

2011 HOUSE FINANCE AND TAXATION

HB 1322

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1322
February 9, 2011
#14257

☐ Conference Committee

Committee Clerk Signature

Mary Bruehl

Explanation or reason for introduction of bill/resolution:

A Bill relating to prohibition of imposition of special assessments against agricultural property; and to provide an effective date.

Minutes:

See attached testimony #1, #2a and b, #3

Representative Dwight Wrangham: Sponsor. Support. Please refer to attached testimony #1 that defines general property assessment definition in the law. This bill deals with the fifth leg of the tax stool, special assessments. This bill deals with agricultural land and how it is assessed by municipalities. Section 40 of the code deals with municipalities. This states that agricultural land may not be assessed for special assessments. There have been some real horror stories around the state of huge special assessments done against agricultural property with very little or no increase in value to that agricultural property. There are people who have experienced this and there are people a lot more knowledgeable than I so with that I would conclude my testimony.

Beau Bateman, Farmer in Grand Forks: Support. I'm a township officer and run a township. North Dakota State Township Officer's Association voted unanimously in favor of this bill. I'm a member of the North Dakota Farm Bureau and they also are unanimously in favor of this bill. Finally, as a farmer/rancher I am pretty strongly in favor of this bill. The word sustainability gets a lot of play these days, nationally and state-wide. We farmed and ran a township since the year after North Dakota became a state. I'm the fourth generation. I would submit to you that my farm, nor any other farm in the state, is not sustainable if it is subject to \$25,000 an acre in special assessments. Two themes of consideration for you in my talk, logic and timing. Your decision on this bill will affect vast numbers of North Dakotans because it relates primarily to flood control funding and city expansion. Both of those represent large amounts of money and we need to recoup that. Farm and ranch land is significantly different than commercial or residential land. It seems like an obvious statement. When the Army Corps of Engineers came to Grand Forks to consider putting a flood control project in place they used a formula by which the US Government can justify a huge expense. The amount expended must equal or exceed what they have lost. In Grand Forks we added up all the homes and businesses that were wrecked and came up with a huge number, also the amount of commerce that was interrupted. They reported that to the US Government and asked if they could protect that damage for an equal amount or less it will be a cost benefit ratio. If all the land that Grand

Forks sits on was agricultural property and was flooded in 1997 there is no way the federal government would have invested the \$200 and some million that was there half of the \$450 million flood control project in Grand Forks. That is evidence that agricultural property is entirely different in its value than commercial or residential. When the city of Grand Forks determined special assessments to pay for their fourth of it because the state came in on a fourth and the feds paid half and the state paid roughly a fourth and Grand Forks had to come up with a fourth. They developed a special assessment policy. When it came to ag property they deducted rights of way where there would be streets and alleys and said for the remainder of the agricultural property we are going to assess you a special assessment, the same as if you were a commercial property. To put that in perspective (drew picture of farmland and businesses) farmland and a liquor store, the value of the liquor store per acre in Grand Forks is \$1.5 million an acre. The value of the gas station per acre is \$250,000 and that is the value of that property that is protected by flood. The value of this farmland at the time was \$2,000. The special assessment on this property was \$7,000 an acre and the same was assessed on the farm. Land has different values. Timing is related to city expansion. The Farm Bureau and the Township Officer's Association agree that paying for the benefit when it is exercised through tapping fees is a fair way to cover the costs. If a circus is in town and you don't want to go to the circus they don't charge you for a ticket until you show up to go to the circus, until you use that benefit. Land is an investment like stock. If you owned Microsoft stock you would be outraged if the federal government said "We want to tax you right now on the value of that Microsoft stock even though you didn't sell it and we think it's going to be worth this much in 20 years so we are going to tax you on that right now." You would not stand for that and that is how we view assessment and agricultural property. The appeal process if you are special assessed the special assessment commission who is appointed by the mayor whom we rural people cannot elect. They decide what the value of your special assessment is and you can protest it. They may make a recommendation but it doesn't stick and the city council is the final arbitration board. I submit to you that you now have the referee of one of the kids in the game making the calls. You really don't seem to get a fair hearing if the people that are making the judgment are the people that benefit from their own decision. From the city's perspective they may argue that they wouldn't be able to pay for expansion if ag property is exempt. We would suggest that you wouldn't build something unless you knew you could afford it. When the developer proposes an advance of a black top road you make sure he's got the cash to cover most of that and then you pay for the project through proper assessment of that value. They may say they are just taking the right of way when it comes to agricultural land but if you're a farmer or rancher an acre is an acre and it has to prove itself every year unless you do something to improve it. \$25,000 is still \$25,000. The cities will say that they already have the legal authority to levy these special assessments against farmland and they need to do so to accelerate the transition. They can collect more money if they force development through harsh taxation similar to a taking or a condemnation. They can force us to sell the land because we simply can't afford to farm it anymore. Do they have this right, yes they do as the century code allows that? Unfortunately the Supreme Court of the United States also affirmed this decision and in 2005 case the city used condemnation to force a land owner off her property so they could be used for a comprehensive redevelopment plan. The Supreme Court said you could do that. The developer couldn't get the financing so the land that women's house on was leveled and is blank today as the project fell through. By July of 2007 42 states have enacted laws restricting the takings allowed by this decision so that is 42 states that said

the Supreme Court was wrong. On a personal side, in our experience the combination of flood assessment and specials incurred through road construction have led to taxation of over \$25,000 an acre. On farmland that NDSU would tell you nets in our rotation of the Red River Valley is between \$150 to \$200 annually. There is no business in any town that can take 100% times the annual rate of revenue that could survive a tax rate based on that logic. Businesses can increase the price of their widgets for their customers to offset an increase in taxes. Farmers and ranchers accept prices quoted from elevators and sales barns. We can't increase what we want for our wheat when we bring it to Archer Daniels Midland. The solution to this problem is in this bill but it could be spelled out more equitably I think. Both the Farm Bureau and the Townships Officer's Association propose that Ag land remain as such for special assessments until development occurs at which time the tapping fees would be appropriate. I would suggest to you that you would consider an amendment to this bill to say that Ag land should be assessed at a percentage of its taxable value which is equal to the average percentage paid by developed property relative to its taxable value. The average taxable value of the city's property is about \$1 million. Their special assessment was \$7,000. If you applied that same ratio to farm land it would be about \$14 an acre. That is the same ratio and protecting the same value based on the value of the property. To recover the other \$6,986 you have a tapping fee as the farmers and ranchers can afford if they sell that land to a developer and the city can collect from a developer or the city could use it or waive it to encourage development to come to the city. Clearly there needs to be some changes because you have large groups of people considering flood control and expansion and they are going to fund those through special assessments I would guess. I think it's both ironic and illustrative that article 10 in the home rule charter of the city of Grand Forks states the powers of the city under this charter shall be construed liberally in favor of the city. I appreciate the upfront and forwardness of that statement. I think maybe it is time to restore the powers equitably between the city and the citizens. We are of the people by the people and for the people not of the city by the city and for the city.

Representative Glen Froseth: What's the difference why this bill is excluding greenhouses and nurseries? Aren't nurseries a form of a farm? It is basically an agriculture producing area.

Beau Bateman: Perhaps because greenhouses would be commercial and a very intense footprint and they are selling cash out the door to customers similar to a Wal-Mart or liquor store.

Representative Glen Froseth: But how are tree nurseries classified?

Chairman Wesley R. Belter: Maybe these are questions that the tax department could clear up for us.

Beau Bateman: That language is not language that was supported by Farm Bureau or Township Officer's Association.

Representative Wayne Trottier: How are out did this go out of Grand Forks?

Beau Bateman: They create a future special assessment district. If you build dikes in the Red River Valley where it is flat up 12 feet high...inaudible as he wasn't at the speaker.

Representative Wayne Trottier: Would you say your farm is right where the tractor is?

Beau Bateman: inaudible

Representative Lonny B. Winrich: You said the commercial and agricultural land was assessed at \$7000 an acre? I know from experience that residential property in Grand Forks was initially assessed at a certain level and over the payment period that went down considerably because the city was able to capitalize and had some interest savings on the bonds and so on. Did the \$7,000 go down similarly for commercial and agricultural land?

Beau Bateman: It did. In terms of significant...

Representative Lonny B. Winrich: Do you know what it ended up at?

Beau Bateman: About 10 or 15%. It went from \$7,000 to about \$6,300. Inaudible.

Representative Shirley Meyer: Would you repeat your suggested amendment one more time?

Beau Bateman: Ag land shall be special assessed at a percentage of its taxable value equal to the same percentage that cities and commercial property use and that way things stay equitable until we develop.

Representative Steven L. Zaiser: I understand the economic difficulties you pointed out and you've done a fine job in doing that. On the other hand does this if it were to go the way you were talking, make it difficult for the city to create that expansion because it really can't plan in an orderly fashion?

Beau Bateman: I struggle with that too in trying to create the language because it is important that they expand and no doubt their expansion would benefit adjacent land owners. So how do you craft language to achieve both objectives? The city of Fargo expanded at least at twice the rate as Grand Forks so they've been granting deferrals as they say they see your point and in 10 or 20 years we are going to come and get their money regardless of whether you develop or not. A deferral is an option to consider but without a bill with language that deferral option has to have a discussion with a referee and his kids because if they won't grant you that then we are back to oppressive taxation and we have no recourse. Somewhere in there a city needs to grow but you're treating cities like corporations and they have responsibilities to be profitable and they don't make bad decisions or they go out of business.

Representative Steven L. Zaiser: From my standpoint wouldn't it be difficult to anticipate the timing? The city then has to almost anticipate the timing that would make it profitable so you don't have wasted up front. To me that almost seems like an impossible task, would you agree or disagree with that?

Beau Bateman: I would agree with that 10 years ago. But now that I've been able to deal with some people within the city and reached some common ground I think that the realization that they have to grow and we're probably going to have to give up some land. It makes it easier to have that negotiation. I think that they will be able to develop.

Claus Lembke, ND Association of Realtors: Support. I am very surprised that Mr. Bateman suggested deferred assessment. You passed a law about eight years ago and I'm surprised that Grand Forks is not using it because it was done for the city of Grand Forks. I believe it had to do with the land between Menards and the city that was agriculture land and they were not assessed a special assessment but they were assessed and prorated. As soon as that Ag land changed, in other words, somebody put in a service station in that ag land and let's say the specials were assessed over 10 years and five years later it was developed into commercial property and they had to pay 50% of that. I think that is an excellent tool. I don't think it works that way with the flood but agricultural land should not be assessed a special assessment because they could have gotten to their field all the time without that road. If it now becomes more valuable you can develop it easier. The moment it develops it should be all enrolled in a delayed assessment. That is the reason why we support this bill.

Al Bekkerus, North Dakota Township Officer's Association: Support. At our last annual meeting two month ago this came up as a resolution and it was passed unanimously by the members at that meeting in support of this bill. I would urge your support in support of HB 1322.

Kent Costin, Finance Director from the City of Fargo: Opposition. Special assessments are not a tax. Often times they are confused as a tax and are talked about as a tax. Even attorneys who understand the law accuse us of it being a tax. It's a cost recovery of the cost incurred to put in the infrastructure and it's billed based on the benefits that have been conferred to the properties. I don't believe that tapping fees are used widely in North Dakota. I believe they are used a lot in Minnesota and other communities. That is because we have special assessments as a financing tool to help pay for the infrastructure. In communities where tapping fees are used that is one of the primary mechanisms to recoup the capital where the property owners after the infrastructure has been installed. Please refer to attached testimony #2 a and b.

Chairman Wesley R. Belter: Are you indicating to the committee if Mr. Bateman's land was in Fargo he wouldn't have the problems he has in Grand Forks?

Kent Costin: It sounds as though Grand Forks is levying all the assessments and I don't know what their philosophy is about giving them time to develop their property. That is a local issue and we've chosen to ease that burden because we have revenues in place to handle that. He is certainly going to be assessed but the issue is timing of sending in the bill. You can by agreement say we are not going to bill you for 10 years and if the city is happy with that and the landowner is happy with that then everything is great. Where you get into a rub is when there is differing opinions about the rate at which you are going to develop. If they feel that the city is leaning on them to do fast track development then I think there are a bit more problems negotiating arrangements. Or in the case of a recent discussion they say to just leave us alone we don't want to be assessed and are not going

to be assessed then that's the extreme on the other side. There is give and take in this process and there is some ability to negotiate an arrangement but not in all cases.

Representative Wayne Trottier: Does Fargo have plans for special assessments for flood protection or for fixing the flood problem?

Kent Costin: We did until we had to go to plan B which was sales tax. The maintenance portion of the diversion project may have assessments for the ongoing maintenance. The primary means of financing the flood project now is not through special assessment.

Representative Scot Kelsh: I assume that looking down the road long range that once if and when we get the diversion then all this will go away because parameters will be set on what is developable and what is not because all this land will be taken out of the flood plain, is that correct?

Kent Costin: They are still looking at the flood plan elevations and that determination is the final map. We don't really know the answer. The diversion project will certainly help development and help secure development. It may change the face of development in Fargo because of the need to elevate. We are already seeing that in some of our southern most areas. It's hard to say not knowing the final design parameters of the project what the effect will be. We believe it will be positive.

Representative Lonny B. Winrich: When you do special assessments does Fargo assess agricultural land at the same per acre rate as commercial land?

Kent Costin: I believe it depends on what the use plan for the property corridor is. In this case the parcel I used in my testimony would likely be partially commercial on the corridor on the street and then partially single family residential. There is a mix based on the planning use it's intended for the whole corridor. You kind of know on the way in what type of assessments will likely be levied.

Representative Lonny B. Winrich: Would you comment on the proposed amendment Mr. Bateman offered when he asked that agricultural land be assessed at the same percentage of taxable value as commercial land?

Kent Costin: That was the very reason I said special assessments are not taxes. It seems he is attempting to correlate the math and the allocation of benefits conferred to his property by using some form of taxation formula. I don't believe the existing state law nor have the courts upheld that it would be a workable solution. It's contrary to the way we do it and I think that would be contrary to the existing state law.

Allen Grasser, City Engineer with the City of Grand Forks: Opposition. Please refer to attached testimony #3. When we are in the rural areas you can envision this 140 -190 foot strip in some of the perimeter boundary areas so that part comes within the city limits. If you can envision a section of land you may have that 140 foot wide strip around portions of those sections of land. The remaining part of that property as it relates to flood protection is not taxed or assessed and is effectively treated about like a tapping fee. This means that there are no impacts to the property owners until that property gets developed. With regard

to the flood protection project there are two big components to the project, one is the flood walls and the dikes along the river and the second piece is protection from over land flooding. When the valley floods we get it from the river and we get it from the inside. Sometimes that over land flooding can be more problematic to deal with than the actual river. In regards to Grand Forks we have a perimeter interceptor ditch that does protect the city but it is several miles west of the city so what happens is we've got a number of sections of agricultural land that are now protected by that boundary. The pieces that we are assessing are contained within that narrow strip of property so on a per acre basis you've got a high number on a per acre basis but when you look at the entire level of protection a vast majority of the property is not being assessed and not being taxed by the city. Application of special assessment is a little bit different if you're talking about a road versus a storm sewer ditch versus a flood protection project.

Representative Glen Froseth: Is Mr. Bateman's property within city limits or is it within your zoning jurisdiction?

Allen Grasser: It's a little of both. The majority of it is within the zoning jurisdiction. They have pieces outside the city limits adjacent to developable and developing property. Primarily what is getting encompassed is the 140-190 foot strip of property that is actually within the city limits because we can't assess it if it's not in the city limits.

Representative Glen Froseth: The assessment you placed on his property is only on the 140 strip along the road?

Allen Grasser: 140-190.

Representative Lonny B. Winrich: Does Grand Forks make use of the delay or deferment process at all on special assessment?

Allen Grasser: Yes we do. The flood control project is one example. We have two mechanisms that the state has allowed us to use. One is what we call the future assessment district and one is a tapping fee. Mechanically they operate fairly close together. We've created a future assessment district of all the areas we believe are going to be benefitted by the project. It is bounded on the west by the diversion ditch and on the east by the river. As property comes into the city limits each year we go through and reassess it to capture the new areas that came into the city limits. The feeling was that we didn't want to assess the core level of people that were in the community in the 2000 and not have future growth contribute to the flood protection projects. Clearly the benefits are there for the future growth. In the meantime we are not collecting those dollars we collect them as it is annexed.

Representative Wayne Trottier: Is there not an assumption in a lot of these assessments that it forecast and general felt that it would develop but in the case of a person or a family saying they will never ever let that be developed, is that an assumption that all of us make?

Allen Grasser: I don't know if that's an assumption. I think what the past practice application has been is generally when the city is growing you get a boundary where sometimes you have a property owner that is more interested in developing than the next.

The problem is you may have this common boundary like I have on this document. There are benefits that accrue. I'm not sure what taxable value is a property but I know that we have done some recent purchases of property in Ag land and we are paying considerably more than what is on the taxable value unless it is being taxed at \$20,000 or \$25,000 an acre. We are not paying taxable value for the property we are acquiring.

Representative Wayne Trottier: Sometimes these developments are negative to the land owner for accessibility or travel if the street runs along his property?

Allen Grasser: They should be a benefit. If you're turning a gravel road into a paved road I'm having a hard time figuring out how that would be a negative benefit to the property. Certainly it does increase the property value when you have those types of improvements.

Representative Mark S. Owens: You said something a minute ago and I'm curious about and I would like clarification to see if I understand you correctly. You described the flood assessment in Grand Forks and you did it over the current but you didn't do it over the part that wasn't annexed yet but you wanted to be able to include them in the future because they should pay part of it because they were included. I heard that even after we've assessed it to everyone in this event where it changes and a new property comes in then we reassess it and people who are currently paying could see a reduction in the future of what they've been assessed because now that's been spread out a little bit over a greater amount of property. Did I understand you correctly?

Allen Grasser: No. Let me describe the process. Grand Forks actually had three special assessments that were done over time. On my personal property the estimated assessment for each one was about \$800. The last assessment almost didn't happen so we probably dropped that project by close to 25 or 30%. Every time they did that they reassessed the entire...it is part of the mechanisms in dealing with future assessment district, they reassess all the property under each one of those scenarios so that everybody paid the same amount. In other words, as the city grew between assessment one and two so when the reassessed assessment two they added assessment two to those that got assessment one and people that weren't in assessment one got assessment one and two. In the end result you're creating a level amount of special assessments to be applied. The mechanism gets a bit confusing. They call it a reassessment because they reassess the whole thing over their remaining costs. The intent in the future is to continue to apply that same level of that cost against future...so if it's \$.15/square foot that is basically what would be applied in the future. What they perceived as equity was that somebody in the city in 1997 and somebody in the city in 2000 or somebody in the city in 2020 would all pay that same amount.

Representative Mark S. Owens: You didn't confuse me more but you did create a few more questions. I have all three assessments on my property tax so I know what three you are talking about. At the point where I've been around and lucky enough to have assessment one and was blessed again with assessment two and now you've annexed some property in. Was not the whole cost of what was expected from assessment one and two included in those initial assessment one and two? The reason I'm asking that is when you annex this property and you just said you would add to them one and two and if it was the whole cost then their addition sounds like profit. So please clear that up for me.

Allen Grasser: Part of the flood protection project is a corps sponsored project so you have to be certified so there is going to be an ongoing cost to be continuing to be certified and to make improvements. A project that large should be looking ahead and setting aside capital for capital repairs. We realize that when things are new everything runs great and you really don't think about the future costs but you get down the pike and pretty soon you have to start replacing things. Part of what this money is intended to do is to be applied towards that so we're not coming back to you as an owner with assessment four, five, six, and seven but hopefully the new additions are able to offset those capital maintenance costs of a project. It also costs a lot of money to get recertified every five years as the federal government requires.

Representative Mark S. Owens: I just imagine the scariness of the federal government is like the city coming to the state.

Connie Sprynczynatyk, ND League of Cities: Opposition. Distributed written testimony from City of Williston. Please refer to attached testimony #4. When we had this discussion in a conference call there was unanimous concern among the cities, especially out west, if the bill says once it is Ag zoned you can never special assess then this will shut down growth in the communities. If you look at the zoning of the land just in the capital city you will see a lot of Ag zoning and there are some pieces that are in the city limits but that is where the city is going to grow. Somebody has to pay the cost of improvements.

Vice Chairman Craig Headland: What is happening with the property tax when they are special assessing the building, the maintenance, etc?

Connie Sprynczynatyk: You could be special assessing for an improvement. One of the options is that cities can choose to send a letter to ever property owner who is affected by the improvements being done. They can protest and if the protest is sufficient it collapses that project.

Vice Chairman Craig Headland: I'm wondering what we're doing with the property tax that we collect if we special assess for the construction of the project and the maintenance of that project?

Connie Sprynczynatyk: Say there is a new development who needs a street improvement, everybody is going to pay a special assessment because there has to be water, sanitary sewer, storm water management system, street lights and sidewalks and that is part of the upfront development cost. As time goes by you see how much you spend on that system and manage that system and periodically rehab it instead of reconstructing it again. When you set up a street project that gets special assessed because it is a benefit to the property and it is maintenance. You could say that in the state of North Dakota you could give communities an optional financing tool for those benefits. Somebody has to pay for those benefits. If a neighborhood doesn't pay for their own streets and a small portion of the entire street network then how are we going to do it if it's not paid by specials? It will probably have to be by property tax because most of the money in the general fund goes to public safety and public works. You have to have a way to pay for those improvements and if you don't have enough money from the highway distribution fund to take care of your

routine street maintenance like snowplowing and sanding and everything then what other sources are you going to have? It becomes a burden on the property tax.

Representative Dwight Wrangham: There's been a lot of discussion about whether specials are a tax or not but I think they can be taxing. I've heard that if it is agricultural then it is always agricultural property. What it defines in here is agricultural land that meets the definition in chapter 57 and it clearly states when agricultural land is no longer classified as agricultural.

Chairman Wesley R. Belter: No further testimony. Closed hearing on HB 1322.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
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☐ Conference Committee

Committee Clerk Signature

Mary Bruhn

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A bill relating to prohibition of imposition of special assessments against agricultural property; and to provide an effective date.

Minutes:

No attachments.

Representative Dwight Wrangham: I asked our staff to try and get down what Mr. Bateman was recommending for an amendment and they spoke with Mr. Walstad. Mr. Bateman would be asking for an amendment that would say the ration of special assessment to true and full valuation for agriculture property may not exceed the ratio of special assessments to true and full valuation of commercial property.

Chairman Wesley R. Belter: Do you have that in amendment form?

Representative Lonny B. Winrich: I do not.

Chairman Wesley R. Belter: If we are going to act on that we should get that in amendment form.

Representative Lonny B. Winrich: I'm not sure at what point it comes in but I know that the determination that is done at NDSU about the production capability of agricultural land comes into that assessment some place. Does that determine the true and full value?

Chairman Wesley R. Belter: That's what determines your true and full value as long as that land is classified as agricultural by the local taxing district. It's the NDSU study that determines the value.

Representative Lonny B. Winrich: If that's the case then there is a completely different basis for determining true and full value of Ag land as opposed to commercial land. Commercial land is based on comparable sales and Ag land is based on this formula that comes out of NDSU. It doesn't make sense to relate the two of them.

Representative Dwight Wrangham: I think the ratio is what we're talking about, the ratio of special assessment to true and full valuation. True and full valuation is true and full valuation no matter how it is determined.

Representative Lonny B. Winrich: I would disagree. I think the true and full value that comes out of one formula for determining it might be very different from the true and full value that comes out of some other process for determining it.

Chairman Wesley R. Belter: As long as it's not classified anything other than Ag land it will be the true value as determined by the formula.

Representative Dwight Wrangham: If the committee wishes I will ask Mr. Walstad to put this into amendment form. If there is no interest in that then I won't waste their time.

Chairman Wesley R. Belter: What are the committee's wishes? Do we want to get this in amendment form and to get what Representative Wrangham mentioned should also be clarified. Let's get your amendment and get Representative Wrangham's question clarified. Then we can look at this tomorrow.

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Mary Bruck

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A Bill relating to prohibition of imposition of special assessments against agricultural property; and to provide an effective date.

Minutes:

See attached amendment.

Representative Dwight Wrangham: Amendments distributed and explained. Please refer to attached amendment. Made a motion to move the amendment 1001.

Representative Mark S. Owens: Seconded.

Representative Lonny B. Winrich: I talked with Marcy this morning about the issue I raised yesterday and she confirmed what I thought was the case. For commercial property the assessments are based on comparable sales and some estimate of market value. For agricultural property the assessments are based on the formula that comes out of NDSU which tries to assess the agricultural land based on how much income it can produce by growing crops. I think this is rather a bizarre attempt to convert property tax into an income tax. It goes so far as when the ratio study is done on commercial and residential property the assessments have to come in between 95% and 100% of comparable sales, the true value assessments. On agricultural property the ratio study requires that assessments of parcels of agricultural land must come in at 95-100% of the average true and full value of agricultural land in that county. The basis for comparison of true and full value of agricultural land and commercial property is completely different. This is really an apples to oranges bill if I've ever seen one.

Representative Wayne Trottier: I disagree with that a little bit because the appraisers use that also. They use the NDSU values but where Mr. Bateman lives and where I live out in the western part of Grand Forks County there is a tremendous amount of difference in the land. When they do the tax valuations his land is taxed at a much higher rate than in the western part of the county. It is a little bit relative to commercial property in that sense.

Representative Lonny B. Winrich: If it's agricultural land does it has to be assessed by NDSU?

Representative Wayne Trottier: Yes. But that value is based on productivity I believe.

Representative Dwight Wrangham: In this proposed amendment we are not asking for any change in the way they determine the true and full valuation just saying that the percentage of true and full value cannot be greater. We are talking about a comparison of the amount of the special assessment to the true and full valuation.

Representative Lonny B. Winrich: The problem is that the true and full value of the land is simply computed on a different basis. If I understand the history of this correctly the reason that agricultural land was shifted to this other scheme was because if you try and assess agricultural land on the basis of comparable sales in particular areas where you can find comparable sales you find that the price of the land has gone up so much because people are buying their own private hunting preserves or whatever. If the land is available for that kind of development the price goes way up and this was a way to relate the property taxes on agricultural land to what it was actually used for. It is a deliberate attempt to get away from a comparison to other property types. It doesn't make any sense to compare true and full values on these two different kinds of properties.

Representative Dwight Wrangham: If that were true then we obviously have some flaws on how we evaluate true and full valuations. I think we are missing the substantial thought here that true and full valuation whatever it is, it is what it is. All this bill is saying that the percentages of that...we're not telling them to change the way they are doing it as they are doing it a certain way now and that has been accepted and I assume it can continue to be used.

Representative Lonny B. Winrich: The problem is that you want to compute a percentage of the true and full value of agricultural land. True and full value of agricultural land is defined in one way by the formula from NDSU. You want to compare that to a percentage of the true and full value of commercial land. True and full value of commercial land is defined a very different way on the basis of comparable sales. It is not what it is, it is two different things and it doesn't make sense to put this kind of restriction on it.

Representative Dwight Wrangham: I don't believe we are mixing the two; we are looking for a percentage of the special assessments on the true and full valuation of this property based on their true and full valuation. On the other one we are looking at the amount of the special assessment of the true and full value of that piece of property. We are not mixing the two, they are two separate calculations. We are not looking at a percentage of true and full value; we are looking at a percentage that the assessed value is of the true and full value.

Representative Dwight Wrangham: Made a motion to move the amendments.

Representative Dave Weiler: Seconded.

Representative Mark S. Owens: I do understand what you have been trying to say. This shows a problem in reality not with true and full value in the way that we do that or that may be a side issue. This highlights the special assessment in the out of control way they do this. If we are going to do this and apply this same theory to this situation then we have to do it to residential versus commercial too inside a city. A residential is based on sales of

the property and yet commercial is based in how well they do in sales. Did I understand that correctly?

Representative Lonny B. Winrich: inaudible as speaker was not on.

Representative Mark S. Owens: Then why would a company that is really no bigger than some houses pay more special assessments and have a higher true and full value than the house that was comparable in size?

Representative Lonny B. Winrich: I don't know. Is this a hypothetical example?

Chairman Wesley R. Belter: I see your point. I'm not troubled with the co marrying with the true and full agriculture versus the commercial property. My concern is the whole bill. I'm wondering if we have a problem in Grand Forks. I remember in the late 1980s or early 90s it was Grand Forks versus Greenburg and it was a Grand Forks problem. I'm concerned that we have the same situation here again.

Representative Lonny B. Winrich: inaudible as the speaker wasn't turned on.

A voice vote to adopt the amendments—MOTION CARRIED.

Representative Lonny B. Winrich: As I understand the problem with this bill as amended we would be comparing special assessments on agricultural land and commercial property by limiting them to a percentage of true and full value. My contention is that commercial property is assessed on the basis of comparable sales and must be related to actual market sales whereas agricultural property is assessed on the basis of what it can produce through the formula from NDSU. The ratio study there compares it to average assessments in the county. In fact the agricultural assessments are deliberately lower than what we might get out of market value to avoid having agricultural producers pay taxes based of land speculations and so on. It seems to me that there is little basis for trying to compare the two in the way that this bill does.

Marcy Dickerson, Supervisor of Special Assessments: I agree with everything you said. But for a different purpose I was just looking at the 2009 sales ratio study agricultural land because even though we don't use the sales ratio study for Ag land we conduct it just for information purposes. The median ration statewide was I think 36%, like Ag property assessed under the formula statewide. It ranged from 16% in Billings County to 66% in Cavalier County. Where I see a problem is that when you are looking at a value of a piece of agricultural property special assessments are generally distributed on a front foot or a square foot or something like that and not on value. I'm not sure how they would do that looking at the value. If you have a 200 front foot parcel of commercial land versus a 200 foot parcel of agricultural land how are you going to spread one based on front feet and then another one on the feet. If it were all done on value it would be easy to figure out. I see a problem with figuring out how to do that equitably. Definitely if you're doing it on the value the assessment spread to the ag land would have to be considerably less than to a similar parcel of commercial land. I believe that is what would happen.

Representative Wayne Trottier: I move a DO PASS AS AMENDED.

Representative Dwight Wrangham: Seconded.

Representative Mark S. Owens: While I understand the difference of true and full value I consider this a symptom of a bigger problem and that problem is still special assessments. While we are sitting here putting Band-Aids on symptoms until we get to the cure we are going to continue to have these problems. So based on what we have done before with a box of Band- Aids I'm going to put a Band-Aid on this one and support the bill.

Chairman Wesley R. Belter: I'm going to support it too. I've got some real questions about it but a good part of our legislative process here is it will get a second go around in the Senate and give an opportunity to get others involved in the process. I think the issue right now seems to be in Grand Forks but at some point in time it could be somewhere else.

Representative Dwight Wrangham: I certainly understand that this may not be perfect. It's unfortunate that our time restraints are such that I didn't have the amendment and the hearing came out on the bill. I understand that this as amended there really hasn't been a hearing on this. I would just ask for support on this. We can move it on and have the Senate take a whack at this. I'm sure we'll have more people with more understanding and the citizens of North Dakota will be best served by further deliberation.

**A roll call vote was taken for a DO PASS AS AMENDED.
YES 10 NO 3 ABSENT 1—MOTION CARRIED.**

Representative Dwight Wrangham will carry HB 1322.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1322
February 18, 2011
#14732

☐ Conference Committee

Committee Clerk Signature

Mary Bruckner

Explanation or reason for introduction of bill/resolution:

A Bill relating to prohibition of imposition of special assessments against agricultural property; and to provide an effective date.

Minutes:

No attachments.

Chairman Wesley R. Belter: There were a couple errors identified in the amendments from Legislative Counsel.

Representative Dwight Wrangham: Motion to reconsider our action where we passed HB 1322.

Representative Bette Grande: Seconded.

Chairman Wesley R. Belter: Voice vote was taken: **MOTION CARRIED.**

Representative Dwight Wrangham: There are two sections to the bill. The amendment was supposed to go into both sections but it only went into one section. All this amendment does is put the exact same thing in the second section. **With that I would move amendments 02001 to the engrossed HB 1322.**

Representative Mark S. Owens: Seconded.

A voice vote was taken: **MOTION CARRIED TO ADOPT AMENDMENTS OF ENGROSSED HB 1322.**

Representative Dwight Wrangham: Made a motion for a DO PASS OF HB 1322 AS AMENDED.

Representative Dave Weiler: Seconded.

Chairman Wesley R. Belter: We have the engrossed bill here and it is correct.

A roll call vote was taken: YES 12 NO 2 ABSENT 0
MOTION CARRIED---DO PASS AS AMENDED.

Representative Dwight Wrangham will carry HB 1322.

VK
2/15/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1322

Page 1, line 2, replace "prohibition" with "limitation"

Page 2, line 2, remove "is exempt from"

Page 2, replace line 3 with "may not be subjected to special assessments at a greater percentage of true and full valuation than the percentage that special assessments are of true and full valuation of commercial property in the special assessment district."

Renumber accordingly

Date: 2-15-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

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. Wragham Seconded By Rep. Owens

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

Total (Yes) _____ No _____

Absent

Floor Assignment _____

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

~~VOICE VOTE~~

~~MOTION~~

Date: 2-15-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

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. Wrangham Seconded By Rep. Weiler

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Scot Kelsh		
Vice Chair. Craig Headland			Shirley Meyer		
Glen Froseth			Lonny B. Winrich		
Bette Grande			Steven L. Zaiser		
Patrick Hatlestad					
Mark S. Owens					
Roscoe Streyle					
Wayne Trotter					
Dave Weiler					
Dwight Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

VOICE VOTE -

MOTION CARRIED.

Date: 2-15-11
Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

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. Trottier Seconded By Rep. Wrangham

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

Total (Yes) 10 No 3

Absent 1

Floor Assignment Rep. Wrangham

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

Date: 2-18-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

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. Wrangham Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Scot Kelsh		
Vice Chair. Craig Headland			Shirley Meyer		
Glen Froseth			Lonny B. Winrich		
Bette Grande			Steven L. Zaiser		
Patrick Hatlestad					
Mark S. Owens					
Roscoe Streyle					
Wayne Trotter					
Dave Weller					
Dwight Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

VOICE VOTE

MOTION CARRIED

VLC
2/18/11

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1322

Page 2, line 18, remove "is exempt from assessment and collection of special"

Page 2, line 19, replace "assessments for benefits conferred under this title" with "may not be subjected to special assessments at a greater percentage of true and full valuation than the percentage that special assessments are of true and full valuation of commercial property in the special assessment district"

Renumber accordingly

Date: 2-18-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
 .02001

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Wrangham Seconded By Rep. Owens

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

Total (Yes) _____ No _____

Absent

Floor Assignment

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

VOICE VOTE

MOTION CARRIED

Date: 2-18-11
Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

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. Wrangham Seconded By Rep. Weiler

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich		✓
Bette Grande	✓		Steven L. Zaiser		✓
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trotter	✓				
Dave Weiler	✓				
Dwight Wrangham	✓				

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. Wrangham

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

REPORT OF STANDING COMMITTEE

HB 1322: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1322 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "prohibition" with "limitation"

Page 2, line 2, remove "is exempt from"

Page 2, replace line 3 with "may not be subjected to special assessments at a greater percentage of true and full valuation than the percentage that special assessments are of true and full valuation of commercial property in the special assessment district."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1322, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1322 was placed on the Sixth order on the calendar.

Page 2, line 18, remove "is exempt from assessment and collection of special"

Page 2, line 19, replace "assessments for benefits conferred under this title" with "may not be subjected to special assessments at a greater percentage of true and full valuation than the percentage that special assessments are of true and full valuation of commercial property in the special assessment district"

Renumber accordingly

2011 SENATE FINANCE AND TAXATION

HB 1322

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1322
3/7/2011
Job Number 15047

☐ Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to limitation of imposition of special assessments against agricultural property

Minutes:

Written Testimony Attached

Chairman Cook opened discussion on HB 1322.

Representative Wrangham – There are 2 different ways that special assessments can be assessed against special assessment improvement areas. One is 40-23-01 special assessment commission where a commission is set up and that commission then assesses the amount due to each lot or parcel within the improvement district. I would like to read from 40-23-07. This is under determination of special assessments by the commission. It says, the commission shall determine the amount in which each lot and parcel of land will be especially benefitted by the construction of the work for which such special assessment is made and shall assess against each of such lots or parcels of land such some not exceeding the benefits as it is necessary to pay it's just proportion of the cost of such work. I believe as long as this commission form is used the problems that we are going to be addressing probably will go away. I don't think there are any problems. Section 40-23.1 is the section that is known as the alternative allocation of special assessments. In that special assessment section, there isn't the special attention paid to the amount that the lot or parcel is benefitted. When this alternative allocation is used there are steps that are set out very plainly. How the assessment is to be divided is very specific, formulas in there, so many feet from the curb, etc. The actual benefit that is given to the property is lost quite a bit in the alternate method. I did find in the alternative method there is an area dealing with parking lots where it says they should be assessed according to the amount of the benefit. The problem being that there is a big difference between the benefit that an improvement may due to agricultural land or the benefit may be to agricultural land and other such lands. I put in the original bill not being, and I have to confess, not being very knowledgeable about the problem, just knowing there is one. The original bill called for, to exempt agricultural property from special assessments. It became very apparent that wasn't going to work. There is some benefit and it should be assessed equally to agricultural land as other land. We had the hearing, and a suggestion was made to amend it. The amendment is as you received engrossed bill 1322 which says that agricultural property may not be subjected to special assessments at a greater percentage of true and full valuation than the percentage that special assessments are of true and full valuation of commercial property

in the special assessment district. I need to say that's probably not perfect either. The main thing I believe is that the citizens of North Dakota are served.

Chairman Cook – All property included within the limits of a local improvement district, are those limits the city boundary if it's a city that's imposing the tax? Or can a city impose a special assessment outside of the city limits?

Representative Wrangham – I believe they can only assess within the city limits.

Chairman Cook – So this is agricultural property that's located inside the city.

Representative Wrangham – Yes.

Senator Dotzenrod – Could you give me an example of where you got a special assessment district? The ones I'm familiar with would be like curb and gutter and that sort of thing. Can you give me an example of a special assessment district that would have as part of it something that is agricultural?

Representative Wrangham – I believe that it could be even a matter of a new street or a new road. I believe there could be a difference in the way the value of the property is affected. There would also be special assessments as in flood diversions and flood plain drainage and things like that.

Larry Syverson, North Dakota Township Officers Association – This situation was brought to our annual meeting and the membership there endorsed a resolution that the ag land should be continued to be regarded as ag land and special assessments should be deferred on to the land that is developed.

Bo Bateman, Farmer – The 2 reasons this is important to your committee and to the state are on upcoming flood control projects and the expansion of cities. I will use the 2 topics of logic and timing. First off logic, when the Army Corp of Engineers came to the city of Grand Forks to determine whether the US would construct a flood control project they had to determine whether the benefit accrued from building dykes, whether they would save more money by putting the dykes up than the dykes would cost. The logic is, if a city wasn't there and that same land flooded and it was farm land, the Army Corp wouldn't even consider building it. There is a significant difference between black farm lands whether it's pasture or agricultural farming land, and a lot that has a building and infrastructure. Once it was built in Grand Forks, we had to pay for it. The special assessment committee for the city of Grand Forks decided the easiest way to do it was to determine that land would either be commercial or residential. Agricultural property was then called commercial. They decided then with the amount of money that they had to collect, that commercial property would be paying about \$7,000 an acre whether it was farm land or whether it had a building on it. We debated them on that and their concession was, we will keep the assessment the same but your farm land will have roads and alleyways and right of ways and curb and gutter, so we will reduce the amount of land in a quarter section by 30% to make up for the roads, but we are going to leave that \$7,000 an acre against you. So the effective rate was about \$4,000 on the farm land.

He went on to explain a diagram he drew on the board.

Chairman Cook – You have ag land that is in the city where you have been special assessed?

Bo Bateman, Farmer – Annexed, special assessed, and we are still farming it.

Chairman Cook – Do you have ag land outside the city that has a special assessment that's been deferred for it?

Bo Bateman, Farmer – No, they can only special assess what they have annexed. We do have land that has been annexed with what we call a tapping fee.

David Burkland, Land Owner – I think the whole focus of this bill relates on fairness. I think it's fairness to the land owners of ag land that is currently in ag production. I'd like to demonstrate how the special flood assessment in Grand Forks affects land that is in my family. Land is potentially based on an assessment of square footage. The current assessment on the land that we have in this flood assessment area is approximately 12 cents a square foot. That translates into \$5,227.20 per acre. This land that is in my family is 4 miles from the current flood protection dykes and did not flood in the flood in 1997. If all this land was brought in at one time to the city of Grand Forks in the potential or future flood assessment area, my family would be stuck with a bill of \$4.8 million. This is on approximately 900 acres of land. Recently in the last session the North Dakota Legislature made special legislative rules regarding the taxation of farm land. One of the things that the legislature wanted to do was to make sure the taxation of farm land was fair and represented the actual productivity of that farm land based on soil type and a productivity index. The Soils Committee is a result of that legislation. Senator Triplett served on the committee with me as she was a member of the Grand Forks County Commission. I think one of the goals of that committee was to make sure that everyone was fairly taxed on their land and the purpose of the Soils Committee was to make allowances in some cases if your land had a disadvantage or a problem that you could have a reduction or a modifier put on that land. I believe whether you're talking about a tax or an assessment it should be fair to the benefit received. It's not fair that ag land bear the brunt of these assessments, otherwise existing land owners pay a disproportionate share of cost on their farm land to subsidize these developments. I think that ag land should not be subject to assessments that far exceed the value of what you can grow on that land to pay for those assessments. There are not too many crops that I can grow that I can recover a cost for \$5,227.20 an acre.

Clouse Lembke, North Dakota Association of Realtors – What I need to say has been said already so I don't want to delay this, but I want to share with you when I testified in the House, after I sat down a Fargo Assessor came up here and straightened things out. He said those are special assessments, those are not taxes, and he was pretty firm about it.

Sandy Clark, North Dakota Farm Bureau – We believe land use primarily for production agriculture should retain its agricultural designation even when an annex by a city or municipality. Special assessments should be deferred until the land is developed. We stand in support of this bill.

Chairman Cook – So you believe that ag land in the city should not be special assessed until it's developed?

Sandy Clark, North Dakota Farm Bureau – That would be our belief.

Chairman Cook – I know of 10 acres of ag land in city limits of Mandan. It's in a prime location. It's not farmed, its grass, and someone comes in and bales it once a year, gets 10 round bales off of it. It's going to be worth a whole lot of money someday and the only thing that's keeping it from being worth a lot of money today is getting a road by it. Someday a road is going to get built by it and it's going to be expensive because there is a big drop off. That's why the road stops at the beginning of those 10 acres. Once that road gets built the only person that's going to benefit from it is the person that owns that 10 acres of land. They will benefit greatly because the value of that land is going to go sky high. People are waiting for that road to go in.

Sandy Clark, North Dakota Farm Bureau - I believe there are 2 different situations here. That parcel of property in the middle of Mandan now is not benefitting from any road that might from the stand point of agricultural use. They would pay when it quits being used as agriculture I would suspect.

Chairman Cook asked for testimony opposed to HB 1322.

Connie Sprynczynatyk, North Dakota League of Cities – I have some factual information about how our state statutes deals with special assessment law (attachments A and A1). These pages that I'm offering to you will show you with century code sites what we have to do when we set up a special assessment project.

Don Flaherty, Mayor, City of Ellendale – I would be speaking in opposition of this bill as it is written. I have 3 concerns coming in to this just from reading the legislation. In hearing the discussion there is another concern that has risen in my mind that I would like to bring to your attention. The 3 concerns that I have is, in the way that I understand legislation as it's presently written, it is looking at the percentage of the property value for agricultural land in comparison to the percentage of value with regards to commercial property. We know that with agricultural land you are talking just land. Because of that, when you start to compare to commercial property you are talking about an improved property, you aren't just talking about land; you're talking about land and a building and structure. I do understand what was shared earlier, it doesn't seem necessarily proportionately far because a farmer is not going to get necessarily the same type of revenue stream that maybe a commercial business is going to get and I would agree with those aspects and that understanding, but I also understand that when we start looking at proportionate matters, we realize that we already have some disproportionate set up in our property tax system. North Dakota is very unique in the way we set agricultural land values compared to any other state in the country. I think when we look at that aspect alone the way that this legislation is written is just not well written law. The second point is it says it would be looking at the true and full values of agricultural property as compared to the true and full value of commercial property. As I hope everyone knows, agricultural lands true and full value is based on a production value of that property, not a market value for that property. In Dickey County our sales ratio for agricultural land is approximately 25% of the true and full value, compared to

what it is selling at. What that means is our production value of agricultural land in Dickey County is $\frac{1}{4}$ the market value of that same property when it is sold. Right now just off the cuff agricultural land, at least in Dickey County, is being taxed at a rate that is $\frac{3}{4}$ lower than any comparable agricultural or residential property within that same area. They are already getting a tax advantage because of that. I understand there are difference in what can be produced off of agricultural land compared to what can be produced off of commercial land, but residential land doesn't produce anything and yet they are still paying a higher proportionate tax just from a taxation perspective than agricultural land. When we deal with taxation in North Dakota with the exception of certain farm residences and certain situations all other farm structure buildings are exempt from taxation within the state. Residential buildings right now to my knowledge can usually only at the most a 2 year exemption on their structure. Agricultural land already enjoys benefits that residential and commercial lands do not enjoy.

Chairman Cook – This bill doesn't deal with the property tax.

Don Flaherty, Mayor, City of Ellendale – I understand that. In the perspective of what is being talked about here, I think that needs to be taken into account as an understanding that we already have disproportion in our system of law and system of taxation. The last part, we have agricultural land within our city limits. We don't have the situations you have in Grand Forks, or Fargo where there is heavy flooding or massive huge infrastructure projects, but when we do want to do projects with our modesties we need to be able to charge a fair assessment to those agricultural lands within our city limits in comparison and in conjunction with the residential and commercial properties so we can develop and we can grow. The thing I wanted to deal with is the area of deferment. The only concern I would have if a deferment option was put into this bill would be the aspect and understanding that, how long would that deferment last. Would it be a year period, and then the deferment would expire, so it would still have to be paid by the current land owner, or would it go on until the use of that property changed. If it goes on to the point of use of property changing, and it is a situation of where a person whose owned it used it as farm land, now they are selling it to a developer whose going to turn it in to commercial, and they are selling it at a premium cost, that is a benefit to that farmer, does that person pay a portion of that deferment because of the benefit they received because of the fact that they hung on to that property for so long and now it has grown, or would that deferment be completely pushed upon the new owner, the one who's going to now make it into a commercial venture or residential venture and now has to pay that deferment that has been pushed off and the person who did the selling gets to go to Las Vegas.

Chairman Cook – I believe to what degree deferment options are available is a decision of the local government.

Don Flaherty, Mayor, City of Ellendale – That is being talked about as a requested option.

Chairman Cook – What percentage of the land in your community is agriculture yet, do you know?

Don Flaherty, Mayor, City of Ellendale – I'm going to say maybe 20%-25% within the city limits of Ellendale.

Vice Chairman Miller – With regards in Grand Forks, since that was the best example we had to deal with. My question is who should own the land then if the city decides they were to annex an area and then the valuation increases and they special assess for whatever reason. The land has been designated in a way where the farmer or land owner of the farm either has to sell his land, because I'm guessing many do not have a lot of income to be able to pay the \$9,000 an acre or \$6,000 an acre assessment that may occur annually and so without having some sort of deferment process in that, I think it would place an unfair advantage. How do you believe that we should deal with that without having to force someone to sell their land immediately as soon as the city decides they want to expand?

Don Flaherty, Mayor, City of Ellendale – I don't know exactly how you can deal with that. I think we have 2 vastly different problems here. We have a problem where we have some special interests, special situations, like we are seeing in the Fargo and Grand Forks area because of the flooding, because of the growth that is very different than what you'd see in our area which is a stable area. We don't have the flooding issues; we don't have the massive growth taking place in short term. We are comparing apples to oranges and trying to fix it with one band aid. I don't think there is a way we can do that. I think we need to have something put together that's going to look at special considerations or we need to rely on our process as it is.

Jim Neubauer, Mandan City Administrator – (See attached testimony B in opposition to HB 1322)

Senator Hogue – Can you give me a little background on how the city of Mandan Special Assessment Commission draws up the boundaries for the special assessment district? What factors they consider and the other question I have is, I always had the impression that the commission can come up with their own formula to decide how much an individual property gets benefits and I know for example like curb and gutter you can go by a linear foot but I know if other situations you could go by square footage and give a reduction to ag land because it's not developed.

Jim Neubauer, Mandan City Administrator – When an engineering firm or our city engineer brings forth a project, whether a street maintenance project for water and sewer, they will determine the boundaries that district would affect. Then we take a look at, is we've got a north south street called Collins Avenue running right through the middle of town, we will split, take a look at that assessment district and go half way to the next major arterial to the east and half way to the west and will determine district and those who are closer to the project, that live right adjacent to that street improvement normally will pay a higher cost than someone who lives 2 or 3 blocks away. In determining benefits Special Assessment Commission has many different factors.

Senator Triplett – Can you talk about urban sprawl for a minute and tell me how this proposed bill would impact that if at all?

Jim Neubauer, Mandan City Administrator – It would become very difficult to assess cost. Normally a city will grow into agricultural areas. In order to do that fairly the cost of providing streets and water and sewer service have to spread among those within the assessment district, generally the city. There are the deferments, there are tapping fees, or we have occasionally done hookup fees. I think this would limit the ability for cities to grow if this bill would pass.

Senator Triplett – I guess that was my point exactly, wouldn't a bill like this encourage cities to make better use of the land that's already within the city limits?

Jim Neubauer, Mandan City Administrator – Is urban sprawl an issue in North Dakota? Yes. Do cities actively attempt to annex properties outside of their corporate limits into their cities? About 30 years ago the city of Mandan tried to annex the refinery and was shot down. About 5 years ago we were looking at building a new middle school; we knew there would be growth around that middle school. Mandan attempted to annex some property into the city and that also failed. So there are remedies to solve the urban sprawl because the property owners can come forth and at least in our case they have been successful.

Chairman Cook – Has the city of Mandan ever withheld part of the cost of a project and then assessed it on the property that was outside of city limits when the project was put in? Assessed it on the property when it was annexed in?

Jim Neubauer, Mandan City Administrator – We have on occasion done a hookup fee but that's generally for water service.

Senator Hogue – Has the city of Mandan, have you gotten any land back, either the city or Morton County, land back for unpaid special assessments?

Jim Neubauer, Mandan City Administrator – Yes, we have. It is rare, we have a very high percentage of taxpayers that pay the special assessments, I think we are 95% or above. This year we got 2 pieces of property back for unpaid taxes, but that does not happen often.

Chairman Cook – Back in the 80's we got a lot of land back.

Senator Dotzenrod – I thought I understood special assessments fairly well, the city would do an improvement and would outline the boundaries of the district and they would divide the benefits up amongst everyone inside the district. My experience with special assessments hasn't been where I've seen the kind of controversy like now we are talking flood type of special assessment districts; I can see where we are having some troubles. You talked about a waterline that went from the east side to the west side. Now normally from my experience waterlines would not be done by special assessment. Waterlines are normally, if a group of people want water, they will go to the city and say we want water; our neighborhood wants to get water. Did that property get some benefit from that waterline?

Jim Neubauer, Mandan City Administrator – The water and sewer lines that were extended, there are times where you will take, what's a normal size waterline for your property. You will pay for the special assessment on that normal, whether a 4 inch line, if you expand that to an 8 or 10 inches, that overage normally will be picked up by our water and sewer utility fund. Even in a new residential development, if there is a trunk line that's put in that cost is picked up by the water and sewer utility but if there are individual lines that are going to those properties those are picked up by those, through special assessment or in a new development as part of the developers upfront cost.

Bill Wocken, Bismarck City Administrator - (See attached testimony C in opposition to HB 1322)

Erik Johnson, Fargo City Attorney – (See attached testimony D in opposition to HB 1322)

Chairman Cook asked for neutral testimony for HB 1322. No one came forward.

Chairman Cook closed the hearing on HB 1322.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1322
3/21/2011
Job Number 15757

☐ Conference Committee

A. B. Miller

Explanation or reason for introduction of bill/resolution:

Relating to limitation of imposition of special assessments against agricultural property

Minutes:

Committee Work

Chairman Cook opened discussion on HB 1322.

Senator Hogue – This is a hog house amendment to this bill but it changes policy with respect to special assessments for ag property. I've seen it happen twice where the Special Assessment Commission actually levies a tax and the ag land owner disputes that the value of their land is equal to the accumulative assessments. The amendment says if an owner of ag land wants to challenge the assessment against his property the rules are all the same except that the district court can review that de novo.

Chairman Cook – What does that mean?

Senator Hogue – It means they don't have to give difference to the Special Assessment Commission. They don't have to say that their opinion about valuation or the benefits that the ag property gets carries with it a presumption that it's the fair amount.

Senator Hogue – They do not have to rubber stamp what the special assessment does which is what the status of the law is today.

Chairman Cook – Why is this only for agricultural property?

Senator Hogue – Because agricultural property is unique. If there is commercial or street or curb or any of those going in to an area where you've got residential and commercial, everybody gets the benefit of that, but does the farmer get the benefit of a paved road when he's been using it just to go up and down to market his livestock and crops. I would submit that ag is unique in this.

Chairman Cook – So it comes down to the question then if his intent is not to develop it but if that land all of the sudden is worth 10 times as much money if he was to decide to sell to someone who would develop it, are you saying then that he still should not have to pay the special assessment?

Senator Hogue – No I'm not saying that at all. All I'm saying is that in my mind this scenario that Mr. Bateman was describing where he thinks it can be confiscatory it plays out enough times across the state that I think the courts should be able to take a hard look at it and say when you say this going is to be developed that's just not feasible, your assessment is just not credible and the value of this farm land is not greater than the assessments that you are putting against this, your assessment is not reasonable.

Chairman Cook – The only question I have yet is where does this court action take place in the assessment process?

Senator Hogue – It wouldn't change at all. All it would change would be the district judge would not have to rubber stamp the Special Assessment Commission. The district judge could say okay I'm going to look at all the things that you looked at and I'm going to decide on a de novo review that it either makes sense or it doesn't make sense.

Chairman Cook – Right now there is a process that they have to follow and the first process is they tell the land owners you are in a special assessment district. The next process is they give a cost estimate of what the project that's being special assessed is going to cost and an estimate of what that cost is going to be passed on to that land owner. Then there is the time period for over 50% to protest out to stop it. If that doesn't happen they go ahead with the project after it's completed you get the final bill. Could the land owner at that point follow this route still? After the project is completed and he may or may not have protested but whatever it was it wasn't enough.

Senator Hogue – My amendment doesn't create any new process that isn't in existing law. All it says is that for ag land you are simply going to give the court the authority to scrutinize the extent to which the ag land is benefitted by the Special Assessment Commission.

Chairman Cook – But should it happen at a certain time in the whole appeals process?

Senator Triplett – I think Senator Hogue is really on to something here and I think it's a really good idea. What he's saying I think is that the administrative process through the Special Assessment Commission would have to play itself out and they would have to come to a final decision before the district court could get involved in any case under current law. The question is just if and when that happens and someone whose willing to go to court over this. In other words it would have to be a big enough deal in terms of the size of the property and the amount of taxes imposed and someone is willing to make the effort to hire an attorney and go to district court at the point they get in to district court this is just giving the judge a little more authority in these cases than the judge would have regularly. So it's not getting them into court any sooner in the process.

Chairman Cook – If this is done, if after the project is completed and somebody gets a special assessment bill and then they are able to follow this process to get their special assessments reduced, it's passed on to everyone else. Somebody pays the bill.

Senator Hogue – Any person who is aggrieved by an action of an administrative agency or a local governing body has the right to appeal that decision to a state district court. It's a way of keeping that Special Assessment Commission honest.

Vice Chairman Miller – I think part of the problem we also have is with how we use agricultural land as the grab bag and the dumping ground for everything we can't define or don't know how to define. I think maybe a study to figure out a way to create new classifications for undefined commercial or undefined residential so cities and counties or whoever quit using agriculture as a grab bag. Maybe that would alleviate some of these problems as well.

Senator Dotzenrod – The way special assessments that I've had experience with, if you have something that's an improvement to the property that it adjoins like curb and gutter, I think quite often you can make a case that there is some benefit to the agricultural property if it's clear that property has a future as being sold off for lots or if it's in the middle of an area that's quite busy with activity. When the owner sells it, it will probably have a higher value if it's got a paved street that goes by it and it can be use for property development. The thing that puzzled me about the bill and the Grand Forks situation is as I understood that this property was assessed for a flood project and I don't think you can build any case that says there was any benefit of any kind associated that that property would be more valuable. I suppose you could argue that someday when it's not agricultural that those houses there would be protected from the flood. Maybe that's how you could justify the cost.

Chairman Cook closed discussion on HB 1322.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1322
3/29/2011
Job Number 16109

☐ Conference Committee

A. B. Miller

Explanation or reason for introduction of bill/resolution:

Relating to limitation of imposition of special assessments against agricultural property

Minutes:

Committee Work

Chairman Cook opened discussion on HB 1322.

Senator Hogue – I would like to offer my amendments .03002. I think this is a much more measured solution to the perceived problem. The problem that Mr. Bateman and others see is the power to impose special assessments as taxation power and it's the power to take property away. I think for the most part the cities do a pretty good job of trying to figure out what that benefit is but sometimes they go off track.

Chairman Cook – Why just ag land?

Senator Hogue – Because typically there is totally separate uses for ag land and commercial vs. residential.

Seconded by **Vice Chairman Miller**.

Chairman Cook – Ask the clerk to take the roll. (5-2-0)

Vice Chairman Miller – I'll move my amendments .3003 for a study.

Seconded by **Senator Triplett**.

Chairman Cook – All in favor say yea. Opposed? (7-0-0)

Vice Chairman Miller – I'll move a Do Pass as Amended.

Seconded by **Senator Oehlke**.

Senator Dotzenrod – I think the process when cities grow it is essentially almost like a domain. I think that you can have ag property owners that object to be included and assessed, essentially the city is going to grow and I think it's just part of what cities do. It's hard to retain this agricultural nature to land that's in the way or as part of as a city grows.

Chairman Cook – This bill only applies to ag land that is inside city limits.

Brief general discussion followed.

Chairman Cook – Ask the clerk to take the roll. (6-1-0)

Carried by **Senator Hogue**.

Date: 3-29-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

Senate 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 Senator Hogue Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman		X	Jim Dotzenrod		X
Joe Miller – Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke	X				

Total (Yes) 5 No 2

Absent 0

Floor Assignment _____

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

Amendment .03002

Date: 3-29-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

Senate 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 Senator Miller Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman			Jim Dotzenrod		
Joe Miller – Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Verbal vote for amendment .3003

March 11, 2011

43
3-29-11
1062

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1322

Page 1, line 1, replace "40-23-07 and 40-23.1-01" with "40-26-01 and 40-26-07"

Page 1, line 3, after the semicolon insert "to provide for a legislative management study;"

Page 1, remove lines 5 through 24

Page 2, replace lines 1 through 23 with:

"SECTION 1. AMENDMENT. Section 40-26-01 of the North Dakota Century Code is amended and reenacted as follows:

**40-26-01. Courts to review levy and apportionment of special assessments
- De novo review for agricultural property assessments.**

The courts shall review the levy and apportionment of the special assessments in all actions and proceedings involving the validity or apportionment of any special assessment for local or special improvements. If an action challenges the determination of benefits and special assessments imposed for agricultural property, the decision of the special assessment commission regarding agricultural property is not entitled to deference by the court and the court shall consider the determination of benefits and special assessments imposed for agricultural property de novo. An appeal taken under this section must be in accordance with the procedure provided in section 28-34-01.

SECTION 2. AMENDMENT. Section 40-26-07 of the North Dakota Century Code is amended and reenacted as follows:

40-26-07. Actions to restrain collection of special assessments, avoid tax judgments - Duty of court.

The court shall determine the true and just amount which any property attempted to be specially assessed for a special improvement should pay to make the same uniform with other special assessments for the same purpose, whenever any action or proceeding shall be commenced and maintained before the court to prevent or restrain the collection of any special assessment or part thereof made or levied by the officers of any municipality for any purpose authorized by law, if such assessment shall be held to be void by reason of noncompliance with any provision of the laws of this state. The~~Unless the action challenges the determination of benefits and special assessments imposed for agricultural property, the~~ amount of the assessment as the same appears on the assessment list shall be prima facie evidence of the true and just amount, and judgment must be rendered and given therefor against the party liable for such special assessment without regard to the proceedings had for the levy thereof. The judgment shall be a lien upon the property upon which a special assessment shall have been levied, of the same force and effect as the lien of a special assessment, and the lien of such special judgment shall be enforced by the court in such action. No action for said purposes shall be maintained unless it is commenced within six months after the special assessment is approved.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - SPECIAL ASSESSMENTS AND AGRICULTURAL PROPERTY ASSESSMENTS. During the 2011-12 interim, the legislative management shall consider studying use of special assessments for public improvements, use and administration of special assessments across the state, and alternative funding mechanisms available, with emphasis on imposition and relative rate of special assessments against agricultural property. The study must include examination of agricultural property tax classification and assessment issues, with emphasis on these issues within and near city boundaries. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

Date: 3-29-11
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1322

Senate 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 Senator Miller Seconded By Senator Oehlke

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman		X	Jim Dotzenrod	X	
Joe Miller – Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Hogue

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

REPORT OF STANDING COMMITTEE

HB 1322, as reengrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1322 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "40-23-07 and 40-23.1-01" with "40-26-01 and 40-26-07"

Page 1, line 3, after the semicolon insert "to provide for a legislative management study;"

Page 1, remove lines 5 through 24

Page 2, replace lines 1 through 23 with:

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SECTION 2. AMENDMENT. Section 40-26-07 of the North Dakota Century Code is amended and reenacted as follows:

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SECTION 3. LEGISLATIVE MANAGEMENT STUDY - SPECIAL ASSESSMENTS AND AGRICULTURAL PROPERTY ASSESSMENTS. During the 2011-12 interim, the legislative management shall consider studying use of special assessments for public improvements, use and administration of special assessments across the state, and alternative funding mechanisms available, with emphasis on imposition and relative rate of special assessments against agricultural

property. The study must include examination of agricultural property tax classification and assessment issues, with emphasis on these issues within and near city boundaries. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly

2011 TESTIMONY

HB 1322

CHAPTER 57-02 GENERAL PROPERTY ASSESSMENT

57-02-01. Definitions. As used in this title, unless the context or subject matter otherwise requires:

1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. Agricultural property includes land on which a greenhouse or other building is located if the land is used for a nursery or other purpose associated with the operation of the greenhouse. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection. Property platted on or after March 30, 1981, is not agricultural property when any four of the following conditions exist:
 - a. The land is platted by the owner.
 - b. Public improvements, including sewer, water, or streets, are in place.
 - c. Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
 - d. Property is zoned other than agricultural.
 - e. Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
 - f. The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.
 - g. The property sells for more than four times the county average true and full agricultural value.
2. "Air carrier transportation property" means the operative property of each airline whose property is assessed for taxation purposes pursuant to chapters 57-06 and 57-32.
3. "Assessed valuation" means fifty percent of the true and full value of property.
4. "Centrally assessed property" means all property which is assessed by the state board of equalization under chapters 57-05, 57-06, and 57-32.
5. "Commercial property" means all property, or portions of property, not included in the classes of property defined in subsections 1, 4, 11, and 12.
6. "Credits" means and includes every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deeds or mortgages, due or to become due.
7. "Governing body" means a board of county commissioners, city council, board of city commissioners, school board, or board of education, or the similarly constituted and acting board of any other municipality.

**House Finance and Taxation Committee
Honorable Chairman Wes Belter
Legislative Testimony on HB 1322 by the City of Fargo**

Honorable Chairman Belter and members of the House Finance and Taxation Committee, my name is Kent Costin and I am the Director of Finance from the City of Fargo. Thank you for the opportunity to provide testimony on this bill.

The City of Fargo opposes this bill because it has a negative impact upon the current special assessment process by exempting agricultural lands from special assessment levies. Special assessments provide predictable and sustainable revenues which are necessary to operate and grow our City. They have been a core part of our budget resources for years and allow us to expand and operate our City to meet the needs of our citizenry. This is true for many other large and small cities across the State of North Dakota using special assessments as a primary means of financing City infrastructure projects.

The City of Fargo follows state laws relating to special assessment and they provide direction that all property with the sole exception cemeteries participates in paying for infrastructure project costs. Even political subdivisions are assessed so that all property owners contribute to the cost of development and expansion of our much needed infrastructure.

As Cities expand their boundaries to provide more area there needs to be a methodology to move from agricultural to urban use. Exempting land classified as agricultural from special assessments would remove large land areas from paying special assessments which would cripple Cities from using special assessments since they would become cost prohibitive. If the Legislature removes this class of property from the assessment process it would essentially eliminate special assessments since we could not assess the very property needed for future development. Once the agricultural land is developed this bill does not provide a mechanism to bill them for their share of the benefit in the future. Fargo is already using sales taxes to help fund roadway improvements in an attempt to keep the cost of specials as low as possible. This tax was approved by our votes and is being used on key infrastructure projects.

The size and magnitude of projects required for our community would not be able to be funded by

property taxes since it does not have enough tax capacity to produce the capital resources needed for projects.

There is a process in place to determine benefit assigned to property in current State Laws. Courts have ruled special assessments benefits might not be immediately recognized. We agree with the Courts position on this matter and Fargo has adopted practices that allow time for development to occur over a longer time frame that is controlled by the landowner. Special assessment deferral contracts are offered to developers that give them time to work through an orderly development plan for their property. The City does not require the property owner to develop their agricultural land immediately but rather has provided a mechanism to recognize that it may take a few years to fully develop. In some cases these the terms of these agreements go up to ten years with a triggering mechanism that begins the special assessment billing process. Fargo uses property platting requests by developers to trigger the billing of assessments under deferral arrangement. If the developer does not develop within the period named in the development agreement the deferral terms expire and the landowner begins paying their annual installments of the special assessment just like all other property owners.

The process described above works effectively if a City has a source of funds to pay the interest carrying costs during the development deferral period. In Fargo's case we have utilized infrastructure sales taxes to fund the interest during the interim period because a locally enacted sales tax is in place. I cannot speak to the practices of other communities and how they administer their special assessment process but do know that a source of funds is needed to execute a deferred billing business practice. Absent an interim funding source they would likely be forced to bill the special assessments without allowing time for development to occur which appears to be what this bill is attempting to accomplish.

We urge a DO NOT PASS vote on this bill since it would negatively impact the use of special assessment financing commonly used by North Dakota Cities and Counties. We had found this process to be an effective, efficient, and equitable means of financing infrastructure projects.

Thank you for the opportunity to provide our thought on this bill. I would be happy to answer questions that you might have about the testimony.

Senate Finance and Taxation Committee
Honorable Chairman Dwight Cook
Legislative Testimony on HB 1322 by the City of Fargo

Honorable Chairman Cook and members of the Senate Finance and Taxation Committee, my name is Erik Johnson. I am the Fargo City Attorney. Thank you for the opportunity to provide testimony on House Bill 1322 which would substantially alter special assessment law in North Dakota.

The city of Fargo is opposed to this bill as it would impair cities' ability to grow and would cause taxpayers who do not benefit from public improvements to pay for them. Existing North Dakota special assessment law makes property owners pay their fair share of the costs for the construction of roads, sewer lines, water lines and other public improvements. Special assessments are allocated based upon the benefit to the property. The law—and the theory behind the law—states that some properties do not immediately “benefit” from improvements—benefit may come later. For example, farm land on the outer edges of a city may be assessed for a sewer line improvement. The farmer might argue that farm fields don't need sewer lines—why should he/she pay for the sewer line. But we know that usually farm land on the edge of a city is ultimately converted to another use—either residential or commercial. When that happens, the sewer line becomes a necessary infrastructure for the development of that property. When that happens, we can look back and say with confidence that the proper person to pay for the improvement was the landowner. While the farmer will have to make installment payments on the assessments during the interim, the farmer will also profit from a higher sales price when the land is ready to develop. So, it is fair that existing special assessment law allocates the costs of public improvements based upon benefit (even if not immediately realized).

If the concern is that farmers will not be able to afford to advance the funds—through special assessments—to pay for the public improvements which will ultimately benefit the land, cities are authorized to enter into agreements with those farmers to defer the obligation to make annual special assessment payments. Thus, if it takes several years before farm land is ready to be used for urban purposes—to accommodate growth—the farmers' special assessment payments can be deferred, or delayed, until it is ready—perhaps as long as ten years or more. This “deferral agreement” tool is available for use to smooth out the bumps in the road—the growing pains that can occur at the edges of towns and cities.

In summary, the City of Fargo asserts that existing special assessment law is a fair method to spread the cost of public improvements to those that benefit from the improvement and should not be changed. House Bill 1322 should, respectfully, be defeated.

I should point out that our city Finance Director, Kent Costin, provided testimony to the House Committee on this bill. I associate myself, and agree, with that testimony as well. Thank you for the opportunity to provide our thoughts on this bill. I would be happy to answer questions that you might have about the testimony.

Erik R. Johnson
Fargo City Attorney

TESTIMONY ON HOUSE BILL 1322

House Finance and Taxation Committee

**Allen Grasser, City Engineer
City of Grand Forks**

February 9, 2011

Mr. Chairman and members of the House Finance and Taxation Committee, I am the Grand Forks City Engineer and I want to thank you for this opportunity to testify on House Bill 1322 on behalf of the City of Grand Forks and urge your recommendation of a DO NOT PASS.

Under current law, agricultural property can only be subject to special assessments imposed by a municipality if two conditions are met: (1) The property is within the city limits, and (2) The Special Assessment Commission, a body independent from the municipal governing body, determines that the property receives benefits from the constructed improvement.

Benefits are determined based upon both present and future uses of the property. This bill would potentially shift the cost of improvement otherwise attributable to the agricultural property to other property owners within the district or potentially to the general fund/utility fees to be imposed against all residents of the city. This creates three possible inequities.

First and fundamentally, HB1322 grants an exception to agricultural property such that it would not pay its fair and equitable share of special assessments despite receiving benefits from the special assessment.

Second, it would potentially create an economic advantage for the agriculture property over other vacant commercial, industrial or residential property for sale on the market. The agricultural property would have an exemption from special assessments that other vacant and developable property is not eligible for. This bill would effectively allow an owner of property classified as agricultural to market the property for development as commercial, industrial or residential property and still avoid special assessments.

Third, ultimately the infrastructure improvement must be paid for. If benefiting property does not assist in costs, those costs must otherwise be shifted to others. If shifted to general funds/utility rates, non-benefiting property owners can be impacted with costs. Of particular concern would be those owners living on limited or fixed income that pay general taxes and utility bills.

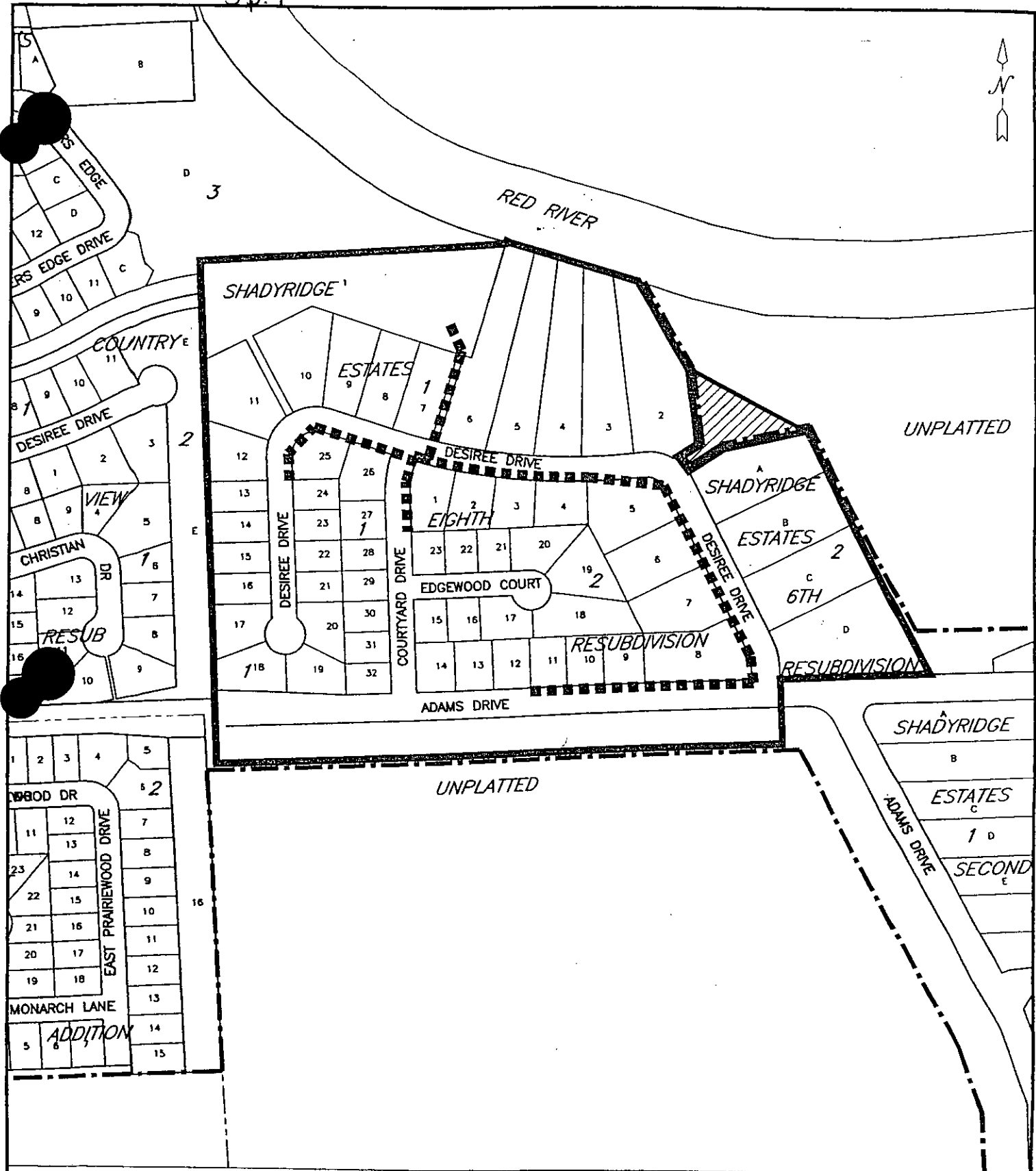
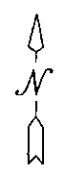
Another significant concern is that this bill does not provide any mechanism for the property to be subject to special assessments for an improvement at a later date in the event of a change in the use or classification of the property. The property could permanently be exempted from special assessments despite future changes in use and classification.

As an example of a real project representing this issue, I have attached the assessment district map for a storm sewer project which shows the relationship of developing property and agricultural property as it relates to a actual project.

#3 p. 3

Finally, HB1322 would change current law as to special assessments against benefitted property such as pronounced by the North Dakota Supreme Court in *Bateman v. City of Grand Forks*, 2008 ND 72, 747 N.W.2d 117.

It is for these reasons that I would ask for a DO NOT PASS recommendation of House Bill 1322 and I thank you, once again, for your consideration.



PROJECT 6334

DISTRICT 464

PROJECT LIMITS

ASSESSMENT DISTRICT BOUNDARY

STORM SEWER

SHADRIDGE 8TH ADDN

CITY LIMITS

TAPPING AREA



P.O. Box 1306
 Williston ND 58802-1306
 PHONE: 701-577-8100
 FAX: 701-577-8880
 TDD State Relay: 711

NORTH DAKOTA

Bill No: HB1322

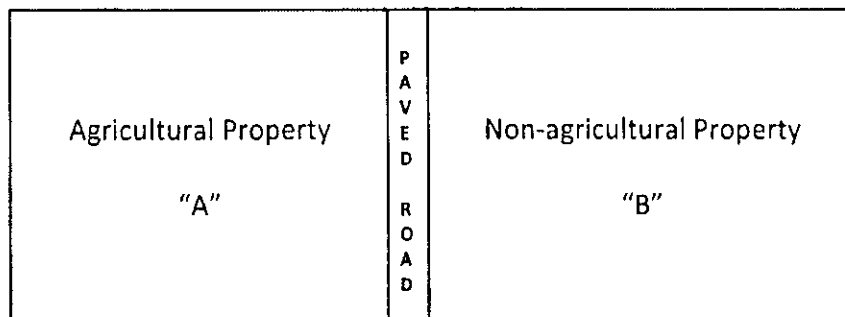
Hearing Committee: House Finance and Taxation Committee

Date: February 9, 2011

Honorable Chairman Belter and Committee Members,

The City of Williston is opposed to House Bill 1322, which exempts agricultural property from special assessments.

If a City chooses to make improvements to property, there is often a benefit to adjacent agricultural property. Immediate benefits could include improved roads, water or sewer lines and increased marketability to developers. HB1322 would allow these agricultural property owners to receive the benefits, while making their neighbors pay for the improvements. The owners of agricultural property could enjoy the immediate benefits while they own the property and reap the profit when they sell the property to a developer for a higher price because the improvements made the property more valuable. Exempting agricultural property would have the effect of limiting growth of cities because of the reluctance of owners to lose this exempt status. This in turn makes growth more expensive for Cities, which have to extend improvements through or adjacent to the agricultural property and either pass those costs on to the owners of adjacent property or find other funding sources such as a general obligation tax. In the illustration below, the cost of paving the road would be paid entirely by the owner of property B, while the owner of property A would also receive the benefit of a paved road.



The City of Williston urges a "DO NOT PASS" recommendation on HB 1322.

Sincerely,

E. Ward Koeser
 President
 Board of City Commissioners

SPECIAL ASSESSMENT PROCEDURES

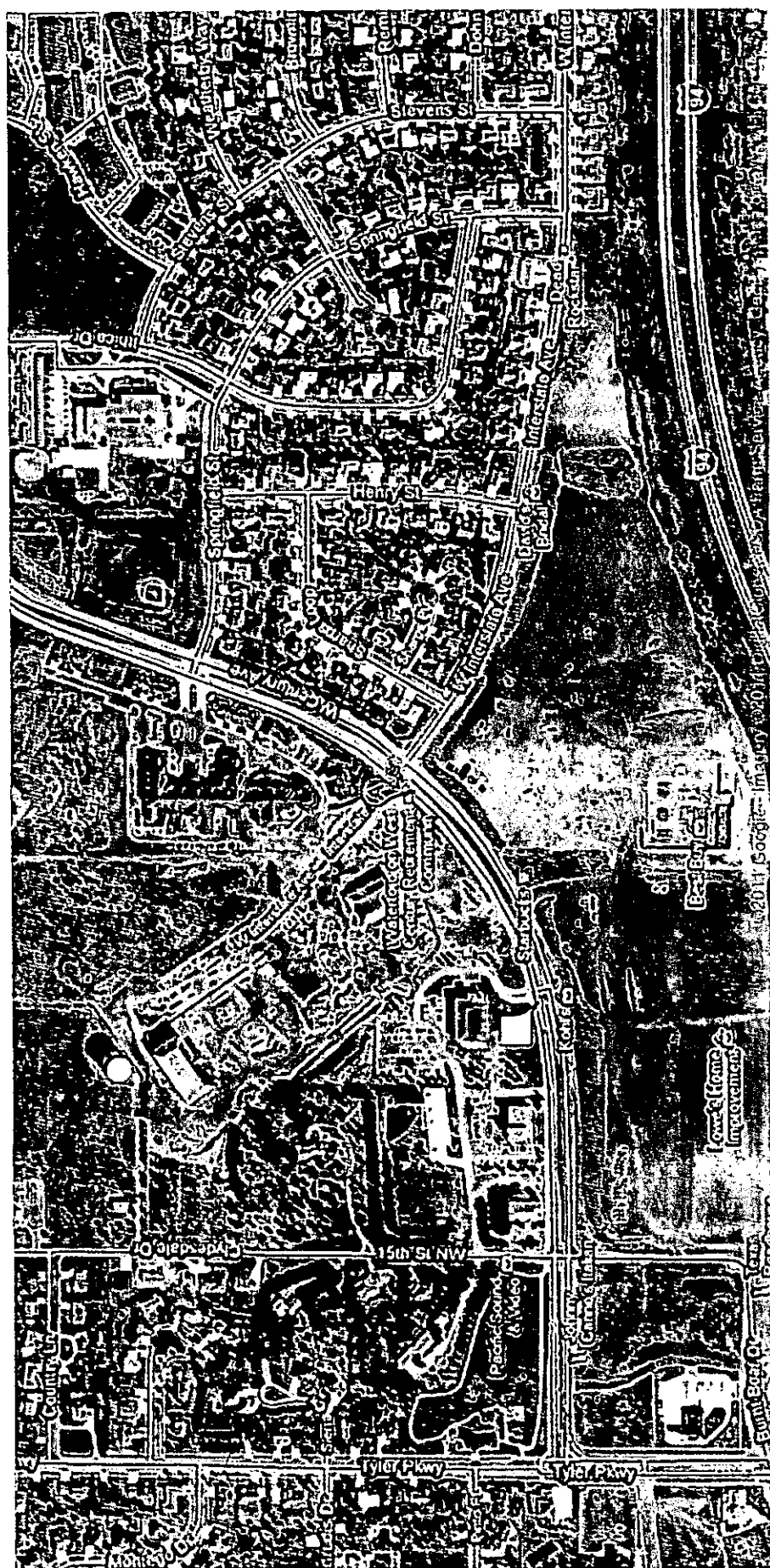
<u>NDCC REF. RESPONSIBLE</u>	<u>STEP</u>	<u>WHO DOES IT</u>
40-22-01	1. Petition received, or Council orders improvement.	Engineering/Council
	2. Informal meeting with property owners, or letter sent-cost est.	Engineering
40-22-10 Engineer	3. Engineer's Report	Engineering
	4. 5% Prepayment, if necessary	Finance
40-22-11 Engineer	5. Design and Specifications	Engineering or Consultant
	6. Engineer's Report put on Finance Committee Agenda followed by Council Agenda	City Clerk
40-22-08	7. Appropriate Resolutions prepared for Mayor and City Clerk signatures	City Clerk
40-22-15	8. Publication of Resolution of Necessity (if necessary)	City Clerk
40-22-17	9. Public Hearing placed on Council Agenda (if necessary)	City Clerk
40-22-19	10. Approval of Plans & Specifications and Bid Advertisement (if separate from Engineer's Report) put on Finance Committee agenda	City Clerk
40-22-19	11. Appropriate resolution (required by item 9 above) prepared for Mayor and City Clerk signatures	City Clerk
	12. 25% Prepayment, if necessary	Finance
40-22-19	13. Preparation of Advertisement for Bids and Proposal	Engineering
Chapt. 48-01.2 Auditor	14. Bid Opening	City Clerk

<u>NDCC REF. RESPONSIBLE</u>	<u>STEP</u>	<u>WHO DOES IT</u>
40-22-29 Engineer	15. Report on bid results	City Engineer
40-22-29	16. Bid Award put on Finance Committee Agenda, followed by Council Agenda, Resolution awarding contract	City Clerk
40-22-35 Auditor	17. Preparation of Contract	City Clerk
Chapt. 48-01.2	18. Resolution approving contractor bond put on Finance Committee Agenda followed by Council Agenda	City Clerk
40-22-35 Auditor	19. Signed and approved contract distributed	City Clerk
40-24-19 to 40-24-23 Auditor	20. Abstracts and public hearing notice on bond sale	City Clerk
40-24-19 to 40-24-23 Auditor	21. Resolutions prepared and signed	City Clerk
40-24-19 to 40-24-23	22. Closing documents related to bond sale, plus Federal Tax Compliance	Finance
40-22-37 Engineer	23. Payment estimates prepared	Engineering
40-22-37 Auditor	24. Payment estimates processed, contractor paid monthly	Finance
40-22-37 Auditor	25. Final payment report, Acceptance notice	Engineering
40-22-37 Auditor	26. Final payment report put on Finance Committee Agenda, followed by Council agenda	City Clerk
40-22-37 Auditor	27. Final payment processed, contractor paid	Finance
	28. Memo to City Treasurer - recom- mendation in assessment formula (optional)	Engineering

<u>NDCC REF. RESPONSIBLE</u>	<u>STEP</u>	<u>WHO DOES IT</u>
40-23-09	29. Assessment list prepared	Finance
40-23-07	30. Informal meeting with Special Assessment Commission to review project and proposed assessments	Finance, Engineering
40-23-10	31. Publication of assessment list notice of hearing.	Finance
40-23-11	32. Public hearing with Special Assessment Commission	Finance
40-23-13 40-23-15 Auditor	33. Publication of notice of confirmation, hearing scheduled to confirm assessments by Council	Finance
40-23-16	34 Resolution confirming special assessments	City Clerk
40-24-11	35. Certification made to Co. Auditor	Finance

Miscellaneous:

1. 40-22-14 requires plans and specifications be on file with City Auditor
2. 40-22-40 - Auditor shall keep all records of improvement districts



Testimony for Senate Finance and Taxation Committee
HB 1322 - Limitation of Imposition of Special Assessments against Agricultural
Property
March 7, 2011

Good afternoon Chairman Cook, Vice Chairman Miller and Finance and Taxation Committee members. My name is Jim Neubauer; I am the City Administrator for Mandan and am here in opposition to House Bill 1322.

The City of Mandan has several parcels of property zoned agricultural within our corporate limits. Concerns regarding the potential passage of House Bill 1322 are:

- This bill combines the process of determining a special assessment from benefit to valuation, which quite simply becomes a quagmire.
- The language in the bill: "may not be subjected to special assessments at a greater percentage of true and full valuation than the percentage that special assessments are of true and full valuation of commercial property in the special assessment district." would become problematic and provide no guidance if the assessment district does not contain any commercial property.
- Nothing prevents a parcel of agricultural property from immediately following the determination of a special assessment to turn and zone the property commercial which would create the possibility of an unfair advantage to the agricultural property.

An individual property owner has several occasions in which to voice their opinion regarding a special assessment project:

- At the time the assessment district is created, the property owner could protest a project.
- At the time the Special Assessment Commission convenes to determine the benefits of a project to particular properties
- At the time the recommendation from the Special Assessment Commission comes before the City Commission

I have attached maps of two separate pieces of agricultural property within the City of Mandan.

The first property (outlined in blue) is mostly surrounded by residential property and within the past few years, the roadway to the north has been improved, railroad crossing to provide easier access to the interstate has been constructed and water and sewer improvements have been made. Had the benefits of these projects been unable to be conferred to this property, every other property within the district would have to pick the tab for the additional costs.

The second property (also outlined in blue) is also zoned agricultural property and is surrounded on the north by interstate 94, the south by railroad tracks and commercial property to the east and west. Many years ago the street adjacent to the north was improved along with water and sewer service. Again had the benefits of these improvements not been conferred to this property, the other property owners in the district would be paying an unfair portion.

I would urge you to vote NO on HB 1322

Testimony for Senate Finance and Taxation Committee
HB 1322—Limitation of Imposition of Special Assessments against Agricultural Property
March 7, 2011



Testimony on Engrossed House Bill 1322
Senate Finance and Tax Committee
March 7, 2011

Good afternoon Mr. Chairman and members of the Senate Finance and Tax Committee. My name is Bill Wocken. I am City Administrator for the City of Bismarck. The city is opposed to this bill.

The bill originally made agricultural properties exempt from special assessments. Agricultural properties, as used in this bill, are defined by NDCC 57-02-01. This section of the Century Code was put in place to define when a parcel of property passes from being assessed as agricultural property to being assessed as commercial property for tax purposes. My recollection is this provision was inserted into the code in response to a question about the correct way to value land that was being farmed, but was adjacent to a regional mall. Please note that of the seven criteria that determine this transition, five are fully within the control of the property owner. (List criteria)

It allows a landowner to hold property in its agricultural state while the value builds to commercial standards. He can then avoid the parcel's fair share of the cost of the improvements, while that cost is assessed against the rest of the benefitting parcels. This is patently unfair to properties developing on the edge of any city as it apportions the actual costs and benefits unequally between similar properties.

I ask you to give HB 1322 a Do Not Pass recommendation.

Bill Wocken
City Administrator