

Representative Donald Longmuir

and members of the House Political Subdivision Committee

RE HB 1462

Thank you, Mr. Chairman, and members of the committee for giving me the opportunity to speak in support of this bill with a bit of fine tuning. The current 30-day appeal process of local governing body decisions is unworkable unless an affected party attends every single meeting of the governing body. Minutes are taken of these meetings and then adopted at the next monthly meeting. The 30-day appeal period is over by that time. Since I have become aware of this unworkable appeal timeline, I have noticed that small towns publish batches of minutes. They will publish 5 to 6 months of meeting minutes in one paper edition. It certainly fulfills the publication of minutes requirement but does not allow an appeal by an aggrieved person who can't attend the meetings.

In a recent ruling, the ND Supreme Court weighed in on this very topic:

Banderet v Sargent County Water Resource Board  
ND Supreme Court  
February 26, 2019

"[¶18] In Sandahl v. City Council of the City of Larimore , 2016 ND 155, ¶ 9, 882 N.W.2d 721, we stated:

Our decisions in Zajac and this case recognize an abbreviated time frame for a party to appeal from a decision by a local governing body is imposed under the plain language of N.D.C.C. § 28-34-01. **The legislature may want to consider extending the time for appeal or consider triggering the time for appeal from a decision by a local governing body from service of the notice of the decision on the affected party or from publication of the decision.**

The ND Supreme Court realized the importance of notification of a governing body's decision to include publication of the decision or the minutes. I would respectfully ask that "or from publication of the decision" be added to the amendment.

Pertaining to Section 2 of this bill: It has become painfully apparent from my involvement with the aforementioned Supreme Court decision that landowners have been solely tasked with “policing” water board actions. Our county commissioners disavowed any responsibility of overseeing the water board by stating “we just appoint them, after that they are on their own”! It becomes a huge financial burden for landowners to take on a lengthy court battle and the end result is that it almost never happens. The 2019 Supreme Court case cost landowners more than \$100,000 and there is no incentive to pursue such an appeal under the present law. The additional wording of Section 2 of this bill would allow aggrieved landowners to remain financially whole if they were to prevail against the water board, unlike the 2005 ND Supreme Court ruling where the landowners’ award was denied because only county commissioners are mentioned in Century Code as being liable for opponent’s attorney fees.

About 10 years ago, a landowner from Sargent County was sued by the water board over a right of way disagreement. He took it all the way to the ND Supreme Court and amassed over \$30,000 in attorney’s fees. He prevailed at the Supreme Court but could only be awarded a few hundred dollars in filing and transcription fees.

This bill will rectify that injustice! Please give this bill a “Do Pass” recommendation.

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