

2009 HOUSE POLITICAL SUBDIVISIONS

HB 1187

2009 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1187

House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: January 29, 2009

Recorder Job Number: 8183

Committee Clerk Signature

Minutes:

Chairman Wrangham opened the hearing on HB 1187.

Rep. Delmore: Introduced the bill. It is a bill done for the common good in a condo should be equal as far as what people pay and expect. I have 29 windows to replace; Rep. Wrangham only has 9; but if we are doing good for the common good of the condo this should be assessed that way.

Rep. Koppelman: This bill does put restrictions on covenants and so on, perhaps?

Discussed the size and wondered if this would prohibit that kind of thing?

Rep. Delmore: I think the covenants' that go with the property is something different than this. It does say not withstanding any provisions that has already been set forth.

Rep. Klemin: The introductory clause caught my eye because what we would be doing by the statue is reversing anything that said in the condo document now, if it said, except as already provided in a covenant and so forth, the it would maybe be different. I think we might have a problem where our statue is going to interfere with provisions that are already in by laws or other declarations already in existence.

Rep. Delmore: That is what my understanding of what "not withstanding" meant. Legislative Council did the wording.

\$110 Duane Christenson, President of the Cherry Arms Condo Assoc. in Grand Forks:

(see testimony #1).

Rep. Klemin: The bylaws you referred to; were they available before you purchased your condo?

Duane Christenson: this is a dilemma in our particular building. Often time people will purchase the condo without getting the bylaws. The former owner is supposed to deliver the bylaws but they have to be tracked down.

Rep. Klemin: Did you know there were bylaws?

Duane Christenson: Yes we did. It seemed fair to pay \$160/month for condo fees. What has happened is; when we compute all the common interests of the condo, some units are not at this time even paying enough in fees to cover the common costs of the unit.

Rep. Klemin: have you tried to change the bylaws since you discovered this issue?

Duane Christenson: We have, but I am a member of the strategic for the condo association. We thought this was the most equitable way to change it. We did try and decipher whether there were other condos like ours in ND but we cannot find any within the confines of Grand Forks.

Rep. Klemin: Are you saying rather than changing the bylaws it is easier to change the whole state?

Duane Christenson: Perhaps.

Rep. Nancy Johnson: What do you consider common elements? The heating or what about the utilities?

Duane Christenson: each unit is billed separately for heating within their unit. We all pay for the common areas in the condo. We pay for water, snow removal, lawns and any repairs that

need to be done on the building as a common fee. We are now functioning without a manager. We within are taking up the slack for that position.

Kate Schwitzer: I do not live in this condo. I own one and who lives there is my mother. I pay the bills for her and this is a place for her to live. We did try to secure bylaws when we moved in and at that time there was some turmoil at this particular condo. By the time they came to us we had purchased this condo. It has been pleasurable, but the part about the financial aspect is quite heavy. I spent out 3 months working with an accountant trying to figure out how to keep the condo viable. There are 8 larger units paying double what the smaller units to keep up with the costs of living expenses. The commonalities that are paid by all are water, power, grounds keeping, snow removal, bookkeeping, banking, lighting, light company and the contingency fund. Just to keep the condo afloat the 40 units must pay a minimum of \$110. This does not include any repair work or anything. We asked our attorney's how do we change the costs of the larger units? Because the covenants' were sent to the state, we were told it take coming to the state to get this changed. I asked the attorneys and CPA's to project in three years what it costs to keep condos viable. We are not the only association in trouble with this. I was assured that within three years the big units that are paying \$190/ with the cost of inflation we would be paying about \$250-\$300.

Opposition:

Gary Puppe, Bismarck: (see testimony #2) I own a condo and have lived in it for 16 years. This bill is a new section to the current statue. The current statue does recognize that common areas are owned by the owners of the unit as tenants in common in proportion to each unit interest. Here we are talking size. It means each owner pays its fair share in the project. This bill would want to separate maintenance, which is undefined, from the other costs associated with the common elements. All condo units are not the same size, but

naturally larger condos require more common elements. In our bylaws and declarations it is spelled out the shares. We are not in any financial difficulty. I think state law should stay the same.

Rep. Koppelman: As you read this bill it would essentially rewrite every current contract in the state with regard to this wouldn't it?

Gary Puppe: that is a concern that I have. That is why I came to this hearing.

Claus Lembke: Government Affairs Director, NDAR: (see testimony #3). I don't think it is unfair for state law to dictate fairness, but covenants are private regulations that you regulate yourself. Enforcement of the covenants is not the states responsibility. It is the responsibility of that individual association or member. We hope you oppose this bill.

Rep. Klemin: What do you think the responsibility should be of a person who buys a condo unit with respect to determining what these provisions are that govern the operation of the unit.

Claus Lembke: Every abstract has the condo rules published in it so they are readily available when one does title search. It is the responsibility of the individual to research the rules that apply to that unit.

Hearing closed.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1187

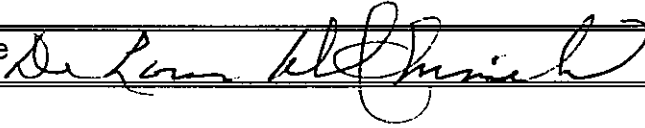
House Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8746

Committee Clerk Signature



Minutes:

Chairman Wrangham hearing on HB 1187.

Motion made for a Do Not Pass By Rep. Koppelman: Seconded By Rep. Pietsch:

Rep. Koppelman: This separates out the fees not by size and that is not right so I think it is working well now.

Vote: 11 Yes 0 No 2 Absent Carrier: Rep. Klemin

Hearing closed.

Date: 2/5/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1187

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS DO NOT PASS AS AMENDED

Motion Made By Rep. Kappelman Seconded By Rep. Pietsch

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman	✓		Rep. Kari Conrad	✓	
Rep. Craig Headland, Vice Chairman	0		Rep. Jerry Kelsh	✓	
Rep. Patrick Hatlestad	✓		Rep. Robert Kilichowski	✓	
Rep. Nancy Johnson	✓		Rep. Corey Mock	✓	
Rep. Lawrence Klemin	✓		Rep. Steve Zaiser	0	
Rep. Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Vonnie Pietsch	✓				

Total (Yes) 11 No 0

Absent 2

Carrier: Rep Klemin

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

REPORT OF STANDING COMMITTEE

HB 1187: Political Subdivisions Committee (Rep. Wrangham, Chairman) recommends
DO NOT PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1187 was
placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1187

#1

President of Cherry Arms
Condominium Association

Chairman Wrangham and Members of the Committee,

My name is Duane Christenson from Grand Forks. I am here today to speak in favor of the House Bill No. 1187. After my wife Linda and I retired from teaching in the Grand Forks Public Schools, we purchased a condominium in Grand Forks. Ours was a 1600 square foot three bedroom unit in a complex where there are seven others like the one we purchased. In the same complex of forty units, in addition to three bedroom units, others own 1260, 885, and 834 square foot two-bedroom units. Upon our purchase, we were told that we would pay a monthly condo fee of \$160 to compensate for the cost of snow removal, yard work, electricity in the common areas, and city water for all units. Initially, I did not consider this high because I assumed all homeowners paid the same fee with some of the monies going into a contingency fund to cover emergency repairs to the buildings.

I was also told a portion of the assessment also went to pay the salary of a manager who oversaw the day-to-day operations of the condominium association. But, after my living in the units for two years, the manager abruptly announced that he was resigning from his post. His resignation coincided with my becoming a member of the condominium board. My membership on the board allowed me to scrutinize carefully the association's budget. I was quickly made aware that no monies from my monthly fees were being placed in a contingency fund for emergency uses, and a large percentage of the monthly fee had been going to pay for the manager's salary and additional monies for any additional work he did for the association. I discovered this at a time when our monthly electric bills for the common areas and monthly city water fees for all owners were rising.

Prior to this, my monthly condo fee had increased \$30 per month to pay for additional expenses. I did not quarrel with this amount because I assumed everyone's monthly fee had increased the same amount to pay for all common expenses. I did not realize that in my association, fees were paid based upon the square footage of ownership. I then realized that assessment fees were paid on a sliding scale from \$83 to \$160 per month. When my fee was increased \$30 per month, the sliding scale changed from \$99 to \$190 per month. In other words, when my condo fee increased \$30 per month, the other condo fees increased only \$24 and \$16 respectively.

Common areas
fees are used
to pay for
common areas only.

Also, I discovered that when I paid an assessment fee for paving the parking lot, putting new windows in the condo dwellings and common areas, as well as for new siding for the buildings, I paid a larger assessment than other condo owners even though what I was paying was for the betterment of the entire association not just my unit. For example, I was charged more for paving the parking lot than others in smaller units despite that fact I drove a Saturn and other owners drove large pick-ups and SUV's. I paid more simply because my condo unit's square footage was larger than the other condo owners unit's square footage.

In addition,

This inequity became even more evident after the manager resigned, and the association realigned the budget to create a monthly contingency fund of \$500 per month as a line item in the budget. The majority of the monies for this fund came from the eight owners of the 1600 square foot units like my own and the eight owners of the 1260 square foot units. The owners of the 834 and 885 square foot units pay just enough to

15

meet monthly expensed for common usage of the condo buildings. Their present fees are not even enough to cover monthly fees for the use of common areas.

It is time for this pattern to change. In the middle 1970's, when my association was formulated, condos were new to Grand Forks, and I might add to North Dakota, and the firm from outside the state who built the units established our by-laws in order to achieve their end to sell all units. The by-laws they created resulted in our association guidelines that allow for the previously stated inequities. Initially, this promoted their sale effort, but as inflation threatens to impact what was originally only a small difference in fees, the costs for common services on a sliding scale could increase to exorbitant levels. In associations like ours, the larger units would reach a point where owners like myself are subsidizing the owners of units who pay smaller fees. At present, in my association, certain owners are close to doing this.

The time has come for change in North Dakota. This bill would create a more equitable and fair way to pay for the common services in all condominium associations. When some members of an association like my own association are forced to be welfare recipients of other condo owners, it reduces all owners' personal dignity and makes for an unhealthy working relationship amongst the association members. It is certainly not the way our founding fathers perceived of a democracy. What we have in return is a feudal system like that of Medieval Europe. This law would enable all North Dakota condominium owners to be faithful to our American ideals and to revitalize the relationships amongst all owners in all associations where inequitable fees apply. This law, if enacted, is the only justifiable means for condominium owners to pay for the common interests of all the owners in an association.

① Rentals

② Notes - Bookkeeping

assumed job 7

- Brady March - \$1500 + 2500
Treasurer extra dues ~~45000~~

Strategic Plan
& Financial Planning
Board

④ Monthly Concise to 1970

#2

Darryl Rupp

MEMO

~~I DON'T WANT TO THINK ABOUT
SEPARATING THE COST OF MAINTENANCE
OF SYSTEMS~~

THEREFORE OUR FURNACE, AIR
CONDITIONER, WATER HEATER, AND AIR
EXCHANGE SYSTEMS ~~ARE~~ AND THE
OPERATION, MAINTENANCE, REPAIR AND
REPLACEMENT ^{ONE BILLING} IS BILLED TO UNIT
OWNER ACCORDING TO PERCENT
OWNERSHIP OF THE CONDOMINIUM. IT'S FAIR.

OUR UNIT OWNERS UNDERSTAND
THIS, ABIDE BY IT AND HAVE
AGREED TO THIS CONCEPT FOR
35 YEARS. IT IS ALL SPELLED OUT IN
OUR DECLARATION OF RESTRICTIONS AND
BY-LAWS

HOUSE BILL 1187 SHOULD BE DEFEATED

THANK YOU, MR. CHAIRMAN

~~IT DOESN'T APPEAR TO ME TO BE
A STATE LAW MATTER~~

IT LOOKS TO ME TO BE LOCAL MATTER
~~DISAPPEARED~~ SEEKING A STATE
LAW CHANGE WITHOUT UNDERSTANDING
IT'S CONSEQUENCES ON OTHER CONDOMINIUMS

#2

MEMO

Dany Pappas

LET ME ILLUSTRATE.

ALL CONDOMINIUM UNITS ARE NOT THE SAME SQUARE FOOTAGE.

NATURALLY, LARGER CONDOMINIUMS REQUIRE MORE COMMON ELEMENT.

FOUNDATIONS

COLUMNS

GIRDERS

BEAMS

SUPPORTS

MAIN WALLS (BRICK, MORTAR

ROOF

FLOOR

WINDOWS

LARGER
MECHANICAL SYSTEMS

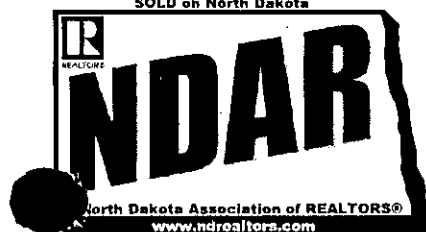
LARGER UNITS ALSO REQUIRE MORE HEATING, COOLER, ELECTRICAL, AIR EXCHANGE, ^{EVEN} TUCK POINTING & SEALING AND INSURANCE. THAT COST IS SHARED IN MY UNIT ACCORDING TO CURRENT LAW... ACCORDING TO MY PERCENT SHARE OF OWNERSHIP IN THE CONDOMINIUM... ALSO TAXES SPECIAL ASSESSMENTS.

THERE IS NO SEPARATE METERING OF GAS, ELECTRICITY OR WATER. WE SHARE _{COSTS} BASED ON OUR PERCENT OF OWNERSHIP

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2009

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January 29, 2009

Testimony on HB 1187

To: House Political Subdivisions Committee

From: Claus Lembke, Government Affairs Director, NDAR

Chairman Wrangham and members of the House Political Subdivisions Committee, my name is Claus Lembke. I am the Government Affairs Director for the North Dakota Association of REALTORS®. Our membership consists of eight local Boards of REALTORS® with 1500 individual REALTOR® members and roughly 500 affiliate members.

HB 1187 is attempting to equalize common area condo fees regardless of the size of unit. I have been informed that many condos have a common heating plant and in those cases it would not be fair to charge the same fee for the common heating plant regardless of the size of the unit being heated.

It is for such a reason as this that we oppose this bill.

