

Testimony Presented on HB 1324 to the

Political Subdivisions Committee

Representative Jason Dockter, Chairman

Brenda Derrig, City Engineer for City of Fargo

February 11, 2021

Mr. Chairman and Members of the Committee,

The City of Fargo understands and recognizes that the process of eminent domain can be very upsetting and confusing to property owners from whom the city needs land to construct a public project. The City makes every effort to negotiate fairly to ensure the best, most fiscally responsible use of taxpayer dollars to obtain the land, while following the approved process pursuant to North Dakota Century Code Ch. 32-15 and 40-22-05 when necessary for the benefit of the public. For several reasons highlighted briefly, the proposed amendments to NDCC 40-22-05 are of concern. First, as you know, NDCC 32-15-06.1 entitled Duty to negotiate requires the City to secure an appraisal and negotiate based on "just compensation." The proposed amendment requires a deposit based on the undefined term of "reasonable value." It is unclear how reasonable value is to be determined, when and by whom. Introducing a new and undefined term to the process is problematic.

As far as determining public necessity, it has been established by the court that the determination of necessity is within the province of the condemning authority and would only be overturned by the court if the City acted fraudulently. Thus, there is an elected body tasked with determining whether the use of the statutory process of securing land for public purposes is necessary. Certainly, if the court finds bad faith or fraudulent behavior on the part of the public entity, consequences may follow. However, the law provides for such damages already. To provide for a penalty, and punitive damages which by definition is a penalty, is both unnecessary and excessive.

Further, the proposed amendment provides for an award of attorney fees in certain circumstances. Attorney fees are already provided for by N.D. Cent. Code § 32-15-32 entitled Costs. The proposed language that ties the attorney fee amount to a percentage of the "reasonable value" presents several interpretation concerns, but more likely may result in the landowner not receiving attorney fees at all. Whether to award attorney fees and the amount of such fees are properly within the province of the judge, as provided for by the existing statute.

Finally, the proposed language that requires that the zoning must remain the same is concerning as it may create due harm, such as, in nonconformities. There may be times when a taking is for a particular use, such as a water treatment plant, that would result in a zoning change from residential to public institutional. The City has addressed nonconformities that occur from a public taking in the land development code, which legally protects land owners.

§20-1005. - Nonconformities Created by Public Action

When a conveyance of land to a federal, state, or local government for a public purpose results in the creation of nonconformity to [Article 20-04](#), [Article 20-05](#), or [Article 20-07](#) of the Land Development Code, such nonconformity shall not be deemed to be a violation of the Land Development Code. Such nonconformity shall be deemed to be in compliance with the Land Development Code until such time that subsequent development activity will trigger Land Development Code provisions as applicable at the time of such activity.

To prohibit the well-established and separate zoning process to occur due to the nature of securing the property would unseat the lawful local zoning authority, unnecessarily.

I seek your opposition to HB 1324, which in its current form will bring ambiguity to a clear process and create zoning nonconformities.