimony #1.

Chairman Wesley R. Belter: If a home is sold and the person buying it doesn't have a mortgage on that home do you have access to the selling price of that home?

Kevin Ternes: About 80% of our sales go through multiple listing services. We are lucky enough to be in a larger community where we have that data. The other 20% are probably sold between private parties. Sometimes we get that sales price that comes from the Tax Department, sometimes the individuals will respond to our surveys where we ask them how much they paid for their home. I would say most of the time we have an idea of what something is selling for at least in our community. There are many cities and in the smaller cities there is no checking system. The owner could bring in the purchase agreement to prove what he paid for to the assessor. The problem is the inequity that is going to create. If somebody is going to sell below market because that particular person wanted to sell it to that particular person, not related, but this meets an arms length transaction. That is going to be a huge discussion of what's going to be arms length and what is not. This bill would require us to what is called chasing of sales. It's in our textbooks what we train assessors that chasing of sales is not proper, its called selective reappraisal. Sales chasing is a serious violation of basic appraisal uniformity and is highly unprofessional. Oversight agencies must be vigilant to detect the practice if it occurs and take necessary corrective action. You'd be putting in law something that some people say is not fair and equitable to everyone else on the street. If somebody pays less for a house than what the assessed value is there is no way I am going in front of the City Council and the County Commission and defend that value when there are no sales to support something higher. We immediately fix the problem for the current year immediately. This proposal would make that person pay taxes on an inaccurate assessment and then be fixed the following year. But what if the properties are even updated by then, it's the wrong year.

Debra Goodsell, Acting City Assessor in Bismarck: Opposition. Please refer to attached testimony #2.

Representative Bette Grande: Distributed opposition testimony from Ben Hushka, City Assessor for Fargo. Please refer to attached testimony #3.

Marcy Dickerson, Tax Department: Opposition. I am opposing this bill for similar reasons to what Mr. Ternes said and similar reasons to what is in Mr. Hushka's testimony. My main concern is the inequity that could be and probably would be encountered because of this bill. If you go with a sales price that may or may not be an arms length transaction but for whatever reason is considerably lower than the valuations of similar properties and probably lower than sales prices of similar properties in the past few months or years or

whatever, you're going to wind up with certain properties that are going to be relatively undervalued compared to similar properties. Somebody is going to be paying too much tax compared to his neighbor. The one who is paying too little tax compared to his neighbor is going to be happy but that is not equalization. That is my main concern the fact that there is going to be inequity among properties because of something that is written and not because of the market.

Chairman Wesley R. Belter: No further testimony. Closed hearing on HB 1253.

Date: 1-26-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1253

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. Weiler Seconded By Rep. Hatlestad

| Representatives | Yes | No | Representatives | Yes | No |
|----------------------------|-----|----|------------------|-----|----|
| Chairman Wesley R. Belter | ✓ | | Scot Kelsh | ✓ | |
| Vice Chair. Craig Headland | ✓ | | Shirley Meyer | ✓ | |
| Glen Froseth | ✓ | | Lonny B. Winrich | AB | |
| Bette Grande | ✓ | | Steven L. Zaiser | AB | |
| Patrick Hatlestad | ✓ | | | | |
| Mark S. Owens | | ✓ | | | |
| Roscoe Streyle | ✓ | | | | |
| Wayne Trottier | ✓ | | | | |
| Dave Weiler | ✓ | | | | |
| Dwight Wrangham | ✓ | | | | |
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Total (Yes) 11 No 1

Absent 2

Floor Assignment Rep. Weiler

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

REPORT OF STANDING COMMITTEE

HB 1253: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO NOT PASS (11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). HB 1253 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1253

Testimony to the House Finance & Taxation Committee,

Chairman Wesley R. Belter

HB 1253

Kevin Ternes, City Assessor

City of Minot

kevin.ternes@minotnd.org

Testimony #1 p.1

January 26th, 2010

House Bill 1253

Mr. Chairman, my name is Kevin Ternes and I am the City Assessor in Minot.

I'm here to ask you to give a do not pass recommendation on this bill and ask you to continue to support fairness and uniformity of assessments for all property tax payers.

I would like to offer the concerns I would have regarding this bill:

This bill seeks to make sure that no assessment is higher than a previous year's sale price. If sale prices, and the real estate deals made between buyers and sellers were perfect, consistent and made sense all the time, this might be a good idea. But that's not the real world. We consistently see houses sell for less in winter than the same types of houses would sell for in the spring and fall when people are generally moving or transferring from city to city. Or some folks have to sell quick for personal reasons which generally results in a home selling for less than similar homes. The bottom line is most homes and properties sell for more than what they are assessed at, and for those homes that sell for less, there is a system in place to correct that if the assessment is actually an error.

This bill would require a home that sold for one price during a slow time of the year for instance to be assessed at that price the following tax year when others on the same street sold for a different or higher price just a few months later.

It's been my experience that what bothers people the most about property taxes is when similar homes are not assessed consistently. And this bill would create that inequity immediately in the first year.

Townhome developments where most of the units are all the same, built the same time, same floor plan, same age, same location obviously will on occasion have some units sell at different prices throughout the year because somebody is moving and is in a hurry, or wants out of the home fast because of the loss of a spouse etc. Are these similar units all to be assessed at different True and Full Values now based on sale price? The result is we would have similar units assessed at different prices based on sale prices that were the result of personal decisions of either the seller or buyer that doesn't always relate to market value. Under the current system, properties are assessed at the estimated market value based on all the sales of a development or neighborhood, not just one sale here and there.

To verify whether a property was sold in an arm's length transaction is extremely difficult. For instance, we have seen individuals buy a home from a senior citizen below market price. However, that buyer will tell us, "Hey we agreed on this price so that's what it should be assessed for". Even though similar homes sell for greater amounts throughout the year, should this home now be assessed at 25% to 40% less than all the other homes on the street?

TESTIMONY #1 p. 2

This bill does not address the conflict it would create between current statute which states a property is to be assessed according to its market value on February 1st of each year. If a home is purchased the previous year and then remodeled or updated after purchase but prior to Feb 1st of the following year, how is that to be reflected in the following year's assessment.

If a home sells twice in the same year, which sale price takes priority?

If the state board requires an across the board adjustment on all property in a particular jurisdiction for the following year to get into compliance, these sales would be exempted and that will require larger adjustments on the remaining properties in a jurisdiction.

We currently have a system in place, where if a property sells for less than the current assessment, the new owner can contact us and file an abatement which is a one page document easily filled out in less than 2 minutes. We can then visit the property, do a review and determine what the circumstances were and if in fact the property was over assessed it is adjusted immediately for the current year. They don't have to wait for the following year's assessment to be corrected, the current year's assessment is corrected immediately.

Currently in Minot, we have some people paying more for certain properties than we feel they are worth. We don't just assess at sale price now even when the sale price is higher than what other similar homes are selling for. So how can we only consider a sale price if it is lower than the current assessment. Assessments in a neighborhood should be based on all similar properties and those that sell for below market should not automatically receive a tax assessment advantage.

Walmart in Minot recently sold a vacant lot for what appears to be 50% of the price that it sold all the other properties around its SuperWalmart. And about 60% less than all the lots across the street have sold for. So now this single lot is to be assessed at half of what all the other commercial lots are currently assessed at for the following year? We have approximately 15 commercial land sales in this immediate area in the last couple of years that are supporting a particular sales range. But this klunker sale comes along and this out of state commercial enterprise should now pay half of what all the other property owners pay in tax?

Finally, the effective date of this proposal would apply to all 2011 assessments. The 2011 tax roll will mostly be completed under the current law and letters of notification of the board of equalization meeting will already have been mailed. If this bill would pass, there isn't time to implement this statute for 2011.

This proposal has numerous unintended consequences that will cause assessment inequity among similar properties and is actually not a solution to the correction of those few properties that might be over-assessed. The current system of correcting an inaccurate assessment is superior to this proposal.

Testimony # 2 p. 1

Testimony to the House Finance & Taxation Committee

Chairman Wesley R. Belter

HB 1253

Debra Goodsell, Acting City Assessor

City of Bismarck

dgoodsel@nd.gov

January 26th, 2011

House Bill 1253

Mr. Chairman, my name is Debra Goodsell and I am the Acting City Assessor in Bismarck.

I would like to offer the concerns that I have regarding this bill.

My concern is "What is an Arms length Transaction" and who would decide if a sale is an arm's length transaction. We have sales that sold at Auction, which we do not consider an arm's length transaction by State law, however the buyer is adamant the price is a realistic price because it had been advertised for sale, was an open auction sale and the property appraised for finance purposes for the purchase price the buyer paid. I feel that there would have to be unambiguous and stringent definitions and guidelines as to what an arm's length transaction is. There are also properties that list a selling price, but there are conditions that "transfer under the table" that no one knows about. This should be considered part of the sales price making it an unusable sale. If the buyer doesn't inform us of these transactions, the sales price is not accurate. With so many variables for "sales prices," it would be virtually limitless as to how to determine what a legitimate sale price is.

My next concern has to do with special assessments, mortgage points or other costs traditionally borne by the purchaser paid for by the seller. If a developer pays for improvements such as the streets and lights, sells the property, would that be considered a cost that we should subtract from the sales price even though they are not "special assessments." The developer may build two similar homes, one in an area that he puts the improvements in which he would sell for more and one where the City puts the specials in which would sell for a different price. We have asked

Testimony #2 p.2

several buyers what they paid for their home, and a lot of them don't really know what they paid for the property. When asked what they paid for a property, they will give you the bottom line of a closing cost statement, after all taxes are prorated, and credits or debits are made. An agreed upon purchase price between a buyer and seller often changes many times. Would it be fair to value two properties that are alike differently, just because one buyer isn't as savvy a negotiator as the next person?

This proposed legislation would cause many inequities in the equalization process with no reliable methods of getting the required information from the purchasers.

Testimony # 3 p. 1

**Written Testimony on House Bill 1253
House Finance and Taxation Committee
Chairman Honorable Representative Wesley Belter
by Ben Hushka, Fargo Assessor
January 26, 2011**

Mr. Chairman and members of the House Finance and Taxation Committee, my name is Ben Hushka. I am the City Assessor for Fargo.

The official position taken by the Fargo City Commission is to oppose this bill.

There are two main concerns I have with items in this bill. One relates to the inequities that will result in valuations on very similar properties. The other concerns the creation, in effect, of a different standard of valuation being applied to select properties.

The bill calls for the reassessment of properties that sold in arm's-length transactions for less than the assessment true and full value at no more than the sale price, reduced by the value of improvements financed with special assessments and other costs typically part of a normal transaction.

This would create a sub-class of properties that would be appraised by a different standard of valuation than presently applied to all properties. That sub-class would include only sold properties and, of those, only those that sold for less than the assessment value. Unsold properties and those sold for higher than the assessment value would continue to be appraised according to the current standard of value and appraisal.

The fact of the matter is, not all similar properties sell for the exact same price. There is a range of values even in the most homogeneous of neighborhoods for residential property or within the same occupancy type for commercial property. For that reason, widely accepted appraisal methodology is to consider a number of sales in determining the

market value of a type of or single property rather than each individual sale. Additionally, it is accepted appraisal practice to include the contributory value of in-ground improvements to a property regardless of the means by which they were financed. Special assessments are merely a financing mechanism to pay for part of the cost of developing a property.

Singling out specific properties for a different method of appraisal application will create inequities in the valuations and effective tax rates on the same class and, across classes, of properties. Article X, Section 5 of the North Dakota Constitution states that taxes shall be uniform upon the same class of property.

This concludes my testimony. Thank you for your consideration.