

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1344

2007 HOUSE POLITICAL SUBDIVISIONS

HB 1344

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1344

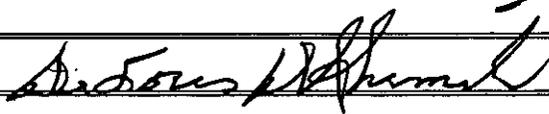
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: 2563

Committee Clerk Signature



Minutes:

Chairman Herbel opened the hearing on HB 1344.

Rep. Kerzman: One of the basic rights is excess and utilization of the property. We had a person in our area that has been struggling with this for a number of years. I can relate back I had an incident where I had a piece of property that I farmed and I worked extensively with the township and the township does not have allot of resources, but they allowed me to put the culvert in and they allowed me to do this an assume the liability. Section lines and excess to property has been a problem for years. Explained how an excess came about from an old agreement from a former owner of property getting to their land. Since there was no verbal agreement the county commissioners did go out and get this excess in order and every ting is in order except there is a revenue through there and he would have to fill in some dirt in order to navigate this with his equipment and the hold up has been that the county commission does not assume any kind of liability. The constituent I have been working with is willing to fix this up, but he is concerned about the liability too. There is no perfect bill but one thing about this is should put an amendment out there and put surface interests on it. We have been dealing with unorganized townships and I think this should be added.

Rep. Lee Kaldor: I was wondering about the rights of the easement when there has been an improvement made and then a new land owner decides to interfere with that. Aren't there laws that should protect even though there is no written agreement?

Rep. Kerzman: I assume there was but the county commissioners read it different and I can't dispute it with them. I did see documents where the former land owner was given a sum of money and we don't know if that was in regards to the easement, but I know that the present land owner has pulled up the cattle guard, put a fence across there and won't let him have excess. This has been going on for several years.

Rep. Lawrence Klemin Section line roads are part of a congressional grant to the state of ND going back to before there was a state. The federal government granted property to the state here, it has a provision in there that section lines are considered public roads and open for public travel to a width of 33 feet on each side of the section line. There are provisions already in ND law allowing for those section line roads to be closed and vacated if certain procedures are followed. Under section 24-07-03 the law provides if a person with an interest in adjoining land petitions the board of county commissioners that after a public hearing they may close the sections lines or portions there of which are not used for 10 years or are not traveled due to natural obstacles and are not traveled due to other routes of travel. We tried to come up with a method similar to the procedure for closing a section line to allow someone improve the section line and that is where the language comes from. When you do improve it and it can be traveled is there any requirement for maintenance there? Because it is a public road, not just for the petitioner or anyone else. That is why the bill says providing minimum maintenance. Who is to bear the liability for the damage to person or property as a result of this improvement and the county commission is not willing to take on that liability so that is why it is put in the bill that the person wanting that done would have to assume that liability.

Chairman Herbel What about people that are in the oil field area that own the land, but don't own the mineral rights and those people that own the mineral right to be able to travel around on their land?

Rep. Lawrence Klemin We are trying to provide an excess to people with a surface to get to their other farmland so they can farm it. These are public roads and anyone can use it. Maybe we need to narrow the scope of this to address the surface interests?

Chairman Herbel If we limited it to agricultural purposes maybe that would take care of that?

Rep. Lawrence Klemin: I can't imagine that there is any industrial or commercial entity that would not have some kind of excess already based on their existing road system. I think you are correct when you are talking about agricultural and not anything else.

Rep. Louis Pinkerton: This would be a public road where excess would remain with the developer; where would the liability remain?

Rep. Lawrence Klemin I think the cities, state and counties and other townships now has jurisdiction over public roads that have been constructed, that they would probably have some liabilities with accidents relating to the construction of that road so I don't know if that is in the statute anywhere but I know that I have seen court cases to that affect.

Rep. Kim Koppelman Under the bill, if the landowner improves the road, with the permission of the political subdivision, and let's say they have an established road, then the township takes it over and does more repair, how does that work?

Rep. Lawrence Klemin I think that there is some shares responsibility there. We did not include township authority in there and there is an amendment to do that.

Larry Syverson: NDTOA offers this amendment and explained it. (see testimony #1) We would not object to this bill if it is amended in this manner.

Chairman Herbel If we amended it like that where would the liability lie?

Larry Syverson: The bill tries to give the liability to the interested party. We are not sure it would completely satisfy that, but as long as it remains and option for the road authority to approve this, they would have to require that the work be done according to code and they would be under no obligation to grant the petition.

Rep. Pat Hatlestad: How has final authority if the county commission approves lets say my right to approve the road and the township said no we don't want it. Now what happens?

Larry Syverson: That would depend on whether the road is in an unincorporated township or organized township. In an organized township the right of way belongs to the township, no the county.

Melvin Fisher (son Curtis) We would request some working changes and I know there are issues with liability and there is not a perfect bill. Discussed the fact that his grandfather and father had traveled across this section line, a quarter mile, on a ridge line to excess our property. During the years there has been some dispute with the neighbors about crossing this property. In 1976 the county deviated from the section line under the century code, plated a trail and sell cattle guards, and the neighbors attorney prepared an easement, which was never signed. From 1976 until 2000 we continued travel as we did before. In 2000 the neighbor constructed a solid fence across the road. For the past seven years we have been before the county commissioner at every meeting pleading our case to gain excess to our property. You would think after so many years if you have traveled this route you would have the right by prescription to continue. We followed that path, but under a right by prescription there are three criteria's that need to be meet. It has to be for 20 years, for continuous use and the third is by adverse and hostel use and not by permissible. The court ruled it was permissible use because an easement was never signed. The case was referred to the municipal court and they confirmed the district court ruling. Therefore, we turned back to the

county for help to excess this property. (Handed out testimony #2 and #3) Discussed the problems with section line and excess. Discussed court trails and attached sheets and went over this in great detail.

Melvin Fisher: Discussed in great length the problems and court actions that have been on going for several years.

David Mund: Morton County Residence and own 480 acres of cropland and farmland. I know Melvin and I have written permission to get the this quarter section of land he has there to hunt and trap on it. He has been messing around with these guys and they think it is a joke after he leaves there. I can see why there is a feud over that quarter he has got because anyone that loves to hunt like I do it is like going to heaven. This piece of ground is right behind this other individual's property and is idea for wintering cattle and that. What they are trying to do is freeze him out so he will give that land up and the county commissioners appear to be involved in it. I want to address the liability issue on this. I tried to get the county commissioners to address the liability issue last month. They did not give me an answer, except for Allan Copy, who said if you keep your premiums paid up you are OK more or less. Explained problem of liability with an accident regarding an Umpleby boy that had an accident and tried to sue Morton County for the damages and stuff. It went to court and he lost. When a section line is closed, according to a law I read, even when the county commissioners close the section line, the people that have farmland or have a need to use it. It cannot be closed to them. You can close it to the general public but you can not close it to the landowner. Our Morton County engineer said these are antiquated laws. Discussed all the concerns that the Fischer's have been dealing with.

Dennis E. Daniel: I first became acquainted with Melvin a few years ago. I live in a subdivision 14 miles west of Mandan on a lot and it has convents. Explained the layout and

where his lot sets. I requested Morton County to just have the fences pulled back and opened up so you can travel down the section line so you can excess the back of the lot. I was told by the chairman at that time told me that you have no damn business back there. You got a road to get to your lot from the front, what the hell do you need back there for? This is the attitude of the county commission. Went on about how Morton County is not responsive to their residence.

Rep. Kim Koppelman The bill says the landowner can partition the county commissioners to authorize the landowner to improve the section line.

David Mund: If someone goes out and someone pulls that rock out and maybe he will come along with a pickup load of dirt and pour it in there to fill that hole up. If it settles down later on, does he assume the responsibility or does the county? The code says for them to be held liable they must knowingly do something wrong. So by leaving the liability with the county rather than putting on the individual owner. County puts the liability back onto the landowner and I am responsible and we are already paying the premium for the county to have that.

Curtis Fischer: Went on about fixing the section line. Said this is only one spot that needs fixing on this quarter mile.

Opposition: None

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1344

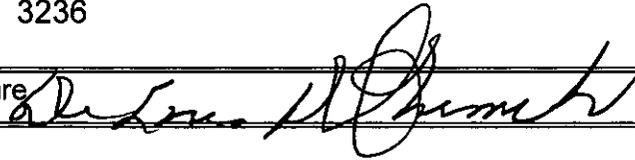
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: ⁸3236

Committee Clerk Signature



Minutes:

Chairman Herbel reopened the hearing on HB 1344.

Rep. Lawrence Klemin: (passing around the proposed amendment #1) Explained the amendment. Discussed the laws regarding the section line roads. After the hearing on this we received some good constructive criticism. With the amendments it would have to be a person having interest in the surface, that would take away that the government would have more interest in the minerals. Secondly it has to be approved for travel for agricultural purposes. That would take away the concern with some of the Western counties for oil and gas companies. Third, the person would have to file the petition with the board of county commissioners in an unorganized township or the board of township supervisors in an organized township and that petitioner would then have the burden to persuade that board that he should be allowed to include that section line road, which can't be travel due to natural obstacles for difficulty of terrain. The board would set the standards. The board would still be able to deny the petition, but they would have to have a reason. At least they would have to recognize your right to file a petition and they do have to have a reason and that could be appealed to a district court. I did discuss this with one of the Morton County Commissioners last night. He thought this was good.

Motion made to move the amendment By Rep. Lawrence Klemin Seconded By Rep. Donald Dietrich Voice vote carried.

Discussion:

Rep. Nancy Johnson You said they would have to identify why they would not approve it?

Rep. Lawrence Klemin If they file a partition they are going to either grant it or deny it. It doesn't say they have to have a reason. Normally you would have to.

Rep. Pat Hatlestad It doesn't say anything about maintenance where the other one said minimal maintenance.

Rep. Lawrence Klemin I think that is going to be up to them to decide whether they are going to do that or not.

Rep. Pat Hatlestad What about liability?

Rep. Lawrence Klemin It would be on the county or township. They set the standards when they approve it.

Rep. Pat Hatlestad Is it just agricultural use?

Rep. Lawrence Klemin We are talking about improving the road. The reason is agricultural, but after that is done it is still public roads under law.

Do Pass As Amended Motion made By Rep. Pat Hatlestad Seconded by Rep. Dwight Wrangham

Vote: 13 Yes 0 No 1 Absent Carrier: Rep. Lawrence Klemin

Hearing closed.

VR
2/9/2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1344

Page 1, line 6, remove "adjacent", replace "an" with "a surface", and after "in" insert "a parcel of"

Page 1, line 7, replace "adjoining" with "connected by", after "line" insert "to another parcel of land in which that person has a surface interest or to a highway", and after "commissioners" insert "in an unorganized township or the board of township supervisors in an organized township"

Page 1, line 8, after the second "line" insert "for the purpose of travel for agricultural purposes. The petition may be approved"

Page 1, line 10, replace "other property in which the petitioner has an" with "the parcel of land"

Page 1, line 11, remove "interest"

Page 1, line 12, replace ", provide minimal maintenance for the improvement, and assume liability for" with "to standards approved by the board."

Page 1, remove lines 13 through 17

Re-number accordingly

Date: 2-8-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1344

House Political Subdivisions Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Rep Hatlestad Seconded By Rep Wrangham

Representatives	Yes	No	Representatives	Yes	No
Rep. Gil Herbel-Chairman	✓		Rep. Kari Conrad	✓	
Rep. Dwight Wrangham-V. Chair	✓		Rep. Chris Griffin	✓	
Rep. Donald Dietrich	✓		Rep. Lee Kaldor	✓	
Rep. Patrick Hatlestad	✓		Rep. Louis Pinkerton	✓	
Rep. Nancy Johnson	✓		Rep. Steve Zaiser	✓	
Rep. Lawrence Klemin	✓				
Rep. Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Vonnie Pietsch					

Total (Yes) 13 No 0

Absent 1

Floor Assignment Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1344: Political Subdivisions Committee (Rep. Herbel, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1344 was placed on the Sixth order on the calendar.

Page 1, line 6, remove "adjacent", replace "an" with "a surface", and after "in" insert "a parcel of"

Page 1, line 7, replace "adjoining" with "connected by", after "line" insert "to another parcel of land in which that person has a surface interest or to a highway", and after "commissioners" insert "in an unorganized township or the board of township supervisors in an organized township"

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Page 1, line 11, remove "interest"

Page 1, line 12, replace ", provide minimal maintenance for the improvement, and assume liability for" with "to standards approved by the board."

Page 1, remove lines 13 through 17

Renumber accordingly

2007 SENATE POLITICAL SUBDIVISIONS

HB 1344

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1344**

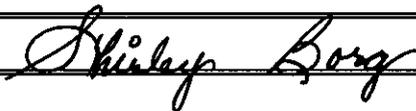
Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **March 15, 2007**

Recorder Job Number: **5157**

Committee Clerk Signature



Minutes:

Chairman Cook called the Senate Political Subdivisions committee to order. All members present.

Chairman Cook opened the hearing on HB 1344 relating to section lines.

Representative Kerzman, District 31, introduced HB 1344. A constituent has had a long on going problem with access to his property. We live in a great democracy where we have a privilege to own property. I think there are rights that go along with that ownership and one of the rights is that we have access to that property. This situation has evolved through the years and has run into a grid lock. As one of the last resorts we have decided to try and pass some legislation that addresses the problem. His land is basically surrounded by another persons land and through the years they had access across this neighbors land and because of personal conflicts this guy decided to shut him off. He has not gotten to his property for a number of years. The county commissioners went out and surveyed where the section line is suppose to be. The land is not navigable and some dirt work would need to be done. He is willing to do the work but the commission is worried about liability issues. So we are trying to address it so he can make the corrections. He would like to add an amendment on line 11 and

change that to a must and on line fourteen change standards to minimum maintenance. He will be using it for his own use so he does not want to fix it up any more than he has to.

Chairman Cook: Are we talking a quarter section and do we have section lines on two sides of that. Are they both impassible.

Representative Kerzman: We are talking about a quarter of a section and it only has access on one side.

Representative Klemin, District 47, Bismarck, ND testified in support of HB 1344 (Attachment # 1)

Senator Hacker: Can you explain the situation, why access from either side does not work and is there water that would be disruptive?

Representative Klemin: There is no water that is a problem. The problem is that you can not travel on this section line road due to the terrain. There is no other way to get there as all other section line roads are basically the same.

Senator Olafson: The bill will give the authority to do this type of work. Is there any thing in current law that prevents this from being done?

Representative Klemin: I don't think there is. It is not provided for in the statute.

Curtis Fischer: farmer, testified in support of HB 1344. This bill pertains personally to our situation. Everyone has a dream to own property, whether it is a house or acres of land. But as a farmer or rancher this dream becomes a lively hood in the way of life to use this property to make a living. For the past fifty three years we traveled across the neighbor's property to access our property. (Attachment #2)

Chairman Cook asked Curtis to draw a picture of the property on the board.

Senator Olafson: I am still a little vague on the action that the county commission took on having the fence removed from the middle of the section line.

Curtis Fischer: We requested to get it back because it was in the middle of the section line. After repeated request, in July they finally did remove the fence. If we put minimum maintenance in the bill then the county should be able to post minimum maintenance signs which would remove the liability from the county.

Senator Anderson: Is it the whole quarter of mile that needs work.

Curtis Fischer: No it is just the area where the photographs are. About 200 feet.

Melvin Fischer testified in support of HB 1344. The law use to be that if someone needed to use the section line or move a fence you had the right to do it. The law now says that you have to petition the county commission to have the fence moved. We commissioned the county over seven years and finally got it petitioned to move the fence.

Larry Syverson. Chairman of Roseville Township of Trail County and Director of the ND Township Officers Association testified in support of HB 1344. (Attachment #3)

No further testimony in support, opposed or neutral on HB 1344.

Chairman Cook closed the hearing on HB 1344.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1344

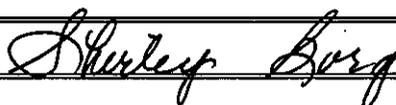
Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 22, 2007

Recorder Job Number: 5446

Committee Clerk Signature



Minutes:

Chairman Cook called the committee to order. All members (5) present.

Chairman Cook asked the committee to look at HB 1344.

Senator Warner: I have sympathy for anyone that can not reach their land but I really think we are being asked to serve as a court here. I think the current law is more than adequate to deal with the situation.

Chairman Cook: It isn't. This man has not been able to access his property for seven years. He has an attorney and paying money for an attorney but he can not do it. He use to be able to do it. There is an interesting story behind this but he still can not get through the land. I will support the bill if a change is made. The change would be: In line 14 put a period right after petitioners expense and then remove "to standards approved by the board".

Senator Hacker: Half way through they asked for the change to "the petition must be approved" (Line 11) instead of "may be approved". I don't agree with that. Then on line 13 "The petitioner must improve the section line or portion of the section line at the petitioner's expense". What if the Local Township or county wanted to pay for that? They couldn't.

Chairman Cook: Yes they could.

Senator Olafson: If you added a section after petitioner's expense, where you are purposing to end the sentence, if you put a comma and said unless the local governing board is willing to pay the cost or something like that.

Chairman Cook: I don't think we need it.

Senator Warner made a motion to amend.

Senator Hacker seconded the motion.

Discussion:

Voice roll call vote: All members in favor.

Senator Olafson moved Do Pass as Amended.

Senator Warner seconded the motion.

Discussion:

Chairman Cook: My first thought is I wouldn't buy the land if it was landlocked unless I had a way in there.

Senator Hacker: I don't know if I will be in favor of this bill because I don't think it is appropriate to have specific language to affect a specific area of which a court case said no already. I know we do that but usually it affects lots of people. In my mind this is bad public policy.

Roll call vote: Yes 4 No 1 Absent 0

Carrier: **Senator Cook**

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Adopted by the Political Subdivisions
Committee

March 22, 2007


3-22-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1344

Page 1, line 14, replace "to standards" with an underscored period

Page 1, remove line 15

Renumber accordingly

Date: 3-22-07
Roll Call Vote #: #2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1344

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Senator Olafson Seconded By Senator Warner

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X		Senator Arden C. Anderson	X	
Senator Curtis Olafson, ViceChair	X		Senator John M. Warner	X	
Senator Nicholas P. Hacker		X			

Total Yes 4 No 1

Absent 0

Floor Assignment Senator Cook

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1344, as engrossed: Political Subdivisions Committee (Sen. Cook, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1344 was
placed on the Sixth order on the calendar.

Page 1, line 14, replace "to standards" with an underscored period

Page 1, remove line 15

Renumber accordingly

2007 TESTIMONY

HB 1344

#1

To support HB 1344

Good morning Chairman Herbel and members of the Political Subdivisions Committee.

I am Larry Syverson a farmer from Mayville; I am the Chairman of Roseville Township of Traill County. I am also a District Director of the North Dakota Township Officers Association. NDTOA represents the six thousand township officers that serve our eleven hundred and forty one dues paying member townships.

NDTOA wishes to offer a friendly amendment to HB1344 inserting in line 7, 14 and 16 after the word "commissioners" these words in an unorganized township, or the board of township supervisors in an organized township; this change would give the decision to the authority that is actually responsible for the section line.

Chairman Herbel and Committee Members, NDTOA would not object to HB1344 if it is amended in this manor.

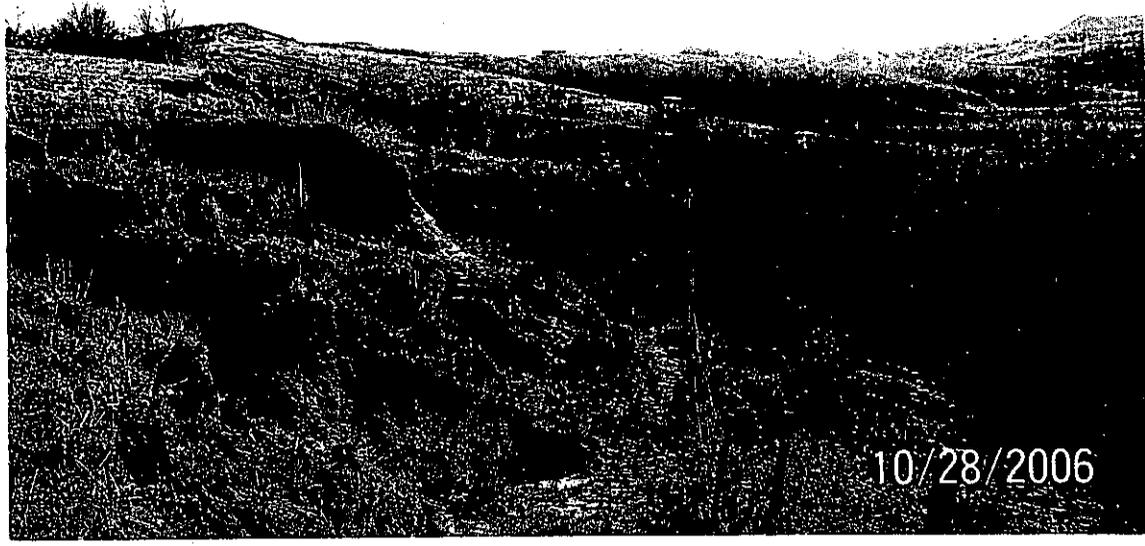
That concludes my prepared testimony now I will try to answer your questions.

2

House Bill No. 1344 As Amended

Improvement of section line by landowner. A person having a surface interest in land connected by a section line to another parcel of land may petition the board of county commissioners in an unorganized township or the board of township supervisors in an organized township to authorize the petitioner to improve the section line or a portion of the section line for the purpose of travel for agricultural purposes. The petition may be approved if the section line cannot be traveled due to natural obstacles or difficulty of terrain and if the petitioner does not have a readily accessible alternative route of travel to the parcel of land. The petitioner must improve the section line or a portion of the section line at the petitioner's expense to standards approved by the board.

#3



Mandan News - Friday, May 12, 2006 - 15

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maintenance is not very good with no
 crown to the roads and loose rocks left on
 the road surface.

Dewey Kautzmann appeared about getting
 the fences moved back off the section line
 between Sections 18 and 19, Township 139
 North, Range 83 West by May 1, 2006.

Commissioner Christensen moved and
 Commissioner Boehm seconded to send
 out notice to all landowners whose fences
 are in the section line right of way between
 Sections 18 and 19, Township 139 North,
 Range 83 West to move their fences back
 thirty-three (33) feet off of the center of
 the section line by May 1, 2006.

Melvin Fischer appeared before the county
 board asking for the county to give him a
 way into his land since the Supreme Court
 upheld the District Court ruling in his case.
 Commissioner Christensen moved and
 Commissioner Boehm seconded to take no
 action on Mr. Fischer's request which was
 one of the options given to the County
 Commissioners by Assistant State's
 Attorney Brian Grosinger. On roll call vote,
 Commissioners Christensen, Boehm,
 Tokach and Erhardt voted "Aye."
 Commissioner Bitz voted "Nay." Motion
 carried four (4) to one (1).

Commissioner Erhardt moved and
 Commissioner Boehm seconded to autho-
 rize out of state travel for Paul E. Trauger,
 County Auditor to attend the Government
 Finance Officers Association Annual
 Conference in Montreal, Canada on May
 6th through May 10th, 2006. The total cost
 about \$1,645 which will be funded by
 reduction in line items in the auditor's bud-
 get. On roll call vote, all commissioners pre-
 sent voted "Aye."

Commissioner Erhardt moved and
 Commissioner Boehm seconded to autho-

MORTON COUNTY COMMISSION MEETING
May 2, 2006

The Morton County Commission regular meeting was called to order on May 2, 2006, at 10:00 AM by Chairman Matt L. Erhardt in the Commission Room at the Morton County Courthouse, 210 2nd Avenue NW, Mandan, North Dakota. Others present were Commissioners Mark Bitz, James Boehm, Bob Christensen, Dick Tokach and County Auditor Paul E. Trauger.

Commissioner Christensen moved and Commissioner Boehm seconded to reaffirm the motion made in April 2006 County Commission Meeting to take no action on Melvin Fischer's request for a road. On a roll call vote, all commissioners present voted "Aye."

Draft a letter of appreciation for Lloyd Huber for the many years of service on the Morton County Water Resource Board.

Commissioner Boehm moved and Commissioner Christensen seconded to lift the burning in Morton County but residents still have to follow the State Fire Index when to burn and when not to burn. On roll call vote, all commissioners present voted "Aye."

Commissioner Bitz moved and Commissioner Tokach seconded to authorize the County Offices to be closed on July 3, 2006 with the employees taking vacation time for that day. Personnel with essential duties are still required to work. On roll call vote, all commissioners present voted "Aye."

The total of all county funds expended for May, 2006 amounted to \$7,789,005.79. A detailed list of funds expended by check is available for public inspection anytime during regular business hours at the Morton County Auditor's Office.

Commissioner Christensen moved and Commissioner Boehm seconded to recess the commission meeting at 5:45 PM until 10:00 AM on June 6, 2006. On a roll call vote, all commissioners present voted "Aye."

Matt L. Erhardt, Chairman Morton County Commission _____

Paul E. Trauger, County Auditor _____

MORTON COUNTY COMMISSION MEETING

November 14, 2006

The Morton County Commission regular meeting was called to order on November 14, 2006, at 10:00 AM by Chairman Matt L. Erhardt in the Commission Room at the Morton County Courthouse, 210 2nd Avenue NW, Mandan, North Dakota. Others present were Commissioners Mark Bitz, James Boehm, Dick Tokach and County Auditor Paul E. Trauger.

Absent was Commissioner Christensen.

Commissioner Boehm moved and Commissioner Bitz seconded to authorize the hiring of a replacement Public Service Tech II in the County Recorder's Office. On a roll call vote, all commissioners present voted "Aye."

Commissioner Boehm moved and Commissioner Tokach seconded to table the request from the Recorder's office to set the salary for the new Recorder and the Public Service Tech IV until the commissioners can review the salary schedule. On a roll call vote, all commissioners present voted "Aye."

Commissioner Boehm moved and Commissioner Tokach seconded to clarify the intent of the Morton County Commission of the motion passed July 11, 2006 at the Morton County Commission Meeting to move the fences back 33 feet on the following section line starting at the NW corner of Section 30, Township 136 North, Range 82 West and at the NE corner of Section 25, Township 136 North, Range 83 West, south for a distance of 1,420 feet. To permit access on the section line as is. **No authorization for any change of the section line has been approved by this commission.** On a roll call vote, all commissioners present voted "Aye."

Commissioner Christensen arrives at 10:30 AM.

Commissioner Boehm moved and Commissioner Tokach seconded to appoint Commissioner Bitz to represent Morton County on the Board of Directors for the Mandan Progress Organization (MPO). On a roll call vote, all commissioners present voted "Aye."

Paula Graner reported to the Commission that Morton County could not do random drug testing for the general county employee base. Ms. Graner based this on her conversation

AFTER
NOON
SESSION

Ernie Fisher reported to the County Board that he will have Ron Berger's fence moved by Monday morning at 9:00 AM. The commission told Ernie Fisher that if the fence is not removed they would hire someone else to move the fence.

The total of all county funds expended for November, 2006 amounted to \$1,574,545.18. A detailed list of funds expended by check is available for public inspection anytime during regular business hours at the Morton County Auditor's Office.

January 2, 2007

Dear Concerned;

Melvin Fisher has visited with me about access to some of his property in Morton county, SE 1/4-24-136-83.

After much discussion with the Fisher's, several County Commissioners and residents of area, I decided to get a first hand look at situation upon Mr. Fisher's invitation. It has been told to me that access through adjoining property was closed off after having been allowed since mid seventies for various reasons and the Morton County Commission gave access through a section line. That section line as staked out is impossible to navigate except by walking, which still disallows usage of property since vehicles and equipment couldn't get through.

My understanding at this point is the legality of making that section line useable, Mr. Fisher is willing to make changes so that the section is usable to him, the County is concerned about liability. I would like to see some resolve in this issue, property owners have rights that need to be respected and enforced.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Rep. James Kerzman".

Rep. James Kerzman

70610.0200

Sixtieth

Legislative Assembly HOUSE BILL NO. 1344

Introduced by

Representatives Kerzman, Klemin

Senator Krauter

1. A BILL for an Act to create and enact a new section to chapter 24-07
2. of the North Dakota Century Code, relating to section lines.
3. BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF
4. NORTH DAKOTA:
5. SECTION 1: A new section to chapter 24-07 of the North Dakota
6. Century Code is created and enacted as follows:
7. **Improvement of section line by adjacent landowner.** A person
8. having an interest in land and adjoining a section line may petition the
9. board of county commissioners to authorize the petitioner to improve
10. the section line or a portion of the section line if the section line
11. cannot be traveled due to natural obstacles of difficulty of terrain and
12. if the petitioner does not have a readily accessible alternative route of
13. travel to other property in which the petitioner has an interest. The
14. petitioner may improve the section line or a portion of the section line
15. at the petitioner's expense, provide minimal maintenance for the
16. improvement, when the county can not or will not take responsibility
17. for the improvement of section line in a reasonable length of time like
18. thirty days after petition has been received by the County. The county
19. which already has liability for improved or unimproved section lines
20. will assume and continue to be responsible for maintenance and
21. liability of said section line after the petitioner has improved the
22. section line to a degree that is reasonable for his use
23. or to access his property.

House Bill No. 1344
Testimony of Rep. Lawrence R. Klemin
Senate Political Subdivisions Committee
March 15, 2007

Mr. Chairman and members of the committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of House Bill 1344.

House Bill 1344 creates a new section of law to Chapter 24-07 of the North Dakota Century Code, relating to the improvement of section line roads. As the result of the congressional grant of land to Dakota Territory in 1866, all section lines were dedicated as public roads open for public travel to a distance of 33 feet on each side of the section lines. Despite the designation of section lines as public roads, some section line roads are impassable due to natural obstacles or difficulty of terrain. House Bill 1344 creates a procedure whereby a person who owns a surface interest in land next to a section line road that is impassable can petition the proper road authority for permission to improve the section line road, or a portion of the section line road, in order to make it passable for agricultural purposes, such as for travel with farm equipment or livestock. The proper road authority is either the Board of County Commissioners in unorganized townships, or the Board of Township Supervisors in organized townships. The petitioner must agree to make the improvement at his own expense to standards approved by the appropriate board.

This bill is modeled on existing law relating to the closing of section line roads that are not traveled due to terrain and follows the same petition procedure. For your reference, I am attaching a copy of Section 24-07-03, relating to section line roads and the petition procedure for closing them.

I request that you give a "do pass" recommendation to House Bill 1344. Thank you very much.

24-07-03. Section lines considered public roads open for public travel — Closing same under certain conditions.

In all townships in this state, outside the limits of incorporated cities, and outside platted townsites, additions, or subdivisions recorded pursuant to sections 40-50.1-01 through 40-50.1-17 or recorded prior to July 1, 1987, under former chapter 40-50, the congressional section lines are considered public roads open for public travel to the width of thirty-three feet [10.06 meters] on each side of the section lines.

The board of county commissioners, if petitioned by a person having an interest in the adjoining land or a portion thereof, after public hearing and a finding by the commissioners of public benefit, may close section lines or portions thereof which are not used for ten years, are not traveled due to natural obstacles or difficulty of terrain, are not required due to readily accessible alternate routes of travel, or are intersected by interstate highways causing the section line to be a deadend, providing the closing of the dead-end section line does not deprive adjacent landowners access to the landowners' property. After the section lines are closed, they may be used to the benefit of the adjacent landowners. However, survey or property reference monuments may not be disturbed, removed, or destroyed. If drainage is interfered with due to the farming operations, alternate means of drainage must be provided for by the landowners or tenants farming the lands.

Source. S.L. 1897, ch. 112, § 3; 1899, ch. 97, § 1; R.C. 1899, § 1052; R.C. 1905, § 1348; C.L. 1913, § 1920; R.C. 1943, § 24-0703; S.L. 1965, ch. 201, § 1; 1967, ch. 210, § 1; 1977, ch. 234, § 3; 1977, ch. 235, § 1; 1987, ch. 501, § 18; 1997, ch. 240, § 1.

5 #2

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1344

Introduced by

Representatives Kerzman, Klemin

Senator Krauter

- 1 A BILL for an Act to create and enact a new section to chapter 24-07 of the North Dakota
- 2 Century Code, relating to section lines.

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

4 **SECTION 1.** A new section to chapter 24-07 of the North Dakota Century Code is
5 created and enacted as follows:

6 Improvement of section line by landowner. A person having a surface interest in a
 7 parcel of land connected by a section line to another parcel of land in which that person has a
 8 surface interest or to a highway may petition the board of county commissioners in an
 9 unorganized township or the board of township supervisors in an organized township to
 10 authorize the petitioner to improve the section line or a portion of the section line for the
 11 purpose of travel for agricultural purposes. The petition ^{must} may be approved if the section line
 12 cannot be traveled due to natural obstacles or difficulty of terrain and if the petitioner does not
 13 have a readily accessible alternative route of travel to the parcel of land. The petitioner must
 14 improve the section line or a portion of the section line at the petitioner's expense to ^{minimum} ~~standards~~ *maintenance*
 15 approved by the board.

To support HB1344

Good morning Chairman Cook and members of the Political Subdivisions Committee.

I am Larry Syverson a farmer from Mayville; I am the Chairman of Roseville Township of Traill County. I am also a District Director of the North Dakota Township Officers Association. NDTOA represents the six thousand township officers that serve our eleven hundred and forty one dues paying member townships.

I offered a friendly amendment to HB1344 (inserting in line 8 after the word "commissioners" these words in an unorganized township, or the board of township supervisors in an organized township; this change would gives the decision to the authority that is actually responsible for the section line.) it was accepted as such and I am here today to support HB1344.

Chairman Cook and Committee Members, I ask that you give HB1344 a do pass

That concludes my prepared testimony now I will try to answer your questions.

1 of 1 DOCUMENT



Cited

As of: Mar 15, 2007

Melvin Fischer and Antonia Fischer, Plaintiffs and Appellants v. Adam P. Berger, Clara Berger, Ronald G. Berger, and all other persons unknown claiming any estate or interest in, or lien or encumbrance upon, the property described in the Complaint, Defendants Ronald G. Berger, Defendant and Appellee

No. 20050182

SUPREME COURT OF NORTH DAKOTA

2006 ND 48; 710 N.W.2d 886; 2006 N.D. LEXIS 51

February 28, 2006, Filed

PRIOR HISTORY: [***1] Appeal from the District Court of Morton County, South Central Judicial District, the Honorable Gail H. Hagerty, Judge.

DISPOSITION: AFFIRMED.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff property owners sought review of an order from the District Court of Morton County, South Central Judicial District (North Dakota), which awarded judgment to defendant property owners in plaintiffs' action claiming a prescriptive easement for a right-of-way over defendants' land.

OVERVIEW: Since at least 1947, plaintiffs used a trail across defendants' land to move between their two tracts of land. In 1975, defendants locked the gate on the south fence line after one plaintiff repeatedly failed to close the gate. Plaintiffs complained to the county commission. Although an easement for the trail was prepared, defendants did not sign the easement. Plaintiffs continued to use the trail from 1976 until 2000 when defendants locked the gates. In 2003, plaintiffs brought an action against defendants, claiming a prescriptive easement for a right-of-way over defendants' land. The trial court found that while plaintiffs proved continuous and uninterrupted use of the trail for more than 20 years, they failed to establish that their use was adverse. On appeal, the court found that there was evidence to support the finding that there was no adverse use of the trail. The

court rejected plaintiffs' claim that they were entitled to an easement by prescription under the doctrine of acquiescence. Finally, because plaintiffs' damage claim was dependent on their claim for a prescriptive easement, the trial court did not err in holding that they were not entitled to damages.

OUTCOME: The court affirmed the order of the trial court.

COUNSEL: Lawrence R. Klemin (argued) and David D. Schweigert (on brief), Bucklin, Klemin & McBride, Bismarck, N.D., for plaintiffs and appellants.

Thomas D. Kelsch, Kelsch, Kelsch, Ruff & Kranda, Mandan, N.D., for defendant and appellee.

JUDGES: Mary Muehlen Maring, Daniel J. Crothers, Carol Ronning Kapsner, Zane Anderson, D.J., Gerald W. VandeWalle, C.J. Opinion of the Court by Maring, Justice.

OPINION BY: Mary Muehlen Maring

OPINION: [**887] Maring, Justice.

[*P1] Melvin and Antonia Fischer appeal from a judgment dismissing their quiet title action against Ronald Berger seeking a prescriptive easement for a road across Berger's land and damages. We conclude the district court did not clearly err in finding Fischers failed to

prove their use of a trail across Berger's land was adverse. We affirm.

I

[*P2] Berger and his predecessors in interest ("Bergers") [***2] own the north half of the north half of a section of land in Morton County which is situated between two separate tracts of land owned by the Fischers and their predecessors in interest ("Fischers"). The Fischers' tracts of land consist of the south half and the south half of the north half of the land in the same section owned by the Bergers, and the southeast quarter of a section immediately to the northwest of the Bergers' land. The section line connecting the Fischers' two tracts of land is not passable, and since at least 1947, the Fischers have used a trail across the Bergers' land to move between their two tracts of land. In the 1950s, the Fischers and the Bergers had a disagreement about the location of the property line between their tracts of land in the same section. The property was surveyed, and each owner erected a fence on their side of the property line, with a gate in each fence where the trail was located. The fences were about three feet apart. The Bergers also erected a fence and a gate on the north property line adjacent to the Fischers' land. In 1960, the Bergers notified the Fischers they were not to use the gates and trail for access across the Bergers' land. [***3] However, the Fischers continued to use the gates and the trail across the Bergers' land from 1960 to 1975.

[*P3] In 1975, the Bergers locked the gate on the south fence line after Melvin Fischer repeatedly failed to close the gate. The Fischers complained to the Morton County Commission, and in 1976, the Commission surveyed the trail and installed cattle guards on the property line between the Fischers' property and the Bergers' property. The cattle guards were located next to the wire gates in each of the fences. Although an easement for the trail was prepared, the Bergers did not sign the easement. The Fischers continued to use the trail from 1976 until 2000 when the Bergers locked the gates. The Bergers [**888] subsequently removed the cattle guards and gates.

[*P4] In 2003, the Fischers sued the Bergers, claiming a prescriptive easement for a right-of-way over the land now owned by Ronald Berger. The Fischers claimed an easement by prescription to use the trail over the Bergers' land for access between their two tracts of land immediately to the northwest and to the south of the Bergers' land. The Fischers alleged they had used the trail on the Bergers' land for more [***4] than 20 years to travel between their parcels of land. The Fischers sought a prescriptive easement for a right-of-way across the Bergers' land and damages for loss of access between their two

tracts of land. The Bergers denied the Fischers had a prescriptive easement for a road across their land.

[*P5] After a bench trial, the district court found the Fischers had proven continuous and uninterrupted use of the trail for more than 20 years. However, the court further found the Fischers had failed to establish their use of the trail was an adverse use. The court decided the Bergers had allowed the Fischers permissive use of the trail and not an adverse use. The court concluded the Fischers were not entitled to a prescriptive easement and dismissed their complaint.

II

[*P6] The Fischers argue the district court erred in determining they were not entitled to a prescriptive easement for a road across the Bergers' land. They argue the court clearly erred in finding they failed to prove their use of the trail across the Bergers' land was adverse. They argue the evidence established their use of the trail was adverse, or the Bergers had acquiesced in the Fischers' use [***5] of the trail.

A

[*P7] Under North Dakota law, a use of land creates an easement by prescription if the use is adverse, continuous and uninterrupted, and for the 20 year period of prescription. *Gajewski v. Taylor*, 536 N.W.2d 360, 362 (N.D. 1995); *Nagel v. Emmons County Water Res. Dist.*, 474 N.W.2d 46, 48 (N.D. 1991). Except for the requirement of public use for establishing a road by prescription, that approach is consistent with the requirements for establishing a road by prescription under N.D.C.C. § 24-07-01, which requires the general, continuous, uninterrupted and adverse use of a road by the public under a claim of right for 20 years. *Hartlieb v. Sawyer Twp. Bd.*, 366 N.W.2d 486, 488 (N.D. 1985); *Mohr v. Tescher*, 313 N.W.2d 737, 739 (N.D. 1981); *Backhaus v. Renschler*, 304 N.W.2d 87, 89 (N.D. 1981); *Berger v. Berger*, 88 N.W.2d 98, 100 (N.D. 1958).

[*P8] Here, the primary disagreement between the parties is whether the Fischers' private use of the trail was adverse or permissive. The determination whether or not there has been an adverse [***6] use is a question of fact subject to the clearly erroneous rule of N.D.R.Civ.P. 52(a). *Hartlieb*, 366 N.W.2d at 488; *Mohr*, 313 N.W.2d at 739; *Backhaus*, 304 N.W.2d at 90. A finding of fact is clearly erroneous if there is no evidence to support it, if, on the entire record, a reviewing court is left with a definite and firm conviction a mistake has been made, or if the finding was induced by an erroneous application of the law. *Brandt v. Somerville*, 2005 ND 35, P12, 692 N.W.2d 144. A choice between two permissible views of

the weight of the evidence is not clearly erroneous. *Id.* On appeal, this Court does not reweigh conflicts in the evidence, and we give due regard to the district court's [**889] opportunity to judge the credibility of the witnesses. *Id.*

[*P9] The district court found the Fischers' use of the trail was not adverse and instead was permissive based, in part, on the fences and gates on the property line leading to the trail. The court cited *Berger*, 88 N.W.2d at 100-04, to support its determination that the fences and gates across the trail were strong indications the use was [***7] permissive and evidenced an intent by the Bergers to assume and assert ownership and possession of the land over which the road ran. See also *Mohr*, 313 N.W.2d at 739-40 (holding existence of a gate across a road is indicative of permissive use); *Backhaus*, 304 N.W.2d at 89 (same). The court also cited other factual circumstances to support its determination of a permissive use, including that the Bergers did not sign the easement in 1976, the Bergers continued to allow the Fischers to use the trail, and the Bergers threatened to withdraw permission to use the trail if the Fischers did not close the gates. The court found the Fischers did not prove adverse use of the trail and failed to establish they were entitled to an easement over the Bergers' land.

[*P10] We conclude there is evidence to support the district court's finding there was no adverse use of the trail. On appeal, we do not reweigh conflicts in the evidence, and we give due regard to the district court's opportunity to judge the credibility of the witnesses. *Brandt*, 2005 ND 35, P12, 692 N.W.2d 144. We are not left with a definite and firm conviction the court [***8] made a mistake in finding no adverse use. We therefore conclude the court's finding is not clearly erroneous.

B

[*P11] Relying on *James v. Griffin*, 2001 ND 90, 626 N.W.2d 704, *Manz v. Bohara*, 367 N.W.2d 743 (N.D. 1985), and *Production Credit Ass'n v. Terra Vallee, Inc.*, 303 N.W.2d 79 (N.D. 1981), the Fischers also argue they were entitled to an easement by prescription under the doctrine of acquiescence. They argue an easement by prescription may be acquired under the doctrine of acquiescence as well as by adverse possession.

[*P12] Our cases recognize the doctrine of acquiescence applies to the location of a boundary between adjacent property. See *James*, 2001 ND 90, P10, 626 N.W.2d 704; *Knutson v. Jensen*, 440 N.W.2d 260, 262 (N.D. 1989); *Manz*, 367 N.W.2d at 746; *Ward v. Shipp*, 340 N.W.2d 14, 16-17 (N.D. 1983); *Terra Vallee*, 303

N.W.2d at 83-84; *Trautman v. Ahlert*, 147 N.W.2d 407, 412 (N.D. 1966); *Bernier v. Preckel*, 60 N.D. 549, 555-57, 236 N.W. 243, 246 (1931). The doctrine of acquiescence allows [***9] a person to acquire property when occupying part of a neighbor's land due to an honest mistake about the location of the true boundary, because the adverse intent requirement of the related doctrine of adverse possession could not be met. *Terra Vallee*, at 83-84.

[*P13] The American Law Institute recognizes that acquiescence does not apply to servitudes created by prescription, because modern prescriptive doctrine is based on theories of acquisitive prescription and the running of the statute of limitations, and because acquiescence of the owner cannot be distinguished from permission of the owner, which is fatal to a claim for prescriptive use. *Restatement (Third) of Prop.: Servitudes* § 2.17 cmt. g (2000) (citing *Restatement (Third) of Prop.: Servitudes* § 2.16(1) (2000)). We agree with the rationale that for purposes of acquisitive prescription, acquiescence of an owner cannot be distinguished from permission of an owner. Because permission of an owner is fatal to a claim of prescriptive use, we conclude the doctrine of acquiescence is not applicable to a claim [**890] for an easement by [***10] prescription for a trail across another's property. We therefore reject Fischer's claim that they were entitled to an easement by prescription under the doctrine of acquiescence.

III

[*P14] The Fischers also argue the district court clearly erred in finding they were not entitled to damages. The Fischers' damage claim is dependent upon their claim for a prescriptive easement, and because of our resolution of that issue, we conclude the court did not err in finding they were not entitled to damages.

IV

[*P15] We affirm the judgment dismissing the Fischers' claim for a prescriptive easement.

[*P16] Mary Muehlen Maring

Daniel J. Crothers

Carol Ronning Kapsner

Zane Anderson, D.J.

Gerald W. VandeWalle, C.J.

[*P17] The Honorable Zane Anderson, D.J., sitting in place of Sandstrom, J., disqualified.