

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2271

2007 SENATE POLITICAL SUBDIVISIONS

SB 2271

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2271**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **February 8, 2007**

Recorder Job Number: **3199 & 3201**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the Senate Political Subdivision to order. All members (5) present.

Chairman Cook opened the hearing on SB 2271 relating to requiring findings or statements upon which zoning requests and subdivision plat requests are disapproved.

Senator Holmberg District 17, Grand Forks, ND, introduced SB 2271. He put the bill in at the request of North Dakota Home Builders.

Doreen Riedman, ND Association of Builders, testified in support of SB 2271. (See attachment #1)

Carl Hokenstad, Director of Planning, City of Bismarck and Burleigh County, testified in support of SB 2271. Using findings which are a list of reasons why you denying or approving an application, upon which zoning requests and subdivision plat requests are disapproved.

Our city attorney advised us that that is a good thing to do. We remind our city and county commissions to please be specific when making a motion either approving or disapproving.

Dave Patience, Swenson and Hagen and Company, testified in support of SB 2271. It depends upon the particular subdivision he is dealing with whether he gets approval or disapproval notices in writing. This bill would help his work tremendously.

John Spitzer, Burleigh County Township Officers Association, President, testified in favor of SB 2271. He had a couple of concerns. One of the problems is a concerned municipality. At one time if the city lies within a township and was not incorporated and did not have zoning, the township could infringe on its city. The way the law works now with the municipalities, the township has to be concerned with its municipality and municipality is not defined real well. The second problem is if a township has zoning and county has zoning, according to the attorney generals opinion, if there is a conflict the township shall prevail. But then the state law gives the county the authority to plat.

No further testimony in favor, opposed or neutral on SB 2271.

Chairman Cook closed the hearing on SB 2271.

Recorder #3201 February 8, 2007

Senator Olafson moved the amendment on SB 2271

Senator Hacker seconded the motion

Discussion

Voice Vote: All members in favor. Amendments adopted.

Senator Hacker moved a Do Pass as Amended

Senator Warner seconded the motion

Discussion

Roll call vote: Yes 5 No 0 Absent 0

Carrier: **Senator Warner**

REPORT OF STANDING COMMITTEE

SB 2271: Political Subdivisions Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2271 was placed on the Sixth order on the calendar.

Page 1, line 12, replace "any" with "the"

Page 1, line 13, replace the first "a" with "any" and after "is" insert "approved or"

Page 1, line 14, replace "disapproval" with "decision"

Page 2, line 8, replace "any" with "the", replace "a" with "any", and after "is" insert "approved or"

Page 2, line 9, replace "disapproval" with "decision"

Page 3, line 8, replace "any" with "the" and replace the first "a" with "any"

Page 3, line 9, after the first "is" insert "approved or" and replace "disapproval" with "decision"

Page 3, line 19, replace "any" with "the" and after "is" insert "approved or"

Page 3, line 20, replace "any disapproval" with "the decision"

Page 4, line 28, replace "any" with "the" and replace the first "a" with "any"

Page 4, line 29, after the first "is" insert "approved or" and replace "disapproval" with "decision"

Renumber accordingly

2007 HOUSE POLITICAL SUBDIVISIONS

SB 2271

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2271

House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 1, 2007

Recorder Job Number: 4198, 4221

Committee Clerk Signature



Minutes:

Chairman Herbel opened the hearing on SB 2271.

Doreen Riedman: ND Assoc. of Builders: (see testimony #1) The Senate did amend it to change it from denial and approval reasons. Any discussion should have the reason listed for either the denial or approval action from zoning requests and subdivision plat requests. The action just needs to be part of the minutes. We are not asking for anything formal and a written reason be given in those minutes. Things having a written reason would lessen litigation. I also have letters attached to my testimony in support of other people. Dave Patience, an engineer from here in town, would like to support this bill.

Chairman Herbel: This is requires something put in the minutes?

Doreen Riedman: Just in the minutes; we are not asking for anything beyond that.

Rep. Kim Koppelman: Why would you have to have a reason for approval? Why did the Senate think it was important to give a reason for approval?

Doreen Riedman: They wanted to make the playing field level and have written reasons for everything. We did check with Fargo and people were fine with it.

Rep. Nancy Johnson: Would you give me a reason why that would be denied?

Doreen Riedman: I would like to defer that to Colby Well, our builder, who might know a little bit more.

Rep. Steve Zaiser: I can understand why the reason for denial would be put in. Can you think this is over kill. Why would we put in every action?

Doreen Riedman: Is nice to have it all out there and to know. I don't think it hurts anything and I don't think it is overly cumbersome to say why they are approving something.

Rep. Lee Kaldor: What is the goal of this? Part of this makes me wonder about potential liability issues. Does this put the city of subdivision in a position where there may be a discrimination suit filed if they give a bad reason?

Doreen Riedman: Exactly. Senator Hater on the Senate side went OGC to see if we are going to put us in a situation where we are going to have put subdivisions into facing more litigation and the reaction from the OG's said it would be less litigation, they felt. They thought there would be a more thoughtful process given to everything.

Rep. Lee Kaldor: In a meeting where this denial occurs, is that record not sufficient to at least get the information you need to get an understanding of the reason.

Doreen Riedman: I think it is somewhat like this, but I think it gets real informal and loose in some instances. Maybe we don't get this spells out and not real discussion. It was probably decided before they entered the room? I don't know.

Rep. Lawrence Klemin: I think it is appropriate to know the reasons for both parties. The courts have said many times that their function is not to substitute their judgment for the judgment of the board that made that decision. The review is to determine whether that decision is arbitrary, compressive, unreasonable or unlawful. The courts say we can not determine this if they do not say why you did it.

Colby Well: ND Association of Builders: Local builder with Well Built Homes. Honestly I am just a builder, not a developer. By the time I get to the building site with my clients all these issues have been solves. I did a development about ten years ago in Mandan and I did not have these issues come up at all. I will be happy to answer any questions today.

Rep. William Kretschmar: Are you aware of any developers that have had difficulties in this regard?

Colby Well: I think a developer up north was denied by a county commission or township and there was no reason.

Rep. Carlson: In support of this bill.

Bill Wocken: City Administrator of the City of Bismarck: Was a city planner in my prior life. I think SB 2271 in its present form is a good bill. We have always put reasons for denial or approval action in our minutes. Some of the reasons for the actions are infra structure to support a subdivision, roads, drainage or inadequate utilities. Our city attorney supports this too. I am in support of this bill.

Rep. Kim Koppelman: What about the litigation question that was raised? Rep. Lee Kaldor said this might lead to less legal action. If we are requiring political subdivisions to give a reason does that open up the potential that someone will disagree with the reason more often and challenge it etc.

Bill Wocken: We have a burden as local government to act in a reasonable manner, legal and not arbitrary or capricious. Most of the times we get complaints are that we were arbitrary and we decided this was the answer and we gave it to people.

Opposition: None

Hearing Closed.

Chairman Herbel reopened the hearing on SB 2271.

Do Pass Motion Made By Rep.Dwight Wrangham Seconded By Rep. Kari Conrad

Vote: 13 Yes 0 No 1 Absent Carrier: Rep.Dwight Wrangham

Hearing closed.

Date: 3-1-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 5B2271

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Kretschmar Seconded By Rep. Conrad

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 Rep. Wrangham

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

REPORT OF STANDING COMMITTEE (410)
March 1, 2007 4:01 p.m.

Module No: HR-39-4252
Carrier: Wrangham
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2271, as engrossed: Political Subdivisions Committee (Rep. Herbel, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2271 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2271



**Testimony on Senate Bill 2271
Senate Political Subdivisions Committee
February 8, 2007**

Same given to House

**Doreen Riedman, Executive Officer
North Dakota Association of Builders**

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Vicky Flagstad, Executive Officer

NORTH DAKOTA ASSOCIATION OF BUILDERS

Doreen Riedman,

Executive Officer

Sandra Neiss,

Administrative Assistant

Chairman Cook and members of the Senate Political Subdivisions Committee, the North Dakota Association of Builders (NDAB) encourages your support of Senate Bill 2271, relating to the requiring of written reasons for denials of zoning requests and plat approval projects.

The NDAB represents over 2,300 members statewide with employees numbering approximately 45,000. We are affiliated with five local builders associations in Bismarck-Mandan, Dickinson, Fargo-Moorhead, Grand Forks, and Minot; and are all part of a larger federation, the National Association of Home Builders (NAHB), which has over 240,000 members.

PURPOSE:

This bill simply requires cities, counties, and townships to provide written reasons to developers for their denials of zoning and platting requests, thus providing the builder/developer the opportunity to make corrections in their applications. Currently, the builder/developer may have a great deal of time and money invested in their proposal, and be interested in making the project work if at all possible, yet not be provided any reasons for the application denials.

EXAMPLES OF DENIALS:

Projects that get denied aren't just those that make the headlines, but are oftentimes lesser-known projects for lower-income people. Decisions get based on what other people want in their neighborhoods rather than what is good for a community as a whole. As an example, workforce housing is in great demand, but such projects are among those that may have been rejected.



We believe good, sound planning is critical. Decisions should benefit the greater good, and should be a part of the community's master plan. Builders and developers should not be held hostage by boards and commissions that fail to provide reasons for why projects have been denied. They deserve the right to know why the denial was given so that they can know how to move forward in the future.

We respectfully ask this committee to support Senate Bill 2271, and ensure that cities, counties, and townships provide written reasons for denials of zoning requests and plat approval projects.

*K&L
Homes, Inc.*

Your Quality Custom Home Builder Since 1978

250 North 31st Street, Suite 5 • Bismarck, ND 58501

Phone: 701-258-4584 • Fax: 701-258-6018

*Same
given to
Hewitt*

February 5, 2007

Chairman Cook and Member of the Senate Political Subdivisions Committee,

As a builder and developer in Bismarck, I am in support of Senate Bill 2271 requiring written reasons for denials of zoning requests and subdivision plat requests. Builders and developers must go through many steps in the process of developing land, and need to be provided with clear responses when going before city, county and township boards.

We need to make sure that decisions are based on what is best for the community as a whole. In developing land, we work with engineers and planners to design projects that will fit into the scope of the community. If projects are denied, reasons need to be given as to why the denials are made so that corrections can be made and projects can eventually come to fruition.

Please support Senate Bill 2271, and make sure written reasons are provided for denials of zoning and subdivision plat requests.

Thank you,

Kelly Moldenhauer

Kelly Moldenhauer
K&L Homes, Inc.



CAVALIER HOMES, INC.

725 Memorial Hwy. ~ Bismarck, ND 58504
Phone: (701) 224-9063 ~ Fax: (701) 224-8202

*Same
given to
Houser*

February 6, 2007

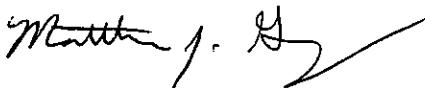
Chairman Cook and Senate Political Subdivisions Committee,

My name is Matt Geiger, and I am a builder and developer in Bismarck. I support Senate Bill 2271 requiring written reasons for zoning and subdivision plat denials. Without information on why denials are given, builders and developers are left in limbo and unsure of how to proceed on projects.

By providing reasons for denials, the builder/developer can make corrections and work toward solutions for housing developments. At this point in the process, the builder/developer has already invested a lot of time and money, and will work even harder to accomplish the end goal. But, we need to know "why" a denial is given.

Please support Senate Bill 2271, and provide for written reasons on denials of zoning and subdivision plat requests. Thank you.

Sincerely,



Matt Geiger

SUGGESTED AMENDMENTS TO SB 2271:

Page 1, Line 12: change the word "any" to "the"

Page 2, Line 8: change "any" to "the"; and "plats" to "a plat"

Page 3, Line 8: change "any" to "the"

March 1,2007

Chairman Herbal and House Political Subdivisions Committee:

My name is Mark Fleck and I am a builder in the Bismarck – Mandan area. I support the Senate Bill 2271 requiring written reasons for zoning requests and subdivision plat denials. As builders we must go through many steps and spend a lot of time in the process of land development and need clear answers as to why we are being denied from city, county, and township boards.

After knowing the reasons for denial, we may then continue to make any necessary corrections that may be needed and hopefully continue our process in development of new housing communities. Without clear reasons for denial, everyone spends more time and effort than needed, ultimately increasing costs for everyone involved including city, county, and township boards.

Please support Senate Bill 2271 and provide written reasons on denials of zoning and subdivision plat requests Thank You,

Sincerely,

Mark Fleck

Mark Fleck