



Testimony on HB 1438
Presented to the Finance and Tax Committee
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1 Thank you for the opportunity to share what I see as challenges to the
2 administration, and possible unforeseen side effects, of HB 1438.

3 The proposed HB 1438 essentially alters the two-part test used to determine
4 eligibility for charitable exemptions. It appears to me that HB 1438 is trying to make the
5 charitable exemption similar to the religious exemption, in that it allows for exempting
6 land in preparation for the construction of a future structure. As previously mentioned,
7 we have a two-part test for both of these type of exemptions: 1) Ownership 2) Use.
8 However, the religious exemption amendment did not break the two-part test and HB
9 1438 does break the use test for charitable exemptions.

10 In the case of the religious exemption the two part test wasn't broken as the
11 exemption in NDCC 57-02-08(9)(c) specifies "for the purpose of a future church
12 building." You would reasonably expect a new church building to pass any use test for
13 a religious exemption, due to the substantial cost and uniqueness of the structure of a
14 typical church.

15 Conversely, in regards to the charitable exemption and the amendments
16 proposed in HB 1438, it requires exemption for "purpose of a future building." An
17 undefined building alone does not by itself meet the use test, and we could come to
18 find never meets the use test after completion. We cannot assume just any building
19 built by a qualifying 501(c)(3) would meet the use test, as there have been multiple
20 North Dakota Supreme Court cases arguing the validity of the use by fully qualifying
21 501(c)(3) organizations.

22 As written, these amendments require us to exempt land based on the intent of
23 a potential building that might never qualify for exemption when complete. Breaking
24 the longstanding two-part test, which has been proven to safeguard our local
25 jurisdictions from being taken advantage of by unintended misuse for decades, is a risky
26 endeavor and necessitates the maximum amount of consideration.

27 I can understand the intention is to relieve the burden of property taxes on
28 qualifying charities that plan to build a structure in the future, but the bill as written
29 opens up local jurisdictions to possible serious unintended consequences.

30 First, as written, an organization could submit multiple applications on multiple
31 properties. A single application cannot be on a tract bigger than 50 acres. However,
32 there is no limit to the acreage owned and exempted by any one entity; all with
33 nothing but the "promise" it will be built on within 10 years. Technically this could lead to
34 a limitless amount of pieces of property being taken off the tax rolls for up to 10 years.
35 This could have a significant fiscal impact to the local jurisdiction.

36 I also call into question the appropriateness of making up to 50 acres exempt for
37 a potential building site. In my 15 years as an Assessor, I have never seen a charity use
38 even close to 50 acres for their building or campus. In our community of over 13,000
39 parcels, there are 20 non-government owned parcels that are equal to or over 20
40 acres. These parcels are large industrial lots and development tracts. I will also add that
41 the religious exemption limits the amount of land for a potential church to just 20 acres. I
42 question why we would want to exceed what we are already allowing for a similar
43 property type.

44 Second, anyone who could obtain a 501(c)(3) could in theory purchase land,
45 hold it tax free, and sell pieces incrementally over the years. Historically, in our area,
46 land held for a few years and then sold, has been sold at a profit. As written, there is
47 nothing addressing the selling of pieces, or the entirety, of a parcel within the 10-year
48 window. Without a penalty or tax claw back on tracts sold, this bill would allow a
49 charitable organization to compete with typical land developers while maintaining an



50 unfair advantage. I have concerns that by allowing an exemption on such a large tract
51 of land, this bill is incentivizing speculative development on at least part of the property.

52 Finally, as a City Assessor I typically have the benefit of being able to see how a
53 property is built and used prior to valuation or classification and respond accordingly. A
54 change like the one this bill proposes binds us to a very ambiguous set of rules and
55 requires exemption based on the possibility of what could happen in the future, all the
56 while not allowing the local jurisdiction safeguards against unscrupulous use.