

2021 HOUSE POLITICAL SUBDIVISIONS

HB 1222

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Room JW327B, State Capitol

HB1222
1/28/2021
House Political Subdivisions

Relating to nonconforming structures

Chairman Dockter: (2:19) Opened the hearing.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	P
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Property changed by zoning

Rep. Vetter: Introduced the bill. (Testimony 4131).

Joe Sheehan: In favor, (testimony #4079).

Dennis Huber, Appraiser: In favor, (testimony #4098).

Natalie Pierce, ND Planning Association: In opposition, (testimony #4130).

Kevin Ternes, Real Estate Appraiser: In opposition, (testimony #4129).

Mark Krumway: In opposition.

Ryan Brooks, Interim City Planner and Brandon Boespflug, Inspections Director: In opposition, (testimony #3825).

Brian Billingsley, Community & Economic Development Director: In opposition,
(testimony #3973).

Additional written testimony:

Joe Ibach, testimony #4128. **Rachel Laqua,** testimony #3861. **Bill Wocken,** testimony #4126.

Chairman Dockter: (3:56)

Carmen Hickle, Committee Clerk

Vetter, Steve M.

From: Vetter, Steve M.
Sent: Thursday, January 28, 2021 10:50 AM
To: Vetter, Steve M.
Subject: HB 1222

Good Afternoon,

Chairman Docktor and members of the Political Subdivisions.

HB 1222 is a bill you heard last session about nonconforming structures. It passed overwhelming in the House and then failed in Senate. This bill has been misunderstood and mischaracterized. It sounds complex when called nonconforming structures but It is actually simple from this perspective.

It is a property in which the zoning was changed therefore making it nonconforming.

If for any reason the zoning was changed and the structure no longer meets the new zoning regulations, it becomes nonconforming. The ordinances in many communities in North Dakota do not allow a nonconforming property to be rebuilt if it is over 50% damaged or destroyed.

The bill is the same as last session except this time it adds the option for the city to pay for the property if they choose to not allow the property owner to rebuild or repair.

The argument in the Senate was they wanted the control to not allow a property owner to rebuild. So, if a government wants the property, they should pay for it.

Let me go through the bill and what it does. There are 3 sections that are identical other than Section 1 is counties, Section 2 is cities and Section 3 is townships.

Subsection 1. Says that a residential nonconforming structure can be rebuild or repaired if over 50% damaged if it meets several conditions.

Go through the Bill...

Additional language was added for issues from flood insurance and for less restrictive language of cities like Bismarck.

As I said earlier, I worked with legislative counsel for the language for Subsection 6. It was added to allow a city, county, or township not to allow a nonconforming structure not to be rebuilt if the owner is compensated. The fair market value language was used because that is what the language is used with the eminent domain part of law. Fair market value is commonly understood term in the Real Estate world. However, if the committee feels there should be more clarification, then amend it please.

Here are some examples on nonconforming house in each of the different areas. County zoning set a minimum acreage for each site. If you have a 5 acre site and the county changes it to require 10 acres, you have a nonconforming property.

Anytime the city changes a zoning regulation the house that doesn't conform to the new regulation becomes a nonconforming house. Some examples include a duplex in a R1 zone(single family homes only). A resident house in a commercial zone. Other examples include house having too small of a site or the setbacks are no longer the same as current zoning codes.

With townships and smaller towns they are often littered with nonconforming house because of lot size.

Bismarck and Fargo along with several smaller towns have modified the common boilerplate to automatically allow for the repair or replacement of non-conforming properties under the conditions that this bill includes. Unfortunately, Grand Forks, West Fargo, Minot and Williston do not.

The proposed law was based on Bismarck and Fargo zoning code and the State of Minnesota Statutes. In recent times, Minnesota passed a law that in essence forced the government entity to fully compensate a property owner that was denied a building permit due to a legal non-conforming property. In essence, it amounted to a government taking and all the conditions and issues that arise from such actions. However, I found that in 2017 they simply created a Statute that is similar to HB1165 from last session. HB1222 this session is more flexible than the Fargo and Bismarck ordinances. Yet the testimony of the opponents to the bill is doom and gloom. There have been no issues anywhere this law was put into affect. The only issues are the areas where this law is not in affect.

Homeowners are never informed when their house becomes nonconforming nor are they informed when they buy a nonconforming house.

This bill deals with Nonconforming structures not nonconforming uses.

This bill deals with zoning only. Houses rebuilt under this bill would need to comply to all applicable building codes. There is a difference between zoning code and building code. This bill in no way affects building code. Building code always comes into effect whenever repairs or replacement takes place. This law does not change any of that. It does not impact safety issues, building inspections, or other State Laws.

If any structure is proven to be unsafe then the city can condemn a structure for safety reasons. This bill deals only with zoning not safety issues as all building and fire codes need to be followed.

An illegal structure is not a nonconforming structure. For example, residential structures are never allowed in an industrial area. If an area is zoned industrial, nonconforming houses or any other residential houses are not allowed. This bill does not effect industrial areas.

The Grand Forks City example is the same fairy tale they told last session in the Senate. The house on the 1400 square foot site that burned down. It didn't burn down because of zoning. It didn't burn down because it was too close to another property nor did it damage the neighboring property. This issue wasn't solved by collaboration between the owner and the city. The structure was never going to get rebuilt because the owner didn't have insurance on it. That is why it was never going to get rebuilt. If it was a life-safety impact, they why didn't they condemn the house?!

A house being close to another house is not a safety concern if the proper building codes and materials are used. Ever heard of a duplex or a twin home? Are they a safety risk? How close are they together. How about Row houses and attached twin homes? Are they a safety risk because they are close together?

Grand Forks talks about collaboration when the homeowner has no choice but to beg the city for variance. Since the last session, there were several instances that GF issued nonconforming homeowners a variance. If they are allowing everyone a variance, at what point does it become discriminatory to say no and for what reason, they don't get one. What about people that don't have help and don't know the process of getting a variance? However, in other areas like West Fargo, they don't always issue a variance and once realized that immediately decreases the value of that property by doing so. The value goes down because a house cannot be financed if it cannot be rebuilt.

Since the last session, several communities have adopted ordinances like Bismarck. In Mayville, when came to their attention that the majority of the houses listed for sale were actually nonconforming along with many other houses so they changed their ordinances.

How does not allowing someone to rebuild help the community? How is it fair to a homeowner when it was never disclosed to them? Zoning is supposed to be about health, welfare and safety of the public. It is not supposed to be about ways the city/county can take away you ability to rebuild.

How much would your car be worth if you weren't ever allowed to fix your tires?

The opposition is fighting for the ability to not allow a nonconforming to not be rebuilt. They can have it but they will need to pay for it. Just like with any government taking, the owner must be compensated. What do they really accomplish by having this ability? Can they really change the neighborhood by not allowing houses to be rebuilt. No, all they do is cause blight in the neighborhood. They are willing to not allow an owner to rebuild but they don't inform the public in a manner that the effect on their property is understood. they not willing to disclose to all the nonconforming owners until the Ike comes when they want to repair or rebuild their property. Then they require the owner to beg them for the ability to repair or rebuild.

Address the opposition to the bill:

City of MInot- Show me where your policy has worked to provide health, welfare and safety of the public. Do they really believe this is the only tool they have for zoning?

Williston: Nonconforming house or any other residential house are not allowed

I would ask you to push back and challenge on the same inaccurate testimony provided by the opposition with questions.

Grand Forks:

This is not an issue of safety as all building codes and safety issues are required anytime someone rebuilds. This an issue of fairness. This is a bill that needs to become law. I would ask you for a Do Pass recommendation. I will stand for questions.

DATE: January 28, 2021

TO: Political Subdivisions Committee

FROM: Joe Sheehan

RE: Testimony for HB 1222

Dear Mr. Chairman Dockter and members of the Committee

I am testifying in favor of HB 1222 and the necessary changes this bill offers to protect North Dakota home owners and property owners. I am a mortgage banker in ND. I have been originating mortgages for more than 20 years and I managed more than 1 billion dollars in mortgage origination in that time across the state.

Property ownership is the American dream. When citizens of North Dakota buy property to invest in a home and their future, it is with a "good will" understanding that the government within which they live supports their effort to gain from a fair market. When a property is rezoned into a status of nonconforming, whether it is intentional or unintentional, this investment is automatically depreciated and threatened.

Value is a supply demand issue. Demand is what protects a property owner's investment. When a property is rezoned nonconforming and cannot be rebuilt to the original footprint, the demand for this property is demonstrably diminished as the property is no longer eligible for most home buyer financing. I have copied the section of the Fannie Mae and Freddie Mac guide that indicates this in my testimony.

Is property that constitutes a legal, non-conforming use of the land allowed?



Fannie Mae only purchases or securitizes mortgage loans on properties if the improvements constitute a legal conforming use of the land. However, Fannie Mae will purchase or securitize a mortgage for a property that constitutes a legal, non-conforming use of the land provided the use of the land and the appraisal analysis reflects any adverse effect that the non-conforming use has on the value and the marketability of the property. This requirement applies to all property types.

Fannie Mae will not purchase or securitize a mortgage secured by a property that is subject to certain land-use regulations, such as coastal tideland or wetland laws, that create setback lines or other provisions that prevent the reconstruction or maintenance of the property improvements if they are damaged or destroyed. The intent of these types of land-use regulations is to remove existing land uses and to stop land development, including the maintenance or construction of seawalls, within specific setback lines.

For information regarding accessory units that comply or do not comply with zoning, see [B4-1.3-05, Improvements Section of the Appraisal Report](#).

II. Eligible zoning compliance

The Mortgaged Premises must conform to the jurisdiction's zoning and land use requirements. The zoning compliance must be either legal non-conforming or legal conforming; however, if a property has an accessory unit that does not comply with the jurisdiction's zoning and land use requirements (illegal zoning compliance), the Mortgaged Premises may be eligible if the requirements of [Section 5601.12\(e\)](#) are met. Mortgaged Premises that are located in jurisdictions with no zoning are acceptable.

For Mortgaged Premises with a land use that is legal non-conforming, the appraisal report must reflect any adverse effect the non-conforming use has on the opinion of market value.

A Mortgage is ineligible for sale to Freddie Mac if the Mortgage is secured by property that is subject to coastal tideland, wetland or setback laws and/or regulations that prevent the rebuilding or maintenance of the property improvements if they are damaged or destroyed.

A great majority of financing for home owners is financed through these government agencies. When rezoning of a property makes the property ineligible for a majority of home buyers it is cataclysmic to the value of the property. The only financing options available for these properties is in house bank financing with down payments of 20% or more. These loans are often offered with balloons or adjustable rates. This makes buying one of these properties a very unattractive prospect for home owner's and investors.

Whether the zoning impact is intentional or unintentional, homeowners should be protected from automatically losing value in their home. Homeowners should be protected from municipalities suffocating them out of their investment through a long term consequence of reducing their properties marketability so the properties can be gobbled up at reduced values. In the event cities won't offer this protection, it seems reasonable the state should stand up for the rights of homeowners and their hard invested dollars in the American Dream.

Mr Chairman and members of the Committee:

Thank you for allowing me a few minutes to present my testimony. Full disclosure, my name is Dennis Huber, and I am in support of this bill. I am an associate of Rep. Steve Vetter in the appraisal business covering the eastern part of North Dakota. I have been instrumental in changing the non-conformity provisions in the cities of Casselton, Lisbon and Mayville. I testified on behalf of a similar bill in the last legislative session that passed with a large majority in the House, but narrowly failed in the Senate. This bill includes a new provision that allows for an additional option for the local political subdivisions.

Whereas my prior testimony focused on the specifics of where and why properties became non-conforming and reasoned that it was mainly unintentional consequences of updating planning and zoning documents, today I charge that in most cases it resulted from gross negligence on the part of those in charge of designing and applying the residential classifications. The trust that homeowners grant to local government has been violated.

Sometime in history some organizations, such as the predecessors of today's League of Cities and Counties or the ND Planner's association, provided a boilerplate zoning document that was widely adopted thru out political subdivisions in ND and elsewhere. Inherent in their thinking, the non-conformity restrictions were designed to restrict maintenance and repair to existing houses that were legal conforming houses prior to the adaptation of the new plan for the simple purpose of forcing them into decline so that the neighborhoods could be rebuilt under the new requirements or redeveloped into a different use. There can't be any other explanation for the restrictive rules.

If effective and enforced the neighborhood containing these properties would deteriorate and collapse unless the homeowner kept up with maintenance and replacements on an ongoing basis. However, homeowners generally protected their properties by making those repairs whether legal or not. I know of zero areas where this provision has resulted in the total decline and redevelopment of a better land use. Instead, it has resulted in blight and a transition into rental houses.

Clearly the non-conforming restrictions on repair and replacement were not often recognized by local adopters of new ordinances, nor are they well known by commissioners, Realtors, or even appraisers. The statement that existing properties would be "Grandfathered" is prevalent, but the provisions just means that the house can stay as it is as long as it doesn't need maintenance, major repairs or reconstruction. Many restrict the amount of maintenance in a given time period and almost all prohibit repairs or rebuilding if the cost exceeds 50-60% of its value. The only solutions to the homeowner are either to change the zoning ordinance, or an application for a variance. These solutions take time and expertise the owner usually lacks.

How prevalent are non-conforming houses? My research shows that they are everywhere a political subdivision has updated their zoning ordinances in last 50 or more years. Some areas such as Minot and Mandan appear to have few, whereas Burleigh County, most small cities, Fargo and Grand Forks are littered with them. I estimate Fargo to have more than 1,000 and Grand Forks is in the 500 range.

Why does it matter? If properly disclosed, it prevents secondary market financing whether it be a sale, or a refinance to take advantage of today's low fixed interest rates. It also prevents senior citizens from accessing their equity to stay in their home. If undisclosed, it can result in losses to banks and financing

companies and liability for Realtors and appraisers. Most importantly, it can harm homeowners financially and turn their lives into chaos.

Fannie Mae's Selling Guide states that properties that have restrictions on maintenance, repairs, or rebuilding are not eligible for financing. They set the standard in the industry for most secondary market mortgages and many local bank lending is based on their standards even if the mortgage isn't originally sold.

Financial loss to a homeowner can be significant even if insured. In a partial loss, your homeowner's policy is going to want to pay the cost to repair even if the building permit is denied, leaving the homeowner with a 50% or more loss due to the exception in the policy from losses caused by government actions. Case law shows that in some lawsuits, Insurance law has been applied successfully to cover some these cases when the house was condemned. Even so, the homeowner may be faced with a two-year lawsuit while living in a motel.

Due to a lack of understanding, Realtors can be liable for material facts that affect the property that were not disclosed. Appraisers not fully investigating, reporting, and considering these facts in their appraisal are certainly liable and are also subject to licensure sanctions for material errors. Your local bank that sold the mortgage to Fannie Mae would get it back if it's caught on review.

We are taught in Real Estate Classes that Zoning Law is absolute. I can't sue the city because a change in zoning resulted in a drop in value of my house. However, ND Century Code provides the basis of zoning authority on the premise that their actions are in the best interests of the community. During the last session, I asked the opponents to cite examples of how this law has benefited any neighborhood or community. Not one reasonable individual case was cited that would have changed anything. If you measure the benefit to any community versus the harm to individual homeowners, how can the zoning authorities defend that they are acting within the authority given to them by ND Century Code.....?

The opponents of this bill will raise a number of concerns, and if last session's arguments persist, they will attempt to confuse us with situations that don't apply to this part of the zoning code. Items like "Use" instead of structure, property condition that applies to building code, hazards that applies to fire code and general safety and health provisions that aren't a part of this issue. Local control instead of a mandate from the state is the larger concern.

Realistically, there is no effective way to educate all of the political subdivisions on this issue in a timely manner. First of all, most do not understand that these restrictions exist in their ordinance. It simply seems too harmful to be true. Secondly, there is no motivation to do so until a citizen is harmed, and then they lack the expertise to change the ordinance in a way that works without unintended consequences.

Instead of opposing a reasonable solution to this bill, the League of Cities and Counties and the ND Planners Association should be supporting this change because they have been ineffective in providing a solution that is in the best interest of the homeowners without restricting the zoning boards of the tools to work in the best interest of the communities. This tool has never resulting in a meaningful benefit, and in fact if you talk to those cities that have a provision similar to this bill, the zoning administrator will often tell you that it has been a relief and actually allows them more flexibility in doing their job.

If the local authority wants to get rid of a property, or redevelop a neighborhood over time, the current provision isn't going to accomplish it. If they'd use their imagination there are more effective ways. Or just plagiarize a provision from Moorhead, MN used in specific redevelopment areas to work around the non-conformity law in their state to accomplish their goals.

In closing, I thank you for your time and consideration to this bill. I trust that you will discern the facts of the situation, turn a critical eye to the opposition's statements, and act in the best interests of your constituency.

I'd be happy to answer any questions now, or after the opposition to the bill has presented their case. I have attached a Question-and-Answer addendum that answers specific objections.

Sincerely,

Dennis J Huber

Common Concerns:

Q: When new changes to the zoning classifications and provisions are proposed, are the owners fully informed and have the opportunity to object?

A: Fully Informed is the key here. When the new zoning documents rezoned much of Fargo in the late 90's, thousands of houses, in fact whole large neighborhoods fell into the non-conforming status. In fact, the provisions were worse than most found today because it expressly denied any variances due to lot size at the time. Even the mayor's house fell into this category. If homeowners were fully aware of the consequences, there would have been riots at city hall.

Q: Grand Forks City has been stating that it allows them to work with homeowners toward a better individual solution.

A: Since the prior legislative session, they have been very cooperative in granting zoning changes and variances. Never before in my 27 years of raising objections to city administrators has it resulted in a variance or a zoning class change. However, keep in mind that with this law change, they can continue to work with an owner on achieving a solution better than the minimum required under this bill.

Q: Since the last session, have political subdivisions made changes to reduce the number of non-conforming houses?

A: I've noticed changes in rural Grand Forks County's documents as well as West Fargo finally changing one of their neighborhoods from commercial to residential after a 40-year failed experiment that harmed a very needed 30 affordable and well-built houses. So, yes, some progress has been made.

Q: Why don't political subdivisions take a hard look at their properties and apply appropriate classifications so that this issue is reduced?

A: Sometimes these occurred for other intended reasons, such as preventing the addition of apartments to single family houses, as occurred in Fargo. The easy solution is to simply not allow adding them to existing single family dwellings in a single statement in the document. Instead, they developed a minimum site size per unit that exceeds the site size of lots in the areas.

Changing the zoning classification or documents that may restrict a homeowner's rights requires legal notices and public meetings. It's a lot of work that busy or small departments don't have the time for or money to pursue.

Q: Upon sale or financing, who is responsible for making sure that all parties are informed about the consequences of these restrictive zoning provisions:

A: To the inexperienced, a zoning ordinance is a complex document with provisions that appear to be in conflict with each other and must be cross referenced by plat maps, legal descriptions and physical measurements.

Realtors must inform parties to a transaction of anything they know that may affect the property. They are not experts in this venue, this issue has not been widely publicized, and venturing into it without expertise is a recipe for liability. When its zoned something other than residential they are likely to

consult the city. However, most non-conforming properties are within a zoning that allows residential by a right.

Title Opinion Attorneys and Title Companies never make any statements regarding compliance with zoning laws for similar reasons. It is beyond the scope of their responsibilities.

Appraisers must address it, but it is very common for it to be overlooked. The report requires us to answer whether the property is legal, legal non-conforming, or illegal. If it is anything other than legal, they ask if it can be rebuilt if partially or fully destroyed. If that answer isn't clearly positive, such as a variance is possible, most will then ask if there is a history of variances for this purpose. Other than Grand Forks on small lots, I've never been able to obtain a list of variances for site size mostly likely because variances are applied for when someone wants to enlarge a property rather than for financing.

Q: Can't Realtors and Appraisers just call the zoning authority and find these things out?

A: That is the common protocol. I stopped doing that after reading the Casselton Ordinance because when it comes to non-conforming properties, they are wrong more often than not. It's just not reliable. The standard in the industry is to seek readily available information, and or do what your peers do. Because of online information and prompt response via email, it is my standard to review all of the documents.

Q: Certainly, counties like Cass or Burleigh would give you correct answers?

A: Not likely. In Cass, many rural property's minimum lot size may be 2 acres, so you'd get the answer of it being legal conforming. However, because it has a septic system the minimum is 3 acres. In Grand Forks county the answer almost always was that it was conforming, and when questioned it was that the classification could be changed. Recently, they corrected this problem.

Q: What are your thoughts about safety because they are too close to each other?

A: Properly maintained, proximity to a neighbor creates limited risk due to building code on firewall provisions. Safety on a house that has 5' between foundations is clearly superior to a twinhome.

Q: What about being in dangerous places?

A: Being in an industrial zoned area turns that house into an illegal property which has its own provisions.

Q: What about being too close to the highway?

A: When the highway expanded, no doubt there was a government action that needed to be compensated for in the eminent domain provisions under state law. If they didn't consider this factor and didn't put any restrictions on it, someone failed to do the proper thing.

Q: Senator Lee stated that a task force would be formed to work on the non-conformity issue after the last session. What do you know of its recommendations or work that has been done?

A: Absolutely nothing even though I contacted Sen. Lee immediately after the prior session. I've asked for names, to be included, and if not to at least be informed at least 5 times. I have no knowledge if they exist, who they are if they exist, or any efforts they have made to reduce the problem.



North Dakota Planning Association
Testimony presented by Natalie Pierce #718

House Bill 1222 Strongly Urging a “Do Not Pass” Recommendation

The very simple point NDPA wishes to convey is that HB 1222 is a completely unnecessary bill. There is no provision of the bill that could not be easily adopted by the political subdivision where supporters of the bill live and work, if it were seen to be in the best interest of the local community to do so.

Bill language is vague, and has far-reaching, negative consequences

The language of the bill is vague and inconsistent. If enacted, it would have a chilling effect on zoning and building code enforcement, as well as the enforcement of health codes, because political subdivisions would not have clear direction as to where their authority begins and ends, with respect to residential structures. The bill would also immediately, and categorically, legitimize those lots and structures that were created illegally.

Political subdivisions are not, and should not act as, insurance guarantors

What are the circumstances in which this bill would be applied? In almost all cases, when a residential structure has been damaged beyond 50% of market value, the structure is a total loss. In a total loss scenario, private insurance will pay the full insured value of the structure. It is common for insurance policies to also pay out a premium for excess costs resulting from the imposition of local zoning regulations. Any argument that a political subdivision is “taking” all value from a property owner by holding a property in a non-conforming status is a gross over-simplification.

Legal basis for zoning regulation

You will often hear the refrain “you can’t interfere with my private property rights” in debates about zoning regulation. This phrase is powerful and strikes at the heart of what many North Dakotans hold most dear. But, in its simplicity, this phrase falls short of being 100% accurate. So it is important to recall some facts:

Fact 1) Property boundaries have not existed since the beginning of time; they are a creation of the government.

Fact 2) The U.S. Supreme Court has ruled, for many decades, that it is a legitimate exercise of the police power of the state to organize land uses for the purpose of protecting and enhancing the overall health, safety and well-being of the community at large. This means that the bundle



of rights inherent in the ownership of real property is subject to some degree of compromise in the face of a compelling government interest.

Fact 3) Across the past century, the give-and-take between state law, local regulation, and legal review by the courts, has continued to better define where that compromise lies between a land owners' rights and the interests of the larger community, taken as a whole. And the process continues...

The status of a property as "non-conforming" is an example of one of those compromises between a property owner's rights and the legal ability of a political subdivision to intervene for the purpose of reducing land use conflicts, for the good of the community as a whole. Testimony from the cities of Grand Forks, Minot and Williston has provided some tangible examples of these conflicts. Hopefully these examples have been helpful to illustrate some of the ways in which the use of non-conforming status aims to reduce these conflicts over time, and why the categorical removal of this planning mechanism across the state would have negative consequences for many communities.

Again, if various political subdivisions in North Dakota see this as a critical issue, they have every ability to adopt those regulations at the local level. For these reasons and more, NDPA urges a "do not pass" recommendation.

Date: 1/28/2021
 House Bill No. 1222

COMMITTEE: Political Subdivisions
 CHAIRMAN: Representative Dockter
 FROM: Kevin Ternes, CAE, ND CG-2003, Licensed Real Estate Appraiser

Subject: House Bill 1222 concerning those residential buildings that are non-conforming as it relates to the zoning district, they are in.

Chairman Dockter and Honorable Representatives: Thank you for allowing me to present testimony on this bill. As a former city assessor, current private real estate appraiser, homeowner and fellow taxpayer, I would offer some concerns and questions about the bill.

I do understand the goal here of protecting a homeowner's property rights, but also share concern for other members of the neighborhood also. Hopefully a good zoning ordinance protects the rights and enjoyment of those property rights of *all* the residents of a particular neighborhood.

Below is a portion of a residential appraisal form lenders require that I suspect is where the issue is coming from:

Dimensions		Area		Shape		View	
Specific Zoning Classification		Zoning Description					
Zoning Compliance		<input type="checkbox"/> Legal <input type="checkbox"/> Legal Nonconforming (Grandfathered Use) <input type="checkbox"/> No Zoning <input type="checkbox"/> Illegal (describe)					
Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use?		<input type="checkbox"/> Yes <input type="checkbox"/> No If No, describe					
Utilities		Public		Other (describe)		Off-site Improvements - Type	
Electricity	<input type="checkbox"/>	<input type="checkbox"/>	Water	<input type="checkbox"/>	<input type="checkbox"/>	Street	<input type="checkbox"/>
Gas	<input type="checkbox"/>	<input type="checkbox"/>	Sanitary Sewer	<input type="checkbox"/>	<input type="checkbox"/>	Alley	<input type="checkbox"/>
FEMA Special Flood Hazard Area		<input type="checkbox"/> Yes <input type="checkbox"/> No		FEMA Flood Zone		FEMA Map #	
FEMA Map Date		Are the utilities and off-site improvements typical for the market area? <input type="checkbox"/> Yes <input type="checkbox"/> No If No, describe					

If I could, I would offer the following for the committee to ponder:

1. I do not recall a time in 29 years of city service where this had been an issue that couldn't be handled with local solutions. Small towns especially would welcome new and safe construction.
2. If the reason for this bill is to satisfy banking and underwriting rules, regarding that I have visited with 2 long time lenders in Minot who have told me they each have seen this issue come up only once, and there were other remedies including local lenders.
3. Would the state be inserting itself in an issue that local boards who understand all the issues, characteristics of the particular neighborhood and past issues with a particular property be more suitable for addressing with a zone change if there is a financing issue or might there be considerable reasons why a zone change or allowing a re-build is not productive for the rest of the neighbors and their property values?
4. Regarding part 6) in each of the 3 Sections, if I received an insurance payment for my loss, and am denied by zoning in hiring a contractor to come and rebuild the structure to another non-conforming use, won't I be paid twice for the same building?

Thank you for your consideration and the opportunity to testify.

255 N. 4th St.
PO Box 5200
Grand Forks, ND 58206-5200



City of Grand Forks
(701) 746-4636

TESTIMONY ON HOUSE BILL 1222

House Political Subdivisions Committee

January 28, 2021

**Brandon J. Boespflug, Building Inspections Director/ Chief Building Official
Ryan Brooks, Interim City Planner, City of Grand Forks, ND**

Chairman Dockter and members of the House Political Subdivisions Committee, my colleague Brandon Boespflug (Inspections Director) and myself, Ryan Brooks (Interim City Planner), represent the Building Inspections and Planning Departments for the City of Grand Forks. We thank you for the opportunity to provide testimony and express our opposition to House Bill 1222.

The City of Grand Forks has several concerns with the bill, specifically how it relates to removing local control regarding non-conforming structures. City staff often work with property owners and, in some cases, entire neighborhoods, regarding the redevelopment of a property that has been damaged beyond 50% of its value. For the majority of structures, this is not an issue and the structure meets our zoning code to be rebuilt. In some cases, however, the structures do not meet setback or other zoning requirements, making them non-conforming.

The way the bill is written "ties our hands" at the local city level and eliminates our ability to work with our citizens and/or neighborhoods regarding non-conforming elements of a property. This is especially problematic in situations where those non-conforming elements have a life-safety impact that could otherwise be corrected should a property be damaged beyond 50%. Our current process allows the City to collaborate with property owners to rebuild structures while maintaining public safety interests. It is imperative that not only the City of Grand Forks, but all North Dakota cities, counties, and townships, have the ability and authority to adopt and enforce building codes and zoning ordinances to protect the safety, welfare and health of their citizens.

A real-world example where this bill would be problematic occurred in Grand Forks two years ago when a fire occurred on a small residential lot (1,400 square feet), leaving the structure damaged beyond 50% of its value. The now-damaged house was located within a few feet of an adjacent house. It was very fortunate that the fire did not consume both homes. Under this bill, the City would either have to allow the structure to be rebuilt despite the life-safety issues of its close proximity to another residential structure, or compensate the property owner for its fair market value; an issue made more problematic given there is no clear method specified in the bill as to how fair market value is to be determined.

In sum, if adopted, House Bill 1222 would deny cities the ability to address life-safety concerns, in partnership with property owners and through a proper and thorough evaluation of existing zoning and building codes, that may result from non-conforming properties, as well as the limit the evaluation of the impact a given non-conforming property may have on surrounding land uses.

The passage of House Bill 1222 is not in the best interests of the City of Grand Forks, nor any other cities, counties, or townships in North Dakota. Thank you for your time and consideration.

The City of Grand Forks asks for a DO NOT PASS for HB 1222



North Dakota House Political Subdivisions

Chairman – Jason Dockter

January 27, 2020

Testimony: Brian K. Billingsley, AICP
Community & Economic Development Director
Email: brian.billingsley@minotnd.org
Phone: 701-857-4147

House Bill 1222 Urging a “Do Not Pass” Recommendation

I am writing on behalf of The City of Minot to express our **opposition** to HB 1222 (Non-Conforming Uses). We assert the bill undermines the basic purpose of municipal zoning, which is the separation of non-harmonious uses.

North Dakota’s cities are unique and have different needs. Unfortunately, this legislation promotes a “one-size fits all” approach for the zoning of our cities. City governments should have the independence to determine how to handle non-conforming uses without governmental interference. In Minot, we have a significant amount of non-conforming residential uses with commercial zoning. We also have several grandfathered multi-family buildings in single-family residential neighborhoods. Allowing these non-conforming residential uses to rebuild after a disaster will detract new businesses from locating in our commercial zones and infuriate single-family homeowners in low-density residential neighborhoods.

The ultimate goal of the zoning code is to achieve uniformity of property uses within each zoning district, which can only be accomplished by the elimination of uses that do not conform to the specifications of district regulations. This bill will encourage urban sprawl into rural farmsteads at an accelerated rate and make infill development more expensive and arduous.

Commercial property owners will argue that allowing the residential properties to continue in their neighborhood will devalue their property. Residential property owners tend to complain about traffic, lighting, and noises generated by neighboring commercial uses. Eliminating non-conforming residential uses in commercial districts will alleviate complaints made upon our business community, raise commercial property values, and foster new economic development.

Protecting the investment of homeowners of a nonconforming use and achieving uniformity of land use within zoning districts is difficult to balance. To prevent nonconforming uses from becoming blighted properties, the Minot zoning code allows for routine maintenance and repair, so long as such

activities do not constitute an expansion or enlargement. As a last resort, a property owner has the right to file a rezoning application and go before the City Council to address their situation.

Lastly, the City of Minot asserts Section 40-47-05.1.6 is a terrible way to force cities to adopt a State mandated public policy. It requires a city to compensate a property owner when a residential building is damaged beyond 50% of its value and the owner is refused a building permit to replace or repair the building. The City of Minot follows all Federal and State regulations and mandates and we feel this provision is unnecessary. To force a city to pay a property owner for damages that his or her insurance company is obligated to cover is a waste of the taxpayer's money.

For these reasons, we strongly urge your committee to recommend a "do not pass" on HB 1222.

Sincerely,



Brian K. Billingsley, AICP
Community & Economic Development Director

Cc: Mayor Shaun Sipma
Minot City Council
Harold Stewart, City Manager
Shane Goettle, Special Assistant City Attorney
Blake Crosby, North Dakota League of Cities
Natalie Pierce, North Dakota Planning Association

HOUSE BILL NO. 1222

**HOUSE POLITICAL SUBDIVISIONS
Rep. Jason Doctor, Chairman**

Written Testimony

**Joe Ibach
North Dakota Appraisers Association, Government Affairs Chairman**

January 27, 2021

Mr. Chairman & Members of the Committee,

I am representing myself as a licensed North Dakota real estate appraiser and as the chairman of the North Dakota Appraisers Association's Government Affairs Committee. I will offer my personal opinion about the proposed bill and the view from the NDAA Board of Directors.

I am not well versed as to why this bill originated. However, having been in the North Dakota real estate appraisal profession since 1975, issues dealing with nonconformity have not been a major issue in the appraisal process. In rare instances, a dwelling was found to be nonconforming. However, the nonconformity issue is normally remedied by applying to the controlling political subdivision and pursue a "conditional" use permit. It appears that, if this legislation were to pass, it would have a major negative effect on small rural communities as they have limited or no zoning and planning staff or even an inspector. It would then create a significant financial burden on these communities.

The bill, if passed, would also require political subdivisions to reimburse the property owners for the property's fair market value before the damage occurred. This reimbursement would also create an undue financial burden on the political subdivision. Therefore, I personally recommend a "do not" pass on this bill.

Again, I serve as the Governmental Affairs Committee Chairman of the North Dakota Appraisers Association (NDAA). Though not yet in a "bill" form, this issue was discussed at the NDAA Board of Directors' last board meeting in November 2020. They also opined that the nonconforming issue has not been a significant appraisal issue. Most related issues are typically addressed by the local political subdivision. Therefore, the Board decided not to support the bill.



**Testimony on behalf of the City of Williston Development Services Dept.
in Opposition to House Bill 1222
House Political Subdivisions Committee
January 25, 2021**

Chairman Klemin and members of the House Political Subdivisions Committee:

This is testimony in opposition to House Bill 1222 on behalf of the City of Williston Development Services Department.

The City of Williston Development Services Department has concerns regarding this bill.

This bill would remove the ability of cities to further development and zoning goals by allowing for non-conforming uses to be removed if they are destroyed beyond 50 percent.

For example, the City of Williston has a variety of areas that are not suitable for residential use or for habitation by individuals. These areas are located next to industrial zones and along federal and state highways. Over the years, the City has taken steps to ensure that those areas are transitioning to appropriate uses, including creating "transition zones". Non-conforming status helps to encourage those residences to turn over to appropriate uses as they come up for sale.

in some cases, the location of residences that are in non-conforming areas means that they have been disinvested in for years. In Williston, at least one residence that was beyond repair (no running water, no heat) in a light-industrial zone was required to be torn down after a violation occurred. Had the property been destroyed (which could easily have happened in a residence with no utilities), and had the property owner been able to rebuild on the property, they would have been re-building a residence into a light industrial area. That does not serve the resident, the neighborhood, or the city very well.

This bill would remove the ability for cities to make determinations about what is best for their community's goals.

We therefore respectfully request a DO NOT PASS recommendation for House Bill 1222.

Thank you for your time.

Testimony in Opposition to House Bill 1222
January 28, 2021
House Political Subdivisions Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Afternoon Mr. Chairman and members of the House Political Subdivisions Committee. For the record, my name is Bill Wocken and I am testifying in opposition to House Bill 1222 on behalf of the North Dakota League of Cities.

You have heard about the effect of House Bill 1222 so I need not repeat that information. You have also heard from experts in the field that there is no widespread problem with non-conforming structures at present. We have not found them to be problematic to most appraisers, assessors, realtors or bankers.

You have heard from planners from several cities that when a non-conforming structure is destroyed to the extent its remaining value is less than half of its value prior to a catastrophic loss event, many communities work with the owner of the structure to help them find a way to provide a structure that is more in line with fire, zoning, flood and building codes. Often re-zoning, grant of variances or special use permits are employed. The result may not be re-creation of the pre-loss structure but often a better use of the parcel.

The North Dakota League of Cities is concerned that imposition of a state law solution to all non-conforming structure issues takes away the control of local officials over their communities. Those officials who live and work in their communities are willing and able to handle these situations. The opportunity for unintended consequences from a universal decision in state law must be considered.

We believe that cities, counties and townships are able to resolve their non-conforming structure problems on a local level so we must respectfully request a DO NOT PASS recommendation for House Bill 1222.

2021 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Room JW327B, State Capitol

HB1222
2/18/2021
House Political Subdivisions

Relating to nonconforming structures

Chairman Dockter: (10:56) Opened the hearing.

Representatives	
Representative Jason Dockter	P
Representative Brandy Pyle	P
Representative Mary Adams	P
Representative Claire Cory	P
Representative Sebastian Ertelt	P
Representative Clayton Fegley	P
Representative Patrick Hatlestad	P
Representative Mary Johnson	P
Representative Lawrence R. Klemin	P
Representative Donald Longmuir	P
Representative Dave Nehring	P
Representative Marvin E. Nelson	A
Representative Luke Simons	P
Representative Nathan Toman	P

Discussion Topics:

- Nonconforming structures related to zoning
- Amendment

Rep. Vetter: Explained the proposed amendment 21.0422.03002. #11713

Rep. Ertelt: Explained Amendment 21.0422.03005. Attachment #6913.

Rep . Ertelt: Made a motion to adopt amendment 21.0422.03005.

Rep. Johnson: Second the motion.

Voice vote carried.

Rep. Klemin: Made a motion to further amend by adding “unless the county determines that” and delete the words “demonstrate to the district court” to page 2 line 17-21; on Page 3 lines 25-29 and page 5 lines 3-7.

Rep. Longmuir: Second the motion.
Roll call vote on amendment.

Representatives	Vote
Representative Jason Dockter	Y
Representative Brandy Pyle	Y
Representative Mary Adams	Y
Representative Claire Cory	Y
Representative Sebastian Ertelt	N
Representative Clayton Fegley	Y
Representative Patrick Hatlestad	N
Representative Mary Johnson	N
Representative Lawrence R. Klemin	Y
Representative Donald Longmuir	Y
Representative Dave Nehring	N
Representative Marvin E. Nelson	A
Representative Luke Simons	N
Representative Nathan Toman	N

Motion carried 7-6-1.

Rep. Klemin: Motion for a do pass as amended # 21.0422.03006.

Rep. Ertelt: Second the motion.

Representatives	Vote
Representative Jason Dockter	Y
Representative Brandy Pyle	Y
Representative Mary Adams	Y
Representative Claire Cory	Y
Representative Sebastian Ertelt	Y
Representative Clayton Fegley	Y
Representative Patrick Hatlestad	Y
Representative Mary Johnson	Y
Representative Lawrence R. Klemin	Y
Representative Donald Longmuir	Y
Representative Dave Nehring	Y
Representative Marvin E. Nelson	A
Representative Luke Simons	Y
Representative Nathan Toman	Y

13-0-1 carried.

Rep. Ertelt: Will carry the bill.

Chairman Dockter: (11:27). Closed committee work.

Carmen Hickle, Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1222

Page 1, line 11, replace "A" with "An application for a"

Page 1, line 11, replace "obtained" with "submitted"

Page 1, line 17, remove the second "or"

Page 1, line 19, after "damage" insert "; or

(5) Violate existing building and fire codes"

Page 2, line 5, remove "maintenance,"

Page 2, line 5, after the third underscored comma insert "maintenance, restoration, rebuilding,"

Page 2, line 12, remove "If a property owner is not authorized to repair, replace, improve, maintain, restore, or"

Page 2, replace lines 13 and 14 with "Unless the county can demonstrate to the district court that the repair, replacement, improvement, maintenance, rebuilding, or restoration of a structure will violate subdivision c of subsection 1, the county shall issue a building permit to a property owner that meets the qualifications under subsection 1."

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Renumber accordingly

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Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1222: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1222 was placed on the Sixth order on the calendar.

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Renumber accordingly

21.0422.03002

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1222

Rep. Vetter

Introduced by

Representatives Vetter, Dockter, Ertelt, Hatlestad, M. Johnson, K. Koppelman, Marschall,
Sanford

Senators O. Larsen, Meyer, Vedaa

1 A BILL for an Act to create and enact sections 11-33-17.1, 40-47-05.1, and 58-03-14.1 of the
2 North Dakota Century Code, relating to nonconforming structures.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Section 11-33-17.1 of the North Dakota Century Code is created and enacted
5 as follows:

6 **11-33-17.1. Zoning - Nonconforming structure.**

- 7 1. Notwithstanding any other provision of law or local zoning ordinance, a structure
8 devoted to residential use may be repaired, replaced, improved, maintained, restored,
9 or rebuilt in its entirety even though the structure is damaged beyond fifty percent of its
10 value if:
- 11 a. AAn application for a building permit is ~~obtained~~submitted within six months of
12 the date the damage occurs;
- 13 b. Restoration begins within one year of the date the damage occurred; and
- 14 c. The new structure will not:
- 15 (1) Occupy a portion of the lot which was not occupied by the damaged
16 structure;
- 17 (2) Have more square footage than the damaged structure;
- 18 (3) Exceed the height or number of stories of the damaged structure; ~~or~~
- 19 (4) Diminish the number of off-street parking spaces located on the property
20 from the number of spaces before the damage; or
- 21 (5) Violate existing building and fire codes.

- 1 2. Under subsection 1, expansion of a nonconforming structure is prohibited unless the
2 expansion is in compliance with applicable state and local zoning regulations. The
3 local zoning authority shall determine whether a proposed expansion is in compliance.
- 4 3. Under subsection 1, a nonconforming structure may not be moved unless the
5 movement or relocation will bring the structure into compliance with all applicable
6 zoning regulations.
- 7 4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair,
8 replacement, maintenance, improvement, or expansion of nonconforming uses and
9 structures in floodplain areas to the extent necessary to maintain eligibility in the
10 national flood insurance program and adhere fully to all applicable floodplain
11 management ordinances without increasing flood damage potential or increasing the
12 degree of obstruction to floodflows in the floodway.
- 13 5. Notwithstanding subsections 1, 2, and 3, the local zoning authority may create a less
14 restrictive ordinance or regulation.
- 15 6. ~~If a property owner is not authorized to repair, replace, improve, maintain, restore, or~~
16 ~~rebuild a structure under subsection 1, the county shall compensate the owner for the~~
17 ~~fair market value of the property before the damage occurred.~~ Unless the county can
18 demonstrate to the district court that the restoration of a structure is unsafe, the county
19 shall issue a building permit to a property owner that meets the qualifications under
20 subsection 1.

21 **SECTION 2.** Section 40-47-05.1 of the North Dakota Century Code is created and enacted
22 as follows:

23 **40-47-05.1. Zoning - Nonconforming structure.**

- 24 1. Notwithstanding any other provision of law or local zoning ordinance, a structure
25 devoted to residential use may be repaired, replaced, improved, maintained, restored,
26 or rebuilt in its entirety even though the structure is damaged beyond fifty percent of its
27 value if:
 - 28 a. ~~An application for a building permit is obtained~~ submitted within six months of
29 the date the damage occurs;
 - 30 b. Restoration begins within one year of the date the damage occurred; and
 - 31 c. The new structure will not;

Sixty-seventh
Legislative Assembly

- 1 (1) Occupy a portion of the lot which was not occupied by the damaged
- 2 structure;
- 3 (2) Have more square footage than the damaged structure;
- 4 (3) Exceed the height or number of stories of the damaged structure; ~~or~~
- 5 (4) Diminish the number of off-street parking spaces located on the property
- 6 from the number of spaces before the damage; ~~or~~
- 7 (5) ~~Violate existing building and fire codes.~~

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10 local zoning authority shall determine whether a proposed expansion is in compliance.

11 3. Under subsection 1, a nonconforming structure may not be moved unless the
12 movement or relocation will bring the structure into compliance with all applicable
13 zoning regulations.

14 4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair,
15 replacement, maintenance, improvement, or expansion of nonconforming uses and
16 structures in floodplain areas to the extent necessary to maintain eligibility in the
17 national flood insurance program and adhere fully to all applicable floodplain
18 management ordinances without increasing flood damage potential or increasing the
19 degree of obstruction to floodflows in the floodway.

20 5. Notwithstanding section 40-47-13 and subsections 1, 2, and 3, the local zoning
21 authority may create a less restrictive ordinance or regulation.

22 6. ~~If a property owner is not authorized to repair, replace, improve, maintain, restore, or~~
23 ~~rebuild a structure under subsection 1, the city shall compensate the owner for the fair~~
24 ~~market value of the property before the damage occurred.~~ Unless the city can
25 demonstrate to the district court that the restoration of a structure is unsafe, the city
26 shall issue a building permit to a property owner that meets the qualifications under
27 subsection 1.

28 **SECTION 3.** Section 58-03-14.1 of the North Dakota Century Code is created and enacted
29 as follows:

1 **58-03-14.1. Zoning - Nonconforming structure.**

2 1. Notwithstanding any other provision of law or local zoning ordinance, a structure
3 devoted to residential use may be repaired, replaced, improved, maintained, restored,
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5 value if:

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27 management ordinances without increasing flood damage potential or increasing the
28 degree of obstruction to floodflows in the floodway.

29 5. Notwithstanding subsections 1, 2, and 3, the local zoning authority may create a less
30 restrictive ordinance or regulation.

Sixty-seventh
Legislative Assembly

- 1 6. ~~If a property owner is not authorized to repair, replace, improve, maintain, restore, or~~
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3 ~~the fair market value of the property before the damage occurred.~~Unless the township
4 can demonstrate to the district court that the restoration of a structure is unsafe, the
5 township shall issue a building permit to a property owner that meets the qualifications
6 under subsection 1.

21.0422.03005
Title.

Prepared by the Legislative Council staff for
Representative Ertelt
February 16, 2021

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Page 4, replace lines 18 and 19 with "Unless the township can demonstrate to the district court that the repair, replacement, improvement, maintenance, rebuilding, or restoration of a structure will violate subdivision c of subsection 1, the township shall issue a building permit to a property owner that meets the qualifications under subsection 1."

Renumber accordingly

HOUSE BILL NO. 1222

Introduced by

Representatives Vetter, Dockter, Ertelt, Hatlestad, M. Johnson, K. Koppelman, Marschall,
Sanford

Senators O. Larsen, Meyer, Vedaa

1 A BILL for an Act to create and enact sections 11-33-17.1, 40-47-05.1, and 58-03-14.1 of the
2 North Dakota Century Code, relating to nonconforming structures.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Section 11-33-17.1 of the North Dakota Century Code is created and enacted
5 as follows:

6 **11-33-17.1. Zoning - Nonconforming structure.**

7 1. Notwithstanding any other provision of law or local zoning ordinance, a structure
8 devoted to residential use may be repaired, replaced, improved, maintained, restored,
9 or rebuilt in its entirety even though the structure is damaged beyond fifty percent of its
10 value if:

11 a. AAn application for a building permit is ~~obtained~~submitted within six months of
12 the date the damage occurs;

13 b. Restoration begins within one year of the date the damage occurred; and

14 c. The new structure will not:

15 (1) Occupy a portion of the lot which was not occupied by the damaged
16 structure;

17 (2) Have more square footage than the damaged structure;

18 (3) Exceed the height or number of stories of the damaged structure;~~or~~

19 (4) Diminish the number of off-street parking spaces located on the property
20 from the number of spaces before the damage; or

21 (5) ~~Violate existing building and fire codes.~~

- 1 2. Under subsection 1, expansion of a nonconforming structure is prohibited unless the
2 expansion is in compliance with applicable state and local zoning regulations. The
3 local zoning authority shall determine whether a proposed expansion is in compliance.
- 4 3. Under subsection 1, a nonconforming structure may not be moved unless the
5 movement or relocation will bring the structure into compliance with all applicable
6 zoning regulations.
- 7 4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair,
8 replacement, ~~maintenance~~, improvement, ~~maintenance~~, ~~restoration~~, ~~rebuilding~~, or
9 expansion of nonconforming uses and structures in floodplain areas to the extent
10 necessary to maintain eligibility in the national flood insurance program and adhere
11 fully to all applicable floodplain management ordinances without increasing flood
12 damage potential or increasing the degree of obstruction to floodflows in the floodway.
- 13 5. Notwithstanding subsections 1, 2, and 3, the local zoning authority may create a less
14 restrictive ordinance or regulation.
- 15 6. ~~If a property owner is not authorized to repair, replace, improve, maintain, restore, or~~
16 ~~rebuild a structure under subsection 1, the county shall compensate the owner for the~~
17 ~~fair market value of the property before the damage occurred.~~Unless the county can
18 demonstrate to the district court that the repair, replacement, improvement,
19 maintenance, rebuilding, or restoration of a structure will violate subdivision c of
20 subsection 1, the county shall issue a building permit to a property owner that meets
21 the qualifications under subsection 1.

22 **SECTION 2.** Section 40-47-05.1 of the North Dakota Century Code is created and enacted
23 as follows:

24 **40-47-05.1. Zoning - Nonconforming structure.**

- 25 1. Notwithstanding any other provision of law or local zoning ordinance, a structure
26 devoted to residential use may be repaired, replaced, improved, maintained, restored,
27 or rebuilt in its entirety even though the structure is damaged beyond fifty percent of its
28 value if:
 - 29 a. ~~An application for a building permit is obtained~~submitted within six months of
30 the date the damage occurs;
 - 31 b. Restoration begins within one year of the date the damage occurred; and

- 1 c. The new structure will not:
- 2 (1) Occupy a portion of the lot which was not occupied by the damaged
- 3 structure;
- 4 (2) Have more square footage than the damaged structure;
- 5 (3) Exceed the height or number of stories of the damaged structure;~~or~~
- 6 (4) Diminish the number of off-street parking spaces located on the property
- 7 from the number of spaces before the damage; or
- 8 (5) ~~Violate existing building and fire codes.~~
- 9 2. Under subsection 1, expansion of a nonconforming structure is prohibited unless the
- 10 expansion is in compliance with applicable state and local zoning regulations. The
- 11 local zoning authority shall determine whether a proposed expansion is in compliance.
- 12 3. Under subsection 1, a nonconforming structure may not be moved unless the
- 13 movement or relocation will bring the structure into compliance with all applicable
- 14 zoning regulations.
- 15 4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair,
- 16 replacement, ~~maintenance~~, improvement, ~~maintenance~~, restoration, rebuilding, or
- 17 expansion of nonconforming uses and structures in floodplain areas to the extent
- 18 necessary to maintain eligibility in the national flood insurance program and adhere
- 19 fully to all applicable floodplain management ordinances without increasing flood
- 20 damage potential or increasing the degree of obstruction to floodflows in the floodway.
- 21 5. Notwithstanding section 40-47-13 and subsections 1, 2, and 3, the local zoning
- 22 authority may create a less restrictive ordinance or regulation.
- 23 6. ~~If a property owner is not authorized to repair, replace, improve, maintain, restore, or~~
- 24 ~~rebuild a structure under subsection 1, the city shall compensate the owner for the fair~~
- 25 ~~market value of the property before the damage occurred.~~Unless the city can
- 26 demonstrate to the district court that the repair, replacement, improvement,
- 27 maintenance, rebuilding, or restoration of a structure will violate subdivision c of
- 28 subsection 1, the city shall issue a building permit to a property owner that meets the
- 29 qualifications under subsection 1.

30 **SECTION 3.** Section 58-03-14.1 of the North Dakota Century Code is created and enacted
31 as follows:

1 **58-03-14.1. Zoning - Nonconforming structure.**

2 1. Notwithstanding any other provision of law or local zoning ordinance, a structure
3 devoted to residential use may be repaired, replaced, improved, maintained, restored,
4 or rebuilt in its entirety even though the structure is damaged beyond fifty percent of its
5 value if:

6 a. ~~A~~An application for a building permit is ~~obtained~~submitted within six months of
7 the date the damage occurs;

8 b. Restoration begins within one year of the date the damage occurred; and

9 c. The new structure will not:

10 (1) Occupy a portion of the lot which was not occupied by the damaged
11 structure;

12 (2) Have more square footage than the damaged structure;

13 (3) Exceed the height or number of stories of the damaged structure; ~~or~~

14 (4) Diminish the number of off-street parking spaces located on the property
15 from the number of spaces before the damage; ~~or~~

16 (5) ~~Violate existing building and fire codes.~~

17 2. Under subsection 1, expansion of a nonconforming structure is prohibited unless the
18 expansion is in compliance with applicable state and local zoning regulations. The
19 local zoning authority shall determine whether a proposed expansion is in compliance.

20 3. Under subsection 1, a nonconforming structure may not be moved unless the
21 movement or relocation will bring the structure into compliance with all applicable
22 zoning regulations.

23 4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair,
24 replacement, ~~maintenance~~, improvement, ~~maintenance~~, restoration, rebuilding, or
25 expansion of nonconforming uses and structures in floodplain areas to the extent
26 necessary to maintain eligibility in the national flood insurance program and adhere
27 fully to all applicable floodplain management ordinances without increasing flood
28 damage potential or increasing the degree of obstruction to floodflows in the floodway.

29 5. Notwithstanding subsections 1, 2, and 3, the local zoning authority may create a less
30 restrictive ordinance or regulation.

- 1 6. ~~If a property owner is not authorized to repair, replace, improve, maintain, restore, or~~
2 ~~rebuild a structure under subsection 1, the township shall compensate the owner for~~
3 ~~the fair market value of the property before the damage occurred.~~Unless the township
4 can demonstrate to the district court that the repair, replacement, improvement,
5 maintenance, rebuilding, or restoration of a structure will violate subdivision c of
6 subsection 1, the township shall issue a building permit to a property owner that meets
7 the qualifications under subsection 1.

2021 SENATE POLITICAL SUBDIVISIONS

HB 1222

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Sakakawea, State Capitol

HB 1222
3/19/2021

A BILL for an Act to create and enact sections 11-33-17.1, 40-47-05.1, and 58-03-14.1 of the North Dakota Century Code, relating to nonconforming structures.

Chairman Burckhard opened the hearing on HB 1222 at 10:29 a.m. Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.

Discussion Topics:

- City ordinance
- City of Grand Forks Council review
- Housing disclosures
- Local V.S. State issue
- National Flood Insurance program
- Floodplain
- Citizen notification of re-zoning
- Variance requests

[10:29] Representative Steve Vetter, District 18. Introduced HB 1222 and provided testimony #10126 in favor and proposed amendment 21.0422.04001 (testimony #10130).

[10:55] Joe Sheehan, Mortgage Loan Officer. Provided testimony #10131 in favor.

[11:01] Dennis Huber, Residential Appraiser, West Fargo. Provided testimony #10100 in favor.

[11:10] Senator Curt Kreun, District 42. Provided oral testimony in opposition.

[11:22] Ryan Brooks, Interim City Planner, City of Grand Forks. Provided testimony #10094 in opposition.

[11:26] William Wocken, On Behalf of the ND League of Cities. Provided testimony #9942 in opposition.

[11:30] Mike Krumwiede – Lobbyist – American Institute of Architects oral testimony - in opposition

Additional written testimony: (6)

Jessica Cassady, Owner, Cassady Appraisals. Written testimony #9570 in favor.

Dana Sande, City of Grand Forks Resident. Written testimony #10086 in favor.

Brandon J. Boespflug, Building Inspections Director/Chief Building Official, City of Grand Forks. Written testimony #10097 and #10134 in opposition.

Brian K. Billingsley, AICP, Community & Economic Director, City of Minot. Written testimony #10072 in opposition.

Donna Bye, Minot Resident. Written testimony #9885 in opposition.

Natalie Pierce, ND Planning Association. Written testimony #9881 in opposition.

Chairman Burckhard closed the hearing on HB 1222 at 11:32 a.m.

Patricia Lahr, Committee Clerk

Vetter, Steve M.

From: Vetter, Steve M.
Sent: Friday, March 19, 2021 8:48 AM
To: Vetter, Steve M.
Subject: 1222

Good Afternoon,

Chairman Burchard and Senators in the Political Subdivisions Committee

Introduction

HB 1222 is a bill you heard last session about nonconforming structures. This bill is a true grandfathered property law as properties will be grandfathered in. This session there was opposition to the subsection 6 of the original bill so it was taken out. Amendments were added to try to cure some of the concerns of the opposition and now you have the bill before you today. The bill adds specifically that the structure cannot 'violate building or fire codes' as some opponents have made false claims that this bill will allow unsafe houses to be rebuilt. Basically all this bill is trying to do is allow the homeowner of a nonconforming house after meeting the long list of requirements and exceptions, to rebuild or repair. In order to finance a house the lender needs to know the house can be rebuilt so this law is important for lending purposes.

Here are some examples on nonconforming house in each of the different areas. County zoning set a minimum acreage for each site. If you have a 50 acre site and you refinance to a 10 acre lot and the county requires 20 acres, you have a nonconforming property. Anytime the city changes a zoning regulation the house that doesn't conform to the new regulation becomes a nonconforming house. Some examples include a duplex in a R1 zone(single family homes only). A resident house in a commercial zone. Other examples include house having too small of a site or the setbacks are no longer the same as current zoning codes.

With townships and smaller towns they are often littered with nonconforming houses because of lot size.

Bismarck and Fargo along with several smaller towns have modified the common boilerplate to automatically allow for the repair or replacement of non-conforming properties under the conditions that this bill includes. Unfortunately, Grand Forks, West Fargo, Minot and Williston do not.

The proposed law was based on Bismarck and Fargo zoning code and the State of Minnesota Statutes. Originally the bill was introduced with a provision that gave compensation to the owner of a nonconforming if not allowed to rebuild. There was a lot of opposition to this idea so it was amended. However, in recent times, Minnesota passed a law that in essence forced the government entity to fully compensate a property owner that was denied a building permit due to a legal non-conforming property. In essence, it amounted to a government taking and all the conditions and issues that arise from such actions. However, I found that in 2017 they simply created a Statute that is similar to HB1222.

Let me go through the bill and what it does. There are 3 sections that are identical other than Section 1 is counties, Section 2 is cities and Section 3 is townships.

Subsection 1. Says that a residential nonconforming structure can be repaired, improved, maintained, restored or rebuilt if over 50% damaged if

a permit is applied for within six months and restoration begins within 1 year.

Subsection c.

Needs to keep the same foot print of the damaged structure

Can't have more square footage or exceed the same number of stories.

Diminish the number of off street parking spaces

Can't violate building or fire codes.

Subsection 2 & 3 can't expand unless expansion is in compliance with zoning regulations. Can't move the footprint unless it put it into compliance.

Subsection 4 is very important as this is the flood plain language.

Subsection 5 says the local zoning authority can be less restrictive

Subsection 6 says they can rebuild if they follow subsection c

This bill has been misunderstood and mischaracterized. It sounds complex when called nonconforming structures but it is actually simple from this perspective.

It is a property in which the zoning was changed therefore making it nonconforming to the zoning. It is NOT nonconforming because it is unsafe or a poorly built house, its nonconforming status is based solely on zoning. If for any reason the zoning was changed and the structure no longer meets the new zoning regulations, it becomes nonconforming. The ordinances in many communities in North Dakota do not allow a nonconforming property to be rebuilt if it is over 50% damaged or destroyed.

This bill deals with Nonconforming structures not nonconforming uses.

This bill deals with zoning only. Houses rebuilt under this bill would need to comply to all applicable building codes. There is a difference between zoning code and building code. This bill in no way affects building code. Building code always comes into effect whenever repairs or replacement takes place. This law does not change any of that. It does not impact safety issues, building inspections, or other State Laws. The basic rule of building codes is if you open something up you have to bring it up to code.

If any structure is proven to be unsafe then the city can condemn a structure for safety reasons. This bill deals only with zoning not safety issues as all building and fire codes need to be followed with this bill.

An illegal structure is not a nonconforming structure. For example, residential structures are never allowed in an industrial area. If an area is zoned industrial, nonconforming houses or any other residential houses are not allowed. This bill does not affect industrial areas.

The Grand Forks City's example is the same fairy tale they told last session. The house on the 1400 square foot site that burned down. It didn't burn down because of zoning. It didn't burn down because it was too close to another property nor did it damage the neighboring property. This issue wasn't solved by collaboration between the owner and the city. The structure was never going to get rebuilt because the owner didn't have insurance on it. That is why it was never going to get rebuilt. If it was a life-safety impact, they why didn't they condemn the house?!

A house being close to another house is not a safety concern if the proper building codes and materials are used. Ever heard of a duplex or a twin home? Are they a safety risk? How close are they together. How about Row houses and attached twin homes? Are they a safety risk because they are close together?

Grand Forks talks about collaboration when the homeowner has no choice but to beg the city for variance. Since the last session, there were several instances that GF issued nonconforming homeowners a variance. If they are allowing everyone a variance, at what point does it become discriminatory to say no and for what reason, they don't get one. What about people that don't have help and don't know the process of getting a variance? However, in other areas like West Fargo or Thompson, they don't always issue a variance and once realized, that immediately decreases the value of that property by doing so. The value goes down because a house cannot be financed if it cannot be rebuilt. There has been a few court cases in the last year.

Since the last session, several communities have adopted ordinances like Bismarck. In Mayville, when came to their attention that the majority of the houses listed for sale were actually nonconforming along with many other houses so they changed their ordinances.

Also, Homeowners are not informed when their house becomes nonconforming nor are they informed when they buy a nonconforming house. This is an issue of property rights for the homeowner. This has become a bigger issue as this has caused delays or cancelled transactions. Several realtors have come across this issue in the last couple years and have expressed the desire for change. Buyers and sellers should be able to expect the ability to rebuild or repair a property they spend hundreds of thousands of dollars for.

How much would your car be worth if you weren't ever allowed to fix your tires?

The opposition is fighting for the ability to not allow a nonconforming to not be rebuilt. What do they really accomplish by having this ability? Can they really change the neighborhood by not allowing houses to be rebuilt. No, all they do is cause blight in the neighborhood. They are willing to not allow an owner to rebuild but they don't inform the public in a manner that the effect on their property is understood. they not willing to disclose to all the nonconforming owners until the time comes when they want to repair or rebuild their property. Then they require the owner to beg them for the ability to repair or rebuild.

Address the opposition to the bill:

City of Minot- I didn't think they even have very many nonconforming houses in Minot. Do they really believe this is the only tool they have for zoning?

Williston: A structure in an industrial zone is illegal structure not nonconforming.

Grand Forks: The President of the City Council is in support of the bill. The testimony against has limited merit. If a house can be brought into by changing the footprint, it is allowed. There is strong flood protection language in the bill that came from the state engineer lobbyist last session.

Planners: You can't build a septic system on your neighbor's property, that is NOT nonconforming it is illegal. Objection to their testimony. Amendments.

This bill solves issues for property owners. I would challenge any of the opponents of this bill to show somewhere that this law was put in place and there were problems because of this law. Show me somewhere. The only issues are the areas where this law is NOT in effect. Yet the testimony of the opponents to the bill is doom and gloom. I ask again show me somewhere that this law has been in effect and it caused any kind of the doom and gloom that the opponents claim will happen if this law goes into effect. Also, Homeowners are not informed when their house becomes nonconforming nor are they informed when they buy a nonconforming house. This is an issue of property rights for the homeowner.

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Local Control? What is more local than the individual Property Owner? They want the "local control" to not allow an individual to rebuild or repair their house. Not for safety reasons but because they can. How is that local control?

What is more local than the individual homeowner? What is more local the homeowner or the city official? The league of cities represents the elected officials not the people of those cities.

Property rights is a state issue, zoning and planning are local issues. This bill is an issue of property rights.

Also, Homeowners are not informed when their house becomes nonconforming nor are they informed when they buy a nonconforming house. This is an issue of property rights for the homeowner.

This bill solves issues for property owners. I would challenge any of the opponents of this bill to show somewhere that this law was put in place and there were problems because of this law. Show me somewhere. The only issues are the areas where this law is not in effect. Yet the testimony of the opponents to the bill is doom and gloom. I ask again show me somewhere that this law has been in effect and it caused any kind of the doom and gloom that the opponents claim will happen if this law goes into effect.

How does not allowing someone to rebuild help the community? How is it fair to a homeowner when it was never disclosed to them? Zoning is supposed to be about health, welfare and safety of the public. It is not supposed to be about ways the city/county can take away you ability to rebuild.

Amendments:

I would ask for a Do Pass recommendation. I will stand for questions.

21.0422.04001
Title.

Prepared by the Legislative Council staff for
Representative Vetter
March 19, 2021

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1222

Page 1, line 20, remove "or"

Page 1, line 21, after "codes" insert ":

- (6) Violate existing sanitary or health standards imposed by the local health district; or
- (7) Pose a risk to public health or safety"

Page 3, line 4, remove "or"

Page 3, line 5, after "codes" insert ":

- (6) Violate existing sanitary or health standards imposed by the local health district; or
- (7) Pose a risk to public health or safety"

Page 4, line 10, remove "or"

Page 4, line 11, after "codes" insert ":

- (6) Violate existing sanitary or health standards imposed by the local health unit; or
- (7) Pose a risk to public health or safety"

Renumber accordingly

DATE: March 14, 2021

TO: Political Subdivisions Committee

FROM: Joe Sheehan

RE: Testimony for HB 1222

Dear Mr. Chairman, Burkhard and members of the committee

I am testifying in favor of HB 1222 and the necessary changes this bill offers to protect North Dakota homeowners and property owners. I am a mortgage banker in ND. I have been originating mortgages for more than 20 years and I managed more than 1 billion dollars in mortgage origination in that time across the state.

Property ownership is the American dream. When citizens of North Dakota buy property to invest in a home and their future, it is with a good will understanding that the government within which they do that supports their effort to gain from a fair market. When a property is rezoned into a status of nonconforming, whether it is intentional or unintentional, this investment is automatically depreciated and threatened.

Value is a supply demand issue. Demand is what protects a property owner's investment. When a property is rezoned nonconforming and cannot be rebuilt to the original footprint, the demand for this property is demonstrably diminished as the property is no longer eligible for most home buyer financing. I have copied the section of the Fannie Mae and Freddie Mac guide that indicates this in my testimony.

Is property that constitutes a legal, non-conforming use of the land allowed?

 Share

Fannie Mae only purchases or securitizes mortgage loans on properties if the improvements constitute a legal conforming use of the land. However, Fannie Mae will purchase or securitize a mortgage for a property that constitutes a legal, non-conforming use of the land provided the use of the land and the appraisal analysis reflects any adverse effect that the non-conforming use has on the value and the marketability of the property. This requirement applies to all property types.

Fannie Mae will not purchase or securitize a mortgage secured by a property that is subject to certain land-use regulations, such as coastal tideland or wetland laws, that create setback lines or other provisions that prevent the reconstruction or maintenance of the property improvements if they are damaged or destroyed. The intent of these types of land-use regulations is to remove existing land uses and to stop land development, including the maintenance or construction of seawalls, within specific setback lines.

For information regarding accessory units that comply or do not comply with zoning, see [B4-1.3-05, Improvements Section of the Appraisal Report](#).

II. Eligible zoning compliance

The Mortgaged Premises must conform to the jurisdiction's zoning and land use requirements. The zoning compliance must be either legal non-conforming or legal conforming; however, if a property has an accessory unit that does not comply with the jurisdiction's zoning and land use requirements (illegal zoning compliance), the Mortgaged Premises may be eligible if the requirements of Section 5601.12(e) are met. Mortgaged Premises that are located in jurisdictions with no zoning are acceptable.

For Mortgaged Premises with a land use that is legal non-conforming, the appraisal report must reflect any adverse effect the non-conforming use has on the opinion of market value.

A Mortgage is ineligible for sale to Freddie Mac if the Mortgage is secured by property that is subject to coastal tideland, wetland or setback laws and/or regulations that prevent the rebuilding or maintenance of the property improvements if they are damaged or destroyed.

A great majority of financing for homeowners is financed through these government agencies. When rezoning of a property makes the property ineligible for a majority of homebuyers it is cataclysmic to the value of the property. The only financing options available for these properties is in house bank financing with down payments of 20% or more. These loans are often offered with balloons or adjustable rates. This makes buying one of these properties a very unattractive prospect for homeowner's and investors.

As a mortgage loan officer, I ran into this problem repeatedly. This was predominant for customers seeking affordable housing in areas close to the downtown area in Bismarck. I sought out the help of City Councilwoman, Brenda Smith and with the help of Mr. Ziegler, the City Assessor, we were able to adopt a city ordinance to remedy this problem. This ordinance has been in place for a decade or more and I am not aware of any issues or problems that have been caused by homeowner's being protected from rezoning that diminishes their property value.

In Contrast, Mandan our sister city is experiencing new problems. For years, the City Assessor of Mandan, Mr. Barta, would reissue a "rebuild letter". This letter would state the entitlement of the property owner to rebuild the property to its original footprint. Since, Mr. Barta's retirement there has been either a change in policy or attitude at the city. I am aware of a closing that was delayed as of this past Friday, March 12th because it is a non-conforming property. Although, I appreciate Barta's long history of supporting property owners, it is unfathomable that one person's personal attitude should have so much control over the future value and fortune of property owners in a city. Property ownership and the return on the investment should be a good faith investment subject to market forces not the whimsical beliefs, attitudes, or personalities of the city government. This is a great example of why the State of ND needs to take action.

Whether the zoning impact is intentional or unintentional, homeowners should be protected from automatically losing value in their home. Homeowners should be protected from municipalities suffocating them out of their investment through a long-term consequence of reducing their properties

marketability so the properties can be gobbled up at reduced values. In the event cities will not offer this protection, it seems reasonable the state should stand up for the rights of homeowners and their hard invested dollars in the American Dream.

Sincerely

Joe Sheehan

Mortgage Loan Officer

MR Chairman, members of the Committee and attendees of this hearing:

My name is Dennis Huber, a residential appraiser based in West Fargo. I am a Government Affairs committee member of the ND Appraisers Association. I am in support of this bill.

Thank you for allowing me to present my full testimony. To show my respect for your time, my presentation will be concise, on point, non-repetitive and will touch only a few of the high points of why this bill is important.

This bill is not about restricting local control. This is about protecting our most sacred right, that is the safety and security of our own home. This legislative body has shown its support for this ideal by such laws as "the castle law" and by not allowing eminent domain for economic reasons. Why would we then allow zoning regulations, that if followed, would result in the forced demise of our own home over time? All we ask is to allow us to maintain, repair and, if necessary, rebuild our homes. All we want is to protect what we already have.

It is important here to define what this bill does, and more importantly what it does not do. It does allow for the maintenance, repair or rebuilding of a residential structure that is, by default, labeled as a non-conforming residential structure.

This bill does not affect use, or non-conforming use. It does not touch upon building code, fire code, sanitary or health safety regulations. Its not complicated, overreaching or connected to new development.

Let us take a moment to define what a non-conforming residential structure is and what it is not. It is simply a property that once was legal conforming, meaning that it met all of the requirements of the zoning classification or zoning regulations but due to a change in those regulations it now does not comply with one or more of the new rules.

It is not designated as such because of disrepair, or because it was built in violations of the zoning law. It is not a house located in an industrial zone, or any zone that forbids residential structures. Those are illegal or unpermitted structures. This bill does not affect any of those.

So, lets quickly review the non-conforming clauses that are found through out all of North Dakota.

The ubiquitous clause found in many of the ordinances includes the following:

"It is the intent of this chapter to permit these nonconformities to continue until they are removed, or for the reasonable useful life of the building, but not to encourage their survival.

On any nonconforming structure, work may be done in any period of twelve (12) consecutive months for ordinary repairs, or for repair or replacement on nonbearing walls, fixtures, wiring, or plumbing, to an extent not exceeding ten (10) percent of the current replacement cost of the nonconforming structure.

Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than sixty (60) percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter." Which usually means it cannot be reconstructed at all. To shorten my words, I shall hereafter refer to these sentences as the "**evil clause**". The bill replaces the evil clause with the least restrictive provisions possible to enable the public

to maintain and keep their home. It does it in a way that allows for local control without affected other methods of assuring us of safe housing and well-planned community growth.

As Joe Sheehan, a banker board member of the Appraisal Board has or will testify, restricting the maintenance, repair or rebuilding of a residential structure results in rejection by Fannie Mae. Why do they care? Because it imposes a risk to the financial markets as well as the financial security of the homeowner. It imposes risks upon an unsuspecting homeowner and financial liability upon Realtors, mortgage loan originators and appraisers.

Where are all these non-conforming houses? It is rare that a non-conforming house is a single property amongst conforming properties. Most typically it is the whole block or the whole neighborhood. Often this happened without intent, and other times it was the unintended consequence of political or administrative efforts to avoid the transition of a neighborhood into rentals. In fact, it results in the opposite because it prevents owner occupant buyers from getting a mortgage, thus leaving it for investors to buy at a discount.

Let us put the boots on the ground and see the affect. Behind me you see an actual case that came to me last August. This house had been totally and completely updated less than 5 years ago and now was being purchased subject to a VA loan. As you can see, the lot frontage is much less than Mayville's minimum of 75', the side yards are less than the minimum of 15', and the setback is much less than 30'. Are those requirements realistic in the inner city of any town in North Dakota? Of course not, but those requirements are similar to Hatton, Casselton, Kindred and Lisbon.

In my 28 years of appraising in Mayville, I had no reason to suspect that the minimums were so high, so we just relied upon the city clerk telling us that it was zoned residential, therefore legal. In this case, I requested and received a full copy of the zoning map and city ordinance. Unfortunately, it contained the ***Evil Clause***.

I immediately called the zoning administrator and asked if the city had ever issued or denied a variance for any violations of the minimum requirements. The only case found in the 8 years of her employment was for a side yard setback on the enlargement of a house on a large lot. I did this because sometimes a lender will accept a case like this if there is a history of variances for similar reasons. Those lenders are skating on thin ice, but some are known to take cases with such a history based on the "fairness doctrine" that all citizens are to be treated fair and equal. If a variance was issued before, then it likely will again be their thinking.

I informed the lender and VA, asked for permission to communicate with the city attorney to confirm my conclusion. In my discussion with the zoning administrator, I explored the possibility of obtaining a variance or a replacement of the Evil Clause with the wording present in this bill, hereafter referred to as the "Good Clause". The city attorney and the zoning administrator both agreed that if a variance were given, the commission would have no basis for ever denying any variance because the property in question violated all but one of the minimum requirements. Thus, the zoning minimums would be moot.

The Mayor, Realtors and buyer were made aware of the issue and the possible solution. I provided a letter showing that there were currently 6 homes under contract that were non-conforming and 16 sales in the past 2 years were also non-conforming. Had I informed the Realtors of the buyers on those 6 houses, some would have likely fallen apart, and most would have delayed their closing awaiting the

outcome. Had I informed the 16 homeowners of their situation, they would have shown up at the meeting in masses without masks. It would have disrupted the market, caused a loss of reputation for the Realtors involved. This is what we are trying to avoid by creating a statewide standard instead of alerting the affected.

The city attorney supported and even increased the reach of the Good Clause and the vote was 5-0 in favor. The house behind me got a very happy new owner, but the seller read me the riot act for delaying the sale. I guess no good deed goes unpunished.

So, why do we need a state law prohibiting the evil clause? Primarily because 99.9% of the homeowners do not know their property is non-conforming, 99.9% of the Realtors never check beyond conforming **USE**, 80% of the appraisers never investigate the specifics of the ordinance to see if there is a problem, and at least 50% of the city staff will get it wrong when the appraiser calls.

What are the primary risks?

To the homeowner, it is potential financial ruin. It would take too long to illustrate all the effects if a property is partially destroyed, and the political subdivision denied the right to repair it. Your own homeowner policy excludes losses caused by government actions. They are not going to pony up the difference between the cost of repairs versus the replacement cost just because the city denied a building permit. I have copies of three court cases in North Dakota and several settled cases to prove that point. Even if the court rules with the homeowner, these cases take years while you are either paying the mortgage on a house you cannot live in or let it go into foreclosure and ruin your credit for the next 6 years or more.

The Realtor who failed to inform the buyer of material facts affecting the property incurs a massive liability. Reputation and financial and possibly license sanctions.

To the lender. Upon review or foreclosure, if found, the originator has the liability to "cure" the loan. In the case of a foreclosure, they are liable for all losses whether the house had damage or not. This is your local banker, your local mortgage company.

To the Appraiser: The appraiser is supposed to be the gate keeper preventing any of the above from happening. Yet, those 16 sales in Mayville got mortgages most likely because the appraiser did not do their job. The lender can sue the appraiser, but its not likely that the homeowner will be successful because of the lack of a client relationship. Of course, the appraiser also risks a lifetime sanction on his license.

So, we have talked about what happens because one house is non-conforming. How does non-conformity affect the neighborhood, the community? When the appraiser does his job correctly, well informed buyers will not pursue the purchase. Likely terms for a mortgage on such properties include at least 25% down, an adjustable-rate mortgage starting at about 5.5% interest for an in-house loan and are only given to good banking clients. Thus, the market value of those houses falls low enough for investors to swoop in. Over time, the neighborhood turns into mostly rental houses, the exact opposite of what the zoning authorities intended.

The reality is that if the majority of the non-conforming houses were intentionally zoned that way for a solid reason, we would not be here because they would be rare. But that is not how it happens. That is

not how Fargo came to have at least 1000 non-conforming single-family houses, nor is it why hundreds of homes in Grand Forks do not comply with their zoning classification. The story is too long to tell, suffice it to say it resulted from trying to solve a problem without fore thought to the consequences. Simply inserting one sentence into the code that prevents an existing residential property from adding additional living units would have solved it. Instead, we have mass confusion.

When it comes to small towns and county zoning boards, their code seems to focus on how they want to see the growth going forward. Unfortunately, its almost always applied to the existing base resulting in a massive amount of non-conforming houses. Most of them have not taken out the "Evil Clause" and frankly I do not believe 10% of the commissioners know that it exists within their ordinance.

Variances: Always the solution to negligent zoning seems to be the easy answer. Their wording illustrates that their purpose is to allow a change or enlargement under certain circumstances. When one applies for one simply to allow something to continue to exist if something happens it usually results in a refusal to consider it. Variances granted set a precedent, so they are not granted without good reason. Although they can solve the issues that the "good Clause" seeks to cure, they are not intended or worded properly to be a catch all for zoning mishaps.

Opponents raise the concern that this should be handled locally, that it is not a statewide issue. Well, yes, this problem exists statewide. From Cass County to Burleigh County, from Mandan to Valley City the problem is present. 53 counties and 357 cities and I would suggest that if they have a zoning law, they have a non-conforming house. Is there a reason the State should not be concerned about their welfare?

The question should be, has the Evil Clause ever shown to be beneficial to the community? Any community, any neighborhood? ND Century Code 40-48 grants the authority to zoning boards on the basis that they use their authority to the benefit of the community. Facts are that it prevents homeownership and turns neighborhoods into rental housing. If its use does not meet the standards the constitution sets forth, shouldn't be illegal?

Opponents charge that removing the Evil Clause would impede their ability to properly address the needs of the community. Fact is it does nothing positive at all, not even on a house-by-house basis. The only time it comes into effect is if a property encounters a disaster. Is that the time to add insult to injury? Zoning authorities have other tools in their basket. They can target problem areas in ways that actually work by zoning them into illegal structures, by creating redevelopment zones, or by creating tax incentives to affect change. The Evil Clause is not proactive, its reactive to a disaster.

Opponents have charged that one size does not fit all. Do you have any testimony from the cities or states that have the Good Clause saying it was a bad idea? The language in the bill has been tested by large cities and small, by other states for many years.

In closing, all we wish for is for you to consider all the facts. Consider whether the Evil Clause actually makes a difference in any of the opponent's arguments. More likely, there is an alternate solution.

I ask that you hold the interests of your constituents over an outdated provision that jeopardizes the security of their home, the most basic of their needs for feeling safe. Let them sleep soundly.

Sincerely,

Dennis J Huber



TESTIMONY ON HOUSE BILL 1222

Senate Political Subdivisions Committee

March 19, 2021

Ryan Brooks, Interim City Planner, City of Grand Forks, ND

Chairman Burckhard and members of the Senate Political Subdivisions Committee, my name is Ryan Brooks the Interim City Planner for the City of Grand Forks. Thank you for the opportunity to provide testimony and express my opposition to House Bill 1222.

The city has many issues with this bill. We ask for the state to continue to allow the city to work with property owners and neighborhoods in issues that deal with non-conforming structures.

A real-world example where this bill would be problematic happened in Grand Forks two years ago when a fire occurred on a small residential lot (1,400 square feet), leaving the structure damaged beyond 50% of its value. The now-damaged house was located within a few feet of an adjacent house. It was very fortunate that the fire did not consume both homes. Under this bill, the City would have to allow the structure to be rebuilt despite the life-safety issues of its close proximity to another residential structure.

Another prime example is an instance in Grand Forks about 15 years ago where a neighborhood came to the city and asked for their neighborhood to be rezoned. The neighborhood was located near the University of North Dakota and houses in the neighborhood were being purchased and being turned into multiple unit rental houses. The neighborhood was frustrated with the change in character of their neighborhood. Traffic in the neighborhood increased and the neighborhood elementary school experienced decreased attendance. The neighborhood worked with the city council to allow only single-family homes in the neighborhood. The homes could still be rented but the altering the homes to increase the units is no longer allowed. The existing multiple unit rentals were changed to a non-conforming status. These homes are still allowed to do basic maintenance, but they cannot expand their homes. In addition, if the home was damaged beyond 50% it would have to be rebuilt as a single-family home.

In sum, if adopted, House Bill 1222 would deny cities the ability to address life-safety concerns, in partnership with property owners and through a proper and thorough evaluation of existing zoning and building codes, that may result from

non-conforming properties, as well as the limit the evaluation of the impact a given non-conforming property may have on surrounding land uses.

The passage of House Bill 1222 is not in the best interests of the City of Grand Forks, nor any other cities, counties, or townships in North Dakota. Thank you for your time and consideration.

The City of Grand Forks asks for a DO NOT PASS for HB 1222

Testimony in Opposition to House Bill 1222
March 19, 2021
Senate Political Subdivisions Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Afternoon Mr. Chairman and members of the Senate Political Subdivisions Committee. For the record, my name is Bill Wocken and I am testifying in opposition to House Bill 1222 on behalf of the North Dakota League of Cities.

You have heard about the effect of House Bill 1222 so I need not repeat that information. We have heard from practitioners who tell us there is no widespread problem with non-conforming structures at present. Local governments have handled most of the concerns with non-conforming structures with their own ordinances.

You have heard from planners from several cities that when a non-conforming structure is destroyed to the extent its remaining value is less than half of its value prior to a catastrophic loss event many communities work with the owner of the structure to help them find a way to provide a structure that is more in line with zoning, flood and building codes. Often re-zoning, grant of variances or special use permits are employed. The result may not be re-creation of the pre-loss structure but often a better use of the parcel.

The North Dakota League of Cities is concerned that imposition of a state law solution to all non-conforming structure issues takes away the control of local officials over their communities. Those officials who live and work in their communities are willing and able to handle these situations. The opportunity for unintended consequences from a universal decision in state law must be considered.

We believe that cities, counties and townships are able to resolve their non-conforming structure problems on a local level so we must respectfully request a DO NOT PASS recommendation for House Bill 1222.

March 16, 2021

To whom it may concern:

I am a Certified Residential Appraiser in North Dakota and I fully support HB 1222. This bill allows non-conforming structures to be rebuilt if destroyed. Over the past several years it has come to my attention that many homeowners are living in non-conforming structures and have no idea what they could be faced with if their home were to be destroyed.

I am currently working on a case in Grand Forks that the seller was not aware that his property was non-conforming until I had to delay the sales transaction. In order for an appraisal to be conforming to secondary market standards, it has to be legal in its zoning conformance. If a property is marked legal, non-conforming, it is required an appraiser make a comment on whether a home could be rebuilt in its current footprint if destroyed more than 50%. Under current zoning ordinances an appraiser cannot make that comment and financing will not occur. This has left many homeowners without the ability to sell or refinance their homes.

I strongly urge you to vote YES to this bill. It is what is right for every homeowner in North Dakota!

Sincerely,

Jessica Cassady

DANA SANDE

1759 Lydia Circle, Grand Forks, ND 58201

(701) 330-9284

undsande@gmail.com

Public Testimony
Senate Political Subdivisions
State of North Dakota

RE: HB 1222

TO WHOM IT MAY CONCERN,

Hello Chairman and members of the Senate Political Subdivisions Committee, my name is Dana Sande and I'm a resident of the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express my SUPPORT for HB 1222.

I believe HB 1222 has been submitted as a protector of personal property rights for all property owners within our great state. I firmly believe the protection provided by the bill will benefit property owners who should be granted rights based upon the longevity of their property ownership.

Allowing cities to rezone property into a different classification than its long-time use (thus making the property non-conforming) is an infringement in and of its self. However, going a step further and not allowing property owners to rebuild structures, after catastrophic events, due to the non-conformity caused by the rezoning is simply wrong. In my opinion, not allowing property owners to restore their property is a taking by the government entity which initiated the non-conformance in the first place.

For these reasons, I SUPPORT HB 1222 and urge your committee members to support this bill as well. Long-time property owners deserve the right to continue to use their property as they see fit.

My thanks for your time,

Dana Sande
Grand Forks, ND

255 N. 4th St.
PO Box 5200
Grand Forks, ND 58206-5200



City of Grand Forks
(701) 746-4636

TESTIMONY ON HOUSE BILL 1222

Senate Political Subdivisions Committee

March 18, 2021

Brandon J. Boespflug, Building Inspections Director/ Chief Building Official

Chairman Burckhard and members of the Senate Political Subdivisions Committee, my name is Brandon Boespflug and I am the Building Inspections Director/ Chief Building Official for the City of Grand Forks. I would like to thank you in advance for the opportunity to provide written testimony and express the Cities of Grand Forks opposition to House Bill 1222.

The City of Grand Forks has several concerns with the bill, specifically how it relates to removing local control regarding non-conforming structures. City staff often work with property owners and, in some cases, entire neighborhoods, regarding the redevelopment of a property that has been damaged beyond 50% of its value. For the majority of structures, this is not an issue and the structure meets our zoning code to be rebuilt. In some cases, however, the structures do not meet setback or other zoning requirements, making them non-conforming.

The way the bill is written "ties our hands" at the local city level and eliminates our ability to work with our citizens and/or neighborhoods regarding non-conforming elements of a property. This is especially problematic in situations where those non-conforming elements have a life-safety impact that could otherwise be corrected should a property be damaged beyond 50%. Our current process allows the City to collaborate with property owners to rebuild structures while maintaining public safety interests. It is imperative that not only the City of Grand Forks, but all North Dakota cities, counties, and townships, have the ability and authority to adopt and enforce building codes and zoning ordinances to protect the safety, welfare and health of their citizens.

Furthermore, the city of Grand Forks already has a well thought out process and ordinance's concerning items of nonconformity. We have had them in place for many years and we pride ourselves in the ability to work with our citizens. They are also in place to coincide with federal regulations we must follow such as those for the National Flood Insurance Program (NFIP). With a passage of this bill, it will eliminate the city and county of Grand Forks to be part of the National Flood Insurance Program and not allow our residents to participate, receive discounts or purchase national flood insurance. All a process that has been well thought out and staff has spent many hours putting a national recognized program together since the flood of 1997 and even prior.

Chairman Burckhard and members of the Senate Political Subdivision Committee:

Good morning, my name is Brandon Boespflug and I am the Building Inspections Director/ Chief Building Official for the City of Grand Forks. I am writing this email in addition to formal written testimony that I will be submitting on HB1222 that will be in front of you on Friday 3/19. HB 1222 is no different then HB 1165 that was in front of most of you last legislative session. You will hear tomorrow from those that are in favor that they have made changes, but those changes have merely been verbiage changes. Not changes to the intent of the bill. Again, this legislative session the intent of the bill from the bill sponsor continues to be unclear.

One thing we do know about the bill, is if passed it will take away the ability of political subdivisions to work with citizens they represent on a solution. For example, this bill will tie the hands of staff in Grand Forks and tie the hands of our appointed and elected commissions and council. The city of Grand Forks already has a well thought out process and ordinance's concerning items of nonconformity. We have had them in place for many years and we pride ourselves in the ability to work with our citizens. They are also in place to coincide with federal regulations we must follow such as those for the National Flood Insurance Program (NFIP). With a passage of this bill, it will eliminate the city and county of Grand Forks to be part of the National Flood Insurance Program and not allow our residents to participate, receive discounts or purchase national flood insurance. All a process that has been well thought out and staff has spent many hours putting a national recognized program together since the flood of 1997 and even prior.

Furthermore, you may hear from those in favor, that places like Fargo, Bismarck and the state of Minnesota has laws or ordinances like HB 1222 in place. I would urge you to disregard as each political subdivision is its own and should be able to operate the way that they see fit to meet the needs of its citizens. Therefore, I am urging a do not pass when HB 1222 comes before you Friday morning.

I would like to thank you in advance and thank you for serving. Please feel free to reach out to me with any questions, comments, or concerns.

Regards.

Brandon

Brandon J. Boespflug MBA, MS
Building Inspections Director
Chief Building Official
City of Grand Forks
bjboespflug@grandforksgov.com
P:701-787-3721



North Dakota Senate Political Subdivisions

Chairman – Randy Burckhard

March 18, 2020

Testimony: Brian K. Billingsley, AICP
Community & Economic Development Director

Email: brian.billingsley@minotnd.org

Phone: 701-857-4147

House Bill 1222 Urging a “Do Not Pass” Recommendation

I am writing on behalf of The City of Minot to express our **opposition** to HB 1222 (Non-Conforming Structures). This bill attempts to micromanage locally adopted zoning laws. HB 1222 is too vague and may be subject to misinterpretation by planners, property owners, attorneys, and judges.

The City of Minot has several non-conforming residential buildings that can and should be rebuilt to current zoning codes after they are razed. North Dakota’s cities and counties are unique and have different needs. Unfortunately, this legislation promotes a “one-size fits all” approach for the zoning of our cities and counties. Local government should have the independence to determine how to handle non-conforming buildings, structures, and uses within their jurisdiction without interference from the State government. Constituents can and should take their concerns to their local government officials if they do not agree with local rules. Handling this legislation at the State level is unnecessary.

For these reasons, I strongly urge your committee to recommend a “do not pass” on HB 1222 and I thank you for your consideration and for your service to our State.

Sincerely,

A handwritten signature in blue ink that reads "B. Billingsley".

Brian K. Billingsley, AICP
Community & Economic Development Director

Cc: Mayor Shaun Sipma
Minot City Council
Harold Stewart, City Manager
Shane Goettle, Special Assistant City Attorney
Blake Crosby, North Dakota League of Cities
Natalie Pierce, North Dakota Planning Association

March 17, 2021

Dear Senators of the Political Subdivision committee:

Mistaken Identity — Variance vs. Nonconforming Use

A variance is an exception to the existing zoning, whereas a nonconforming use (also known as a grandfather clause) arises when there is a change to the zoning, but an existing use is still permitted to continue.

I was the Minot City Planner from 2001-2016 and in that time, dealt with non-conforming properties both prior and post flood 2011. I can tell you that in my time employed as the city planner, the zoning ordinances locally attempted to find compromises with these properties in both single family and multi-family housing types. Locally, each jurisdiction can attend to these types of situations and everyone of them is unique and will not fit into a little package with a bow. Let me explain a few experiences.

At the time, Minot's zoning ordinance allowed any property owner and or buyer with approved offer to purchase, to file for a variance whether it be on a setback, lot coverage, or lot size and most often would get granted based on a hardship if there were no other options.

Following the flood of 2011, thousands of properties were out of compliance and the City Council passed a resolution allowing anyone to rebuild within the first two years with a building permit, proper inspections and bringing the properties up to building code standards.

In my time as city planner, I wrote hundreds of letters during the appraisal process informing the bank, mortgage company, insurance company or appraisal office what type of property was being reviewed. At times, I had to inform them that a property was legal non-conforming and that if destroyed greater than 50%, it must be built to the standards at the time of incident. And would include information about the variance process. I was led to believe that an individual property owner could still purchase a non-conforming property but was required to carry additional mortgage insurance until 20% of the loan amount was covered.

These decisions were made locally based on conditions that would not likely occur in other cities in ND. Please vote NO and allow the local jurisdictions to solve the issue in their community.

Best regards,

Donna Bye



North Dakota Planning Association
Testimony presented by Natalie Pierce #718

House Bill 1222
Strongly Urging a “Do Not Pass” Recommendation

Very simply, HB 1222 is a completely unnecessary bill. There is no provision of the bill that could not be easily adopted by the political subdivision where the handful of bill supporters live and work, if it were seen to be in the best interest of the local community to do so.

Vibrant and thriving communities do not come about by chance. Anyone who lives in such a community is reaping the benefits of decades of diligent work carried out by local leaders, planners, developers, stakeholder groups, and community champions. Planning work often incites conflicts between those who choose to prioritize short-term benefits, and those who understand that a little discomfort today is necessary to accrue benefits that will be reaped by the community as a whole in decades to come.

The success or failure of planning efforts is dependent on coordination between many moving parts: between community long-range plans, zoning and subdivision regulations, building codes, health and safety codes, development review processes, and host of other activities, plan types, and stakeholder involvements.

The state of North Dakota has granted to local jurisdictions the authority to plan and exercise zoning powers because it has been demonstrated that these activities are essential to healthy growth and prosperity. If the state legislature allows an isolated handful of bill proponents to chip away at the entirety of those zoning powers, for the limited benefit of a select few, we will see the effectiveness of planning activities unravel over time, to the detriment of many local communities.

At a minimum, this bill is vague and hardly in a state to move forward for adoption into law. For this reason alone, it is critical that the committee forward on a “do not pass” recommendation. Despite the ND Planning Association’s official position on this bill as a do not pass, NDPA is offering amendments to limit the detrimental impacts this bill will have.



HOUSE BILL NO. 1222

Representatives Vetter, Dockter, Ertelt, Hatlestad, M. Johnson, K. Koppelman, Marschall, Sanford
Senators O. Larsen, Meyer, Vedaa

A BILL for an Act to create and enact sections 11-33-17.1, 40-47-05.1, and 58-03-14.1 of the North Dakota Century Code, relating to nonconforming structures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 11-33-17.1 of the North Dakota Century Code is created and enacted as follows:

11 - 33 - 17.1. Zoning - Nonconforming residential structure.

1. If a legal non-conforming principal residential structure, located within a residential zoning district, on a conforming lot or a legal non-conforming lot, is damaged beyond fifty percent of its value, the local zoning authority shall not prohibit the reconstruction or restoration of a principal residential structure on the subject property unless the construction or restoration of a structure on the subject property would:
 - a. Violate existing building or fire codes.
 - b. Violate existing sanitary or health standards imposed by the local health district.
 - c. Jeopardize the ability of the local zoning authority to maintain eligibility in the National Flood Insurance Program or would increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.
 - d. Pose a risk to public health or safety.
2. Nothing in subsection 1 shall be interpreted as limiting the authority otherwise granted to a political subdivision to condemn, or compel a property owner to remedy, a structure that poses a hazard to public health or safety.
3. A zoning authority may still require a development review process related to the reconstruction or restoration of a residential structure that has been damaged beyond fifty percent of its value and may impose conditions on the reconstruction or restoration of the residential structure, as otherwise authorized. Any such review process must be completed within 90 days of receipt of a complete application. If a political subdivision requires such a review process, the owner of the destroyed or damaged structure must submit a complete review process application to the zoning authority within 6 months of the date the destruction or damage occurred and submit a complete building permit application within 12 months of the date the destruction or damage occurred.
4. If the property owner does not submit complete applications according to the timeframes detailed in subsection 3, the zoning authority may fully enforce existing regulations related to non-conformities, as otherwise authorized, up to and including the complete prohibition of the rebuilding of a residential structure on the subject property, if such a structure does not forward



the goals, or abide by the policies, established in the community's officially adopted comprehensive plan.

Definitions

Development review process: the process of a zoning authority considering an application for a property improvement for purposes of imposing requirements for setbacks, massing, building materials, availability of off-street parking and all other factors established by the zoning authority as being relevant to the safe and orderly development of the community.

Legal non-conforming lot: a lot or parcel which, in whole or in part, does not conform to the regulations of the district in which the lot is located, but existed as a legal lot of record prior to the adoption of the regulation(s) that now make the lot non-conforming.

Lot of record: a lot or parcel that was lawfully created through compliance with all applicable subdivision and land use regulations that were in effect at the time the lot or parcel was created.

Principal structure: the main building or structure on a lot that is utilized for the principal use that the property is zoned for. A principal structure is distinct and different from accessory structures such as detached garages, sheds or accessory dwellings.

Residential zoning district: a zoning district established by a zoning authority to provide areas of residential character, and only such uses and forms compatible with this purpose, and in which residential structures are allowed by right.

Same text for...

SECTION 2. Section 40-47-05.1 and SECTION 3. Section 58-03-14.1



HB 1222 Opposition Key Points

- This is a completely unnecessary bill. Any political subdivision in North Dakota could adopt some or all of the provisions of this bill if local leaders decided it was in the best interest of the community to do so.
- Long-range plans, zoning codes, subdivision codes and building codes work together as a whole system to guide and shape development for the future benefit of a community. Allowing special interest groups to chip away at the legal foundations of planning will erode the ability of political subdivisions to achieve long-range community goals.
- Local governments impose review processes in order to help guide proposed development in such a way as to forward the goals and policies established in long-range plans. This bill would allow all residential structures (which is a very large share of all development) to completely circumvent that review process.
- The engrossed bill from the House leaves it unclear to local political subdivisions where their enforcement authority begins and ends.
 - The bill leaves it unclear if a Health District or zoning authority can enforce health code violations (related to condemnation of an unsafe structure, the requirement to clean up a failed septic system, etc.) on a non-conforming residential structure that becomes partially destroyed.
- This bill opens the door for structures that were never permitted in the first place or lots that were never formally subdivided to become legitimized. These problem properties will be allowed to persist indefinitely into the future.
- The bill doesn't go far enough to preserve a community's ability to regulate development in flood hazard areas. A political subdivision's NFIP Community Rating System status may be downgraded or lost. This would mean a loss of the flood insurance discounts that come along with CRS status.

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Sakakawea, State Capitol

HB 1222
3/25/2021

A BILL for an Act to create and enact sections 11-33-17.1, 40-47-05.1, and 58-03-14.1 of the North Dakota Century Code, relating to nonconforming structures.

Chairman Burckhard opened the discussion on HB 1222 at 10:00 a.m. Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.

Discussion Topics:

- Bill action

Senator Lee moves **DO NOT PASS**.

Senator Oban seconded.

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	N
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

The motion passed 6-1-0

Senator Lee will carry HB 1222.

Chairman Burckhard closed the discussion on HB 1222 at .

Patricia Lahr, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1222, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman)
recommends **DO NOT PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING).
Engrossed HB 1222 was placed on the Fourteenth order on the calendar.