



**TESTIMONY ON HOUSE BILL 1324**  
**House Political Subdivisions Committee**  
**February 12, 2021**

**Daniel L. Gaustad, City Attorney, City of Grand Forks, ND**

Chairman Dockter and members of the House Political Subdivisions Committee, my name is Daniel L. Gaustad and I am the City Attorney for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express the City of Grand Forks' opposition for HB 1324.

It is the position of the City of Grand Forks that this legislation, particularly Section 2—the amendment to N.D.C.C. § 40-22-05—is not necessary as it is duplicative of protections already provided for in N.D.C.C. § 32-15-32, confuses the issues of attorney's fees and is inconsistent with the law of punitive damages. The legislation provides "if the property owner's attorney's fees are less than ten percent of the reasonable value of the property, the court shall order the municipality to pay the property owner's attorney's fees." However, it is unclear if this is intended to preclude an award of attorney's fees more than ten percent of the reasonable value of the property since the court may already award reasonable attorney's fees pursuant to N.D.C.C. § 32-15-32 and N.D.C.C. § 32-15-35.

In addition, the legislation provides for punitive damages and multiple forms of penalties based on a necessity determination or mistake in value. Under N.D.C.C. § 32-03.2-11(5), to obtain punitive damages, a jury is required find, by clear and convincing evidence, the amount of punitive damages considers the degree of reprehensibility of the defendant's conduct, the awareness or concealment by the acting party, the profit obtained from the wrongful conduct and whether criminal sanctions have been imposed. Yet, this legislation could expose a City to punitive damages solely on a possible mistake or negligent conduct in evaluating the necessity and reasonable value of a piece of property.

The damages permitted by this legislation is concerning in that it is a mandatory penalty, based on the use of the word "shall," and is based on a percentage of the reasonable value of a piece of property. However, the term "reasonable value" is not defined, nor is there a defined means to determine this amount, since eminent domain is based on just compensation. Moreover, imposing a penalty that is likely based on a potential error in an appraisal is problematic for a city.

Finally, this legislation provides that all property taken by condemnation must maintain the same zoning restrictions and property classification. This is an indefinite requirement that will result in stagnation of zoning and municipal improvements. Rather the issue can be resolved, if necessary, through local non-conforming use or structure process.

Accordingly, the City of Grand Forks respectfully asks for a DO NOT PASS for HB 1324.