

2015 SENATE POLITICAL SUBDIVISIONS

SB 2269

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

SB 2269
2/12/2015
Job Number 23720

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a deed or contract for deed that contains a metes and bounds legal description.

Minutes:

Written testimony #1 Grant Shaft
Written testimony #2 Michelle Kessler
Written testimony # 3 Kevin Glatt
Written testimony # 4 Curt Glasoe
Written testimony # 5 Steven Langlie
Written testimony # 6 Debbie Kroshus
Written testimony # 7 Ann Johnsrud
Written testimony # 8 Dana G. Larsen
Written testimony # 9 Michael Montplaisir

Chairman Burckhard opened the hearing for SB 2269. All senator are present.

Senator Holmberg introduced SB 2269, on behalf of the Real Property Division of the North Dakota Bar Association. You received a letter from Grant Shaft, written testimony #1.

Michelle Kessler (2:02-16:25) Spoke in favor of this bill. Written testimony # 2.

Chairman Burckhard Section 47 deals with property, and if its discernable. Michelle Kessler well when I say discernable, I guess if it's a metes and bounds description that has been previously recorded. The recorder can record that description again. So that meets the requirement.

Chairman Burckhard Section 57 of code is taxation. That also meets the statutory requirements you would suggest. This metes and bounds and thing is addressed in that section as well? **Michelle Kessler** The metes and bounds is addressed and if for some reason an auditor decides it's not clear, I guess there is no underlying reason that needs to be given by an auditor, but if they determine that they want a survey, then they can require one and then the remedies are in that statute for how to follow through if no survey is completed. **Chairman Burckhard** so you're looking for clarity and for certainty so that you can, so it isn't such a hit and miss kind of deal. **Michelle Kessler** Correct, when I first approached the county where I ran into this problem, they said the statutes ambiguous. I spoke to a few attorneys who said the word "shall" isn't usually ambiguous in statutes. It

says its taxes and special assessments are paid. The auditor shall record the transfer or effect the transfer. Yet, because there is another statute that deals with metes and bounds that gives this auditor the ability to require surveys, even though it has its own remedies, the auditor said well if I can require a survey why can't require it before I allow a tax transfer. So, essentially that is the ambiguity that was explained to me. This was brought to me by a judge and the judge didn't think that there was enough clarity for him to order the auditor to do one thing or another and stop that. Putting the two statutes together could create some ambiguity.

Senator Bekkedahl In today's world of digital instruments, if the metes and bounds description is correct to begin with, and then I've seen some that are very lengthy, but don't you just kind of copy and paste those? They don't change in that digital transfer to anything different, so how difficult is it to do this? It has gotten easier with digital records hasn't it?

Michelle Kessler That has gotten very easy with digital records. Explanation shared.(19:21-20:39)

Senator Bekkedahl So, what you just described to me then sounded almost like a digitalization of the survey process without doing a survey. Is that kind of what that is? But it process that the survey would give to some degree as well, right?

Michelle Kessler In some cases these descriptions are surveyed they just weren't platted. They were completed using survey instruments.

Senator Judy Lee I think metes and bounds legal descriptions are a real pain in the neck because they don't always agree with what the surveys shows. I realize it is not quite as simple, but still when surveys are done, things show up that people assumed were the case before. Ex. Cited (22:39- 23:16) I hear what you're saying about somebody not having to pay for survey, and I am familiar with farmland as well. There is a big advantage to an official survey that actually is updated compared to some of the metes and bounds things that are really old. Would you please tell me why an investment into making sure that the property transfer is actually the property transferred, isn't it an appropriate investment when someone is buying or selling property?

Michelle Kessler I completely agree that it's a very wise investment and an appropriate one. I think that is why 57:02:39 was enacted, so that if there are problematic legal descriptions out there the auditor is aware of it already, she can require a survey. It has the follow through built in, so if someone isn't getting a survey they say I don't think there is a problem, and they wait more than 30 days the auditor can enforce this survey, they are paying for it anyway. That fixes the legal issue of it. However, I also think that stopping a tax transfer is not the method of forcing a survey on someone.

Senator Judy Lee The auditor would've absolutely had no idea that this driveway was in question, that is my point. There just isn't any way. I don't expect the auditors to police that. If you are in a county that doesn't have a lot of property transfers then he or she might know of an issue or not, I think that is an onerous requirement for an auditor. But in a county that has a lot of property transfers whether it's in Senator Bekkedahl's district or my district in

Cass County, I can't imagine that we could expect that the county auditor would know or have a clue about whether they would have a problem.

Michelle Kessler I agree, and think it is a prudent decision, but it is not a required decision to get a survey. People sell property all the time and they don't even get title work done. It is not a statutory requirement to be good at property transactions.

Senator Judy Lee It is a wonderful opportunity to talk about how terribly important it is not to defer everything to your heirs who then have to do it all. Whether or not it's having a survey done, or having an abstract brought up to date which is huge and you don't have to do any cash transactions. A lender will require it. The other thing is the title insurance I just mentioned, the lenders all require it to protect the lender, but it's excessive for the buyer to buy it at the time of the property transfer and that protection covers the buyer's interest which would be all of the equity they have in it. So were not going to legislate that they have to buy title insurance although in some states it is required, but we have to recognize that it is 2015 and we go to pony up on some of this stuff.

Michelle Kessler I recognize that and I would like to say that in all of the transactions that I have dealt with, I would say 80% of them people are getting title insurance and have an attorney review the abstract and if it is a metes and bounds description, we draw them out and see where it fits, there is usually something describing the adjoining property depending where you're abstracting at and in the title insurance process those things are sometimes caught.

Senator Anderson I've looked at Atlases and they don't mention metes and bounds descriptions, it always says out lots. Maybe the county auditor or the recorder did that. I don't think you really saying that we should add any new requirements here, but what you're saying is that county auditor has to accept the metes and bound description, get the survey, and add it to the person's taxes is really what you want. **Michelle Kessler** Correct. **Senator Anderson** That could be done before you sell the property and in most cases I think it would be. Ex. Cited (27:58-28:22) I think what you're afraid of here is you're saying they would have to accept my metes and bounds description for my lots that I sold and that isn't your intention I don't think.

Michelle Kessler That is not my intention. I think that there is language in the statute regarding metes and bounds descriptions and what is considered to meet statutory requirements and that would be previously existing metes and bounds or a metes and bounds that states the name and address of the drafter of the description. I rarely see the second situation come up.

Senator Bekkedahl I understand you're trying to clean-up existing things here, and dealing with existing issues here but, this clean-up language would not pose a problem or supersede anything that counties are doing or what cities are doing now where we require surveys and platting for development areas would it?

Michelle Kessler No, the language in the statute I believe says if it meets with all statutory requirements, so if there are requirements within a city that any new descriptions or new

subdivisions or newly plated tracks be surveyed before you can start transferring those parcels out. I don't think this would affect that in any way.

Senator Anderson It seems to me the County Auditor's office is an elected position and I'm right about that.

Michelle Kessler correct.

Patrick Ward (30:46-31:07) represents the North Dakota Land and Title Association. I have the policy director from our association, Nick Hacker, here who is going to get up and give the committee the title companies' spin on this. No written testimony.

Nick Hacker (31:31-37:10) North Dakota Land Title Association, we support the bill and ask for a do pass. Ms. Kessler spoke about some instance in one specific county and when we start to look across the state. First off, our association represents all license abstractors in the state of North Dakota including title insurance companies and real estate closing companies as well as closing attorneys. Our members are located in every county in the state so we kind of get a 30,000 foot view of the defining differences between practices from county to county. Rarely, do counties treat transfers identically. (Lengthy testimony related to his position).

Senator Anderson It might make people more comfortable if there is the provision now that the county auditor can require the survey and add it to the taxes, that if we said that is what you have to do, and reference that section then this bill might make everybody more comfortable. I say that because the other people following you might want to comment on that too.

Nick Hacker yes, it can really be addressed in two different kinds of directions. That is where the flexibility for the auditors is in that other section.

Senator Judy Lee What if that grandfathered metes and bounds description is incorrect and the survey was correct?

Nick Hacker It would be a daunting task to remove metes and bounds descriptions from the records in North Dakota, first of all. Usually our abstractors will be able to tie that in because part of the abstract examination is being able to map extremely complicated arcs and curves type of legal descriptions and they will tie that into a starter and an end point. There is also very cheap software that our company employs all the time. We type and copy in the legal description and it literally draws it out for you on the software and it will show you if it ties in and what the parcel looks like. We do have survey corrections that are filed and then we do that when the survey is done or if there is an error in a plat. There is very complete value for us to insure that subdivisions are platted; that we can transfer real estate by lot and block but we're really mixing from urban to rural and where we run into a lot of the problems from our members is in the rural settings. No written testimony.

Tony Weiler (40:20-40:46) Executive Director of the State Bar Association; appeared in favor of the bill.

Michelle Kessler (41:01-42:14) added more information concerning auditors duties as an afterthought from her testimony.

Opposed

Kevin Glatt Burleigh County Auditor/Treasurer in Bismarck (42:43-45:51) Spoke in opposition to SB 2269, written Testimony # 3.

Senator Bekkedahl Please respond to the issue that was brought up earlier and your remedy for, if there is one from your perspective, on the GAP time where these is a time issue where title flaws could potentially enter into the required property, other liens or mortgages etc, because the document has not been recorded and there has been already potentially been a transfer at least monetarily to that property? Do you have a need for that?

Kevin Glatt At least from my experience and from talking to other auditors around the state, I think they have pretty good working relationships with their title companies and whoever does the closing. Maybe they work a little closer with them to understand an ugly metes and bounds description and there should be an auditor's plat done and we will work together. It may delay the closing, or with some assurances that there has been a surveyed hired and the work is being done, record the deed and we'll the auditor's plat recorded within a reasonable period of time.

Senator Bekkedahl Is there a process as an auditor where you can deny something then in that record and that GAP is my big question? If something else comes in during that GAP period, and it's a flaw of the title, because you're saying the survey took longer, if you have that knowledge are you allowed to not allow a document to be recorded through the recorder's office?

Kevin Glatt I don't think this legislation is necessary. I don't think the county auditor cannot put a transfer stamp on it. I don't think the law gives me that discretion. What I have been able to do the last 28 years in Burleigh County is work with the closing agents, the real estate agents and title companies and in most cases they tell Mr. Glatt of the metes and bounds description, where you require an auditor's plan, yes, and they will get it done before the closing. The deed with the metes and bounds descriptions will be recorded either before or after the deed itself. The seller will record the metes and bounds description as an auditors plat or record the auditors plat and then when the deed is done, to remove purchaser it's not the metes and bounds description on the deed it's the auditor's lot in detail.

Curt Glasoe Represented North Dakota Land Surveyors Society (49:46-54:39)Written testimony # 4; testified in opposition to the bill.

Senator Bekkedahl Senator Hacker mentioned the software that allows metes and bounds to be placed into some kind of mapping document. Is that what the auditor's plat also does, or does the auditor's plat are they done that way or are they done with survey actually on the ground?

Curt Glasoe In my experience in the 2 or 3 counties that I worked with auditor's plats, they had to be surveyed officially on the ground with pins in place. But that is a plat or map or picture of what's on the ground.

Senator Bekkedahl So the auditor's plat just described to us is not as simple as doing what Mr. Hacker said where you just have that software.

Curt Glasoe There is a lot of people out there selling lots of things. Computers do it a lot better now; GPS has a really good program; but it is what's on the ground. It's not necessarily what is going to be on the ground.

Senator Bekkedahl Is it the auditor's plats that we're using that description today is always going to involve a survey is that correct, Kevin? **Curt Glasoe** nodded yes.

Steve Langlie (56:06-58:19) Written testimony #5. Past President ND Society for Professional Land Surveyors. Strongly urge a Do Not Pass.

Debbie Kroshus (58:44-1:00:14) Burleigh County Recorder Written testimony # 6. Requesting a Do Not Pass on SB 2269.

Senator Anderson I always like to try and solve the problem for everybody and for you and the others in the room, if we said that, a metes and ground description should be recorded, but the county auditor must order a survey and grant that with an out lot within a certain period of time, I am wondering if that would satisfy all parties involved?

Debbie Kroshus If the auditor puts their transfer stamp on it, we record it. We don't check legal descriptions as was stated earlier. We don't make sure the legal description matches the owner or anything else. So, as far as my office goes, my concern is it's easier for the general public when they come in to do land searches.

Senator Anderson But we could say that has to be within a certain period of time, whereas if they have to do it right away then they ought to get a surveyor and attach that price to whatever the taxes are. So, if somebody comes in in 30 days the survey is not going to be done but in a reasonable amount of time, it could be done.

Debbie Kroshus I don't know how to answer that. If the auditor transfers it, we record it.

Ann M. Johnsrud McKenzie County Recorder, written testimony #7.

Gary Emter (1:02:01-1:04:52) Director of Tax Equalization and Land Use Administrator from Mercer County. I work with metes and bounds descriptions every day. I assist the county auditor and the recorder in trying to determine where some of these properties are without a survey that is attached with the deed. We've been very fortunate to get the recorder and auditor to get the plats when required, but as mentioned earlier, the time frame is getting to be a problem. We're not in the oil area, but we are close enough where we do have a lot of activity with transfers. We also had deadlines we need to know where some of these properties are for taxation purposes. We have a cut-off of June 30, where we make splits so that our assessment records match our tax records when those tax statements go out. We

are getting legal descriptions in June that we acquire a plat, and we don't know where that property is and it's going to go past that June 30 date and that new owner is not going to get a tax statement. The previous owner is going to get the property tax statement back to him even though he is going to own it for 6 months out that year. A plat is not usually required, if you're doing title insurance on a home, on a 5 acre parcel, or a title opinion, I would think you would want to know or make sure that house is sitting within that 5 acre parcel. I think that is what the title opinion is supposed to do. If you want to put some clarity to this, why don't you just pass a bill that says a plat has to be attached to a metes and bounds description or a metes and bounds deed. That would probably take care of some of the problem also. It might be a problem between some abstractors and some county auditors where they are not seeing eye- to- eye. I don't think this is a problem state-wide.

Dana Larsen County Engineer for Ward County (1:05:19-1:08:35) Written testimony # 8.
Do Not Pass.

Senator Anderson Being from Ward County, explain to me how for example at Rice Lake, if somebody leases property so somebody can put their cabin there, or an alternate south of town. How is that done so that they can file their lease or whatever?

Dana Larsen replied most of the property out there is subdivided. I am not aware of too often that it's leased out. There is quite a few of small lots that already exist in Rice Lake, they are currently combining lots and they are following the planning and zoning process and combining those lots.

Senator Anderson So typically the plat is done and then you can look at it to see what one you're buying and can base it off the plat that is there already. Dana Larsen pretty much all of them all have out lots and blocks around the lake and I don't picture this as an issue in Ward County. I could that if the bill was passed that if an individual was unsuccessful in going through the planning and zoning process, or didn't want too, or new it wouldn't be successful, that they would try this avenue. With the individuals that do work and live in Ward County, I don't think they would be an issue, but we've had some individuals come into our county that try to see off stuff and sell the lots and get out of town. This could be avenue they could use to create some problems down the road for us.

Senator Judy Lee (Ex. Cited 1:10:10- 1:10:29) The survey wouldn't really be necessary because you may have a legal document which you choose to record about the lease, but the ownership of the land is still mine even if the house is yours. If I sold you the lot, that would be a whole different deal because of land title transfer on the lot, then the survey would be required. So, if I am not thinking clearly, please fix me up.

Dana Larsen That's the way I read it. As far as I know that is the way that I understand it.

Daniel Narum (1:11: 35-1:13:21) Planning and Zoning Director from Morton County. My concern relates to Chap. 11-33.2 of the Century Code which regulates subdivision of land. Ex. Cited. It doesn't seem abundantly clear in the language of this bill that this would not apply to a new subdivision of land. Other planners around the state have also expressed these concerns. This could be used to undercut a subdivision ordinance or local government.

Mike Montplaisir Cass County Auditor Written testimony # 9 sent to Senator Judy Lee via email.

Senator Bekkedahl asked Ms. Kessler It is my assumption, but we're probably dealing with since the state was platted initially, on the NW quarter and all of that stuff. I call it the grid system. My assumption is that were dealing with a minority of cases probably on both side of this issue. The majority of cases involve platted entities or platted deeds. I was trying to figure what is the simplest solution. What if the bill changed to require a plat, that metes and bounds property deeds prior to any sale transactions. So you're not in this situation of the GAP situation and you're not in the situation of the person afterward having to change to a plat system that costs them money. To me the cost burden should be on the seller, not on the buyer. Does that help your situation and give credibility to what you are trying to do? Can we fix it that way?

Michelle Kessler I realize that it probably does seem like metes and bounds are the minority. But even in the minority we're talking about thousands and thousands of legal descriptions across the state. In every county there are several hundreds to a thousand of them because this shear amount of land that we're talking about. So I think to impose that restriction on a owner of land that before you can sell your property you have to have it platted would halt a lot of transactions. I agree what Senator Lee said about following up with a letter following after the transfer.

Chairman Burckhard closed the hearing on SB 2269.

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee

Red River Room, State Capitol

SB 2269

2/13/2015

Job Number 23817

Subcommittee

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a deed or contract for deed that contains a metes and bounds legal description.

Minutes:

"Click to enter attachment information."

Chairman Burckhard opened the committee for discussion on SB 2269.

Senator Anderson we are waiting for some amendments on this bill. It would require the auditor but that they should immediately after the.

Senator Grabinger Personally I won't support it anyway even with an amendment. I can't support it. I agree with the thought that this is more of a communication issue. I received an email from the Association of Counties suggesting if maybe they need to work harder on the responsibilities in that area. I do think it is a conflict in certain areas and I don't think we pass laws for that.

Senator Judy Lee Terry Traynor had sent a message to us this morning to the committee, while ND Association of Counties had not presented formal testimony yesterday, regarding this bill, I will note that I recorded on opposition on the sign in sheet and wanted to make it perfectly clear that our association is strongly opposed to the legislation. Our county officials I believe explained our concerns quite well and I will not reiterate the potential problems we see this bill causing. It appears that the legislation is primarily trying to address what appears to be a conflict in one county and we hope to address that conflict with education and discretion. It is state law for all counties to solve and interpretation issue in one county does not seem prudent. We urge a do not pass recommendation.

Senator Judy Lee it is absolutely true that there was one incident that caused this. There ought to be a law deals and I just have to disagree with my good friend Ray Holmberg about this one.

Chairman Burckhard We think that issue isn't near in Cando, in whichever county that is in.

Senator Dotzenrod it seemed like it's pretty clear that we can't pass this bill. The real problem if you were to have a law like this would where there's subdivisions and economic development in new housing and where there is 100 lots, and that sort of thing. If you could really be opening up a big problem area that right now we don't have. Is the problem that is going on there in Cando; if it's by nature of the fact they don't have this growth going on. If you went to parts of the state where there isn't the growth is it more of a problem there. Where I am at, I've never heard of this as being an issue. Evidently there are people there, that have some personality differences and differences of opinion about should be done. It is pretty clear that we can't pass this.

Chairman Burckhard Michelle Kessler was so well prepared. I was impressed by that!

Senator Bekkedahl I did hear from my county recorder and received her input which was do not pass recommendation. When those people speak about an issue like this they are pretty knowledgeable. I do take that concern. The one area and I don't know if we addressed this or if there is a way to address it. Ex. Cited (4:52- 5:41) How do we make sure that the ones that either never go to the planning process to the county, cannot use this or the ones that go there and are denied.

Terry Traynor Association of Counties I guess to try and answer your question, that is the biggest concern that we have is the circumventing the subdivision process. The possibility either unknowingly or intentionally to avoid that and it creates a confusion and it's very unfair to the people that buy the property then with the assumption that I've got this 5 acres and I can go build on it when in fact you cannot because it has never been subdivided and created into a subdivision. Yes, you own the property, but you really don't own the right to build. It is really unfortunate. It is much more of a concern in a developing area but, and I agree, as I stated it, that the problem is in in Rolette County. There the auditor is not exerting her authority to actually incur the cost to do the survey and then bill it back. That is what we've encouraged her to do. There it isn't a development process as much as they have properties with very poor metes and bounds decisions. They aren't going 103 ft. off the section line pin, they are going 103 ft from the oak tree, or the center of the driveway and that may not be there. It is her contention that on those sorts of descriptions they need a plat before they will record it again. I can understand if it's a good solid metes an bounds description, and its' already been recorded and there is no reason why they shouldn't record it. But it really becomes a judgment call.

Senator Bekkedahl So, is there some way that the Association of Counties could take the lead on this issue so it doesn't come back next session, or at least try to clear up what we've discussed in committee.

Terry Traynor Absolutely, but I can certainly say yes we're going to try it. The auditors have consciously made an effort now to become more organized. They have asked us to find and employ an Executive Director for the Auditor's Association. That will be Donnell Presky. This year what we need to do is address several issues but this one notably because it came before the committee and come up with a standard model policy. If you get a metes and bounds description, no matter what county you're in, this is the policy. If it is a multiple development sort of situation, a brand new property, no, you immediately require them or do it yourself and then bill them. If it's a good solid metes and bounds

descriptions that is already recorded you can accept it. To have them develop what a good policy is and then through education try to get everybody on the same page. They are separately elected officials so it is difficult and a bit of coordination rather than mandate, but that is our intention to move that.

Chairman Burckhard, So Terry do you think you're going to have some discussion with that county auditor or recorder about this to try and resolve it? I kind of see it a young, aggressive, fairly knowledgeable attorney who sees this as an issue and it really seems like it is isolated issue.

Senator Anderson She wasn't the only one though. Chairman Burckhard Nick Hacker and Tony Weiler were seeing this also.

Terry Traynor That auditor has been there for as long as I have been here. We were aware of this before it came before the committee. We've been trying to work with her to basically get those surveys done. We have not had a great deal of success. It may take the voters up there to make a change. We think the law is appropriate is the way it is, because there are times when you probably should record and there are certainly times when you shouldn't be stamping it for recording. That becomes the auditor's judgment call and we think that is appropriate but we just hope that we can make it more uniform across the state.

Senator Judy Lee Mike Montplaisir is the auditor in Cass County and he sent an email to Senator Lee. (written testimony) This is the way somebody wanted to do a metes and bounds description of residential lots being sold. Example shown. Title companies at home have no trouble telling people that this is a requirement. It is way better to deal with this before the time of closing rather than having this as a surprise at the closing table and everybody is not happy with the charge. The buyer is going to be really ticked off if it happen after the closing and there's no way to go back after the seller. This is a communications issue.

Senator Bekkedahl From my information, the comment was made that some of these pieces of property are not large enough or valuable enough to even go through the survey process for a private entity to do that. So they become unmarketable to some degree with what is happening here. In those cases where the property comes back to the county, if it's totally unmarketable and at some point people just give up on this small parcel, at some point it may come back to the county, when it does that, do you know if the county then go through its own planning process and place a tax lien against that property for resale or set a minimum for the property for resale, or because to me that would be the time to clean this up.

Terry Traynor That is my understanding. If they can find a buyer, they will plat the property and include the cost of doing that in the price that they are willing to sell it for.

Chairman Burckhard If that is the \$500 example that Michelle Kessler gave does it make it then unsaleable if you got those additional costs in something that is only worth or sold for \$500?

Terry Traynor That can happen. What I have seen is the these small communities, small hamlets and towns, when they have individual lots the county will end up replating them as a larger tract of land and then sell it as one large lot.

Chairman Burckhard Asked the committee, We've got a do not pass thought going on here.

Senator Judy Lee, I move Do Not Pass on SB 2269.

Senator Grabinger 2nd

Roll call vote

5 Yeas 1 Nay 0 Absent

Carrier: Senator Judy Lee

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2269
2/20/2015
24208

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Minutes:

Written attachment #1 Grant Shaft

Chairman Burckhard opened the committee for discussion on SB 2269. All senators were present. The reason we are bringing this back to discuss is I think there was some amendments suggested that I did not, I don't know if they came in a timely fashion or if I just missed it. While we've got time, we haven't voted yet on the floor, so for that reason we are going to bring it back today and it's not a hearing but we will have reasons to ask questions of people that are in the room.

Senator Anderson Don't we have to move to reconsider, or is that automatically been forced when it was sent off the Senate floor.

Senator Judy Lee We didn't send it back.

Senator Dotzenrod I move that we reconsider the action by which we passed SB 2269.

Senator Anderson 2nd.

Roll call vote: 5 Yea, 1 No, 0 Absent

Chairman Burckhard: Motion passes

Chairman Burckhard In front of you there should have a copy of amendment from Grant Shaft, Registered Lobbyist # 423. The amendment reads and this would be the last three lines on page 3. " *The auditor may not deny the legal transfer of a deed or a contract for deed under this section or any other section based upon the presence of a metes and bounds legal description if the metes and bounds legal description was obtained from a previously recorded instrument*".

Senator Anderson Previously, even with the other language that we had in the bill, it's said that the auditor needed to record it, but the auditor could still request that there be a survey in the plat file. Of course, previously what they were objecting to is the auditor was requiring that before they would file it but we still had the provision that he could require it afterwards and attach it to the price. This seems to have excluded both of those options. So, now the

auditor accepts it and puts it in the book, and my question is, what happens if we discover that there's two neighboring metes and bounds titles that claim some of the same property? What does the auditor do?

Nick Hacker (4:14-9:20) North Dakota Land Title Association. We did not introduce this bill it came from the Bar originally. We saw what that bill was trying to fix and circulated some ideas and looked at the Bar for the amendment before you today. Senator Anderson's question actually is taken care in a different part of the Century Code that allows the auditor to require a survey at any time on any parcel of land for the purposes of being able to assess that property appropriately. So were not taking that away with this amendment, they still have that ability to require a survey at any time after or before. There is kind of 3 sections of code that we balance here to identify whether or not we can record a metes and bounds legal description deed. Number 1, is Section 47 addresses the recorder must record that previously recorded metes and bounds deed. The problem is not when it comes in front of the recorder; the problem is getting it to the recorder because each deed or conveyance must go in front of the auditor's office first to be assigned a tax parcel identification. So, where they are getting hung up is in the auditors' office to ensure that they can appropriately assign the correct taxes. What the amendment really does it very much narrows the topic to really agricultural land, farm land and certain lake properties. If you have farm land that runs around a lake or the Missouri River, those are many times defined with a metes and bounds legal description and what this amendment does is assures that we don't have to survey those every time we want to resell them. (Ex. Cited) This amendment would assure that the auditor's offices cannot force a survey after we've already closed meaning that money has been exchanged and the deed is sitting there. There are several counties that are starting to require this prior to the closing and it questionable, so what this does is it creates clarity.

Senator Anderson Sometimes when we pass a law, and the attorney's get to arguing about what is the law, then they look at the last law passed as the one that takes precedence. How do you see this coming in here if the auditor wanted to require a survey and the other guy didn't?

Nick Hacker The good news is I am not a lawyer. I would foresee that both sections are interpreted separately and distinctly. This has got to do with the use of the prior legal description so that it would be clear that you would interpret that as they did not address the other section of the code which would allow the auditor to continue to require those surveys.

Senator Judy Lee Just because it was done by surveyors 100 years ago, doesn't mean that it isn't better technology in the stuff that has been discovered since, especially with adjoining properties. I can't imagine you wouldn't want this cleared up before closing. I spent a lot of time and had sold a lot of properties in my real estate life and the last thing we wanted was to have anything come up after closing. We wanted everybody to know what was going on before so that not only was the title clear, but the costs were appropriately distributed among the parties that were involved. So, I just can't imagine what the big deal is here, if the contract says 30 days, that is really subject to having clear title, everything else is moving if there is a loan the loan is approved in an appropriate length of time. You know, sometimes you can't close in 30 days. That is the way it is.

Nick Hacker What exactly is the question? **Senator Judy Lee** You are counting on something that is old description continuing to be accurate, are you really saying that, or do you really believe that these are always accurate?

Nick Hacker We are fairly confident to tell they are always accurate and issue title insurance on those as well. We have to carry E&O insurance when title insurance is not issued to cover for any errors that could occur. We don't find the errors occur that often I guess is what the point is.

Senator Judy Lee I would agree that errors don't occur that often, but the title insurance you are issuing almost always in most areas of the state is to protect the lender. A buyer doesn't get title insurance unless they purchase it. In some areas it was mentioned there aren't a lot of people who buy it, in most areas of the state from what I understand very few buyers do it. Certainly it is true in my area. So, your protecting the lender with a title insurance and your off the hook in that regard but the buyer still has all of his or her equity at stake if there is a problem with the metes and bounds description. I am glad it doesn't happen very often, but why would we want it fixed all the time?

Nick Hacker We have relied upon these legal descriptions for a 100 years and we're pretty confident. We don't see the relevance of the error, and for some clarity, Owners Title Insurance is purchased on about 99% of the transactions in Grand Forks, about 80% of the transactions in Bismarck and Mandan; about 80% in Minot and even higher when we get further west. **Senator Judy Lee** By the buyers as well as the sellers? **Nick Hacker** By the buyers. **Senator Judy Lee** Well the buyers pay for it anyway. I wouldn't say it is statewide. **Nick Hacker** My point is that it isn't statewide. In Fargo it is maybe 5% of the transactions so it changes and is different between markets.

Nick Hacker To clarify the problem is not errors in the surveys, the problem is there is a lack of clarity of whether or not a survey is going to be required. So, the challenge is that from county to county and sometimes from day to day, the requirement changes within the auditors' office because it is up for interpretation. So there are transactions. If we want to talk about risk to a buyer, that is where the enormous risk is because that buyer is technically on the hook for a loan and a mortgage and that mortgage is not secured by the real estate yet.

Senator Dotzenrod When we had this bill in here earlier, one of the real problems with the bill was that people could go outside of a city where there is some growth and they could take some land and create a bunch of lots. Then they could out and start selling them based on metes and bounds description. Now do you feel that with this amendment that you've offered you have really solved that problem because now, if we were to adopt this amendment they wouldn't be able to record it, because the new subdivided property would not have a previous metes and bounds description. Is that your position? You've solved the problem that we saw when we had the original bill.

Nick Hacker Does this preclude the county from requiring a platting of the property? The answer to that is no it does not.

Senator Dotzenrod I think the committee wanted to make sure that any of these subdivisions that occurred that we know that we have confidence that they are going to be not described by metes and bounds. That they are going to have a survey and a plat that will accompany and we wanted that assurance and the bill we had in front of us did not provide us with that assurance. We voted to do not pass that bill. Are you saying that you've that now if we adopt this amendment that based on the language you're using in here that they are not going to be able to take a metes and bounds because these subdivided lots won't have a previously recorded metes and bounds.

Nick Hacker That would be up to the subdivisions. There is one short chapter in the century code but it allows the county to require that platting. Any subdivision on land has to be platted so once we take a parcel and we define it in a different way so we cut it in half. That would be considered a subdivision of land which then would require depending on the county planning and zoning oversight and approval and approval by the county commission so that we don't have those awkwardly described subdivisions. That occurs in statute today.

Chairman Burckhard What section of the code is that? **Nick Hacker** Didn't know where it was located.

Senator Dotzenrod I want to get to what the words are in this proposal that you have here. The proposal says at the end, ' was obtained from a previously recorded instrument'. In these cases of someone going out and dividing up some land into 100 different lots, there would not be a previously recorded instrument that would have those 100 lots described in metes and bounds. So, I think that what I see when I read this is your offering us is an amendment that solves the issue that we had, that is someone is not going to be able to do that, independent of what the county says or what the options they have and the rights they have to require it. This looks to me this amendment says that is not going to happen under the provisions of this amended version.

Nick Hacker Yes, your correct. The way the Century Code works today they are allowed to, the auditor can deny that deed if is an attempt to subdivide and create goofy parcels. What the amendment does is, it says as long as we don't change the legal description of that property, that we can continue to close with that legal description, not subdivided or changed or altered.

Chairman Burckhard, Terry Traynor do you have any thoughts about the amendment?

Terry Traynor Association of Counties Yes, I would agree that I think it does address the one issue raised by the engineers and the planners at the last hearing about subdividing property. It doesn't address the problem of insufficient metes and bounds descriptions that already exist. We know there are some out there. There may be 2 in 14,000 and there maybe more. But, this amendment would in our view, eliminate the counties ability to stop that from being recorded again, because if the auditor is prohibited from stopping, approving the transfer it will be recorded. It will be recorded with that insufficient metes and bounds description. It will move ahead, theoretically, the auditor could later require a plat, but it would be very difficult to find the motivation have it recorded. As long as that hasn't been recorded there is a motivation to get that done and get it done right. We feel that

you're taking this away with this amendment and I don't think it happens often because often those metes and bounds descriptions are approved. But when they shouldn't be, they shouldn't be.

Chairman Burckhard Could the two sides get together to hammer out a solution or is that something that we have to try and legislate?

Terry Traynor I don't think restricting the auditors authority in this area is something that our auditors are going to be agreeable too.

Senator Grabinger I have in my notes, where in the first part of this, instead of saying or rather than saying the auditor may not deny it says, the auditor must show just cause for denial or not deny. Would that give them the latitude to make that call still?

Terry Traynor If you're saying that the auditor has to show just cause to deny, I think that would be a reasonable compromise, as long as they have the authority to deny.

Senator Bekkedahl My question is about small tracts that really are not worth plat survey expenditures. Is there any way to put a valuation limit on say if a tract didn't exceed \$250 valuation, it could be continued under this process? I am really trying to make this easier for everybody and I am thinking about that instance where you have a tract that is maybe only worth \$100.00 and you're not going to spend \$3000 on a survey. Can you answer that question?

Terry Traynor I understand the concern that you raise. I don't know how you do that if it's a blatantly bad metes and bounds description. McLean County brought up the question as they have metes and bounds descriptions that have cut parcels out of metes and description. Then someone comes in and tries to rerecord that original metes and bounds description even though there is other deeds out there that have taken chunks out of that. That might be one of those parcels. You would be perpetuating really a false description and yes it would be nice to say absolute draw a line, but I don't know how you do that.

Senator Anderson I see the Burleigh County auditor in the audience, I would like to ask his opinion is about this.

Kevin Glatt Burleigh County Auditor and Treasurer I believe Senator Anderson asked my opinion. I would say that the auditor's and recorders in North Dakota are not in favor of this amendment. They do not believe that it does anything. We do not have to resurvey every time a property is sold. Previously recorded metes and bounds may not help matters. (Ex.Cited) Again as I stated in the original hearing, my concern is that if an auditor's plat is required and done at the closing time it will revert an innocent purchaser from getting burdened with the cost. That is my biggest concern.

Senator Judy Lee When we had the hearing and I also had an email from someone in another county, who was concerned also with about the ability to with metes and bounds descriptions. So you would like to comment on that?

Kevin Glatt I know that I had discussed this with the recorder in Burleigh County and

it is very tough to search the public record when they are using an metes and bounds description. An irregular plat it is stated, Auditors lot A of the NW quarter of section 12, 138.80.

Senator Bekkedahl Is there language or what it be appropriate somewhere in statute that requires the platting of properties where its required by the auditor be paid for by the seller or precede the transaction? What I am hearing is some of these people get burned with this and have to pay for it afterwards. So can you answer that question?

Kevin Glatt I know a lot of counties now are, we won't deny a description being recorded. What we do is we try to work with everybody so that it's done at the closing time and so it's not done afterwards. Somebody who buys a piece of land isn't burdened with the cost of doing a plat, afterwards. The seller is gone, the transaction is closed. (Ex. Cited)

Senator Judy Lee I understand where Senator Bekkedahl is going but I think that might be a little mico-managing. It would be something that I think most folks would see as part of the negotiations. The whole deal is just don't surprise me. But the point is the buyers and sellers need to know up front. You can negotiate somebody paying the taxes for the whole year even though they were closing on June 27. So I would and I think it would be a little awkward if we looked at requiring it to be paid by a certain party because it's part of the negotiation. Everybody knows what is going on.

Senator Bekkedahl I understand that if I am buying a piece of property and it's required to have a plat document and there's a cost involved, even if the seller pays for it I am ultimately paying for that as the buyer because its adjusted into the purchase price. It was good thing to hear the others say their goal is to have that done before the closing happens which it I think makes it cleaner for everybody. At least there is transparency and disclosure at that point.

Senator Judy Lee I got a message from the McKenzie County recorder in Watford City asking for a do not pass. We need to survey all these parcels for the benefit of all. She is particularly concerned about the public trying to search information on metes and bounds legal descriptions. There is a difference between a survey subdivision plat, and auditor's lots. A subdivision is a formal process before the planning commission and it does take some time. Cass County has two levels of formal subdivisions minor and major. An auditor's lot is basically a survey with a title and a legal description usually a one page document. The survey is just that a drawing of the parcel. Senate bill 2269 simply says that we, the auditors can't refuse to transfer a deed or contract for deed. We can't refuse it now and I don't know of anyone refusing to transfer them now. When they record a deed with a metes and bounds description we look at it and see if it requires a formal plat to be done so it is already recorded now. Or in an auditor's lot which needs to be created. Through education we hope that sellers research before selling land whether the new owners will either have either create a subdivision plat or an auditor's lot. There is a difference between the cost of a subdivision plat and auditor's lot and a difference in the amount of time involved. Subdivisions have to go through an approval process, auditor's lots do not. Usually dividing land for residential or commercial purposes. A minor subdivision may one to 4 lots a major subdivision is more than 4 lots. The dividing line detracts not less than 10 acres to be used as agricultural does not require a plat in our county. The purpose of the

subdivision requirements is for orderly development and to make sure that the developer is dedicating access to the lot for roads and utilities. An example is there is a group of 14 houses on old Highway 10 between West Fargo and Mapleton where there is no recorded access to some of the homes. In parts of it the developer put the road on the lots that people owned and other people have to drive on that road to get to their house. In other parts of it the road was just left over from the original parcel which ended up being up a parcel all of its own. All of this was done with metes and bounds descriptions. We require auditors lots in the division does not result in a requirement for a formal subdivision and the division has more than 4 corners of 90 degrees each and where a split is not anchored in not anchored in the quarter section. We require these both in the rural area and in the city where the description is difficult to follow. Auditor's lots are less expensive in subdivision plats because they are just as describing a legal description and are not dedicating anything to the public and there is no approval process for an auditor's lot. It is simply to survey certifying that it is an accurate survey of the lot. I don't believe the recorder can refuse to record the deed, however, they may be forced to go through the subdivision regulation or the auditor's lot process following recording. The authorization of the auditor to require an auditor's lot is in section 57-02-39. We request the auditor lot if it isn't filed at the time of deeding and can contact to have it done, if the owner doesn't do it voluntarily and assess the cost against the parcel. We hope to never have to do that, we try to work with the owner to get it done and so far we have been successful.

Chairman Burckhard So, it was suggested earlier, by Mr. Hacker, that this amendment creates clarity. You say, is there clarity there, no.

Mr. Hacker I don't believe the amendment does anything. I don't think it clarifies anything. It is just my opinion.

Senator Grabinger something to the amendment if we added that one line in it, where I read before ' *the auditor must show just cause for denial or main not deny the legal transfer of the deed or the contract for deed...* ' and continue on with the amendment that was presented to us. I think that does add something. It may not make this bill good enough to pass it, regardless, but I think it does add to the bill and is important.

Chairman Burckhard So repeat that word for word so we can... **Senator Grabinger** well in-between auditor and may, we would simply add "must show just cause for denial or".

Senator Judy Lee How do we define just cause because a lawyer will some day?
Senator Grabinger I don't know if it is in code anywhere.

Senator Anderson Your working with the amendments and you're putting that language in there; the auditor must show just cause for denial or may not deny, is that what you're saying.

Senator Grabinger then it continues up, your auditor must show just cause for denial or may not deny the legal transfer. It just adds that, that is what I have. I can't tell you who recommended that, somewhere in our discussions.

Chairman Burckhard Is that kind of a motion?

Senator Grabinger I think Senator Lee raises a good question. I don't know not being an attorney whether or not just cause is spelled out in code anywhere or not. I don't know if anybody in here does know. I can't answer her question. So, to adopt this and put it into I don't know if were at point where we can do that if we don't even know that it is capable of being in there.

Senator Judy Lee A county recorder brought this to my attention. I just want to know, if the people who want this amendment have contacted any county auditors in the last 24 hours since that is when this has come up about this amendment and whether or not they've gotten any feedback from county auditors about what that amendment might do? Because this recorder doesn't think that any auditors and recorders were contacted about the impact of the amendment. I am wondering if you did talk to someone and she's is just unaware of it.

Nick Hacker, ND Land and Title Association After the initial hearing we had a little powwow, with everybody draft from the hearing outside this door which included a few recorders and one of the recorders was an auditor. I am a member of a planning and zoning department for one of the counties, and we applied to the group email and yes this looks good to us. So I can't decide whether I reached out directly to all the members of the North Dakota Association of Auditors with the amendment or if Ms. Kessler did or Grant Shaft did.

Senator Judy Lee So you didn't ask the Association of Counties to send any communication. Did you talk to the Association of Counties and as a result of that if you did have a conversation as far as you know is there any information sent out to all of the auditors for some feedback?

Nick Hacker I can't say what the Association of Counties did but we did reach out to them.

Senator Judy Lee I just wondered what kind of communication you had with other auditors in the state about this particular amendment, not the bill. I know there was earlier communication but about this amendment.

Terry Traynor This particular amendment we haven't seen until this morning. We did see a different amendment late yesterday and I did send that out to all of the individuals that participate in the first hearing and their associations and let them know this was being proposed. But at that time, it was on the calendar for the Do Not Pass and we assumed that it was going to continue that way.

Senator Grabinger To move this along, I will move the adoption of this amendment as I previously stated.

Chairman Burckhard can you repeat that for me one more time. **Senator Grabinger** then restated how the amendment would read, "*the auditor must show just cause for denial or may not deny the legal transfer of a deed or contract for deed under this section or any other section based upon the presence of a metes and bounds legal description if the metes and bounds legal description was obtained from a previously recorded instrument*".

Chairman Burckhard Is there a second to that?

Senator Bekkedahl 2nd

Senator Anderson The rest of it is not the same either. We are looking at previously. Chairman Burckhard Did I say that incorrectly?

Senator Grabinger We are working off of the amendment that was presented to us from Grant Shaft.

Roll Call Vote 6 Yea, 0 No, 0 Absent

Senator Anderson I will move a Do Not Pass on SB 2269 as amended
Senator Judy Lee 2nd

Senator Dotzenrod One thing I want to ask about this proposed amendment here is that the 3rd word from the end is previously. Is the word previously, is that unclear and would it recent and previous? Does previous mean something that occurred at some time in the recent would be different than that. I don't know?

Nick Hacker ND Land Title Association. Actually this is a very good point. I recall Mr. Traynor made some comments about maybe this whole metes and bounds description has changed a couple of times and there has been some things that could've used. If we said previously, technically we would be able to record them as this older description. So the point is really well made because where our concern is just recording it in this description, so it should technically be 'prior recorded instrument'. We don't want to be going back to metes and bounds described legal descriptions from much earlier. We just to be able to record the land as described in the most recent conveyance. It wasn't taken from a prior recorded instrument.

Senator Dotzenrod Mr. Hacker used the word prior and again I am wondering, does prior mean most recent. No.. It seems to me that you should say from 'the most recent recorded instrument'. You would strike two words, strike *a* and *previously* and you would insert '*the most recent*'.

Nick Hacker We have to clarify instrument as well. There is a lot of oil and gas leases out there, that are recorded metes and bounds descriptions. There is a lot of mortgages and they don't require a platting, only through conveyance documents require platting. So it should be the most recently recorded conveyance instrument.

Senator Dotzenrod To clarify my motion to further amend. I would strike the words *a previously* and insert *in lieu thereof*, forwards the most recent conveyance recorded instrument. Four new words.

Senator Grabinger 2nd

Senator Anderson refused to undo his motion. It is a Do Not Pass on 2269 as amended.
Roll call vote in reverse order.

4 Yea, 2 No, 0 Absent

Carrier: Senator Judy Lee

15.0651.01001
Title.02000

Adopted by the Political Subdivisions
Committee

February 20, 2015

2/20/15
Jae

PROPOSED AMENDMENTS TO SENATE BILL NO. 2269

Page 3, line 1, replace "The" with "Unless the auditor shows just cause for denial, the"

Page 3, line 3, remove "of the property meets the"

Page 3, line 4, replace "requirements of section 47-19-03.1" with "was obtained from a
previously recorded instrument"

Renumber accordingly

Date: 2.20.15
Roll Call Vote: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2269

Senate Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 15.0651.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Grabinger Seconded By Senator Bekkedahl

Senators	Yes	No	Senators	Yes	No
Chairman Burckhard	X				
Senator Anderson	X		Senator Dotzenrod	X	
Senator Bekkedahl	X		Senator Grabinger	X	
Senator Judy Lee	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

SB 2269: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2269 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2269: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2269 was placed on the Sixth order on the calendar.

Page 3, line 1, replace "The" with "Unless the auditor shows just cause for denial, the"

Page 3, line 3, remove "of the property meets the"

Page 3, line 4, replace "requirements of section 47-19-03.1" with "was obtained from a previously recorded instrument"

Renumber accordingly

2015 TESTIMONY

SB 2269

SB2269
2.12.15
#1

**SENATE BILL 2269
SENATE POLITICAL SUBDIVISIONS HEARING
SENATOR BURCKHARD, CHAIRMAN
February 12, 2015
GRANT H. SHAFT, REGISTER LOBBYIST #423**

**TESTIMONY OF GRANT H. SHAFT ON BEHALF OF
REAL PROPERTY, PROBATE AND TRUST SECTION OF THE STATE BAR
ASSOCIATION OF NORTH DAKOTA**

Mr. Chairman and members of the Committee:

My name is Grant H. Shaft and I am a licensed North Dakota attorney and for the past 22 years have chaired the Real Property, Probate and Trust Section of the State Bar Association of North Dakota ("the Section). The Section is the largest within the Bar Association and is comprised of attorneys who concentrate their practices in the areas of real property, estate planning, probate and trust work.

Senate Bill 2269 has been introduced at the request of the Section in an effort to add clarity and uniformity to the process of recording deeds as it relates to the county auditor's role in accepting the transfer of the land being conveyed.

Attorney Michelle Kessler of Cando, ND will be appearing before your committee today and providing testimony as she has direct experience with the issue Senate Bill 2269 intends to address. Interestingly, I am not appearing in person as my Grand Forks County auditor does not deny deed transfers based on the presence of a metes and bounds description as does Ms. Kessler's Towner County auditor. This underscores the need for the clarification provided in Senate Bill 2269.

On behalf of the Section, I urge your support of Senate Bill 2269. Thank you.

**Grant H. Shaft
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(701)738-0124
Email: grant@shaftlaw.com**

Mr. Chairman and members of the committee, my name is Michelle Kessler. I am here today from Cando. I'm in favor of this bill because it impacts my business as an attorney and as the owner of an abstract company. This bill is meant to clarify and solidify the language of § 11-13-12 regarding the duties of a county auditor.

TWO steps in the process of recording a deed - ~~record~~ tax transfer
There are several statutes dealing with metes and bounds descriptions. Under 47-19-03.1, a metes and bounds description is acceptable if the deed states that it has been previously recorded OR if the name is given of the person who drafted the description.

Under 57-02-39, a County Auditor can require the survey of a property described by metes and bounds. Here, if the auditor requires a survey and the landowner doesn't get the survey within 30 days, the auditor can order the survey herself and assess the cost against the taxes for that land. OR, the auditor can create an auditor's lot. That section contains its own remedies.

What is happening with my clients, and around the state, is that the auditors don't like to pay for surveys and then wait for the taxes to come due. The auditor I deal with most often doesn't like making auditor's lots either.

Even though 11-13-12 says that the auditor SHALL transfer property when taxes and special assessments are paid, the auditors are using 57-02-39 as a way around that requirement to approve a tax transfer.

By doing that, the county doesn't have to pay for the survey OR create an auditor's lot. The auditor is also not required to get its own survey, but will simply wait, holding the buyer and seller's transaction hostage until they get the survey. The auditors are putting the burden on the landowner to carry out the auditor's authority under 57-02-39, which was enacted with its own options for enforcement built in, giving the auditor that extra authority to deal with metes and bounds descriptions she determined to be unacceptable.

The statement I hear again and again is that "There's no statute saying I *can't* do it."

When an auditor denies the transfer of property, simply because it is described by metes and bounds, and even though it complies with all statutes, there are numerous negative consequences.

In most cases, the transfer is denied after the closing took place. Money has changed hands. In every case, there were no flaws in the chain of title. There were no missing parts of the descriptions. The deeds were all drafted exactly as required by statute. But when the buyer shows up to record the deed, the auditor simply says no. "Because it doesn't say I *can't*."

And sometimes the auditor approves the transfer. But we never know when that is going to be and it is seemingly on an arbitrary basis. There is no way to know when the metes and bounds are acceptable and when they are not. With this bill, the auditor cannot use her transfer power to try and enforce a different statute that already has its own remedies built in.

Without this bill, the auditor has discretion over which metes and bounds descriptions are

acceptable. The auditor is never going to refuse a tax transfer of property that the county sells. So county property is never subject to the survey requirement. I have seen numerous cases where the county forecloses on property because of delinquent taxes. And then the county sells that property using a metes and bounds description—because the county doesn't want to pay for a survey. But when the person who purchased that property tries to sell it, the county says the legal description it used is no longer good. The county has decided that it doesn't need to survey the property it sells, because they are the ones enforcing the rule they have made.

I have seen instances where a railroad deeded abandoned track to an adjacent landowner. The county does not require the railroad to get a survey before the auditor allows the tax transfer. All of those deeds are approved.

The effect is that some people and entities are allowed to sell their property when they comply with the statutes, and others are not.

This bill is necessary to provide clarity. Without it, closing procedures are disrupted. Buyers and lenders are furious because funds have already been dispersed at the closing table, and they have no legal title to the property because the auditor refuses to act.

Deeds are sent from attorneys' offices all over the state, to all different counties. And every real estate attorney knows that if a metes and bounds description has been previously recorded, it is entitled to be recorded again. But deeds are rejected for tax transfer on a daily basis because auditors have found a loophole. And those attorneys from other parts of the State have to explain to their clients that, even though they did everything right, and even though they already paid for the property, different auditors in different counties are reading this one statute differently.

This bill tells the auditor that even if a property is described by metes and bounds, the auditor may not refuse the transfer when the taxes are paid. After that transfer takes place, the auditor can still require a survey. That authority and opportunity is not being taken away from the auditor.

By refusing a tax transfer through this loophole, the auditor leaves the property open for the creation of new title flaws when none had existed at the time of the sale. In the months after the deed is rejected by the auditor, a judgment against a seller could be placed against the property when none existed at the time of the sale. An unscrupulous seller could mortgage the property because they appear to still be the record title owner. And when it can take at least a month, on average several months, and even as long as a year in some parts of the state to get a surveyor out to the property, the likelihood of title flaws arising and new liens placed against the property, from a person who should no longer be in the title, only increases.

Another reason for needing clarity on this statute came up recently in my practice. I had a client who wanted to deed away some property because he was advancing in age. So I drafted a deed and used an existing legal description. That legal description had actually come from a survey and plat from years ago. But the county auditor rejected the tax transfer for the sole reason that the property was described by metes and bounds. As we were trying to figure out what to do and

SB2209
2.12.15
#2.3

how my client could come up with the money for the survey, my client passed away. Because the auditor refused the transfer and because she continued to refuse the deed he had executed during his lifetime, the land had to be probated—something my client was specifically trying to avoid through estate planning.

I have heard the argument from one auditor, that without a survey, she cannot tax the property. So she MUST have a survey before allowing a tax transfer. But the problem with that argument is: the property is already being taxed. It is being taxed under a metes and bounds description that, in many cases, has existed for 100 years—and it will continue being taxed. If the auditor determines that she cannot properly tax a property, she has 57-02-39 designed to fix that problem. Waiting to fix a taxation problem until after a sale, but before allowing the new buyer to own the property, is not the solution to that problem if and when it arises.

Without this bill, auditors are affording themselves discretion on when they can allow tax transfers and when they can refuse tax transfers. And that takes away the certainty and uniformity required in real estate transactions. Real Estate transactions need to be a uniform process throughout the state due to a uniform set of laws in the century code. However, because of this loophole and the varying ways auditors are applying the current statute, attorneys, lenders, and closers have no certainty that a deed that is recordable in one county will also be recordable in another.

This could not have been the intention of N.D.C.C. 11-13-12, or 57-02-39.

These are the reasons I am in favor of this bill and why I hope you will give it a do pass.

SB 2269
2.12.15
#3

**TESTIMONY TO THE
SENATE POLITICAL SUBDIVISIONS COMMITTEE**
Prepared by Kevin J. Glatt, Burleigh County Auditor/Treasurer
2/11/15

SENATE BILL 2269

Mr. Chairman and members of the committee, this testimony is in opposition to SB2269.

Metes and bounds descriptions are difficult for landowners, assessing officials, county auditors, county treasurers, and county recorders to follow. Auditor's plats (aka – auditor's lot & plats of irregular description) are maps (pictures) that describe the property contained in a metes and bounds description.

Current law allows auditors to require an auditor's plat on a piece of property that is divided into irregular shapes which can be described only by metes and bounds. If the owner does not comply the auditor can hire a surveyor and bill the owner. If the landowner does not pay the bill – the auditor can assess the costs as a special assessment on the property taxes.

County auditors have found through experience that it is much better to have an auditor's plat done at the time of a real estate transaction closing – rather than after. If an auditors plat is done at the time of closing both parties are aware of the cost – and arrangements can be made to split the cost. If an auditors plat is required and is done after closing the new owner maybe "stuck" with the cost.

Mr. Chairman and members of the Senate Political Subdivisions Committee the county auditors around the state feel this bill is unnecessary - as things are working well – and when needed, the costs of an auditors plat are disclosed upfront and become a part of the transaction. This will help avert an innocent purchaser getting burdened with the cost.

Mr. Chairman, I respectfully request a DO NOT PASS for SB2269.

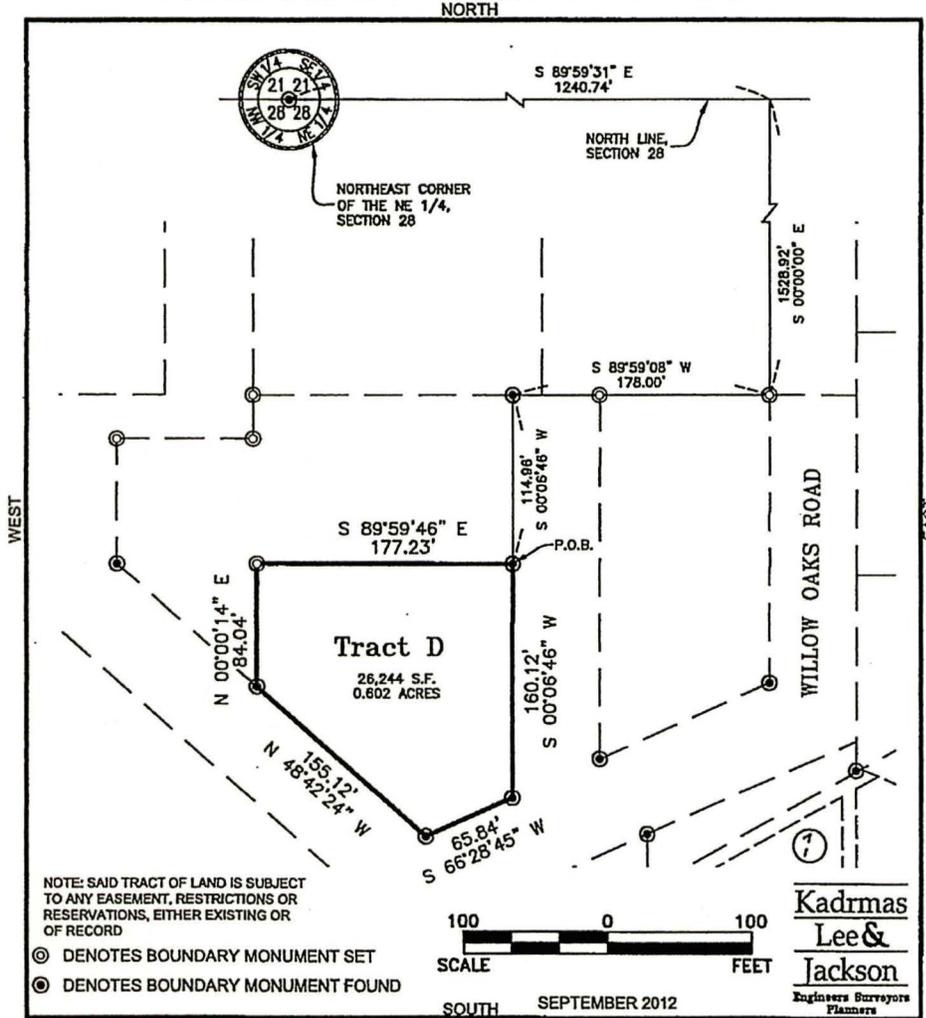
SB2269
2.12.15
3.A

PLAT OF IRREGULAR DESCRIPTION (Sec. 57-02-39-N.D.C.C.)

PLAT OF

TRACT D IN GOVERNMENT LOT 4 Section 28 ,Township 138 ,Range 80

Present Owner EVELYN BRIESE



NOTE: SAID TRACT OF LAND IS SUBJECT TO ANY EASEMENT, RESTRICTIONS OR RESERVATIONS, EITHER EXISTING OR OF RECORD

- ⊙ DENOTES BOUNDARY MONUMENT SET
- ⊙ DENOTES BOUNDARY MONUMENT FOUND

Kadmas
Lee &
Jackson
Engineers Surveyors
Planners

SEP 21, 2012 -- 1:29pm -- J:\misc\1610198-MikaBriese-IntPlat\CADD\1610198-TRACT D.dwg

Description

TRACT D IN GOVERNMENT LOT 4 Section 28 ,Township 138

Range 80 , described as follows:

A TRACT OF LAND LYING IN GOVERNMENT LOT 4 OF SECTION 28, TOWNSHIP 138 NORTH, RANGE 80 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BURLEIGH COUNTY, NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

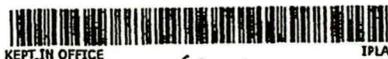
COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 28, THENCE ALONG THE NORTH LINE OF SAID SECTION 28, S 89°59'31" E FOR 1240.74 FEET; THENCE S 00°00'00" E FOR 1528.92 FEET; THENCE S 89°59'08" W FOR 178.00 FEET; THENCE S 00°06'46" W FOR 114.96 FEET TO THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING, S 00°06'46" W FOR 160.12 FEET; THENCE S 66°28'45" W FOR 65.84 FEET; THENCE N 48°42'24" W FOR 155.12 FEET; THENCE N 00°00'14" E FOR 84.04 FEET; THENCE S 89°59'46" E FOR 177.23 FEET TO THE SAID POINT OF BEGINNING.

SAID TRACT CONTAINS 26,244 SQUARE FEET OR 0.602 ACRES MORE OR LESS.

Taxes and special assessments paid, all liens created under section 57-02-08.3 satisfied, if any, and TRANSFER accepted this 5 day of

February 20 13
 Kevin J. Platt
 Burleigh County Auditor
 Debra M. Shanley
 Deputy, Burleigh County

38-138-80-0008-250



Debbie Kroeker

781194

\$13.00
 Page: 1 of 2
 2/5/2013 9:51 AM
 Burleigh County

SB 2269
2.12.15
#3.B

THIS INDENTURE, Made this 22nd day of November in the year of our Lord one thousand nine hundred and seventy-two between George Briese a/k/a George A. Briese and a/k/a George Briese, Jr., husband of grantee, whose postoffice address is Rural Route, Bismarck, North Dakota, part Y of the first part, and George A. Briese and Evelyn Briese, husband and wife,

~~XXXXXXXXXXXX~~ as joint tenants, and not as tenants in common, with right of survivorship, whose postoffice address is Bismarck, State of North Dakota, part ies of the second part;

WITNESSETH, That the said part Y of the first part, for and in consideration of the sum of

One dollar and other valuable consideration-----DOLLARS- to him in hand paid by said parties of the second part, the receipt whereof is hereby acknowledged. do es by these presents GRANT, BARGAIN, SELL and CONVEY unto the said parties of the second part, as joint tenants, and not as tenants in common, their assigns, the survivor of said parties of the second part, and the heirs and assigns of such survivor, FOREVER, all the tract or parcel of land lying and being in the County of Burleigh, and State of North Dakota, and described as follows, to-wit:

All that fractional part of the East One-Half (E½) of Section 28, Township 138 North, Range 80 West in Burleigh County, North Dakota, bounded by and lying within the following described traverse:
Beginning at a point which is south a distance of 1528 feet, west a distance of 238' and south a distance of 114.98' from the Northeast Corner of the Northwest Quarter of the Northeast Quarter of said Section 28; thence South a distance of 160.12', thence south 66° 16', west a distance of 66.18', thence north 48° 44', west a distance of 155.32', thence north a distance of 83.95', thence east a distance of 178' to the point of beginning, which tract contains 0.61 acres more or less.



SB2269
2.12.15
#4.A
NDSPLS ADMINISTRATIVE OFFICE
1811 East Thayer Avenue
Bismarck, ND 58501
Phone: 701-222-3499
Fax: 701-222-0103
E-mail: info@ndspls.org
Website: www.ndspls.org

SB 2269 Testimony

February 12, 2015

Chairman Burckhard and Committee Members:

My name is Curtis Glasoe. I was born and raised in North Dakota, graduated from NDSU in engineering, the home of the four time NDSU National Championship Football team, spent two years in the US Army during the Viet Nam era. I have practiced engineering and land surveying for over 46 years in North Dakota, South Dakota, Montana, and Idaho. I have resided in North Dakota for over 50 years. I am currently licensed to practice Land Surveying and Engineering in Montana, South Dakota, and the Great State of North Dakota.

I am the National Society of Professional Surveyors (NSPS) Governor for North Dakota and the Legislative Co-Chairman of the North Dakota Society of Professional Land Surveyors (NDSPLS). This State Society is made up of over 320 members. There are approximately 500 Registered Land Surveyors and over 50 dual registrants in Engineering and Land Surveying in North Dakota. Some 185 of these registered people live and practice in the State of North Dakota.

I am here to testify in opposition to SB 2269. This Bill, as amended, will put the cart before the horse. This bill will set up a survey process that will be more costly to do for the public and provide many opportunities to get the intended property boundary in the wrong place. It is our job as Surveyors to put the deed description of the property on the ground. When no survey is done prior to the description, many times the description does not fit or match the ground as intended by the seller and/or buyer. This usually creates conflicts with adjoining property boundaries. The Surveyor is put in a tough spot to interpret where the intended boundary should be placed on the ground.

It is a big help to include the description preparer's name and address requirements of section 47-19-03.1 in this bill amendment, but this will not solve the miscommunications that metes and bounds descriptions cause for Surveyors in placing the boundaries on the ground. It is my experience when the deed writer is no longer living, the description is again open to be interpreted in many different ways.

Therefore, I urge a DO NOT PASS recommendation from this Committee on SB 2269.

Thank you.

Curtis W. Glasoe, PE and PLS #2439
NSPS Governor
NDSPLS Legislative Co-Chairman

SB2269
2.12.15
4.1

RIGHT OF WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, (whether one or more) _____ (hereinafter _____) for a good and valuable consideration, the receipt whereof is hereby acknowledged do hereby grant unto _____, an incorporated cooperation association, organized under the laws of the State of North Dakota (hereinafter called the _____ whose post office address is _____ and to its successor or assigns, an easement for the purposes hereinafter provided, upon the lands of the undersigned, situated in the _____ State of North Dakota and more particularly described as follows:

A 20 foot strip of land centered on the following line: from a point at 47.183020N 100.866305W, thence westerly to a point 47.183190N 100.869522W thence westerly to a point 47.182998N 100.870966W thence northwesterly to a point 47.184503N 100.875865W located on the western edge of the quarter, thence a 20 foot wide strip located along the western edge of the easement north to the northern edge of the NE ¼ of Section 30, Township 143N, Range 80W

This easement is for overhead and underground electric distribution facilities of the _____ on or under the above-described property and all abutting streets, roads, and highways. The easement shall include only that part of the above-described land for the facilities as constructed, either existing or to be constructed. The _____ all have the following rights:

1. Ingress to and egress from the easement over the lands _____ such right to be exercised so as to cause the least practical damage and inconvenience to _____.
2. To operate, inspect, maintain and repair its facilities.
3. To cut, trim and control by chemical means, machinery or otherwise, trees shrubbery within the easement, or that may interfere with or threaten to endanger the maintenance of said facilities.
4. To keep the easement clear of all buildings, structures or other obstructions.
5. To correct any violation of the National Electric Safety Code clearance requirements caused by construction hereafter of any buildings, structures or other obstructions within the easement, at the _____.
6. To construct new facilities and extensions of existing facilities, to be located as mutually agreed upon between the _____.
7. To make changes, alterations, improvements, removals from, replacements of, and substitutions and additions to its existing facilities.
8. To license, permit or otherwise agree to the joint use or occupancy of the overhead lines or the trench and related underground facilities, by any other person, association or corporation.

Damages upon the above described land by the _____ either for construction, maintenance, or removal of _____ will be paid for by the _____ Damage claims will either be mutually agreed upon or by a third party adjuster if an agreement cannot be made. All damage claims will be initiated by the Owner.

The undersigned agree that all facilities installed in, upon or under the lands within the easement at the _____ expense shall remain the property of the _____ removable at the option of the _____.

Page: 1 of 2

SB 2269
2.12.15
#5

SB 2269

Past president of the NDSPLS. *Steven M. Langlie*

Since North Dakota became a State in 1889 and the public land survey system were completed in the 1870's, subdivision of land has been done based on this original survey. The original survey has been used as the original plat. Our counties use this system for Recording and Taxation. Surveyors have surveyed using this same system. We subdivide property and create deed based on Plats. Well metes and bounds description have served well on some application such and Easement, these legal descriptions for deeds and contract for deeds could undermine the system that has served the state well.

NDSPLS would Urge a Do Not Pass on this bill.

SB2269
2.12.15
#6

TO: Chairman Randall A. Burckhard, Senate Political Subdivisions Committee

From: Debbie Kroshus, Burleigh County Recorder

RE: SB 2269

Chairman Burckhard and Committee Members,

My name is Debbie Kroshus and I am the Burleigh County Recorder and a member of the North Dakota County Recorders Association. I am requesting a DO NOT PASS on SB 2269 asking to amend Section 11-13-12 to require the auditor to accept a metes and bounds legal description on a deed.

Not only would this amendment be a burden to the county auditors, assessors, treasurers, recorders and the land owners but also to the general public when searching land records. A metes and bounds land description is very hard to try to translate into an index understandable by the general public. It would be up to the public searching land records to disseminate what property is involved.

Chapter 57-02-39 allows the auditor to require an auditor's plat or irregular plat to be drawn up with a new legal description defining such areas prior to a real estate transaction closing. These drawings from surveys are very beneficial to the public as it better defines the actual land being split off. This drawing makes it quite clear where the property is, the dimensions, and it gives the document a legal description easy to index and be understood by the public. This method currently used in many counties works well for all involved. Mr. Chairman, Committee members, I respectfully request a DO NOT PASS on this bill.

Thank you.



Debbie Kroshus
Burleigh County Recorder

SB 2269
2.12.15
#7

Burckhard, Randall A.

From: Johnsrud, Ann M.
Sent: Wednesday, February 11, 2015 9:35 AM
To: Bowman, Bill L.; Burckhard, Randall A.; Anderson, Jr., Howard C.; Bekkedahl, Brad; Dotzenrod, Jim A.; Grabinger, John; Lee, Judy E.
Subject: SB 2269

Chairman Burckhard and members of the Committee,

My name is Ann Johnsrud, McKenzie County Recorder and member of the ND County Recorders Association. I am writing to ask for a DO NOT PASS on SB 2269. This bill is asking to amend Section 11-13-12 requiring Auditors to accept a meets and bounds legal description on a deed or contract for deed. We currently all DO accept these documents, but require a survey to be attached, which is a drawing of the property lines of the irregular parcel. This gives recorders, auditors, treasurers and other a clear legal description which makes indexing and searching the legal document after recording painless for all involved. This process works well for all counties who either do Auditor's lots, Outlot plats or Irregular Tract plats. Taking this away would greatly impact all county offices and the public in an adverse way.

Please give a DO NOT PASS to SB 2269.

Thank you for your time.

Ann M. Johnsrud

Ann M. Johnsrud CPO
McKenzie County Recorder
101 5th St NW Suite 523
Watford City ND 58854
Phone 701-444-3616 Ext 4
Fax 701-444-3902

SB2269
2.12.15
#8.1



Ward County Highway Department

900 13th St. SE • P.O. Box 5005 • Minot, ND 58702-5005 • (701) 838-2810 • Fax (701) 838-3801

**Testimony Regarding Senate Bill 2269
Senate Political Subdivisions Committee
Prepared by: Dana G. Larsen, PE, Ward County Engineer
February 12, 2015**

Chairman, and Committee members, I would like to express my concern over SB-2269 relating to County auditor must allow transfers with metes & bounds description. I am not sure what the intent of SB 2269 was but it has the potential to cause a lot of problems. If the bill was to pass, an individual would be able to subdivide property and sell that property without using a professional survey and could circumvent planning and zoning and review from any public entity like townships, water boards, cities, and county departments. This would not be a major problem on a large track of land, i.e., selling off 40 acres of a quarter of agricultural land that is easily described, but it could be used to potential create an entire subdivision without the use of a professional surveyor.

Essential, anyone would be able to look up example of a metes & boundary survey, draft a document, and provided that document is "executed by an individual, by acknowledgment by the person executing the same" (NDCC 47-19-03.1) the auditor may not deny the legal transfer of a deed or contract for deed under this section. There would be no professional involved in the process which would create a lot of problems.

1. The metes and & boundary survey may not be correct and there would be no monument pins placed to define the area of purchase or any other requirement a survey is required to do.
2. Individual could sell off land that may not meet minimum requirements for building or setbacks or other planning and zoning ordinances.
3. The responsibility to determine if the survey is correct would fall to the county auditors who most like would not have expertise in working with metes & boundary surveys or the ability to calculate the affected acres.
4. Multiple sales could happen in an area, essentially creating a subdivision without any improvements to support the development with new owners now looking to local government to correct the problem.

I don't know if the bill was meant to potential circumvent the subdivision process and the use of professional surveyors, but because of the vagueness of the bill, an individual or company could very well do both. I would strongly encourage each of you to give SB-2269 a Do Not Pass recommendation.

SB2269
2.12.15
#9

Judy Lee

From: Montplaisir, Michael <MontplaisirM@casscountynd.gov>
Sent: Thursday, February 12, 2015 10:31 AM
To: Judy Lee
Subject: RE: SN 2269

There is no provision of requiring a survey unless you require an auditor's lot that I know of. We don't require an auditor's lot if the description is simple, such as area with no more than four 90 degree corners, anchored in the corner of a 1/4 section. For instance if a deed comes in for the SE 1/4 of the SE 1/4 of Section 2, we would not require an auditor's lot because anyone should be able to understand and figure out where the parcel lies.

Michael Montplaisir, CPA
Cass County Auditor
montplaisirm@casscountynd.gov
701-241-5600

-----Original Message-----

From: Judy Lee [<mailto:judylee1822@gmail.com>]
Sent: Thursday, February 12, 2015 10:19 AM
To: Montplaisir, Michael
Subject: Re: SN 2269

Do you require surveys for land transfers? NW 1/4 of SW 1/2, etc,?

Sent from my iPhone
Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
Home: 701-282-6512
Email: judylee1822@gmail.com

> On Feb 12, 2015, at 9:45 AM, Montplaisir, Michael <MontplaisirM@casscountynd.gov> wrote:

>

> We just restarted with requiring auditor's lots on meets and bounds descriptions, it just go too complicated. I don't understand the bill though, we would never refuse to transfer a deed, what we do is send them a letter after the fact and require it to be platted. Ideally, the seller has it platted before he sells off a piece so the buyer knows what he or she is buying. Attached is a deed recorded in December that we are requiring the new owner to plat as an auditor's lot. We have the requirements listed on our web site, have held a meeting with closing companies and realtors so that they know up front what the requirements are so the seller and buyer can work together before the property is transferred. If not, we send out a letter after the deed is recorded and the new owner ends up bearing the cost.

>

> The bill doesn't do anything, we still would have the authority to require an auditor's lot, and we would already transfer the property.

>

> <https://www.casscountynd.gov/county/depts/Auditor/announcements/Pages/AuditorsLotAnnouncement.aspx>

> The above link will take you to our auditor lot procedures on the web.

> Michael Montplaisir, CPA
> Cass County Auditor

SB2269
2.12.15
#9.1

> montplaisirm@casscountynd.gov

> 701-241-5600

>

> -----Original Message-----

> From: Judy Lee [<mailto:judylee1822@gmail.com>]

> Sent: Thursday, February 12, 2015 9:33 AM

> To: Montplaisir, Michael

> Subject: SN 2269

>

> What is your position on metes & bounds

>

> Sent from my iPhone

> Judy Lee

> 1822 Brentwood Court

> West Fargo, ND 58078

> Home: 701-282-6512

> Email: judylee1822@gmail.com

>

> <recent deed.pdf>

SB2269
2.12.15
9.2

Judy Lee

From: Montplaisir, Michael <MontplaisirM@casscountynd.gov>
Sent: Thursday, February 12, 2015 10:39 AM
To: Judy Lee
Subject: RE: SN 2269

Here is another one Judy, developers have begun to sell buildings and describe the building footprint as meets and bounds. Try to follow that description without an engineering degree!

Legal Description

WOODHAVEN 3RD PT LT 3 BLK 1 DESC AS
FOLL: BEG AT SW COR OF LT 3 N N
04DG40'49"" W ON ASSM BRG ON THE W LN OF LT 3 A DIST OF 62.12' THN N 85DG23'02""
E A DIST OF 153.99' TO THE PT OF BEG,
THN CONT N 85DG23'02"" E A DIST OF 72'
THN S 04DG36'58"" E A DIST OF 31' THN N
85DG23'02"" E A DIST OF 2' THN S
04DG36'58"" E A DIST OF 21.50' THN S
85DG23'02"" W A DIST OF 21' THN S
04DG36' 58"" E A DIST OF 1.50' THN S
85DG23'02"" W A DIST OF 17' THN N
04DG36'58"" W A DIST OF 1.50' THN S
85DG23'02"" W A DIST OF 10' THN N
04DG36'58"" W A DIST OF 20.50' THN S
85DG23'02"" W A DIST OF 24' THN N
04DG36'58"" W A DIST OF 11' THN S
85DG23'02"" W A DIST OF 2' THN N 04DG
36'58"" W A DIST OF 21' TO THE PT OF BEG

Michael Montplaisir, CPA
Cass County Auditor
montplaisirm@casscountynd.gov
701-241-5600

-----Original Message-----

From: Judy Lee [<mailto:judylee1822@gmail.com>]
Sent: Thursday, February 12, 2015 10:19 AM
To: Montplaisir, Michael
Subject: Re: SN 2269

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Sent from my iPhone
Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
Home: 701-282-6512
Email: judylee1822@gmail.com

> On Feb 12, 2015, at 9:45 AM, Montplaisir, Michael <MontplaisirM@casscountynd.gov> wrote:

SB2269
2.12.15
#9.3

>
> We just restarted with requiring auditor's lots on meets and bounds descriptions, it just go too complicated. I don't understand the bill though, we would never refuse to transfer a deed, what we do is send them a letter after the fact and require it to be platted. Ideally, the seller has it platted before he sells off a piece so the buyer knows what he or she is buying. Attached is a deed recorded in December that we are requiring the new owner to plat as an auditor's lot. We have the requirements listed on our web site, have held a meeting with closing companies and realtors so that they know up front what the requirements are so the seller and buyer can work together before the property is transferred. If not, we send out a letter after the deed is recorded and the new owner ends up bearing the cost.

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> The bill doesn't do anything, we still would have the authority to require an auditor's lot, and we would already transfer the property.

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> <https://www.casscountynd.gov/county/depts/Auditor/announcements/Pages/AuditorsLotAnnouncement.aspx>

>
> The above link will take you to our auditor lot procedures on the web.

>
> Michael Montplaisir, CPA
> Cass County Auditor
> montplaisirm@casscountynd.gov
> 701-241-5600

>
> -----Original Message-----
> From: Judy Lee [<mailto:judylee1822@gmail.com>]
> Sent: Thursday, February 12, 2015 9:33 AM
> To: Montplaisir, Michael
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> What is your position on metes & bounds

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> <recent deed.pdf>

SB 2269
2.12.15
9.4



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Page: 1 of 10
12/15/2014 8:00 AM
WD \$37.00

BRUDVIK LAW OFFICE

RECORDER'S OFFICE, CASS COUNTY, ND 12/15/2014 8:00 AM
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
JEWEL A. SPIES, COUNTY RECORDER

by Teresa A. Kerby, Deputy 1434760



Warranty Deed

This deed is made by **Vernon D. Liebelt & Judith M. Liebelt, Husband and Wife, Shereen M. Liebelt, a single person, Kris D. Liebelt, a single person, Kent D. Liebelt & Alexi Janai Liebelt, Husband and Wife, and Richard M. Liebelt & Cynthia A. Liebelt, Husband and Wife**, Grantors, to **Tyler K. Odegaard and Beth A. Odegaard, husband and wife**, Grantees, whose post office address is 16799 52nd Street SE, Kindred, North Dakota 58051. For valuable consideration, Grantors grant and convey to Grantees as **joint tenants** the following real property (the premises) located in Cass County, North Dakota:

The Northeast Quarter (NE $\frac{1}{4}$) of Section Twenty-six (26), in Township One Hundred Thirty-seven (137) North of Range Fifty-one (51) West of the Fifth Principal Meridian, situate in the County of Cass and the State of North Dakota,

LESS: A tract and parcel of land lying in the Northwest corner of the NE $\frac{1}{4}$ of Section 26 in Township 137 North, Range 51 West, which tract of land herein conveyed lies with the following lines, to wit:

Commence at the Northwest corner of the aforesaid said NE $\frac{1}{4}$ of said Section 26, thence follow the quarter line South for 38 feet, thence follow the quarter line South for 10 Rods, more or less to a point (said point being at the Southwest Corner of the existing cemetery plat as heretofore conveyed from said quarter), said point being herein established as the point of beginning; Thence, starting at this point of beginning follow the quarter line South for a distance of 40 feet; thence turn to the East and follow a line running Easterly and parallel to the North quarter line for a distance of 16 rods and 25 feet; thence turn to the North and follow a line running Northerly and parallel to the West Quarter line for a distance of 50 feet and 10 Rods; thence turn to the West and follow a line running Westerly and parallel to the North Quarter for a distance of 25 feet, more or less, to the East line of the existing cemetery

32-0000-03128-000



SB2269
2.12.15

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Page: 2 of 10
12/15/2014 8:00 AM
WD \$37.00

BRUDVIK LAW OFFICE

tract Easterly line; Thence turn to the South and follow this Easterly Cemetery line Southerly for a distance of 10 Rods (being the Southeasterly corner of said existing Cemetery 10 by 16 Rods), thence turn to the West and follow the South line of said Cemetery tract in a Westerly direction to the West quarter line (being 16 rods, more or less) to the Point of Beginning; and

LESS: A tract of land situated in a portion of the Northeast Quarter (NE¼) of Section Twenty-six (26) in Township One Hundred Thirty-seven (137) North, Range Fifty-one (51) West of the 5th Principal Meridian, Cass County, North Dakota, being more fully described as follows:

Commencing at a found iron monument which designates the Northeast corner of said Section 26; thence North 90 degrees 00 minutes 00 seconds West, on an assumed bearing on and along the North line of the Northeast Quarter of said Section 26, 1157.38 feet to an iron monument; thence South 01 degrees 00 minutes 20 seconds West, 1042.41 feet to an iron monument, said iron monument being the point of beginning; thence South 62 degrees 07 minutes 38 seconds East, 207.69 feet to an iron monument; thence South 41 degrees 11 minutes 38 seconds East, 65.03 feet to an iron monument; thence South 16 degrees 57 minutes 01 seconds East, 131.99 feet to an iron monument; thence South 01 degrees 19 minutes 12 seconds East, 498.19 feet to an iron monument; thence South 76 degrees 51 minutes 19 seconds West, 264.74 feet to an iron monument; thence North 77 degrees 50 minutes 08 seconds West, 163.43 feet to an iron monument; thence North 33 degrees 37 minutes 51 seconds West, 492.61 feet to an iron monument; thence North 02 degrees 03 minutes 42 seconds East, 568.59 feet to an iron monument; thence South 88 degrees 11 minutes 44 seconds East, 264.49 feet to an iron monument; thence South 36 degrees 36 minutes 06 seconds East, 216.66 feet to the point of beginning. Said tract contains 12.07 acres, more or less; and

LESS a tract of land situated in a portion of the Northeast Quarter (NE¼) of Section Twenty-six (26) in Township One Hundred Thirty-seven (137) North, Range Fifty-one (51) West of the 5th Principal Meridian, Cass County, North Dakota, being more fully described as follows:

Commencing at a found iron monument which designates the Northeast corner of said Section 26; thence North 90 degrees 00 minutes 00 seconds West, on an assumed bearing, on and along the North line of said Northeast Quarter, 1140.42 feet to an iron monument, said iron monument being the point of beginning; thence South 01 degrees 01 minutes 50 seconds West, 1051.59 feet to an iron monument, said iron monument being on a line of previously surveyed tract per Doc. #1072265; thence North 62 degrees 07 minutes 38 seconds West, on and along a line of said previously surveyed tract per Doc. #1072265, 18.91 feet to a found iron monument; thence North 36 degrees 36 minutes 06 seconds West, on and along a line of said previously surveyed tract per Doc. #1072265, 216.66 feet to a found iron monument; thence North 87 degrees 11 minutes 44 seconds West, on and along the most Northerly line of said previously surveyed tract per Doc. #1072265, 19.69 feet to an iron monument; thence North 01 degrees 03 minutes 05 seconds East, 868.00 feet to an iron monument, said iron monument being on the North line of said Northeast Quarter of Section 26; thence North 90 degrees 00 minutes 00 seconds East, on and along the North line of said Northeast Quarter of Section 26, 168.60 feet to the point of beginning. Said tract contains 3.70 acres, more or less. Said tract is subject to easements, restrictions, reservations and rights, whether of record or not, if any. (Survey Attached)



SB2269
2.12.15
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1434760
Page: 3 of 10
12/15/2014 8:00 AM
WD \$37.00

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An easement for ingress and egress over, across and under the following described parcel:

A tract of land situated in a portion of the Northeast Quarter (NE¼) of Section Twenty-six (26) in Township One Hundred Thirty-seven (137) North, Range Fifty-one (51) West of the 5th Principal Meridian, Cass County, North Dakota, being more fully described as follows:

Commencing at a found iron monument which designates the Northeast corner of said Section 26; thence North 90 degrees 00 minutes 00 seconds West, on an assumed bearing, on and along the North line of said Northeast Quarter, 1140.42 feet to an iron monument, said iron monument being the point of beginning; thence South 01 degrees 01 minutes 50 seconds West, 1051.59 feet to an iron monument, said iron monument being on a line of previously surveyed tract per Doc. #1072265; thence North 62 degrees 07 minutes 38 seconds West, on and along a line of said previously surveyed tract per Doc. #1072265, 18.91 feet to a found iron monument; thence North 36 degrees 36 minutes 06 seconds West, on and along a line of said previously surveyed tract per Doc. #1072265, 216.66 feet to a found iron monument; thence North 87 degrees 11 minutes 44 seconds West, on and along the most Northerly line of said previously surveyed tract per Doc. #1072265, 19.69 feet to an iron monument; thence North 01 degrees 03 minutes 05 seconds East, 868.00 feet to an iron monument, said iron monument being on the North line of said Northeast Quarter of Section 26; thence North 90 degrees 00 minutes 00 seconds East, on and along the North line of said Northeast Quarter of Section 26, 168.60 feet to the point of beginning. Said tract contains 3.70 acres, more or less.

EXCEPTING AND RESERVING UNTO THE GRANTORS ALL RIGHT AND TITLE IN AND TO ANY AND ALL OIL, GAS, AND OTHER MINERALS IN AND UNDER THE SAID REAL ESTATE.

Grantors covenant that they are well seized in fee of the premises, which they have the right to sell and convey, and which are free from encumbrances except those of record. Further, they covenant they will warrant and defend the premises in the quiet and peaceable possession of the Grantees.





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Page: 9 of 10
12/15/2014 8:00 AM
WD \$37.00

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"I certify that a report of the full consideration paid for the property described in this deed has been filed with the North Dakota State Board of Equalization."

Signed: Annunella Jonduland Date: 12-10-14
Grantee or Agent

"The legal descriptions were prepared by Rittenhouse & Assoc., Inc., 15 21st S. Ste. 205, Fargo, ND 58103-1435, Phone: 701-237-6542."

This deed was prepared by:
Brett A. Brudvik
Brudvik Law Office, P.C.
PO Box 547
Mayville, ND 58257
(701)788-3251

AUDITOR'S OFFICE
COUNTY OF CASS, NORTH DAKOTA

Dec 15 20 14

Taxes and Special Assessments paid and transfer entered.

Michael Montclair AUDITOR
Sub DEPUTY



SB2269
2.20.15
#1

**SENATE BILL 2269
SENATE POLITICAL SUBDIVISIONS HEARING
SENATOR BURCKHARD, CHAIRMAN
February 19, 2015
GRANT H. SHAFT, REGISTER LOBBYIST # 423**

**TESTIMONY OF GRANT H. SHAFT ON BEHALF OF
REAL PROPERTY, PROBATE AND TRUST SECTION OF THE STATE BAR
ASSOCIATION OF NORTH DAKOTA**

Mr. Chairman and members of the Committee:

The Real Property, Probate and Trust Section of the State Bar Association of North Dakota supports the proposed amendment to Senate Bill 2269 whereby the following language is adopted:

"The auditor may not deny the legal transfer of a deed or contract for deed under this section or any other section based upon the presence of a metes and bounds legal description if the metes and bounds legal description was obtained from a previously recorded instrument".

I urge your support of an amended Senate Bill 2269. Thank you.

**Grant H. Shaft
Shaft Law Office
P.O. Box 5495
Grand Forks, ND 58206-5495
(701-738-0124)
Email: grant@shaftlaw.com**