

2019 HOUSE POLITICAL SUBDIVISIONS

HB 1165

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

HB 1165
2/7/2019
32411

- Subcommittee
 Conference Committee

Committee Clerk Signature	Carmen Hickle	By: Elaine Stromme
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Explanation or reason for introduction of bill/resolution:

Relating to nonconforming structures

Minutes:

Attachments: 1 - 7

Chairman J. Dockter: Opened the hearing on HB 1165.

Rep. Vetter: (Attachment #1). Introduces the bill by reading his testimony.9:40

Vice Chairman Pyle: Have you visited with cities prior to coming here today?

Rep. Vetter: I haven't, but the person coming next has.

Dennis Huber: Real Estate Appraiser from West Fargo, 10:30 (Attachment #2)
Zoning ordinance

The updated zone code, you decide how big the lot size

You didn't apply the new rules

Non-conforming structures cannot be repaired, replaced or rebuilt if a major catastrophe happens.

Chairman J. Dockter: How often does this happen? 27:27

Mr. Huber: Fire departments in the United States are called out on one out of three hundred fifty-nine houses. But if it is a non-conforming structure it cannot be rebuilt. The way around this is to get a variance, but they aren't designed for that. Is eminent domain available for economic development? No we outlawed that. I hope that this committee will stand up for home owner property rights. 41:22

Rep K. Koppelman: Who wins when the houses are zoned historical?

Mr. Huber: I am not sure who wins. But of you are on the register of historic homes, that supersedes these other things.

Rep. Ertelt: Do you know the current status of the last case you spoke about?

Mr. Huber: I believe that they still live there.

Chairman J. Dockter: Anyone in opposition of HB1165?

Aaron Carranza: 43:40 Director of Regulatory Division for the Office of State Engineer: (Attachment #3) This is a zoning issue not a building permit issue. We oppose the language in Subsection 5 otherwise we are neutral to the rest of it.

Rep K. Koppelman: Have you been in contact with the sponsors of the bill?

Mr. Carranza: No, we have not. But we would like to work together to come up with a workable solution that doesn't jeopardize state participation and the federal program.

Bernie Dardis: President, Board of Commissioners in West Fargo. (Attachment #4). Any time you have a fire situation like you stated we would like those folks to come to us, the planning and zoning Commission to work on that on a one to one basis. Our city has changed very rapidly and that is a good thing. There are times where we have had to change our zoning. Non-conforming use and non-conforming structures are very different. In all due respect, this authority and decision making should be kept at the local level.

Rep. Ertelt: In a case there is substantial damage, if an individual comes to you, would you tell them to rebuild? Should individuals have to go before the city commission or zoning board to beg for their property rights to use the property in the same manner that it has been used?

Mr. Dardis: Has the property been damaged? I would hope that the city of West Fargo's, City commissioners and its staff would never ever have anyone have to beg to stay in their own residence. Having served on Governor Burgum's and Governor Dayton's joint task force, the gentleman that proceeded me that talks about flood insurance, the city of West Fargo is very fortunate to have built our Cheyenne Diversion, and much of our city is protected but at the same time the flood insurance issue of its self, if one has not studied that through FEMA, and through the National Flood Insurance program it could be absolutely devastating if we do not continue to change the zoning because it is the flood plain. There are many issues here that one would have to look at on a case by case basis. When the city of Fargo, when they recognized the issue the local authorities readdressed it and made it work. Those folks are still in their home. I remember reading about it. I thought it was an absolute tragedy. There are avenues that on a case by case would be addressed.

Rep K. Koppelman: Do you have any solutions for elderly people that don't know they can go to the city for help?

Mr. Dardis: I would think that any elected official would help if someone had issues with their local bank. That we would be receptive to find a solution to the issue that's at hand. Certainty that is what our community would do.54:30

Ken Vein: (Attachment #5) (Presented testimony from Howard Swanson, City Attorney for Grand Forks.) Howard has looked at this from two bases, one of them is legal as in the

language, and how it is presented and one would be more of the policy implications. So of that would be city planning, building inspections, such as building permits and the like.

Chairman J. Dockter: Anyone else in opposition?

Natalie Pierce: North Dakota Planning Association. 58:58 (Attachment #6). Read her testimony. I think the lenders could get more educated so there isn't such a rigid standard. The supporters of this bill are just looking at today, as planners we have to look 30 or 50 years down the line. You have new priorities' that come up with time, things change. Every community has to make that decision based on their priorities, that should not be done at a state level. The issues are on the planning and the lending side. There is a number of things wrong with this bill. 1:03:43

Rep K. Koppelman: Some cities have always done this on a local level. Is Fargo in trouble right now with flood insurance?

Ms. Pierce: It's not worded right in this bill; the way it is?

Rep K. Koppelman: So if the wording were repaired you think it would pass?

Ms. Peirce: On the flood insurance front that could be fixed, but there are other problems with this bill.

Chairman J. Dockter: Anyone else in Opposition with HB1165?

Russel Neubaum: 1:05:35 - I am the city coordinator and planning zone secretary, the building official, building inspector, and the flood plain manger, of Beulah, I see what's in the bill is needed in certain areas. Non-complying structure and non-complying zoning are two different things. The cost to the communities to re-write their codes would be a lot and some can't afford it.

Chairman J. Docker: Anyone else is opposition to HB1165?

Bill Wocken: North Dakota League of Cities. (Attachment #7).

Chairman J. Dockter: Closed the hearing on HB1165

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

HB 1165
2/14/2019
Job # 32815

- Subcommittee
 Conference Committee

Committee Clerk Signature	Carmen Hickle
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Explanation or reason for introduction of bill/resolution:

Relating to nonconforming structures

Minutes:

1

Chairman J. Dockter: Opens for committee work.

Rep. Ertelt: (Handout #1) Explained a proposed amendment. This to address the concern about flood plain management ordinances. Rep. Vetter could clarify it better. Made a motion to adopt the amendment.

Rep. Vetter: This sits in three sections of law that is why it is repeated three times. The purpose of the amendment is to take care of flood language refers back to the law so it takes care of the issues other than the argument over authority. The state engineers are okay with this but the planners in the cities are still opposed to the bill based on the authority argument.

Rep. Magrum: Second the motion.

Voice vote carried.

Rep. Magrum: Made a do pass as amended motion.

Rep. Ertelt: Second the motion

Rep. Johnson: Did you determine there are no conflicts (the rest inaudible).

Rep. Vetter: It only has to do with zoning, it has to meet all building codes.

Rep. Ertelt: The line of questioning I had during testimony this is a private property rights bill and when you are in a particular type of property so you can rebuild after you sustain damage and not incur a financial detriment. You would have to repurpose the property to another type of zone and if you tried to sell it you might not be able and could incur cost by having to take down the structure.

Rep. Longmuir: I am going to resist this bill. If you build an industrial park around a residential house it creates issues. When you start taking zoning versus building that's the issue, I do think a person should be able to rebuild their residential house if it's still in a residential area.

Rep. Ertelt: Its really what this bill is all about and if you are opposed to that you are opposed to the nature of the bill. It's about that being rezoned into a different zone. It's about being rezoned out of your home or other property.

Rep. Longmuir: You will see in some communities where there is a residential structure and other things around it, I have an issue with the safety factor.

Rep. Fegley: I have seen damage beyond 50%, what I have seen is refurbishing something costs more that to build new.

Vote yes 6, no 7, absent 1. Failed

Rep. Adams: Made a do not pass as amended motion.

Rep. Longmuir: Second the motion.

Rep. Simons: This bill can make it so you are zoned out of your own property?

Rep. Ertelt: This bill is to protect against that.

Rep. Adams: We owed commercial property, on that property was two non-conforming rental houses. Where they sit is now zoned a commercial area, if anything happens to the houses they cannot be rebuilt. We could not replace them for the cost if they were damaged. The city doesn't go and rezone they pull in the whole area around.

Vice Chairman Pyle: I think of main street through Casselton and the older lots are 50 foot lots and new the building code is 75 foot lots. If any were to burn down they can go to the variance board, which all communities have, and get permission to rebuild on the 50-foot lot. There are provisions out there.

Rep. Ertelt: What we heard in testimony is there are large blocks of land within cities and political subdivisions that fall under this non-conforming. A variance board puts the property owner in the position of not being a property owner. He is just a tenant and when some other board makes a decision on his property then he has to go in front of them and beg so he is able to use that property in the same manner that he has been using it.

Vote yes 7, no 6, absent 1.

Rep. Longmuir: Will carry the bill.

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

HB 1165
2/15/2019
Job # 32846

- Subcommittee
 Conference Committee

Committee Clerk Signature	Carmen Hickle
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Explanation or reason for introduction of bill/resolution:

Relating to nonconforming structures

Minutes:

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Chairman J. Dockter: Reopens HB 1165 for committee work.

Rep K. Koppelman: Made a motion to reconsider HB 1165.

Rep. Johnson: Second the motion.

Voice vote carried

Rep K. Koppelman: Made a do pass as amended motion using the same amendment that was approved prior.

Rep. Johnson: Second the motion.

Rep. Longmuir: If a house has been in a location and then is surrounded by commercial property it is not a safe situation.

Rep K. Koppelman: I feel if a property owner and the city has decided to put something else in that is okay. But if something happens to the home the homeowner should be able to rebuild. Let the owner put back what was there, they cannot make a larger structure just the same size that was there.

Chairman J. Dockter: Any further discussion? Seeing none.

Roll call vote: Yes: 9 No: 5 Absent: 0. Motion carries for a Do Pass as amended on HB 1165.

Vice Chairman Pyle: Will carry the bill.

Hearing closed.

February 14, 2019

DA 2/14/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1165

Page 2, line 4, after "and" insert "adhere fully to all applicable floodplain management ordinances;"

Page 2, line 6, replace "any other provision of law" with "subsections 1 through 3 of this section"

Page 2, line 7, remove "than this section"

Page 3, line 1, after "and" insert "adhere fully to all applicable floodplain management ordinances;"

Page 3, line 3, after "40-47-13" insert "and subsections 1 through 3 of this section"

Page 3, line 4, remove "than this section"

Page 3, line 28, after "and" insert "adhere fully to all applicable floodplain management ordinances;"

Page 3, line 30, replace "any other provision of law" with "subsections 1 through 3 of this section"

Page 3, line 31, remove "than this section"

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES *HB*
 BILL/RESOLUTION NO. 1165**

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: _____

- 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 Rep. Ertelt Seconded By Rep. Magrum

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:					
Vice Chairman Pyle:					
Rep. Ertelt:					
Rep. Fegley:					
Rep. Hatlestad:					
Rep. Johnson:					
Rep. K. Koppelman:					
Rep. Longmuir:					
Rep. Magrum:					
Rep. Simons:					
Rep. Toman:					
Rep. Strinden:					
Rep. Adams:					
Rep. Guggisberg:					

voice vote carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: Page 2 line, insert after "and" "adhere fully to all applicable floodplain management ordinances". Page 2 line 6, strike "any other provision of law" insert "subsections 1 through 3 of this section"
 Page 2 line 7, strike "than this section". Page 3 line 1 insert after "and" "adhere fully to all applicable floodplain management. Page 3 line 3 insert after "40-47-13" "and subsections 1 through 3 of this section". Page 3 line 4, strike "than this section".
 Page 3 line 28, insert after "and"; "adhere fully to all applicable floodplain management ordinances;"
 Page 3 line 30, strike "any other provisions of law" insert "subsection 1 through 3 of this section"
 Page 3 line 31, strike "than this section"

Date: 2-14-19
 Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES *HB*
BILL/RESOLUTION NO. 1165

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: _____

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 Rep. Magrum Seconded By Rep. Ertelt

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:		/			
Vice Chairman Pyle:		/			
Rep. Ertelt:	/				
Rep. Fegley:		/			
Rep. Hatlestad:		/			
Rep. Johnson:	/				
Rep K. Koppelman:	/				
Rep. Longmuir:	/	/			
Rep. Magrum:	/				
Rep. Simons:	/				
Rep. Toman:	/				
Rep. Strinden:	/				
Rep. Adams:		/			
Rep. Guggisberg:		/			

Total (Yes) 6 No 7

Absent 1

Floor Assignment _____

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

Failed

Date: 2-14-19
Roll Call Vote #: 3

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES ^{HB}
BILL/RESOLUTION NO. 1165

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 19.0358.05001

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 Rep. Adams Seconded By Rep. Longmuir

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:		/			
Vice Chairman Pyle:	/				
Rep. Ertelt:	/	/			
Rep. Fegley:	/				
Rep. Hatlestad:	/				
Rep. Johnson:		/			
Rep K. Koppelman:	/	/			
Rep. Longmuir:	/				
Rep. Magrum:		/			
Rep. Simons:		/			
Rep. Toman:		/			
Rep. Strinden:	/				
Rep. Adams:	/				
Rep. Guggisberg:	/				

Total (Yes) 7 No 6

Absent 1

Floor Assignment Rep. Longmuir

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

Date: 2-15-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1165

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: _____

- 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 Rep. Koppelman seconded By Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:					
Vice Chairman Pyle:					
Rep. Ertelt:					
Rep. Fegley:					
Rep. Hatlestad:					
Rep. Johnson					
Rep K. Koppelman:					
Rep. Longmuir					
Rep. Magrum:					
Rep. Simons:					
Rep. Toman:					
Rep. Strinden:					
Rep. Adams:					
Rep. Guggisberg					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote Carried

Date: 2-15-19
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES ^{HB}
BILL/RESOLUTION NO. 1165

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 19.0358.05001

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 Rep. Koppelman Seconded By Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:	/				
Vice Chairman Pyle:	/				
Rep. Ertelt:	/				
Rep. Fegley:		/			
Rep. Hatlestad:	/	/			
Rep. Johnson:	/				
Rep K. Koppelman:	/	/			
Rep. Longmuir:		/			
Rep. Magrum:	/				
Rep. Simons:	/				
Rep. Toman:	/				
Rep. Strinden:	/				
Rep. Adams:		/			
Rep. Guggisberg:		/			

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep. Pyle

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

REPORT OF STANDING COMMITTEE

HB 1165: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1165 was placed on the Sixth order on the calendar.

Page 2, line 4, after "and" insert "adhere fully to all applicable floodplain management ordinances."

Page 2, line 6, replace "any other provision of law" with "subsections 1 through 3 of this section"

Page 2, line 7, remove "than this section"

Page 3, line 1, after "and" insert "adhere fully to all applicable floodplain management ordinances."

Page 3, line 3, after "40-47-13" insert "and subsections 1 through 3 of this section"

Page 3, line 4, remove "than this section"

Page 3, line 28, after "and" insert "adhere fully to all applicable floodplain management ordinances."

Page 3, line 30, replace "any other provision of law" with "subsections 1 through 3 of this section"

Page 3, line 31, remove "than this section"

Re-number accordingly

2019 SENATE POLITICAL SUBDIVISIONS

HB 1165

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB1165
3/21/2019
Job # 34117

- Subcommittee
 Conference Committee

Committee Clerk: Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to nonconforming structures

Minutes:

Written attachment #1: Rep. Vetter pg.1-6
Written attachment #2: Dennis Huber
Written attachment #3: Bill Wocken
Written attachment #4: Natalie Pierce
Written attachment #5: Phil Riely
Written attachment # 6: Brad Gengler
Written attachment #7,# 8, # 9: as referenced by Ken Vien
Written attachments #10, #11 pgs.1-7, #12 by Sen. Kreun
Written attachment # 13: Larry Weil
Written attachment #14: Mark Rustad

Chairman Burckhard opened the hearing on HB1165. Senator Kannianen was not present. The other committee members were in attendance.

Representative Vetter, District #18. (:20-19:04) he sponsored and introduced HB1165.

Chairman Burckhard: Is that like moving the foundation then or changing the foundation?

Representative Vetter: continued with his written testimony.

Chairman Burckhard: We have 357 cities in our state. The other 355 are more restrictive or is this just two.

Representative Vetter: These are just two that are less restricted than the bill. The reason for this extra subsection 5, was to say hey we don't want to pass a law and now Bismarck or Stanley now has to be more restrictive with their policy than what they wanted to be.

Chairman Burckhard: It is not the realtor's job to tell you this property is grandfathered, when you're thinking about buying a house now? Is that the realtors job to do that? Probably not.

Representative Vetter: Maybe not. It is going to be hard for them to know that. But at the same time, what's going to happen to that property owner when they can't rebuild. They are going to be looking at a lawsuit, but who are they going to go after. They are going to go after whoever they can. He continued with his testimony.

Chairman Burckhard: So if you have a property that is damaged beyond 50%, that doesn't affect the home owners' insurance policy does it? They still got to pay for the replacement of the house. If this property is more than 50% damaged, and so you can't rebuild there, does that let the insurance company off the hook?

Representative Vetter: From that situation, if you're 60% destroyed that's going to hurt you a lot worse than if your 100% destroyed. If you live in a legal non-conforming houses and your house starts to burn down, you better start blowing on that fire to make sure you have a 100% damage rather than a 60% because if you're 60% your insurance doesn't cover the whole. You still have your mortgage.

Chairman Burckhard: I hope it doesn't let the insurance company off the hook. If you've got a city ordinance that.

Representative Vetter: I don't believe it leaves the insurance company off the hook. He then continued with his testimony.

Senator Anderson: Two things. One, how would this effect for example. In Minot for example where the flood came through and those houses were damaged significantly and the city said we're not going to put any houses there anymore. Now they are all non-conforming because they were in the flood zone and the city said we're not building anymore there. So how does that affect this situation?

Representative Vetter: Well in that case if you look at that's why we have the flood language in subsection 4, so they're required to bring up their houses to standards for the flood protection. So if your low to the ground, and you're in the flood zone. Either it has to be rebuilt up, so it passes the flood insurance program, or you can't rebuild it.

Senator Anderson: What if I don't need insurance?

Representative Vetter: Well, if you need insurance or not, with this bill if you're not in compliance with the national flood zone program, you can't rebuild because it would actually affect other people. Because you don't want a whole city to be out of compliance with that program.

Senator Anderson: I know it's not your fault, it the two people who have been on this committee the longest who are responsible for the way North Dakota law is written. Why do we need these three different sections that consider exactly the same in different portions of the law?

Representative Vetter: I certainly don't think it was the two members that are responsible. Well the reason for it, I was told. I go to Legislative Council and they told me this is way it

needs to be done. I believe one of them is like. They basically are three different sections of code. Why I don't know exactly.

Senator Judy Lee: There always is notice sent to the affected property owners and a certain distance out from an area that is effective when there is a zoning change so there are public hearings and they have the ability to attend or send written remarks and comments on it. I don't know of any city that doesn't have public notice where there is a zoning change in an area. Maybe yours doesn't but mine does, and I think most of the rest do as well. So if you have any comments on that. There is an appeal process from the Planning and Zoning Board because that is an appointed board, so if it goes first to a planning and zoning commission in the community, and they are told that they cannot have approval for this non-conforming use of variance, the appeal is for a variance. If the P and Z denies it, it then goes to the city commission and that's where the appeal process instead of the city commission. So there is an appeal process. After that it's done, but they've already gone through and elected a appointed board, so, I just think that perhaps it would be appropriate for the people in the committee to know that those two areas we may not see it exactly the same way.

Representative Vetter: Maybe in your community that is. When I said they don't allow some appeals.

Senator Judy Lee: I can't imagine that in a city lets a Planning and Zoning commission make a decision when it is a unelected board, an appointed board without automatically going to the city council or city commission or having an opportunity to do that. But every decision by an appointed board of which I am aware of and I know a fair number of them; it automatically goes after they've vetted it and recommended whatever the outcome is and they bring it to the City Commission and that's where the final decision is made. So the people from the League of Cities can tell you how many cities that might not take place in, but I don't believe it's an arbitrary choice of a local committee to let a Planning and Zoning Commission make a final decision, without any opportunity for appeal.

Representative Vetter: As far as the notices concerned, sure maybe when they first change the zoning ordinance they might send something out, but do they actually let the people know of the actual implications of their new quotes grandfather status. Okay. Most of the people that go and people won't buy those properties, they have no idea that they are non-conforming. (Ex. cited)

Senator Judy Lee: Did he have an attorney's opinion done because that would have been a really good idea? You know people who pay cash avoid some of the costs involved and so if they are going to save more than \$100, its more now, and not have an attorney's opinion done, even then they might find out about a lot of stuff.

Representative Vetter: It might not have been a good decision for him.

Senator Dotzenrod: To answer Senator Anderson's question. Section 1 of the bill is counties, section 2 is cities and section 3 is townships.

Dennis Huber, (26:10-43:03) appraiser based out of West Fargo. **Written attachment #2.** Mr. Huber went off script in parts of his testimony to further explain his testimony.

Chairman Burckhard: Should the banks be aware of that?

Mr. Dennis Huber continued with his testimony. There will be risk for the bank loan. Ex. cited (39:48).

Chairman Burckhard called for those in favor of HB1165. Any opposition to HB1165.

Bill Wocken, North Dakota League of Cities, spoke in opposition to HB1165. **Written attachment #3** (43:40-45:25).

Natalie Pierce: North Dakota Planning Association. City of Mandan Planner. (46:07-54:51) **Written attachment #4.** She spoke in opposition to HB1165. She also handed out testimony from Mr. Phil Riely, Mayor of Watford City, who couldn't attend today, but wanted it on the record. (**Written attachment #5**)

Senator Anderson: Maybe we need to get the insurance commissioner here to answer this question. But I think your first question was built around the fact that if somebody has house or home insurance and a fire destroys 60% of their house, the insurance company only wants to pay for that 60%, but now that person can no longer rebuild there because they are out of compliance with the zoning. So they have 60% of the money for their old house and they are forced to go someplace else and build another house which they cannot afford to do with the 60% of money that they had. Tell me how that works and help me to understand that.

Ms. Natalie Pierce: I apologized that I am not versed in the insurance side of things so hopefully we can get answers to those questions from someone who does understand that. Again the amendments that we proposed if it were a primary residence, a case like that where someone's primary residence that they with the amendments proposed that could happen. They would have an opportunity often times their non-conform means based on being too close to a property line and if they are able to move that structure back, they may become non-conforming or maybe not perfectly non-conforming but certainly reduced the non-conformity to give a greater setback. You may have a case where a home is actually on the neighbors' property and we certainly don't want them to build again in that spot on the neighbors' property. So shifting back would certainly help and this would allow them to do that.

Senator Judy Lee: you mentioned in your copy here, and I think it is important to reiterate the fact that the 50% or more damage requires to meet really what it amounts to is building code. Maybe we need to clarify that. If the footprint is there it is maintained. But I have heard for many years that if more than 50% damage occurs or is a house if moved in after they've been approved to move a house in to a vacant lot, that they have to meet current code because the value is enhanced. So it's got to be a new electrical service and not the old kinds of electrical services that we used to have. Plumbing has to be up to code, and all of those kinds of things. Everything else doesn't have to be, you don't have to put in a new kitchen. But the point is, I think it is important just to delineate the fact that my understanding is that the 50% requirement to meet the new code is not necessarily always the zoning code. But would be building code which is a very different thing.

Ms. Natalie Pierce: The 50% is really sort of arbitrary but basically the function of that is so say if something is non-conforming and it is over ½ destroyed, it is time for it to move on. In terms of building code, we do have that in our amendment. Just to be very clear that if this allows someone to rebuild that they would have to do it, completely up to code. To meet the current building code.

Ken Vein: City Council Member (58:49-1:04:25) for the City of Grand Forks. I am Vice President of the City Council. I am also a former member of the Grand Forks Planning and Zoning Commission and part of my testimony during the 1997 flood I was the City Engineer Public Works Director and Planning and Zoning Commission member. I am pretty familiar with what happens with damage, in this case quite significant, but in other cases not so much. I am here to be in opposition to HB1165. Mr. Vein presented testimony from Brad Gengler. (**Written testimony# 6**). He also handed out testimony from Senator Kreun which Mr. Vein referenced in his testimony (**Written attachments #7, #8, #9**).

Senator Judy Lee: What if you've got somebody in one of these transitional neighborhoods that really isn't taking care of the property. What is Grand Forks able to do if you take care of your house and I live next door and I've got garbage in, never mind the health and safety? The garage door is falling off, that kind of stuff. What can we do to help me get me back into compliance so that you don't have to look at this when you back out of the driveway?

Mr. Ken Vein: Unfortunately, we have that happen more often sometimes that I want. It is a lengthy extremely difficult process. We have the neighbors coming into us, and they usually take it to the City/County Health Department who goes out there and serves that; then that does come back through a process that ultimately ends up at the city council and the latest one we tried to work with him to get some type of actually assistance. We've actually gone out and helped clean their place out to try to bring it back into compliance. Unfortunately, in many cases that is an order. They bring it right back again. We get to the point where the current one we actually understanding that once he's gone we probably have to demolish the house because of the condition that it's got in. Again, we follow our health code to have that demolition take place.

Senator Kreun, District 42. (1:06:40) A lot of these issues have been brought forward when I was on the City Council, Tax Equalization Board and Planning and Zoning Commission through this whole thing. Senator Kreun referenced attachments (**# 7, #8, # 9,**) introduced attachments (**#10, # 11 pgs.1-7, #12**) with introduction and explanation of HB1165.

Chairman Burckhard: How old are these homes?

Senator Kreun: These homes were probably built in the 1930's and 1940's and even as late as the 1950's. When that particular lot is 1400 square feet. The lot is 1400 square feet. So you, kind of wonder why we have these codes in place in order to make sure this individual or piece of property does not get rebuilt for the safety and welfare of the next door neighbors and the community, the power lines, everything that goes right along with it. He continued with his testimony.

Senator Anderson: In this situation that's probably his only recourse, because the zoning will not let him put anything else on that property. So, now he's stuck with a property which

the neighbor knows he doesn't have to pay for very much for because it's only worth anything to him. So, that guys' property is now almost zero maybe negative because now he has to pay for the demolition.

Senator Kreun: That may be the case in this one, but I know of two other cases where they actually rebuilt on a lot that was re-buildable and if they didn't want to the neighbors wanted it very badly. It actually would've raised the price, so that is two instances. There is a pro and a con between each one. This particular one maybe not. The other thing I would like to bring forward that non-conforming use is one which lawfully exists prior to the effective date of zoning restrictions. That's on the first part that effects the change. Then if you go down to the middle of that page, where it is HB1165, (attachment # 7 as prior references from Ken Vein and now referenced by Senator Kreun), he continued with his testimony.

Chairman Burckhard: Did you say that your city has a local zoning administrator?

Senator Kreun: Yes, we do. They do use it. Most of these developments are citizen driven either by a developer or in 1227 was citizen driven. That was a change in ordinance. That was use a change in use. That is what it is designed for. This particular bill bypasses all the things that Senator Lee indicated as far as it goes. They don't get a chance to go and speak against this. It is a local issue. It is designed to fix problems in different cities and the reason it's different in different cities is that cities have different problems and different ways of solving their problems. He continued on with his testimony and explanation of points.

Senator Dotzenrod: In the testimony that we got from the bill sponsor, he says here that Minnesota has a similar law and ordinances in Fargo and Bismarck are similar or the same as this bill. This bill was modeled after Minnesota law and Fargo and Bismarck ordinances, so, do you accept that and do you think that is probably accurate and is there some reason that we should not pass this bill? Because we feel what's in the bill represents what other major cities in the state are doing and the state of Minnesota it is probably okay. How would you respond to that?

Senator Kreun: As I stated before, why do we have different zoning ordinances in different cities within the state of North Dakota? They have the same issues whether it is South Dakota, or Minnesota, or whatever it might be. That's the beauty of self- governments in your community. Because of the needs of the special portions of the city. As Council Dean indicated we have in my tenure in these positions have had several different issues come to do that and you heard my testimony on 1227, that is a prime example of why you have different codes and different cities.

Senator Judy Lee: But I sent a message both to the Fargo and West Fargo planners understanding that we know that Fargo does it the way it does, but, in West Fargo if the structure is a nonconforming use we permit maintenance but limit it to not more 25% of the replacement costs in a 12- month period. (**Written attachment #13**) Larry Weil, Fargo Planner response to Senator Lee's question.

Chairman Burckhard asked for any more opposition to HB1165. There was no neutral testimony to come forward.

Senator Anderson: I wouldn't mind talking to somebody from the Insurance Commissioners' office about the question you first asked about that and if there are some requirements to protect people in certain situations like that.

Mr. Mark Rustad sent an email to the Senate Political Subdivision Committee in regard to HB 1165. He did not speak in front of the committee, but wanted it on the record. (**Written attachment #14**).

Chairman Burckhard: We are adjourned for the day.

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1165
3/21/2019
Job # 34145

- Subcommittee
 Conference Committee

Committee Clerk: Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to nonconforming structures.

Minutes:

Chairman Burckhard brought the committee for discussion on HB 1165.

Senator Anderson: You know it just seems to me like in spite of the fact that Minnesota has a law it seems to me like this could be a local issue.

Senator Kannianen: Since I missed half of this hearing here. I got here basically while the opposition started so I didn't hear any of the proponents now. When we talk about the bill, it seems to focus on non-conforming structures from what I can read of it. Now opposition talked a lot about non-conforming use as well. So I am wondering, for clarification where in the bill when we talk about their concerns over non-conforming use, where that comes into the bill?

Chairman Burckhard: I would suggest that Rep. Vetter said that it did not enter into in the bill, am I right on that?

Senator Kannianen: Yes, but then the opposition.

Senator Judy Lee: It isn't clear and that is the problem.

Senator Kannianen: Their concern was that it still was affected, so I am seeking clarification on how that might be.

Senator Anderson: The contention is of course by the people who sponsored the bill is that these zoning requirements take away the property rights from individuals because particularly examples they gave when a house is damaged and the ordinance says that we don't those there anymore because we've changed the zoning now from R2 to R1 or R1 to R2, or whatever the zoning is. Now you have a non-compliant use. If damage is over 50% you're not allowed to rebuild. Then you have to go to the higher or lower or whatever the zoning is now, even though your house might have been in an area that was zoned R1 and

they changed the requirements. They talked about the zoning might be the setback, it might be greater now. It has to be 20 feet from the edge of your property for the setback and your house was built 10 feet well, now when your house is over 50% damaged you can't rebuild it the way it was as you have to comply with the new rules. That is what their saying and complaining about.

Senator Kannianen: So as far as my understanding is though like a non-conforming structure would be like a set- back is changed or something like that versus non-conforming use would be like if the zoning changed is that correct in my understanding?

Chairman Burckhard: I think that is well described now. Didn't we say we were going to talk to the Insurance Commissioner about some of these insurance questions about if the insurance coverage.

Senator Kannianen: When it simply talks about non-conforming structure, that is more about the set-backs or what not that might change and the actual zoning changes or things like that wouldn't be affected by this bill, are they concerned about.

Senator Judy Lee: Maybe I can shed a little light here. If it found that it a non-conforming structure or non-conforming use, the option to apply for a variance is there and they are often variances are granted. It would go first in most cases in mostly the zoning and planning board which is an appointed board, and they would make a recommendation to the city and the city council or commission would be the final determining body because it is an elected body. However, they don't always do what the P & Z commission has said. But somebody isn't locked in forever because their property is either a non-conforming structure or a non-conforming use because as one of the speakers talked about there are transitional areas in somebody is living in an area. When Dennis Huber was talking about financing we've had that problem for decades where in transitional areas that are in Fargo and are close to the railroad tracks and West University Drive, and its where your kind of approaching the Staiger area a little bit. That's kind of a commercial area. The factories and the more commercial stuff. None of the lenders secondary market buyers, outfits like the insurance companies that buy bundles of loans they, don't want those because they figure the properties aren't going to maintain their value well. But it doesn't mean that they will never finance them, it usually means that they may have to have a higher down payment. So, they may not get the initial financing they apply for, but it isn't that they can't find a way to buy it unless the property is falling down. Now, appraisers make sure that it is safe, sound and sanitary, that is their job. It's not to make sure they like the wallpaper. So, it isn't that anybody is locked into any problem, but I remember one in Fargo recently where there was a little bitty crummy house in a beautiful neighborhood south 8th street. Everybody would like to have that address in Fargo, an old historic street. This little bitty dumpy one because there are a few of those, it was for sale and it sat there on just a small lot. It took a while, but it did sell and a guy I know bought it. He and his wife built a new house that fits the architectural structures, met all the city needs and that stuff. The neighbors were livid that they were building this home. Even though they did everything they could to communicate with them. The neighbors well one woman that I know she just raised particular heck about the whole thing because that house is going to be taller than the little bitty one that used to be there and now the sunshine was not coming into her plants on the south window. She could have bought the dang lot. They have enough money to do that. It's not a problem. So sometimes when you want somebody

else to make sure that nothing changes in your life and the only way you can control it is by buying the property next door.

Senator Anderson: You know you have these pictures here. This house does not have with the current zoning enough space on that lot to rebuild it so, if it's over 50% damaged your choice is to sell it to the neighbor that you can't rebuild it. (Senator Anderson was referencing Senator Kreun's attachments # 11, 1-7 from the March 21, 2019 hearing on HB1165. **Job # 34117**) That is really what they are complaining about, but if the zoning is changed some actually we saw some pieces from some cities and we've changed zoning in this area now, and there are houses there but we don't want to maintain those houses. When they transition out we want them gone and then we're going to use it for the different use that the zoning now says. So the people are unhappy with that. Well they should have been at the city commission when they zoned it in the first place and made their complaint know.

Senator Judy Lee: They do all get public notice. They may have disregarded it but they are notified because public notice to everybody in the area and so many feet outside the area.

Chairman Burckhard: Rep. Vetter and Senator Kreun have disagreed on just about everything this session. Vetter says it is a local issue. Kreun would say it was citizen driven and it is a local issue. I think Vetter said it was not a local issue. Natalie Pierce pointed out several inaccuracies of Rep. Vetter's testimony and she suggested that zoning information can be received from their local zoning administrator. I didn't take many notes from Kevin Vein.

Senator Judy Lee: He was the city engineer and now city councilman now. He knows his stuff obviously.

Senator Dotzenrod: It does seem like there are two kinds of people in this world. The people that like zoning, believe in it and think it's helpful and think it's constant. Yet it has a tendency to bring value, to have good zoning and then there is others who just hate it. You set this in the ET zone. A lot of people they just don't like the zoning. They don't want the imposition of somebody else's rules. But I was thinking about the lake country in Minnesota. They have these set back rules, they have the distance from your neighbors, and people out there complain. But what they've done is they have a fantastic natural resource over there. They are really protecting and guarding that resource. I think that same principle to me sort of applies to cities. You have a city with downtown infrastructure and a lot of investment, a lot of public money and some people that have generally have a lot of pride in their homes and I guess I would be as a person I would be one of the people that believes in zoning. But, there are many people that don't. You have your property and its' your property and nobody should be able to tell you what to do. But when Senator Kreun was here he gave some examples of very variances that the city of Grand Forks has granted. I think he said that the proponents of this bill had said it was 7000 square feet and he said it was 3500 square feet. Looking at that situation with that building when you look it from the top, you can see why it would be in the interest of the city not to have something rebuilt on that spot. It is really kind of a fire danger and there is hardly any room from the one house to the other.

Chairman Burckhard: They must've built them small and close together back in the 1940's or whenever that house was built.

Senator Dotzenrod: I don't know how that happened at the time, but one of the thoughts that crossed my mind is what about parking spaces. There really is no room left on that lot.

Chairman Burckhard: Some of the pictures showed how little bit of parking there was.

Senator Dotzenrod: I really think it is a question of how far in to city zoning do we as a state want to get. It does look like Grand Forks is different than Fargo and Bismarck. If we want them all to be the same or be almost the same that is one thing. But if we want cities to be able to have the zoning that in a generally locally thought out and locally determined with public meetings, it seems like that's kind of the way it should be.

Chairman Burckhard: I think people that like zoning like planned growth. People that don't like zoning don't mind knee jerk growth. I think that is just the difference. Sometimes it just has got to be better thought out and better planned than what we're seeing.

Senator Judy Lee: I am looking at the amendment that Natalie Pierce provided for us. We might want to take a look at those. Regardless of what we might do, with the bill, under the idea of you fix it up in case it passes, if we decide we don't want it to pass, but when you look through it that is pretty sensible actually. Maybe, Mr. Wocken can say whether or not the bill would be acceptable to the League of Cities if we did include those amendments or would you still oppose the bill? (**Written attachment #4, page 2** from Natalie Pierce's testimony in the 3/21/2019, **Job # 34117** hearing with explanations of the amendments).

Chairman Burckhard: So the amendments are in color, right. The blue and the yellow, green and red. The notations to it are next to it.

Mr. Bill Wocken: North Dakota League of Cities. I've not reviewed the amendments in depth. It has been awhile since I've been in the planning practice, but I have seen them. I believe that Ms. Pierce did offer a very reasonable set of amendments. Whether you put them on this bill or not, I guess is up to you. The League of Cities is opposed to the bill and I believe Natalie also mentioned that she would be opposed to the bill but if you felt that you wanted to put something together this was the kind of amendment that she was talking about. I believe that this whole process is probably going to require a little more investigation and that maybe asking the planners to take a look at this in the interim and bring something back might be a prudent approach. There seems to be a new wave of planners, some of us older experienced people are now cycling out and there is a group of younger planners coming in the state. They do have some pretty good ideas in fact. I understand that they will be looking at a number of the zoning issues and trying to be proactive. So the League of Cities would like to see something functioning well. We understand that some cities are taking the non-conforming use lead like Fargo and Bismarck have and for other cities that is just not the right approach. So that is our suggestion that this is a local issue.

Chairman Burckhard: Closed the discussion on HB1165.

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB 1165
3/22/2019
Job # 34181

- Subcommittee
 Conference Committee

Committee Clerk: Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to nonconforming structures.

Minutes:

Written attachment #1: Senator Kreun

Chairman Burckhard: asked the committee to work on a bill that we heard yesterday, HB 1165. It is kind of a complicated bill. I think our question has to do with insurance when a house burns down and he refers to the pictures from Senator Kreun's testimony on 3/21/2019, attachment # 11, pgs 1-7. (Job # 34117)

Chairman Burckhard: Asked John Godfread if a house is in a district and it burns down or is basically a total loss.

Senator Dotzenrod: I think the question wasn't the total loss. He was 60% loss, and then the insurance company, is the insurance company not going to give you a check for the whole value of the home, but just that 60% and you can't rebuild because of this bill were to be killed the bill, that the zoning in that city would say you can't rebuild on that site. Is the homeowner out essentially that unpaid portion of that insurance coverage? Basically the question is, have we sort of taken value away from this home owner? Because the homeowner insurance, if they can't rebuild, because that is what this local zoning does they can't rebuild if the damage is over 50%. So have we by imposing that zoning requirement, putting that on the home owner, if there is a fire and has that homeowner been deprived by the zoning ordinance of the value of their home, or the residual value after their home? They are not going to get, as an example of a \$200,000 house and he had a 60% loss, there is \$80,000 there that the insurance company probably won't give you. We were wondering if that was how it works?

Mr. John Godfread: North Dakota Insurance Commissioner. Generally, the insurance is used to get you back to your state. Right, so if it will take you back from whatever the cost it is to get you back to what you were. Essentially. I guess to answer the question if. I will open up by saying I know a lot about of things. I know very little about zoning and this area. But I will do my best. We may take it back and have to bring it back down again. If I understand this bill correctly, if there is a 51% loss of the home, so more than half, this would not allow them to rebuild it, is that. The city would now have the option to say that if it's more than 51%

loss. Insurance is generally meant to get you back to your pre-loss state. So that would be the 60% of your damage would pay you back each of you normal. Looking into the zoning pieces there I don't know about that.

Jeff Ubben, Deputy Insurance Commissioner, General Council. So I can tell you in my 6 years of the department this question hasn't come up before. It is a question of first impression. What I can tell you for certain is that the insurance company isn't going to pay you more than they have too on the loss. So if they're saying your house is 60% loss, they are going to pay 60%, they are not going to pay more than that. So how that fits in with the rest of the bill or what unintended consequences the rest of the bill might have on somebody looking to rebuild or not, I guess I don't feel good to answer right now.

Chairman Burckhard: So possibly the owner is out \$80,000 in this case if it is a \$200,000 house, but is there more homework that we need to do on this topic?

Mr. Jeff Ubben: I don't know if we can give you a better answer than what we've given so far today, so I guess that is your discretion.

Senator Judy Lee: I was just going to add that if you looked at those photos you will see that there has been a significant fire, but that lot is a 3500 square foot lot, is that correct? No, 1400 square lot. But a 1400 square foot lot and the city does not want to continue because of fire reasons. The fire chief even said you know there is so few feet between the structures they don't want that to happen. So that's how the zoning kind of gets involved with the whole thing. So this is more than just what the insurance company pay and we don't want to short change anybody there. But we can't, and I don't think we want to, require the city to allow somebody to rebuild in a place where they shouldn't build for other reasons. Whatever that might be. That is the complication.

Senator Diane Larson: In effect it would be total loss to a homeowner.

Senator Kreun: Here is what the city attorney said. He said it is fair market value will be less. That came from the Grand Forks City Attorney.

Chairman Burckhard: So, Senator Kreun if there was a total loss or 60% loss, and the insurance company would only repay them 60% would the city cough up the other 40% if they couldn't rebuild it?

Senator Kreun: Probably not.

Senator Judy Lee: Then it's the city's zoning that has decided.

Senator Kreun: If you look at the testimony that I handed out, it starts with HB 1165 right on top (**Attachment # 1**), we do address that on the second page under comments regarding House Bill 1165. The argument that a mortgage or owner would be at risk in the event that they were unable to rebuild the structure after substantial damage, more than 50% ignores the typical requirement of having property insurance with the owner and or mortgagee names as the insured. In the event of destruction by fire, weather etc, the insured would receive the benefits of the insurance policy of any subsequent reconstruction at the fair market value and

would require compliance within the then existing code. Now, what does that mean, fair market value. I am assuming if it's a total loss, its fair market value and you can't rebuild. That's the way our attorney did the research when these were put into place. These non-conforming units. Now, I am not an attorney and what not, but I can get you his opinion if you would like to this group or whatever. Because he is the one that did the research and he's the one that wrote that particular piece of information.

Mr. John Godfread: I guess the way again having a first impression on this the way the think the we would interpret that and I believe the way many insurance companies would interpret that would be the fair market value of what it would cost you that 60%. It doesn't say it's a fair market value of the home, it's the fair market value of the reconstruction. So, that to me is where the fight would be. As Deputy Commissioner Ubben mentioned, you can anticipate a fight there, I would imagine. The insurance company will pay to the contract, and if there's belief that you can repair the home and get you back to what you were insuring, that they will fight that.

Senator Diane Larson: It does seem though that if I am living in a non-conforming home and I do have a fire, which destroys 60% of the value of my house, and then the city zoning says I can't rebuild because it is in a non-conforming home, then the value of what I've lost is the entire value of the home. You can't get me back to where I was. Right.

Mr. Jeff Ubben: That is likely not a covered loss under the policy. I agree he's lost it all, but that insurance policy isn't going to cover. A covered loss comes from things like fire, wind, hail, but not city zoning laws. I don't think I've ever seen a policy that says we'll reimburse you if the city zoning laws reduce your property value. So I think what the commissioner said originally was correct in that they will be reimbursed the fair market value of what was damaged by fire, not by what the city took through their zoning laws.

Senator Dotzenrod: Well, Mr. Godfread, I am wondering the way the insurance business works. I am just thinking that if you were an agent in the city of Grand Forks, and you had one of these homes and it was a nonconforming home you're probably someone who is going to be selling a policy trying to make sure that you don't insure that house for very much because its' got some handicaps, some problems that you can see as an insurance agent. I don't know if there are any rules within the profession that guide any agents in trying to decide what level of coverage they would provide. But it would seem to me that if I was an agent I would be very hesitant to try to have a policy that provides coverage that was maybe you would insure it for a value of 75% or 60% of what you think its worth. Just because knowing that it's a non-conforming structure.

Mr. Jeff Ubben: These homes go through an underwriting procedures and so that is ultimately probably the company decision, but speaking to the defects on this particular lot, this particular home, I certainly cannot do that, but I would say that generally speaking there is an underwriting process that goes into it. I would imagine that prudent underwriter would look at these issues and take that into account. But again if you're insuring the contents and the structure, that is what you're insuring. They are not insuring potentially the changes or replacement.

Senator Kreun: District 42, Grand Forks. I think we're talking about an issue that is probably going to happen once every 5 years. In Grand Forks, in the industrial, non-conforming. In the entire part of Grand Forks, the non-conforming areas in the business and industrial areas I couldn't get the numbers in all the residential, because I certainly don't believe there are hundreds for statements were made. But in the other we could quickly identify there is only four-eight housing units in the whole city of Grand Forks that probably this would apply too.

Senator Diane Larson: So, without this bill though, if there was even a 20% loss, of the house, the city ordinance zoning could say that they can't rebuild. No, it is currently 50%?

Senator Kreun: It is currently 50%.

Senator Judy Lee: Did you see the amendments the Planning Association had discussed from Ms. Natalie Pierce?

Senator Kreun: What I would like to bring up is the fact that frankly I favor a do not pass on this personally. But with the idea that it might pass and we want to make it better, Mr. Wocken may have a copy too. Does Bill have a comment on that as well?

Bill Wocken: Representing ND League of Cities. As far as the amendments of Ms. Pierce, I believe they are pretty well written. I am not sure exactly which section Senator Lee that your referring too? **Senator Judy Lee:** The whole thing. **Mr. Bill Wocken:** One thing I would like the committee to remember is that the loss is to the structure, there is still residual value in the lot. That will vary on the size of the lot and desirability, for example if a lot on a edge of a commercial district were non-conforming and they did have a more than 50% loss it is likely that the land would be more valuable for a commercial purposes than for residential purpose. That in fact was the reason that it was non-conforming there would be some residual value there. The small lot in the subdivision that Senator Kreun probably would have much less value because its smaller of course and it doesn't have any ability to be rebuilt. So they would have to reply on a relatively small pool of adjacent owners who might be willing to acquire the property, but predictably at a much lower price and if it had a higher reuse value. So I want you to consider that it's highly variable depending upon the circumstances of the loss.

Senator Judy Lee: It would be useful I think to us to have Senator Kreun and Mr. Wocken get together to talk about the planning associations amendments and the other thing is to have Mr. Wocken explain what the Planning Association is looking at doing, because of some of these ambiguities.

Mr. Bill Wocken: A discussion that Senator Lee and I had briefly was resulting from the conversation that occurred here at the table yesterday when we talked about a potential study of zoning in particular extraterritorial zoning but other zoning issues. After the hearing that we had on 1210, which was the extraterritorial representation voting issue, a number of the planning association members and I visited outside for quite a period of time. The Planning Association is very interested in becoming proactive and would like to study some of the issues that are plaguing us year after year that keep coming back to us. We would like to bring in some solutions to those problems for the next legislative session. They have agreed that they would like to form a committee and work these things through. I don't think we need

a legislative study committee to do this as I think the Planning Association if they are given the topics will be more than happy to work things through. I think they will be doing some consultation as well. I've offered to give them the backgrounds as I have some background with the subject over the years and tell them what I know and they are certainly more knowledgeable than I am on the current practices in the industry. So they had offered to do that so they would like to do it. They've discussed it even before the session. The League of Cities has since the Planning Association is an affiliate member of the League of Cities, the League of Cities this morning agreed that we would be happy to work with them on this issue.

Senator Diane Larson: I think that one of the things I would like if you do that, to talk about some consistency because it seems like one of things that we're running into this session is just one jurisdiction coming in with a problem that is in their city or their ETA. So if you're talking about that it might be a good idea to see if you can try and come up with some consistency across the state so that we don't have just new legislation to deal with what's happening in one city.

Mr. Bill Wocken: That is a concern to the organization and to the League of Cities as well. It seems like an issue in one locality, if it isn't able to be resolved all of sudden ends up on your table. I am not sure in all instances although the local remedies are exhausted before it ends up coming to you. We do have a lot of opportunities for variances and ordinance changes as you heard on this particular bill for example. That Bismarck and Fargo had actually changed their ordinance to be more in line with this bill because they saw a problem. Other communities have looked at it and said no I don't think that would work for us, but we do variances and we do have a number of other opportunities. So there is going to be some variation between communities based on needs and conditions but I believe that you will see a lot more consistency.

Senator Judy Lee: If we would wish to continue this discussion I certainly am respectful of that attitude on the part of the committee, but with the information that we just got from Mr. Wocken, and the fact that experts are going to no matter what we do here, they are going to be doing this study. I would be willing to make a motion do not pass, with the explanation being given to the Senate as a whole when the bill is presented that we are going to be depending on these various organizations particularly on the Planning Association to bring concrete recommendations back next time.

Chairman Burckhard: Is that a motion?

Senator Judy Lee: I make a motion of do not pass

Senator Dotzenrod: 2nd

Roll call vote: 4 Yea, 1 No, 1 Absent

Carrier: Senator Judy Lee

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1165**

Senate Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: _____

- 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. Judy Lee Seconded By Sen. Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard	x		Sen. Jim Dotzenrod	x	
Vice chair Howard Anderson					
Sen. Diane Larson	x				
Sen. Judy Lee	x				
Sen. Jordan Kannianen		x			

Total (Yes) 4 No 1

Absent 1

Floor Assignment Senator Judy Lee

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

REPORT OF STANDING COMMITTEE

HB 1165, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman)
recommends **DO NOT PASS** (4 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed HB 1165 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1165

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Vetter, Steve M.

From: Vetter, Steve M.
Sent: Thursday, February 7, 2019 9:58 AM
To: Vetter, Steve M.
Subject: Chairman Docktor and members of the Political Subdivisions committee...

Chairman Docktor and members of the Political Subdivisions committee. My name is Steve Vetter. I represent district 18, which is half a north Grand Forks, a part of south Grand Forks, downtown and a small rural area north of town extending to the Grand Forks Air force base.

The reason for this bill is an issue that has to do with 'Grandfathered' properties. You would think when you hear your property is 'grandfathered' that everything is ok. In most cities in ND, legally non-conforming houses or 'grandfathered' houses that are over 50% destroyed the city will not issue a permit to rebuild, therefore it makes the property unfinanceable. What bank would want to loan money on a property if were destroyed and could not be rebuilt? What buyer would buy if they knew the risk?

The intent of this proposed law is simple. If a residential property was once legal, but is now legal non-conforming, under the provisions in this bill, it can be repaired or replaced.

This is not just a Grand Forks or a local issue. My reasoning for utilizing state law to affect change is because these harmful provisions permeate throughout almost all zoning districts that I could find online in the State of North Dakota. Attempts to work through the cities, townships and counties in North Dakota for a change in these provisions would be a time consuming long-term activity. Rather than seek negative publicity against zoning authorities to generate local pressure to address the issue, I think it is more efficient and less derogatory to the zoning authorities to do it by adding a state law requiring provisions that are already present in two cities and other States.

My research shows that Bismarck and Fargo have modified the common boilerplate to automatically allow for the repair or replacement of non-conforming properties under the conditions that this bill includes. Unfortunately, Grand Forks, West Fargo, Minot and Williston do not. Of major concern to me is that zoning documents in all townships in Cass County that I found online seemed to be recently updated versions that had numerous restrictions on the ability to repair or rebuild, even at times leaving themselves no legal way to allow it even if they wanted to.

The proposed law was based on Bismarck and Fargo zoning code and the State of Minnesota Statutes. In recent times, Minnesota passed a law that in essence forced the government entity to fully compensate a property owner that was denied a building permit due to a legal non-conforming property. In essence, it amounted to a government taking and all the conditions and issues that arise from such actions. However, I found that in 2017 they simply created a Statute that is similar to HB1165. I'm not sure if they repealed the older law. My initial submission to the Legislative Council included the Minnesota provision regarding flood impacted properties. The Legislative Council changed that provision to comply with ND Law and seemed to give local authorities more control, which I would encourage to prevent flood control issues.

It seems like a straight forward bill but the opposition may say that it won't work because 'it's complicated' and will have severe unintentional consequences. I couldn't disagree more. It is the current zoning codes that seem to have stemmed from a boilerplate format regarding legal non-conforming structures that has placed severe unintentional consequences to residential property rights.

I suggest that in the opposition's position that it involves all kinds of issues for small towns is very misinformed. This bill is actually MORE simple than existing codes in many of the zoning documents. Whereas many have provisions that would need to be proven to allow for a rebuild, the proposed law couldn't be simpler. It only gives the right to residential property owners to repair or replace the same improvements on the same sized footprint. I could show you some the complex boilerplate language of some cities and towns.

Another thing I would like to clear up. There is a difference between zoning code and building code. This bill in no way affects building code. Building code

always comes into effect whenever repairs or replacement takes place. This law does not change any of that. It does not impact planning, building inspections, or other State Laws. Additional language was added for issues from flood insurance and for less restrictive language of cities like Bismarck.

I fully expected for zoning authorities to have some concerns with taking away some their control. They might say this bill hurts their ability to provide for public health, welfare and safety. They might say to allow nonconforming structures to stay in place will have adverse impacts upon the neighborhood. Really? So having a duplex that was built with the city's permission and then at one time down the road, the city changed its mind. Using this example, does the duplex in the neighborhood affect safety, health or welfare of the other residents? I can tell you as a Real Estate Appraiser, I have not seen lower values in this type of example. The purpose of changing the zoning is so more duplexes are not built in that area. Would not allowing a duplex owner the ability to rebuild help the neighborhood? Will having a duplex in disrepair help the neighborhood because they are not allowed to rebuild/repair because of its nonconforming status? Should they be able to be zoned out of existence by the government without just payment? There was a time when planners thought that the best practices included helping areas change into different uses, such as commercial properties along busy streets, etc. I've never actually seen it work, and I've not seen such attempts in recent times by the larger cities. This bill DOES NOT throw planners and zoning authorities under the bus. This provision will allow them more freedom to uncomplicate the rezoning process to address future change without negative consequences to present properties.

Two situations seem to have had most of the effect on creating legal non-conforming properties. Historically, a reasonable request to change a property from residential into office space resulted in "spot zoning". This caused issues with neighboring properties and for the most part major cities don't do that anymore. Unfortunately, all too often those requests result in the whole street or block being changed to neighborhood commercial or something similar. Nobody seems concerned because everyone is "grandfathered" in. Unfortunately, they don't understand the unintended consequences. Grandfathering is misunderstood by the public. The more common cause of the non-conformity issue arises from best efforts in a reclassification based on a new major land development code. Attempting to fit future development code to older existing properties almost always will result in numerous non-conformities. In almost all cases, this was not the intent of the development code, however, without spot zoning it is almost impossible to avoid. The public, and I'm sure the Cities are not aware of just how many legal non-conforming properties exist. I know that in short order if put to task, my company could locate at least 50 houses in a local township near Fargo that have become non-conforming recently. There was no public awareness of what the change in the zoning code did to these properties, and actually under the provisions of granting a variance it's not even likely one could be given.

My appraisal company have identified 10 properties that we worked on this year that are negatively impacted by this provision. They range from the elderly couple who can't access the equity in their home to live properly in their final years to lawsuits against a government authority for turning their houses into non-conforming properties by the establishment of a wider right of way. Sales have been canceled, refinance transactions denied and numerous financial losses by property owners for one simple reason; the inability to automatically rebuild in the case of a disaster. The secondary market mortgage restriction is based on an unintended risk, a risk that if a buyer was fully informed they would not likely accept. Would a buyer still buy if they new the unintended consequences?

It's time for change, and this is the best way to make that change sooner rather than later for the property rights of the citizens of North Dakota. Will you join Vetter and make it Better? please give this bill a Do Pass recommendation. Thank you, I will stand for questions but I have an expert coming after me to answer the technical questions.

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City of Fargo-Code of Ordinances/Chapter 20-Land Development Code
Article 20-10-Nonconformities

§20-1004. - Nonconforming Structures

Nonconforming structures shall be subject to the following standards.

A.

Enlargement and Expansion

Any expansion of a nonconforming structure shall be prohibited unless such expansion is in compliance with all applicable Land Development Code standards. The determination of whether a proposed expansion is in compliance with all applicable Land Development Code standards shall be made by the Zoning Administrator.

B.

Damage or Destruction

In the event that any nonconforming structure is damaged or destroyed, by any means, to the extent of more than fifty percent (50%) of its structural value prior to such destruction, such structure may not be restored except in conformance with the regulations of the zoning district in which it is located. When a structure is damaged to the extent of fifty percent (50%) or less of its pre-destruction value, repairs or restoration may be made, provided that a building permit is obtained within six (6) months and restoration begins within one year after the date of destruction. The determination of reduced structural valuation shall be made by the Zoning Administrator.

1.

Notwithstanding the foregoing paragraph, any existing structure that is devoted to a legal nonconforming residential use may be repaired or rebuilt even though damaged beyond 50 percent of its value, provided that the structure may be repaired or rebuilt in its entirety so long as the new structure will not: occupy any portion of the lot that a was not occupied by the destroyed structure, have a greater floor area than the destroyed structure, exceed the height or number of stories contained in the destroyed structure, or diminish the number of off-street parking spaces located on the property from the number existing before the damage; and so long as a building permit is obtained within six (6) months of the date the damage occurs and so long as restoration begins within one year of the date the damage occurs.

C.

Relocation

Nonconforming structures may not be moved unless the movement or relocation will bring the structure into compliance with all applicable zoning district regulations

2017 Minnesota Statutes

462.357 Official Controls: Zoning Ordinance.

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Subd. 1e. Nonconformities. (a) Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:

(1) the nonconformity or occupancy is discontinued for a period of more than one year; or

(2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged. In this case, a municipality may impose reasonable conditions upon a zoning or building permit in order to mitigate any newly created impact on adjacent property or water body. When a nonconforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

(b) Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety. This subdivision does not prohibit a municipality from enforcing an ordinance that applies to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

(c) Notwithstanding paragraph (a), a municipality shall regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.

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Mr Chairman and members of the Committee:

Hello, my name is Dennis Huber. I am Real Estate appraiser based out of West Fargo. I am speaking to you today in support of bill #1165. It is often said, "You can't fight city hall". Although it looks like one against many, I'm not here to oppose the mission of the zoning authorities. I am not here for my own personal or business interests. I am here to speak for the thousands of homeowners in this state that are not even aware that zoning provisions exist that threaten their financial security. It seems unrealistic to imagine that their home, likely their largest asset, could be their biggest risk to their financial wellbeing.

As I take you through the specifics, I will show you that without a doubt that threat exists for many homeowners. Homes just like yours and mine.

I'd like to present the facts and let you decide if the intentional or unintentional consequences of the zoning provisions common throughout the State compromise the marketability and value of their homes. I'll let you decide whether a lightning strike could drive a homeowner into foreclosure or bankruptcy.

The crux of the problem is how zoning ordinances treat nonconforming properties. Let's define exactly what we are talking about. Nonconforming structures are defined in Ordinances like this quote from Minot's Code; **"Within the districts established by this Ordinance, or amendments to it, there exists lots, structures, and uses of land which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance"**.

So, to reaffirm, these were not illegal structures. They were perfectly legal and conformed to all zoning laws before the ordinance was changed. For one reason or another, now they don't conform to the updated version of zoning code.

Representative Vetter brought up two of the three most common causes for these houses to fall into the nonconformity status. The primary is by updating the ordinance and changing the classifications. First of all, its near impossible to overlay older neighborhoods with specifications that were created for new developments without. However, that difficulty isn't the only reason. Often, these properties become the unintended victims of an effort to control changes that have been disruptive to neighborhoods. We'll see a prime example in a few minutes.

The second most common is a single restriction added to the zoning documents. Such as, setbacks from water ways, or minimum sized sites for those that have septic systems, or simply to limit urban sprawl. This has caused a significant number of houses to become nonconforming in rural Cass County and West Fargo. Nonconformity is especially present in the townships surrounding the growth areas of the State.

And lastly, the most imposing and troubling nonconformity is where the authorities change the primary use from residential to neighborhood commercial, or some such class. The zoning authority is either promoting a change in use or accommodating a request for commercial expansion in the area. In a bit, we'll talk about how successful those attempts and changing neighborhoods has been. And why this law would enhance the process.

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Let's move onto how being classified as nonconforming affects residential properties.

Fannie Mae is the ultimate authority on underwriting mortgage financing.

Fannie Mae's Selling Guide states in part, "Fannie Mae will not purchase or securitize a mortgage secured by a property that is subject to certain land-use regulations that create setback lines or other provisions that prevent the reconstruction or maintenance of the property improvements if they are damaged or destroyed."

Zoning Ordinances define the consequences of being labeled as a nonconforming structure. Some, such as Grand Forks and Minot's have guidance statements are quite nasty. From Grand Forks, I quote, "It is the intent of this chapter to permit these nonconformities to continue until they are removed, or for the reasonable useful life of the building, but not to encourage their survival". To reinforce mission, Grand Forks restricts repairs to a limit of 10% of the replacement cost of the building in any one year. Restricting maintenance alone disqualifies nonconforming properties in Grand Forks from being eligible for competitive mortgages. But it gets worse from there.

Almost all of the zoning documents that I have reviewed have similar wording to this restriction found in West Fargo's code: "Should such nonconforming structure or nonconforming portion of the structure be destroyed by any means to the extent of more than 50% of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance". Okay, at first glance, that seems reasonable. However, in conformity with the provisions of this Ordinance is the restrictive statement. When I say that nonconforming properties are prevalent throughout the state, I'm not talking about the rare case where something can be done to rebuild it in conformity to the rules. The reason these properties are nonconforming can't be cured.

Is Fannie Mae being picky? No, there is a real significant risk associated with these terms. And it's not only the lender that is at risk.

An opponent's attorney prepared a statement may tell you that if the homeowner is properly insured, there is no financial loss to the homeowner. Whoops!

If the properly insured home is partially destroyed and its replacement cost is \$300,000, but the repair cost is estimated at \$160,000, how much is the insurance company going to pay? Imagine your neighbor has a mortgage of \$260,000, the insurance company pays it down to \$100,000. Now he has a half burned down house you must remove, and still has a \$100,000 on the mortgage. **This is financial devastation created by the unintended consequences of zoning authority overreach.** Where do you draw the line between property rights and zoning authority?

In this example, what can a homeowner do?

Other than changing the zoning code or rezoning the property to fit into a new classification, is there any other option? How about a variance? Frankly, a variance is usually the only possible escape from this problem, but there are usually significant problems with this.

The provisions of gaining a variance are outlined within the zoning code. Although each may have some differences, once again, they tend to be boilerplate. They weren't written for the purposes of rebuilding, they were written for things like enlarging or adding buildings and such. Each provides some guidance as to the authority's reasons for being able to issue a variance, and each also has specific restrictions that prohibit the variance. Those prohibited items often eliminate the possibility of a reconstruction.

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The language in the zoning ordinances I quoted are easily verified on line. This is not fake news.

As Representative Vetter mentioned, we came across about 10 cases in the past year that fell victim to the nonconformity conditions. Although I only appraise in the eastern portion of the State, I've taken time to research the zoning ordinances online in most of your districts. I didn't find them all, but I'll bring to your attention situations close to home.

I did study 12 of the major cities, 6 small cities, and several county and township documents. I found that only Bismarck, Devils Lake, Fargo and Stanley did not have rebuild issues. In fact, the bill before you was plagiarized from Bismarck and Fargo's provisions as well as a Minnesota State Statute passed in 2017. All 20 others had material issues with the ability to rebuild, and some have no possibility of reconstruction at all.

Time does not allow me to address each and every one of your districts, but I have attempted to research each one. If you are interested, I can try to address them in the question and answer session.

Starting at the top, Chairman Dockter, the bill is near word for word with Bismarck's code, and therefore, this bill changes nothing in Bismarck. However, I can say that there are major issues within Burleigh County, especially in the townships surrounding Bismarck.

Representative Pyle, several years ago I requested and obtained the zoning map and regulations for a problem case I was working on. When I found out that the minimum sized residential lot in the least restrictive zoning code in Casselton was just short of 10,000 sf, I nearly had a heart attack. I'd been doing appraisals in Casselton for 25 years; how many did I erroneously classify homes as conforming when in fact they were nonconforming? To their credit, the city council did modify it somewhat after I presented the issue and solution.

Representative Ertelt, I have also appraised in Lisbon for about 25 years, and in preparation for this presentation, I obtained the zoning map and Ordinance. Second heart attack. Just several blocks from your house I completed an appraisal for the sale of a typical house, surrounded by houses and sites quite similar to the subject. Unfortunately, the lot size is 1400 sf too small for the zoning regulations. Worst of all, the conditions of obtaining a variance forbids granting a variance for not meeting the minimum lot size of 8,000 sf. So, now we wait to see if the underwriter okays it against Fannie Mae's rules, or if the homeowner challenges the zoning authority to change the zoning law. That would probably take longer than to just wait for the passage of this Bill. Maybe you can amend this bill to have emergency status?

Incidentally, I noted that 9 nonconforming houses in Lisbon sold in the past 2 years. A review of sales in Kindred showed 7 nonconforming sales. What's happening? The appraiser glanced at his zoning classification, it said one or two unit residential, the property seemed normal for its area, and he checked the box conforming. I seriously doubt that there is any residential appraiser active in this state that hasn't done the same, myself included.

Representative Longmuir, congratulations! Stanley has a provision that may be actually better than this bill. It simply says that if the property became nonconforming due to a change in the zoning district's regulations, it is to be treated as conforming. Simple and fair. Maybe that should be the new law!

Let's focus on actual cases in the areas that I am well acquainted with. Representative Koppelman, according you represent West Fargo. The properties to the south of Main Avenue along 1st and part of 2nd avenue have been zoned commercial for as long as I can remember. Whether this was an effort on the part of the city to make it possible for the commercial properties to expand or it was to accommodate their request, I can't say. I counted 30 nonconforming houses in this area. Two are in disrepair, the rest are very well updated affordable housing. There are just a few commercial metal buildings in there now, after 20 plus years of trying. Mostly those lots that don't have houses on them are vacant lots strewn with equipment and junk. None of the businesses along that stretch of main appear to have expanded into that area for anything other than storage lots. So, reviewing the mission of zoning, how can you say this is in the public interest? You have 30 houses with mortgage and or sales issues, whose value and appeal is negatively impacted by an area is in a very slow transition. No, I suggest that this change was made based on a misguided effort at economic development. Even eminent domain is not allowed for economic development. Based on similar situations in every major city that I am familiar with, an effort to zone houses out of existence has resulted in blight. Wouldn't it be better to just get along and let conversions of neighborhoods happen based on economics? Why try to limit their maintenance or wait for one in 500 to have a catastrophic loss each year?

Representative Koppelman, some years ago, West Fargo added a provision requiring improvements to be more than 100' from the Sheyenne River to avoid bank settlement issues. A reasonable plan for new construction, but it also applies to the existing base. Across the street from your house, 6 out of the 8 houses are too close to the river. Do you think that any of them have a clue that they are in financial jeopardy? As I followed the GIS system down the Sheyenne, I found about 30 more. So, about 60 nonconforming houses in West Fargo, and I haven't explored all areas or minimum requirements.

I have no knowledge of why Bismarck's Ordinance has the provision that is near identical to this bill, but I do know why Fargo has it. If you'll bear with me for a little while longer, I think the story will show how Fargo's very professional planning department's attempts at solving neighborhood problems inadvertently resulted in massive unintended consequences.

For as long as I remember, the City of Fargo defines a family as not more than 3 unrelated persons. Every other city I know of has 4. No doubt, this was intended to help with two goals, that of encouraging home ownership by making these houses less attractive to investors, and at the same time reducing the negative impact of rentals in neighborhoods. Well, economic drivers being what they are, landlords soon began converting the houses into as many units as possible under the zoning regulations. Some even just added a minimal kitchen to a family room, added a few doors, got it approved as a duplex so now they could have up to 6 individuals. Most then rented them to 6 people on two different leases.

Of course, over time, homeownership plummeted in the Roosevelt and Hawthorne neighborhoods and their schools were threatened. For all the right reasons, Fargo totally updated their zoning ordinance and applied new rules and classifications to most all of Fargo to put a stop to it. Of course, along with the problem properties, many of the single-family owner-occupied homes fell into a nonconforming status. The method of the change is very common in newer documents, where instead of designing how many units are permitted under each classification, it becomes how many units per acre.

At first, I thought it was pure carelessness of applying the correct classification to properties based on the common lot size in the area. However, a close inspection of the facts shows that the classification was chosen to prevent any additional units being added to any houses in the area. Once again, good public policy.

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But then, they added a provision in the variance section stating that no variance could be given for density, the minimum lot size per unit. So, now hundreds, may more than a thousand single family owner occupied houses had no possibility of being repaired or rebuilt if they had a disaster. Oversight, or over reach?

Well, the odds prevailed around 2006. A house in the Hawthorne neighborhood was partially destroyed by fire. The cost to repair exceeded 50% of the cost of replacement. The insurance company offered the cost to repair, but the City could not allow it. The neighborhood association wanted it restored, the owner wanted it rebuilt, the school district did not want to lose another home. It sat that way for nearly a year while the attorney's presented their cases. In the end, the result the zoning ordinance was changed, the basis of which is the Bill before you.

One last argument. Representative Adams, you represent parts of Grand Forks. I am aware that the City of Grand Forks may oppose this bill. I can think of three cases this year where a mortgage was denied because of a nonconformity. Each has a different twist. I'll try to be brief on this.

R1 in Grand Forks means single family only. Several years ago, an appraiser drove up, looked at his residential zoning, noted that the duplex was about the same age as all the houses in the neighborhood were about the same age, and that duplex properties dotted the neighborhood, and never thought to check the fine print. This year, the owner obtains a purchase agreement. We read the fine print. We had two of those this year.

But the reason we are all here is because the next case is the poster child of senior citizen abuse.

I wish I could show you the photos of the property and tell you the details, but I can't because of confidentiality regulations. This modest house is located along a totally residential avenue but is next to the corner lot that faces of North Washington street in Grand Forks. It is a very well updated somewhat modest home with newer siding, windows and shingles. It has a double garage and a large manicured lot buffering it from the traffic street in the area. There is a single-family house to the rear, one to the left, and across the street. But, somewhere along the line, it along with those facing Washington Street got rezoned into neighborhood commercial. In the public interest, or a stab at economic development?

The home was owned and occupied by elderly owners for longer than online records exist. The request was for a HUD reverse mortgage, a typical method of being able to afford to stay in their long-term home. I took the liberty of researching the public record in preparation for this presentation. Turns out they took out a home equity loan in 2011 for \$24,000. Being the house has new windows, siding and roof of about that age, its logical the loan was for that purpose. The loan was restructured in 2016, and after their reverse mortgage application was denied due to its zoning, they restructured once again in 2018. Did the building permit department turn a blind eye to the maintenance restriction of 10% back in 2011? Is the loan repayment and other financial stress the cause of their decision to apply for a reverse mortgage? Is it right that a restriction on maintenance and the denial of allowing them to repair in the event of a catastrophic loss prevents them from using their equity to live out their lives in the forever home? How does the public interest outweigh the property rights to their homestead?

I'd like to add a few words regarding the opponent's potential arguments. Based on the information I have received, they may try to confuse the issues by trying to tie zoning ordinance into building code

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and other possibilities. Building Code stands on its own. We are simply trying to make it possible for the house to be repaired or rebuilt which would always require the repairs were made according to current building code.

I note that they may attempt to say that the bill is confusing or unclear on certain issues. Not true, it's been tested. It's been used for more than 12 years in major cities. It doesn't touch nonconforming uses, or land uses. It just says, let us maintain, repair, or reconstruct what we already have.

The elephant in the room is the thought that this is an attempt at taking away local control. I understand how the opponents may think, but that is not what this is about. It's about property rights. It's about setting boundaries. Somethings just need to be illegal.

Mr. Chairman and members of this Committee, I sincerely hope that you will stand up for homeowner property rights. I encourage you to carefully consider the issues and sincerely hope that you will not only vote in the affirmative, but also advocate for the passage of this important bill.

Thank you.

May I answer any questions you may have?

#3

Testimony
House Bill 1165 – Office of the State Engineer
House Political Subdivisions Committee
Representative Dockter, Chairman
February 7, 2019

Chairman Dockter and members of the House Political Subdivisions Committee, my name is Aaron Carranza and I am the Director of the Regulatory Division for the Office of the State Engineer. I am here today to present testimony regarding House Bill 1165. House Bill 1165 proposes to codify language regarding a “nonconforming structure” and, as written, has some serious statewide economic consequences that need to be addressed.

All communities that participate in the Federal Emergency Management Agency’s (FEMA) National Flood Insurance Program (NFIP) must appropriately regulate land use and development within their identified Special Flood Hazard Area (SFHA), which is typically referred to as the 100-year, or 1-percent, floodplain. When building or substantially improving a structure in the SFHA, NFIP regulations require the lowest floor of the structure to be elevated to or above the Base Flood Elevation (BFE).

Through North Dakota Century Code (N.D.C.C.) § 61-16.2, North Dakota has adopted the minimum requirements of the NFIP and requires one foot of freeboard, or clearance, above the BFE for both residential and non-residential structures in the SFHA. Furthermore, any community that fails to adopt and enforce floodplain management ordinances as required under the NFIP will not be eligible to participate in the NFIP and will be unable to receive any flood disaster assistance (through FEMA), financial or otherwise, from the state.

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If House Bill 1165 is approved, as proposed, there is a strong possibility North Dakota's participation in the NFIP will be jeopardized as state law would not comport with minimum NFIP requirements. By allowing communities to adopt regulations that are less restrictive than the minimum federal requirements, multiple negative impacts may result, including exceedingly high flood insurance rates and NFIP sanctions.

Buildings that are Substantially Improved (SI) (repairs/improvements costing in excess of 50 percent of the market value), in the SFHA are required to be brought into compliance with current regulations. In regards to the NFIP, this typically means elevating the lowest floor. After a structure has been SI, the construction date for the building is changed to the SI date and the flood insurance premium is based on that new date. The structure would then be considered a Post-FIRM structure and insurance will be rated according to the lowest floor elevation in relation to the BFE. If the building has a basement, this could result in having the lowest floor 8-10 feet below the BFE, resulting in an insurance policy costing more than \$10,000 annually. Furthermore, structures with the lowest floor below the BFE will be more difficult to sell due to the high cost of flood insurance and the increased potential of flood damage. This is a huge financial burden that needs to be understood and avoided.

If a community is not enforcing floodplain development regulations that meet the minimum federal requirements, the community may be placed on probation or suspended from the NFIP. During a period of probation, every NFIP flood insurance policy in that community will be assessed \$50 per year, for a minimum of one year. In the event a community is kicked out of or chooses not to participate in the NFIP, federally subsidized flood insurance will not be available for purchase by the homeowner.

Properties located in the SFHA with a federally backed mortgage are required to carry flood insurance. If the community is not participating in the NFIP, but NFIP mapping products exist in the area, individuals will be forced to purchase flood insurance through private insurance companies. Historically, private flood policies are more expensive than NFIP policies and are hard to come by in North Dakota.

It is also important to understand that if SFHAs have been identified on a Flood Insurance Rate Map and the community does not participate in the NFIP, some federal and state disaster assistance for flood damage may not be available.

There are roughly 10,000 NFIP insurance policies in place in North Dakota at any given time. To date, there has been nearly \$260,000,000 paid out in claims and over \$528,000,000 has been awarded by FEMA for flood-related disasters. Given North Dakota's propensity for flood-related disasters, many communities and individuals could be left without federal assistance should HB1165 be enacted as proposed.

The Office of the State Engineer is proposing to remove subsection 5 from each section. By removing subsection 5, we can eliminate the potential of violating the regulations of the NFIP and risking community and state participation in the program.

Thank you for the opportunity to comment and I would be happy to answer any questions you might have.



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HB 1165
City of West Fargo Testimony

Provided by Bernie L. Dardis – President, Board of Commissioners

HB 1165 relates to nonconforming structures for zoning purposes for cities, counties, and townships. The City of West Fargo would like to go on record as being in opposition to the bill as it pertains to Section 40-47-05.1 as written for the following reasons:

The City is sympathetic to the situation of a homeowners ability to finance a property that is no longer in compliance with local zoning ordinances, however it is within the City's best interest to find remedy to this situation rather than to be required by State Statute to allow the homeowner to rebuild without regard to local zoning decisions.

- Local zoning is responsive and often provides remedy such as rezoning, zoning text amendments, or variance from zoning requirements to allow for the proper rebuilding of a property that is nonconforming.
- There may be specific cases where rebuilding a nonconforming structure is not in the City's or future homeowners' best interest such as soil stability, flooding, compatibility with adjacent uses, environmental considerations, cost related to regional improvements, etc. In these cases allowing the rebuilding of a nonconforming structure without local consideration may not result in the best situation for the City or for the homeowner.

The City respects the bill sponsors desire to find an easy remedy for homeowners of nonconforming structures, however feels it is in the City and future homeowners' best interest to allow the City to make these decisions locally.

The City of West Fargo urges a **DO NOT PASS recommendation on HB 1165.**

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2-7-19



CITY OF GRAND FORKS

P.O. BOX 12909
GRAND FORKS, NORTH DAKOTA 58208-2909

OFFICE OF CITY ATTORNEY

Testimony on House Bill 1165
House Political Subdivisions Committee
Howard Swanson, City Attorney
City of Grand Forks, North Dakota

Mr. Chairman and Members of the House Political Subdivisions Committee:

Thank you for allowing me the opportunity to provide testimony regarding HB1165. My name is Howard Swanson. I am the City Attorney for the City of Grand Forks. I submit this testimony in opposition to the adoption of House Bill 1165. My opposition is based upon my concerns with the Bill language as well as the policy implications of adopting the Bill.

Bill draft.

House Bill 1165 seeks to allow a "nonconforming structure" to continue its nonconforming status and be reconstructed in the event that it is destroyed or damaged beyond 50% of its value. There are a number of issues and concerns relating to the proposed language in HB1165.

The Bill fails to distinguish between a "nonconforming use" and a "nonconforming structure". It is unclear whether the Bill was intended to apply to one or both. The two terms are not the same. As a result, the language of HB1165 is vague and ambiguous.

The Bill limits its application to a "residential use". However, there is no definition of a "residential use". It is unclear as to whether the reference to "residential use" would apply to a nonconforming residential use in a commercial or industrial zone. If so, is a residential use in a commercial or industrial zone a use that should be continued and protected by statute? Is it reasonable and appropriate to extend the nonconforming status under these circumstances? Depending upon the definition of "residential use" House Bill 1165 may apply to a multi-family structure located in a single family zoning district. Also depending upon the definition of a "residential use" the Bill may apply to a multi-family structure located in a commercial or industrial zone. If so, is the reconstruction of the multi-family dwelling in a single family zoning district, commercial or industrial zoning district appropriate? Should its indefinite continuation be promoted and protected by a state statute? Is this a situation in which a state statute is necessary or appropriate?

House Bill 1165 includes a provision prohibiting the moving of a nonconforming structure unless the movement or relocation will bring the structure into compliance with all applicable zoning regulations. This provision should be clarified to make it clear that the moving of the structure off of the premises should be allowed even if the structure, which is being moved off the site, does not comply with all applicable building codes.

The Bill also prohibits a new structure from occupying a portion of the lot that was not occupied by the damaged structure, having more square footage than the damaged structure, or exceeding the height or number of stories than the damaged structure. Prohibition of occupying a portion of the lot that was not occupied by the damaged structure as provided in the Bill could, depending upon the circumstances, prevent a structure from being reconstructed in compliance with current codes. For example, the noncompliance may be due to side yard, front yard or rear yard setbacks. Reconstruction in an area not previously occupied by the structure may actually bring the structure into compliance with the setback requirements. An outright prohibition may be inconsistent with the policy of bringing property into conformity.

Another provision of the Bill allows expansion of a nonconforming structure if the expansion is in compliance with the applicable state and local zoning regulations. The likelihood of its applicability with respect to a nonconforming structure will largely depend upon the ability to provide structural, electrical and mechanical services to the expansion that comply with current codes. It is extremely unlikely that an expansion of any type of a nonconforming use would comply with applicable zoning regulations.

House Bill 1165 removes municipal authority to regulate property uses and structures for the protection of the public health, safety and welfare. To allow a nonconforming use or nonconforming structure to remain out of compliance with zoning or building codes in perpetuity will likely have adverse impacts upon adjoining and neighboring properties.

House Bill 1165 is inconsistent with the purposes and policies of bringing properties and structures into conformance with current zoning and building codes.

Purposes of nonconforming restrictions

The intent of ordinances regulating nonconforming uses and/or nonconforming structures is to protect the public health, safety and welfare. It is also to provide some assurances to property owners that have made the investment to comply with both the zoning code and building code that nonconforming properties in their neighborhood will also be conforming in the future. House Bill 1165 defeats these purposes and adversely impacts the adjoining property owners' or neighbors' expectations that any nonconforming use or nonconforming structure would eventually be brought into compliance with applicable city codes. The provisions of House Bill 1165 can have adverse impacts upon the valuation of conforming properties located near a nonconforming use or nonconforming structure. House Bill 1165 essentially allows the nonconforming status to remain in perpetuity, to the disadvantage of conforming properties. Courts have routinely recognized that it is a proper public policy to minimize nonconforming uses and nonconforming structures to protect public health, safety and welfare as well as to protect the investments of others, whose investments comply with zoning and building codes. House Bill 1165 defeats that purpose and goal.

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Distinction between nonconforming use and nonconforming structure.

A nonconforming use is one which lawfully existed prior to an effective date of a zoning restriction or change wherein the effect of the change renders the use in a nonconforming status. By the adoption of a nonconforming use ordinance, the use will be allowed to continue to exist in nonconformity with the new requirements. Examples of nonconforming uses would be a residential use (single family home) located in an industrial or commercially zoned district. In such instance, the uses in the area may have changed due to various conditions or circumstances to an industrial or commercial use such that residential use in that district is no longer favored and is inconsistent with the new zoning designation. As a nonconforming use the residential use would be allowed to continue for such time as the property is continued to be used for residential purposes. In the event that the residential use is discontinued, any subsequent use must be in compliance with the current zoning requirements.

A nonconforming use is not the same as a nonconforming structure. A nonconforming structure is a structure that does not meet current building code requirements but is allowed to exist until such time as it is substantially remodeled, rebuilt or otherwise modified. In such an instance the structure is then required to be reconstructed in accordance with current building code and zoning requirements. An example of a nonconforming structure may be where an electrical code requirement has been adopted and the structure does not comply with the newly adopted electrical code.

Most cities have adopted ordinances "grandfathering" in properties and structures that are nonconforming as a result of a change in local regulations. The terms of the ordinance will establish how long or under what conditions the "nonconforming use" or "nonconforming structure" can remain in a nonconforming status. Courts have consistently upheld the restrictions upon nonconforming uses and nonconforming structures and have further warned that it is improper to equate a nonconforming use with a nonconforming structure.

A nonconforming use or a nonconforming structure typically is not defeated by a change in ownership as long as the subsequent owner continues the same nonconforming use or structure without modification, expansion or reconstruction. In other words, a change in ownership does not destroy the right to continue the use of a structure in a nonconforming status.

Grand Forks regulation of nonconforming uses and structures

The City of Grand Forks has enacted ordinances which allow nonconforming uses and structures to exist without complying with current regulations until such use or structure is abandoned, changed or destroyed. Upon an abandonment, change or destruction, the subsequent use must conform with current zoning requirements. With respect to a nonconforming structure, such structure may remain in a nonconforming condition until such time as there is a major remodeling, expansion, reconstruction or substantial damage. Under the Grand Forks City Code, damage to a structure of more than 50% of its fair market value requires any reconstruction to meet current code requirements. The restrictions adopted by the City of Grand Forks are substantially similar to a vast majority of cities in the State of North Dakota and throughout the United States.

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Closing.

In closing, I earnestly believe that the effect of House Bill 1165 is not advantageous and would negatively impact neighboring properties and property owners whose properties comply with zoning codes and building codes. To allow a structure or use to remain out of compliance with zoning code and building codes in perpetuity would mean that a neighboring property owner could never anticipate a future with a conforming use or conforming structure. I also believe that the effect of House Bill 1165 if adopted is adverse to the interests of municipalities, including the City of Grand Forks. The appropriate balance is to allow a nonconforming use or nonconforming structure to remain nonconforming until such time as the structure requires modification, reconstruction or new construction of more than 50% of its value. At that point, any reconstruction or new construction should be required to comply with current zoning codes and building codes. This balance allows the owner of the nonconforming property use of the property as well as protects the interests of neighboring property owners. It further advances appropriate municipal planning, zoning and inspection authority for the overall protection of the public health, safety and welfare. House Bill 1165 disrupts this balance.

Request for Do Not Pass Recommendation.

On behalf of the City of Grand Forks, I respectfully request that this Committee forward the Bill to the House floor with a do not pass recommendation. Thank you.

OFFICE OF THE CITY ATTORNEY



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HB 1165

North Dakota Planning Association Testimony

Presented by Natalie Pierce #718

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2-7-19
pg 1

The North Dakota Planning Association (NDPA) strongly opposes HB 1165. The bill would undercut the authority of political subdivisions to reduce land use conflicts and protect public health and safety. Below, NDPA highlights just a few of the many issues inherent in the structure and content of the bill.

Negatively impacts management of National Flood Insurance Program: HB 1165 assumes that communities may only restrict residential rebuilding projects to the minimum standards required for National Flood Insurance Program (NFIP) participation. Many communities have imposed regulations above and beyond NFIP minimums in order to attain Community Rating System (CRS) status. If state law compels a political subdivision to regulate only to NFIP minimums, and the community loses their CRS status, this would result in an increase in flood-insurance premiums for all premium payers throughout the CRS community.

No exceptions provided for application of health-related standards: there are cases where a residential structure lies on a very small lot and all or part of the septic system serving the residence is actually located on the neighbor's property. Sometimes it's a mobile home that's involved in these cases. In the language of this bill, does a mobile home count as a "structure devoted to residential use"? Does the word "damage" also mean the degradation of a structure due to years of deferred maintenance? Is it a good practice to allow a dilapidated mobile home to be pulled off a lot and replaced with a new mobile home or even a stick-built home, where the septic system is inadequate?

Overrides local efforts to reduce land use conflicts: allowing non-conforming uses to persist can prolong land use conflicts that affect health, economic development and many other factors. Take, for example, a home located next to a fertilizer plant – a remnant from a time before the political subdivision even adopted a zoning code. The area where the house lies is now prioritized for industrial uses, but the home remains. When the home has reached the end of its useful life or is destroyed, the political subdivision should not be required to allow the residence to be reconstructed in that location. Separating uses in an appropriate manner allows the industrial use to expand and contribute to the economy and supports the construction of residences in safe and healthy locations.

Take a second example of a dilapidated home that persists in a corridor that has been identified for commercial development. The home compromises the character of the area, which in turn affects economic development. Additionally, when the political subdivision imposes special assessments on the area – to install utilities that are of a larger scale to serve commercial development – that home owner will have to pay special assessments at the same higher rate as the other commercial properties in the district. If the home were to be destroyed, it is better to prohibit it from being reconstructed in that location.

This bill will create many more problems than it will solve. NDPA urges a **Do-Not-Pass** recommendation. However, if the Committee is intent to provide a do-pass recommendation to the House, NDPA strongly urges the Committee to include amendments to the bill that will better address the issues cited here.

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Testimony in Opposition to House Bill 1165
February 7, 2019
House Political Subdivisions Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the House Political Subdivisions Committee. For the record, my name is Bill Wocken and I am testifying this morning in opposition to House Bill 1165 on behalf of the North Dakota League of Cities.

House Bill 1165 deals with nonconforming structures. This concept comes from the zoning ordinance. It describes a building that does not comply with all the provisions of the current zoning for the lot on which the building is located. Over the years zoning designations and building regulations change. Often flood districts are revised and flood regulations may change. The structures that exist at the time the changes become effective are not required to change but instead are "grandfathered in" and are called nonconforming uses.

The North Dakota League of Cities is opposed to this bill. We are not going to discuss the concept of nonconforming structures. There are city officials in attendance who will very capably handle that discussion. The League of Cities is opposed to mandates from the state or federal government that restrict decisions and options of local units of government.

In recent interim sessions the Legislature has protested the imposition of federal mandates on our state. I recall recent House Concurrent Resolutions asking the federal government to rescind one or more of its mandates on our state. The North Dakota League of Cities opposes mandates of any kind. We think these issues can be dealt with on the local level by our local elected officials. We therefore respectfully request a Do Not Pass recommendation for House Bill 1165.

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Page 2, line 4, insert after "and" "adhere fully to all applicable floodplain management ordinances;"

Page 2, line 6, strike "any other provision of law" insert "subsections 1 through 3 of this section"

Page 2, line 7, strike "than this section"

Page 3, line 1, insert after "and" "adhere fully to all applicable floodplain management ordinances;"

Page 3, line 3, insert after "40-47-13" "and subsections 1 through 3 of this section"

Page 3, line 4, strike "than this section"

Page 3, line 28, insert after "and"; "adhere fully to all applicable floodplain management ordinances;"

Page 3, line 30, strike "any other provision of law" insert "subsections 1 through 3 of this section"

Page 3, line 31, strike "than this section"

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From: Vetter, Steve M. smvetter@nd.gov
Subject: HB 1165
Date: Mar 21, 2019 at 8:48:29 AM
To: Vetter, Steve M. smvetter@nd.gov

HB 1165

Chairman Burckhard and members of the Senate Political Subdivisions, my name is Steve Vetter, I represent district 18, which is a small chunk of South Grand Forks, downtown, half of North Grand Forks and a small rural area extending to the Grand Forks Air Force Base. I am serving in my 2nd session.

If you live in a house that is Grandfathered in, you would think you are ok, but you are NOT. In most places in ND, except Fargo and Bismarck, if your house is over 50% damaged or destroyed you cannot rebuild or repair your property.

The intent of this proposed law is simple. If a residential property that was once legal, but is now legal non-conforming or grandfathered in, under the provisions in this bill, it can be repaired or replaced. This bill deals with the unintended consequences of changing zoning codes for large areas.

Let me walk you through the bill. You will see the same language repeated 3 times because Legislative counsel said it needed in 3 parts of century code. Subsection 1 is what the bill does. A. B. & C are the conditions to rebuild. Subsection 2 spells out the rebuild must be compliance state and local regulations.

Subsection 3 .The structure needs to be built on the same footprint. If moving the structure brings it into compliance than it is permitted.

Subsection 4 is the flood language to make sure any rebuild is in compliance with the national flood insurance program.

Subsection 5 is language that was added for less restrictive ordinances of cities like Bismarck and Stanley.

There is a difference between zoning code and building code. This bill in no way affects building code. Building code always comes into effect whenever repairs or replacement takes place. This law does not change any of that. It

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does not impact planning, building codes, or other State Laws.

This is not a new concept. Minnesota has a similar law and ordinances in Fargo and Bismarck are similar or the same as this bill. This bill was modeled after Minnesota law and Fargo and Bismarck ordinances.

How does this happen?

It happens when a residential structure is built and is legal but at some time in the future, the city changes its mind and changes the zoning for that area. For example, they might change zoning code to require certain sized lot for area like 7000 square feet. So, anything under 7000 square feet becomes legally non-conforming or grandfathered in. For the rural people an example would be the zoning code changing to require a 10 acre site. The sites under are nonconforming. Another example would be to change the distance required to be away from a lake, river or stream. Or another example would be zoning an area R1 or single family then all the duplexes and multi-family's are legally non-conforming. Or a single family residence that was changed to commercial zoning.

At no fault of the property owner and solely because of city or zoning authority these properties are grandfathered in. And with their new grandfathered status comes new rules depending on your city. Some cities even have restrictions on repairs like only 10% a year or 25% every two years. How does this help the city or neighborhood?

This is not a local issue. My reasoning for utilizing state law to affect change is because these harmful provisions permeate throughout almost all zoning districts that could be found online in the whole State of North Dakota.

Attempts to work through all the cities, townships, and counties in ND would be a time consuming long term activity. I think it is more efficient to do it by state law requiring provisions that are already present in the two largest cities and in

other States.

The other option is to seek negative publicity and notify all the affected homeowners. What purpose would that serve to have citizens have more distrust in government? However, if this law is not passed then the political subdivisions should be responsible for at least notifying property owners of their status and implications for having that status.

When I first submitted this bill, I had the assumption that cities and towns just did not realize the unintended consequences of their actions by zoning a whole area without concern for the existing houses that do not conform to the new rules. Do they really want to zone someone out of their house? That seems a little extreme. Because this bill actually gives the cities more freedom because they will no longer have to worry about the unintended consequences of zoning large areas with mixed housing. why would they oppose this bill if they do not want the authority to zone someone out their home without just payment? Do they want to change the market area without just compensation? It's not my opinion, I will quote Grand Forks & Minot ordinance, this is what they think about nonconforming properties. "It is the intent of this chapter to permit these nonconformities to continue until they are removed or for the reasonable useful life of the building, but not to encourage their survival".

Think about that for a bit.

What if it was your house that they don't want to survive? Or your grand mother or brother or your friend's house? You could be living in a Grandfathered house and you may not know it. The people that live in Grandfathered houses most likely did not know it was Grandfathered when they bought it nor did they know the implications. If they knew, they would not have bought it for the same price. Would you?

During the course of research on this bill, I discovered there is a member of the House that is a running mate of someone on this committee who currently lives in a nonconforming structure. Another Representative told me after the vote on

this bill that his son's house was recently damaged beyond 50% in the Jamestown area and he is being told he cannot rebuild because it is nonconforming. I say this this to impress on you how close to home this problem is. The expert who will be speaking after me will be able to point out to each senator on this committee and how this bill affects their neighborhood or district.

I would like to address some of the common objections that I have heard made by the opposition.

This deals with nonconforming structures not nonconforming uses.

"We let everyone build, just go through the city councils." It's not quite that easy and its not automatic. Many ordinances require supermajority votes on the city council and the variance boards. Usually there is no appeal process. If the city lets everyone rebuild it would set precedent so there would be no need for having the current provisions anyway because if you let everyone build at what point can you say nobody can build?

"We need this as a tool in the toolbox." First of all its not a very good tool. When and where has this 'tool' actually work. The only way this 'Tool' actually works is if you deny all repairs to everyone.

Safety. This bill deals only with zoning regulations. It does not deal with safety concerns. If something is unsafe because of some ordinance or law then this bill does not affect it. All building codes and safety codes must be follow and are not changed by this bill.

The bill does not hurt the city's ability to provide for public health, welfare and safety. How does bill have adverse effects of the neighborhood? Does allowing

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att # 1 p. 5*

someone to repair their house an adverse effect?

Industrial zoning: If an area is zoned industrial then all the residential units are illegal structures not legally nonconforming so this bill would not affect illegal structures or uses. Such as the Septic tank example or other illegal structures that are against code are not affected by this bill because this bill only deals with 'legally nonconforming structures'.

My appraisal company have identified 10 properties we worked on this last that are negatively impacted their legally nonconforming status. They range from an elderly couple who can't access their equity in their home to live properly in their final years to lawsuits against a government authority for turning their houses into nonconforming properties the establishment of a wider right of way.

I can supply numerous examples and actual cases where people have been affected , however, when asked, the opponents cannot provide one example of an actual cases where having the authority to zone people out of their house has benefited the city or neighborhood.

I would be happy to rebut any false objections or claim in how this bill hurts the city or a neighborhood but I have yet to hear one that this bill changes.

Please vote for those who can't protect themselves or who may not even know it. Vote for the individual property owner over the city's authority to zone them out of that property. Please give this bill a Do Pass recommendation. Thank you. I will stand for questions. FYI I have an expert testifying after me that will give more details of actual cases.

If you want to kill this bill then the political subdivisions at least owe it to the

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people to give notice to those who are legally nonconforming and the implications of that status. It is only fair.

Mr Chairman and members of the Committee:

Hello, my name is Dennis Huber. I am Real Estate appraiser based out of West Fargo. I am speaking to you today in support of bill #1165. I am here to speak for the thousands of homeowners in this state that are not even aware that zoning provisions exist that threaten their home, their financial security. It would seem unrealistic to them to know that zoning regulations have classified their home as nonconforming.

Before we get started on the zoning provisions that threaten home ownership, I'd like to take a moment to change your mental picture of the houses we are talking about. We are not talking about the dilapidated odd house setting on a hospital parking lot. We are not talking about unkept houses, unsafe properties. This zoning measure has absolutely nothing to do with housing code or building code. We are talking about normal houses, almost always next to similar houses. Please remember, this measure is about nonconforming residential structures, not conforming uses, not building code violations. Later in this testimony I will illustrate to you the enormous number of nonconforming houses in the areas that I am familiar with and point out problem areas in each of your districts.

Let's define exactly what we are talking about. After reviewing about 30 zoning ordinances in throughout all areas of the state, I find almost all have the same boilerplate definitions and provisions regarding this subject. Quoting Minot's Code verbatim, nonconforming structures are defined as follows:
"Within the districts established by this Ordinance, or amendments to it, there exists lots, structures, and uses of land which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance."

This means that if a property doesn't meet the requirements as stated in its zoning classification, it has become non-conforming. It is often lot size, minimum setbacks to major traffic streets or waterways. And I will illustrate later, due to the zoning to be changed to something other than residential.

Becoming classified as nonconforming creates numerous

restrictions, some of which cause sales to fall through due to a denial of secondary market financing. This has become more prevalent since lenders become more aware of secondary market regulations.

Fannie Mae's Selling Guide states in part, "**Fannie Mae will not purchase or securitize a mortgage secured by a property that is subject to certain land-use regulations that create setback lines or other provisions that prevent the reconstruction or maintenance of the property improvements if they are damaged or destroyed.**"

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What do the zoning ordinance boilerplate have to say about maintenance, repairs, or reconstruction?

From Grand Forks zoning ordinance, I quote, "**It is the intent of this chapter to permit these nonconformities to continue until they are removed, or for the reasonable useful life of the building, but not to encourage their survival.**" So as not encourage their survival, Grand Forks restricts repairs at a limit of 10% of the replacement cost of the building in any one year. Of course, if followed, anyone that doesn't keep up with updating their house is faced with extending major repairs such as siding, shingles, and window replacement over a period year. Is this in the best interests of the neighborhood?

However, the next provision is the one that limits mortgages and should scare homeowners. The numbers vary throughout the areas; however, the language and result are almost universal in all political subdivisions. From West Fargo's Ordinance, I quote, "**Should such nonconforming structure or nonconforming portion of the structure be destroyed by any means to the extent of more than 50% of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.**" That means it must conform to the letter of the law. In almost all cases, if the property could do that, it wouldn't be nonconforming to start with.

Let's consider how that works out. The case that prompted the City of Fargo to amend their ordinance to allow residential properties to maintain, repair, or rebuild their house, a house in the Hawthorne neighborhood had a fire. Like almost every house on the block, it was nonconforming because the lot was too small for the zoning classification. It had a catastrophe, and the estimate to repair exceeded 50% of its replacement cost. It

remained in that condition for a very long period of time.

Actually, the City wanted it rebuilt, the school district absolutely did not want to lose another house. And the homeowner was forced by his replacement cost insurance policy to fight for its survival. Why. If anyone of you has ever had a claim on their homeowner's policy, you'll probably understand how it works. I don't know the numbers in this case, but we can reasonably estimate them.

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The property was worth \$300,000. The replacement cost of the house new is estimated at \$325,000. The estimate to repair is estimated at \$165,000. Is the insurance company going to hand the homeowner a check for \$325,000, or \$165,000? Trick question, probably neither. They're going to send him a check for the depreciated value of the area destroyed along with a promise to pay the balance up to \$165,000 when he submits receipts and evidence that the repairs have been made. So, most likely, this homeowner had a check in hand of about \$100,000, a mortgage of \$240,000, a house that he would be responsible for removing, and a lot that couldn't be built upon, and no place to live. That's why Fargo was forced to change the ordinance.

We sent out the rough draft of this bill to various planning and zoning departments, the League of Cities, and asked that it be sent along to the North Dakota Planners Association. We did get a helpful suggestion indirectly from the Planners Association concerned with the flood zone issues, and we modified to read exactly like Minnesota's law. The other reactions were irrational arguments regarding nonconforming use and areas that housing and building code covers. This measure doesn't touch those. An opinion letter offered by Grand Fork's city attorney stated that if properly insured, a homeowner would have no financial risk, and dwelled upon nonconforming use issues, not nonconforming structures.

The measure before you is nearly identical to the provisions in Bismarck and Fargo's Ordinance. Minnesota enacted a statute accomplishing the same thing in 2017. I did not find the above restrictions on rebuilding in Devils Lake or Dickinson. The City of Stanley rightfully added a clause to their ordinance. It simply states that if your previously legal conforming property has become nonconforming by changes to this zoning ordinance or a previous change, the property will be designated as conforming. They obviously considered the right to protect their home one of

basic principles of the American way.

Chairman Burckhard, I reviewed Minot's Ordinance and found a provision that was very helpful in reducing the number of residential nonconformities because they declared that all houses built before 1963 are excluded from being classified as nonconforming due to lot size. However, mandatory setbacks, and pockets of residential housing to the east and west of Broadway fall into the trap.

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Vice Chairman Anderson, your district includes various small cities and a large amount of rural areas. I found that a county ordinance states that the minimum agricultural site for an active or retired farmer is a reasonable 10 acres, but for non-farmers it is 40 acres. So, when a farmer sells his farmstead to a non-farmer, does it become nonconforming and subject to all the restrictions? Of course, it does.

Senator Dotzenrod, your district's is also a mix of rural and small cities. I'll call to your attention that Lisbon's ordinance requires a minimum of 60' frontage and 8,000 sf for a residence in the older part of town. Furthermore, under the variance provisions it prohibits a variance for lot size. There are at least 30 houses like that, and another 20 or so that are zoned commercial.

Senator Kannianen, I find that your area generally has the same boilerplate provisions but am not familiar enough with your area to point out areas of concern.

Senator Larson, you represent areas that are not within the City of Bismarck's zoning authority that do not have Bismarck's provision. Areas of concern include restrictions from waterways, and if those are changed, then the impact it would have on those large houses. Secondly, you have quite a number of small acreage properties that are too small for the zoning classifications of agriculture or rural residential requirements. Those in near proximity to a growing city are prone to restrictions in part due to the intent to preserve agriculture and stop urban sprawl.

Senator Lee, I am aware that you spent many years on West Fargo's zoning board, and likely understand the important role they play in the orderly growth of this fine city. But like every city I have examined, the old ideas of the past along with

attempting to place new classifications on existing neighborhoods has the unintended result of creating unnecessary turmoil in some areas. As a past Realtor, you know the areas I will mention quite well.

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Att # 2 p.5*

Representative Kim Koppleman lives on the west side, just a bit north of Main Avenue. Across the street from him are 12 houses on his block. 5 are nonconforming because they are less than 100' from the Sheyenne River, a provision added after they were built in the 80's or 90's. 4 are nonconforming because of their residential zoning classification requiring a minimum of a 6000-sf lot. Overall, West Fargo is better than most cities of its size in regard to applying appropriate zoning classification, however, between the two regulations I counted about 30 nonconforming houses.

However, just like every larger city that I researched, West Fargo has a residential area that was zoned commercial many years ago, likely to accommodate commercial businesses that may want to expand in place. South of Main Avenue, along 1st Avenue South, from Sheyenne Street to 4th St East, this area has been zoned commercial for maybe 50 or more years. Today, there is a high level of disrepair along the commercial properties, but of the 30 or so houses, 24 are very attractively updated, 4 are average and 2 are in disrepair. There are a couple of vacant lots strewn with junk, and only 3 commercial buildings that have been built in the past 30 years. Those buildings are little more than someone's shop or warehouse. Against all odds, even with mortgage restrictions the market has spoken. Well kept modest affordable houses remain this area's highest and best use. For the last 26 years, my business has notified homeowners that we are declining the appraisal assignment because the lender won't accept the zoning and have encouraged them to ask the city for rezoning. It never happens. However, unlike Grand Forks and other cities where commercial zoning has been applied to residential areas in near proximity to commercial properties, this is one of very few that hasn't turned into blight.

Fargo has an enormous number of nonconforming houses, almost all of them because the residential zoning classification doesn't fit the existing neighborhoods. There is a 50 square block area in the Northport area where about 90% of them have lots that are less than the minimum of 8,000 sf. I put the number of these throughout the city at about 1000 houses. Fargo has its

areas of houses in commercial areas, and those that remain in that class are the blighted areas. Areas where they have applied a mixed-use zoning have prospered. Is there a lesson and example of what could be here?

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Grand Forks has been the most problematic in my experience. Like Fargo, they have whole neighborhoods that have been zoned R1, a classification usually reserved for the best single-family neighborhoods. However, they have applied it to areas of modest houses, areas where side by side duplexes were built along with the single-family houses. Unfortunately for the homeowners, many of those single-family houses are located on lots that are less than 7,500 sf. Nonconforming, restricted against being repaired or rebuilt. But, under R1 zoning, isn't the only thing that can be built a single-family house. Yes, that's true. A great example that fact is often stranger than fiction.

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Fact of the matter is that in ~~Senator KENNEDY'S~~ district there is an area of very modest houses on small lots just a bit away from UND where I counted more than 150 houses that are nonconforming because of R1 zoning. And I hear that there is public sentiment that believes that these houses should not be allowed to be rebuilt. Most are single family houses are rented to students and the area is prone to blight. This is a problem, but do the zoning restrictions help or hurt? By limiting access to normal first home buyer's mortgages, doesn't it actually force the market to keep them as rentals? By restricting repairs doesn't it add to blight? And if you removed the house, what could you build there? Nothing. I have difficulty making any sense of this.

Grand Forks has quite a number of single-family residential properties zoning into a business classification that does not allow those. Most of them are near North Washington, a main thoroughway. The area has never transitioned into commercial development, and single family residential remains its highest and best use. It's a tried and failed old school concept.

Businesses move to areas where the building can fit their business and where access and exposure benefits their activity. There are vacant commercial lots. If there is blight in this area, its mostly the commercial buildings. Meanwhile, owner occupied housing attempts to hold on despite all efforts to zone it out of existence. For what purpose?

Is there another solution. Yes, and it is very simple. Use your mixed-use class of B4 to let both exist and prosper, and let the market decide.

The cases we've encountered in the past year include a side by side duplex in an R1 zoning in Grand Forks, built at the same time as surrounding houses and duplexes dotting the area. A sale that made it due to inhouse adjustable rate 5-year renewable financing. Do you think they buyer knew the possible financial risk he was taking? I think not. A current single-family house sale for about \$200,000 located in Grand Forks in a B1 classification, appraisal made subject to a zoning reclassification. Best case is a delay of about 3 months, a long and iffy process.

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I've had two cases in West Fargo's extraterritorial area that are considering a lawsuit because a quick take turned their property into nonconforming. If a disaster happened, they could be forced to move their large homes back further, costing hundreds of thousands of dollars. Another in that area that had to be bought out because it caused the site to be too small for the classification. I've had a rural property that had to buy another acre in order to sell their property because the township requires a 3-acre minimum. Another in Pleasant township that got delayed by months because its lot was too small to conform to septic system's regulations.

But the case that motivated me to act is a senseless situation in Grand Forks. The house is zoned B3 but is bordered on three sides by single family houses and on the other side by a vacant lot. The history on this house was that its mortgage was paid off in 1995 by the current owners. Now they applied for an FHA reverse mortgage, no doubt because they needed some of their equity for everyday living expenses. This very well maintained and updated house had newer siding, windows, and shingles about 8 years ago. The person answering my call to cancel the inspection sounded very elderly and a bit taken back when told them the lender was cancelling due to its zoning. I suggested requesting a zoning change, but I could tell there wasn't enough courage for them to pursue it. Would someone please explain to me how zoning this house out of compliance is in the best interest of the public? As a community, shouldn't we try to protect and aid the most vulnerable of all, those senior citizens who only want to live out their lives in their own home, the only home their family has ever known?

The most likely future of this house after they move on is that it will be offered on the market, denied a competitive mortgage, and wind up being sold to an investor at a discount only to be

rented to 4 college students.

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There is a reason that its just Representative Vetter and I as proposed this solution to this massive problem in this manner. Frankly, I have great respect for Planning and Zoning as it applies to the future growth of our cities. I have great respect for the citizens that volunteer their time and efforts to make our cities better. I respect the city employees that understand that goal. The only other way to change this particular problem is to access the media to educate and gather the public to confront the zoning and city authority. I have no desire to promote mistrust and negative opinions against those that help us to create our great cities and communities.

I have absolutely no doubt that if the zoning administrators were forced to individually notify each property owner of any changes to the zoning code that could affect their property along with a clear specific list of the possible ramifications, we wouldn't have thousands of nonconforming properties in North Dakota. Furthermore, if the affected homeowners knew what you now understand, you'd need an event center and heavy security for any public meeting on this topic. They don't know. Realtors don't know. Even most appraisers don't understand this.

I wish I had the opportunity for a rebuttal of the opponent's testimony. I have listened to their objections, to their reasoning. I've asked them for real life examples. Mostly what I have found is attempts at confusion, and examples that aren't about nonconforming structures. They tend to be about housing code or building code. I have faith that you'll understand the importance of this measure and question any and all objections.

I will remain at the capitol following this meeting in hopes that you will discuss any concerns with me after you hear the opponent's point of view.

May I answer any questions?

Dennis Huber
701-306-4255
dennis@eappraisaloffice.com

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att #3

Testimony in Opposition to House Bill 1165
March 21, 2019
Senate Political Subdivisions Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the Senate Political Subdivisions Committee. For the record, my name is Bill Wocken and I am testifying this morning in opposition to House Bill 1165 on behalf of the North Dakota League of Cities.

House Bill 1165 deals with nonconforming uses. This concept comes from the zoning ordinance. It describes an improved lot that does not comply with all the provisions of the current zoning for that lot. Over the years zoning designations and building regulations change. The structures and land uses that exist at the time the changes become effective are not required to change but instead are “grandfathered in” and are called nonconforming uses.

The North Dakota League of Cities is opposed to this bill. We are not going to discuss the concept of nonconforming uses in detail. There are city planning officials in attendance today who will very capably handle that discussion. The League is opposed to mandates from the state or federal government that restrict decisions and options of local units of government.

There are very few situations in any year that demand the mechanism mandated in this bill. Most of these situations are resolved satisfactorily by local government through the use of variances, ordinance changes, meetings with financial institutions and development agreements. These are local issues being handled by local personnel on an individual basis. The North Dakota League of Cities feels there is no need for this legislation. We therefore respectfully request a Do Not Pass recommendation for House Bill 1165. Should you feel that some semblance of this bill is needed, the professional planners in attendance have prepared substantial amendments to the bill that would allow it to function.

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HB 1165

North Dakota Planning Association Testimony

Presented by **Natalie Pierce #718**

The North Dakota Planning Association (NDPA) **strongly opposes HB 1165**. The bill would undercut the authority of political subdivisions to reduce land use conflicts and support progress toward long-range development goals. The bill would also significantly compromise public health and safety. We have provided a set of suggested amendments to the bill that we believe are the minimum necessary to maintain the continuity of protections that are afforded to the public today through public health, fire, and building codes. The suggested amendments also make the bill much less vague.

There are often good reasons why a structure may be non-conforming, why a lot itself may be non-conforming, or why a particular residential structure may not be allowable in the underlying zone. This bill would take away one of the tools that is afforded to a political subdivision to reshape the character of a neighborhood, transform a blighted area into an economically vibrant commercial corridor, or accomplish other important long-range community goals.

Most, if not all, political subdivisions provide some sort of a variance process whereby the owner of a non-conforming property may ask for an easing of regulations. In many cases, a variance is appropriate and will be granted. In other cases, there may be a very compelling reason why the residence is non-conforming and the use should not be prolonged or encouraged. Every political subdivision in North Dakota has a different character and is trying to address a different set of issues. Each individual community is best equipped to determine when a variance is warranted and when it is not. Just because pursuing **a variance takes a little extra effort** and the outcomes is not guaranteed, does not mean it is appropriate to scrap the entire framework of evaluation that is currently afforded to local governments.

If a property owner wants to find out what land use regulations apply to their property, he or she doesn't have to read a zoning code from front to back. **All they have to do is call their local zoning administrator.** Generally after one, maybe two, conversations, a property owner should know if their property is non-conforming. Admittedly, many members of the general public, and even real estate professionals, do not know this.

If the intention of this bill is simply to unburden professionals in the real estate sector from having to understand local planning & zoning regulations, or if the intention of the bill is to unburden a property owner from taking the extra step to make a phone call and apply for a variance before they decide to sell or refinance their property, the amendments NDPA is proposing do not cater to those purposes. If the purpose of this bill is to automatically allow a family to rebuild in place, when their home is destroyed by a disaster or an act of God, **the amendments NDPA is proposing should accomplish this.**

NDPA disagrees with the entire premise of this bill and urges a Do-Not-Pass recommendation. However, if the Committee is intent to provide a do-pass recommendation to the Senate, NDPA strongly urges the Committee to include all of our proposed amendments, for the protection of public health and safety.

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HB 1165

North Dakota Planning Association Testimony

Presented by Natalie Pierce #718

NDPA proposed amendments in blue

11 - 33 - 17.1. Zoning - Nonconforming structure.

40 - 47 - 05.1. Zoning - Nonconforming structure.

58 - 03 - 14.1. Zoning - Nonconforming structure.

1. Notwithstanding any other provision of law or local zoning ordinance, a primary residence structure devoted to residential use may be repaired, replaced, improved, maintained, restored, or rebuilt in its entirety even though in cases where the structure is damaged beyond fifty percent of its value if:
 - a. A building permit is obtained within six months of the date the damage occurs;
 - b. Restoration begins within one year of the date the damage occurred; and
 - c. The new or improved structure will not:
 - (1) Occupy a portion of the lot that was not occupied by the damaged structure;
 - (2) Have more square footage than the damaged structure, unless a greater square footage is approved by the local zoning authority;
 - (3) Exceed the height or number of stories than the damaged structure; or
 - (4) Diminish the number of off-street parking spaces located on the property from the number of existing spaces before the damage.
 - (5) Be located upon, or overhang, any portion of an adjacent property, including public rights-of-way.
 - d. The residential structure was permitted as a residential structure prior to the time the damage occurred.
2. Expansion of a nonconforming structure is prohibited unless the expansion is in compliance with applicable state and local zoning regulations. The local zoning authority shall determine whether a proposed expansion is in compliance.
3. A nonconforming structure may not be moved to an alternate location within the property boundary unless the movement or relocation will reduce the level of non-conformity of the structure bring the structure into compliance with all applicable zoning regulations.
4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the national flood insurance program and adhere fully to all applicable floodplain management ordinances; not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.
5. Notwithstanding any other provision of law subsections 1 through 3 of this section, the local zoning authority may create an ordinance or regulation that is less restrictive than this section.
6. Notwithstanding subsections 1 through 3, a residence may only be repaired, replaced, improved, maintained, restored, or rebuilt if such repairs, replacements, maintenance, restoration or rebuilding would bring the residence into full compliance with local health, building and fire codes.
7. No part of this section shall supersede the authority of a local health district or political subdivision to condemn or otherwise regulate the use or repair of a structure that poses an imminent threat to public safety.
8. For purposes of this section, the word damaged shall not mean obsolescence or structural degradation that occurs naturally over time.

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HB 1165

North Dakota Planning Association Testimony

Presented by Natalie Pierce #718

Annotations to the Proposed Amendments

1. there is concern that extending the reach of this bill to all residential structures may unintentionally prolong the non-conformity of structures that are unoccupied. Limiting the scope of this legislation to primary residences is reasonable and serves the purpose of supporting families after a disaster.

1. c. (2) allows greater latitude, than the current draft of the bill, to increase the size of the structure if allowed by local zoning regulations.

1. c. (5) improves upon the current draft of the bill by *not* allowing the rebuilding of a residential structure in cases where the residential structure may be located across a property line or partially located in a public right of way. Corrects situations where a septic

1. d. closes the loop-hole for illegal structures to gain legitimacy through this bill.

3. allows greater latitude, than the current draft of the bill, to move the structure to an alternate location on the property that may bring the structure into better, or full, compliance with required setbacks.

6. this provision seeks to force a property owner to correct issues that render the structure unsafe or affect public health.

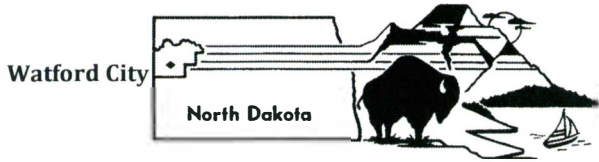
Example 1: residential structures must be spaced 10 feet apart or more to comply with fire code. A home that is less than 10 feet from a neighboring residence should not be allowed to rebuild in the exact same location, which would serve to simply prolong a safety hazard.

Example 2: a residential structure may rely on a septic system that lies partially or fully on a neighbor's property or in a public right of way. This conflict should not be prolonged. Reconstruction of the home should only be allowed if the lot is large enough to accommodate the septic system being fully contained within the lot boundary.

7. The current version of this bill essentially forces a 6 month to 1 year waiting period, during which time a political subdivision may not apply any regulations to the structure, other than if the owner happens to apply for a building permit. If a damaged residence poses an imminent threat to the public (such as imminent collapse; sharp materials, asbestos, or other hazardous material becoming detached from the structure and blowing outside the property boundary, etc.), a political subdivision should be allowed to condemn the structure through normal procedure and not be forced to wait.

8. The current version of this bill would allow a non-conforming structure to be repaired, reinforced and reconstructed forever. This essentially renders the designation of non-conforming to be meaningless. If this legislation is to move forward, the scope should be limited to unforeseen disasters or acts of God.

21. B. 1165
3.21.2019
att #5



City of Watford City
213 2nd St. NE | P.O. Box 494
Watford City, ND 58854
Ph. 701-444-2533
Fax 701-444-3004
www.cityofwatfordcity.com

03/21/2019
10:15AM – Red River Room

Urge a DO NOT Pass on HB 1165

Chairman Burckhard and members of the Senate Political Subdivisions Committee,

Thank you for the opportunity to provide written concern with HB 1165. The city of Watford City urges the committee to recommend a DO NOT pass on HB 1165, or amend it as written. Generally, local political subdivisions are best suited to address through ordinance how to manage land use and zoning within their jurisdiction. For this reason, the city of Watford City opposes this bill.

However, in analyzing the impact of the proposed changes to the respective portions of North Dakota Century Code, the implication of concern is that the additions to **Zoning – Nonconforming structure** in 11-33-17.1, 40-47-05.1 and 58-03-14.1 do not specify that the residential structure needs to be occupied or occupiable at the time of damage. Although local planning and zoning ordinances do not want to create undue burden on residents, it also does not want to see a loophole that creates additional and improved nonconforming uses that inhibit future development.

For those reasons, the city of Watford City urges a DO NOT Pass recommendation on HB 1165. If the committee does not feel that it can protect the fundamental right of local political subdivisions in local planning and zoning, the city of Watford City urges the adoption of amendments to close loopholes that carry unintended consequences when damaged residential structures are not occupied or occupiable.

Thank you again for the opportunity to share Watford City's concerns with you.

Sincerely,

Phil Riely, Mayor
City of Watford City
Phil_riely@yahoo.com
(701) 570-4338



City of Grand Forks

255 North Fourth Street • P.O. Box 5200 • Grand Forks, ND 58206-5200

Michael R. Brown
Mayor

HB 1165
3.21.2019
Att #6 p.1
Ken ref.

(701) 746-2607
Fax: (701) 787-3773

TESTIMONY ON HOUSE BILL 1165 Senate Political Subdivisions Committee March 21, 2019

**Brad Gengler, City Planner
City of Grand Forks, ND**

Mr. Chairman and members of the committee, my name is Brad Gengler and I am the City Planner for the City of Grand Forks. I want to thank you for the opportunity to provide testimony and express our opposition to House Bill 1165.

The City of Grand Forks understands there are a variety of reasons how a property is determined to be nonconforming, whether it relates to the physical placement of a structure on a parcel, the specific use of a structure in a given zoning district, and in some cases both the use and structure in combination. HB 1165 fails to make a clear distinction between nonconforming “structures” and nonconforming “uses.” A nonconforming structure might be an instance where a single-family home in a single-family residential zoning district is situated on a lot in a manner that does not comply with current building setback requirements. On the other hand, a nonconforming use might be an instance where a single-family home is located in a commercial or industrial zoning district. In this case the zoning of the property may have changed over time or the land uses within the given zoning district may have changed. In all cases it is critical that cities have the authority to adopt and enforce building codes and zoning ordinances that protect public health, welfare and safety.

If adopted HB 1165 would deny cities the ability to regulate nonconforming properties without a proper and thorough evaluation of existing zoning and building codes, as well as the evaluation of the impact a given nonconforming property may have on surrounding land uses.

The passage of House Bill 1165 is not in the best interests of the City of Grand Forks nor any other cities in North Dakota. Thank you for your time and consideration. I respectfully ask for a DO NOT PASS on House Bill 1165.

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KSN refer.
att #7
p 1

House Bill 1165

Distinction between nonconforming use and nonconforming structure.

Cities typically adopt ordinances "grandfathering" in properties and structures that are nonconforming as a result of a change in local regulations. The terms of the ordinance will establish how long or under what conditions the "nonconforming use" or "nonconforming structure" can remain in a nonconforming status.

A nonconforming use is one which lawfully existed prior to an effective date of a zoning restriction or change wherein the effect of the change renders the use in a nonconforming status. By the adoption of a nonconforming use ordinance, the use will be allowed to continue to exist in nonconformity with the new requirements. Examples of nonconforming uses would be a residential use (single family home) located in an industrial or commercially zoned district. In such instance, the uses in the area may have changed due to various conditions or circumstances to an industrial or commercial use such that residential use in that district is no longer favored and is inconsistent with the new zoning designation. As a nonconforming use the residential use would be allowed to continue for such time as the property is continued to be used for residential purposes. In the event that the residential use is discontinued, any subsequent use must be in compliance with the current zoning requirements.

A nonconforming use is not the same as a nonconforming structure. A nonconforming structure is a structure that does not meet current building code requirements but is allowed to exist until such time as it is substantially remodeled, rebuilt or otherwise modified. In such an instance the structure is then required to be reconstructed in accordance with current building code and zoning requirements. An example of a nonconforming structure may be where an electrical code requirement has been adopted and the structure does not comply with the newly adopted electrical code.

Courts have consistently upheld the restrictions upon nonconforming uses and have further pronounced that it is improper to equate a nonconforming use with a nonconforming structure. (E.g., County of Lake v. Courtney, 451 N.W.2d 338 (Minn.Ct.App. 1990)).

A nonconforming use or a nonconforming structure typically is not defeated by a change in ownership as long as the subsequent owner continues the same nonconforming use or structure without modification, expansion or reconstruction. In other words, a change in ownership does not destroy the right to continue the use of structure in a nonconforming status.

Purposes of nonconforming restrictions

The intent of ordinances regulating nonconforming uses or nonconforming structures is to protect the public health, welfare and safety. The property owner has no right to substantially expand or change either the use or the structure without complying with current zoning and code requirements. Courts have routinely recognized that it is a proper public policy to minimize nonconforming uses. See McQuillan Municipal Corporation Section 25.183 (3rd Ed.).

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Ken Olson R+
att #7
P.2

Nonconforming uses are disfavored because they often reduce the effectiveness of zoning ordinances, depress property values, impair redevelopment and contribute to the growth of urban blight. The limitation is intended to result in a gradual elimination of the nonconforming uses and construction of new conforming buildings. The policy underlying nonconforming use restrictions is to increase the likelihood that nonconformities will in time be eliminated due to obsolescence, exhaustion or destruction and lead to a uniform use of the land or structure consistent with the overall comprehensive zoning plan or building codes. A municipality has the authority to establish a prescribed period, often referred to as an amortization period, before a nonconforming structure or use needs to be brought into conformity. Alternatively, cities can identify events that remove the grandfathering of nonconforming uses or structures such as destruction or expansion. The adoption of HB1165 would eliminate or emasculate the City's authority to regulate nonconforming uses and nonconforming structures indefinitely, thereby defeating the intended policies concerning nonconforming uses and structures.

Grand Forks regulation of nonconforming uses and structures

The City of Grand Forks has enacted ordinances which allow nonconforming uses and structures to exist without complying with current regulations until such use or structure is abandoned, changed or destroyed. Upon an abandonment, change or destruction, the subsequent use must conform with current zoning requirements. With respect to a nonconforming structure, such structure may remain in a nonconforming condition until such time as there is a major remodeling, expansion, reconstruction or substantial damage. Under the Grand Forks City Code, damage to a structure of more than 50% of its fair market value requires any reconstruction to meet current code requirements. The restrictions adopted by the City of Grand Forks are substantially similar to a vast majority of cities in the State of North Dakota and throughout the United States.

Comments regarding House Bill 1165

The language of House Bill 1165 is vague and ambiguous. It is unclear whether the Bill applies to a nonconforming use or a nonconforming structure. The Bill fails to distinguish between the two.

House Bill 1165 defeats the policy to bring uses or structures into conformity with current zoning districts or current building codes.

The argument that a mortgagee or owner would be at risk in the event that they were unable to rebuild a structure after substantial damage (more than 50%) ignores the typical requirement of having property insurance with the owner and/or mortgagee named as the insured. In the event a destruction by fire, weather, etc., the insured would receive the benefits of the insurance policy and any subsequent reconstruction of more than 50% of the fair market value would require compliance with the then existing building codes.

House Bill 1165 includes a provision prohibiting the moving of a nonconforming structure unless the movement or relocation will bring the structure into compliance with all applicable zoning regulations. This provision should be clarified to make it clear that the moving of the structure off of the premises for the purpose of bringing the lot into a conforming status should be allowed even

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Att #7
p.3

if the structure, which is being moved off the site, does not comply with all applicable building codes.

The Bill also prohibits a new structure from occupying a portion of the lot that was not occupied by the damaged structure, have more square footage than the damaged structure, or exceed the height or number of stories than the damaged structure. Prohibiting the occupation of a portion of the lot that was not occupied by the damaged structure could, depending upon the circumstances, bring a use or structure into compliance. For example, the noncompliance may be due to side yard, front yard or rear yard setbacks. A reconstruction in an area not previously occupied by the structure may actually bring the structure into compliance. Such an outright prohibition is inconsistent with the purposes of bringing property into conformity.

Another provision of the Bill allows expansion of a nonconforming structure if the expansion is in compliance with the applicable state and local zoning regulations. The likelihood of its applicability with respect to a nonconforming structure will largely depend upon the ability to provide structural, electrical and mechanical services to the expansion that comply with current codes. It is extremely unlikely that an expansion of any type of a nonconforming use would comply with applicable zoning regulations.

The Bill limits its application to a "residential use". However, there is no definition of a "residential use". It is unclear as to whether the reference to "residential use" would apply to a nonconforming residential use in a commercial or industrial zone. If so, is a residential use in a commercial or industrial zone a use that should be continued and protected by statute? Is it reasonable and appropriate to extend the nonconforming status under these circumstances? Depending upon the definition of "residential use" House Bill 1165 may apply to a multi-family structure located in a single family zoning district. If so, is the reconstruction of a multi-family dwelling in a single family zoning district appropriate? Should its indefinite continuation be promoted and protected by a state statute? Is this a situation in which a state statute is necessary or appropriate? Also depending upon the definition of a "residential use" the Bill may apply to a multi-family structure located in a commercial or industrial zone. The same issues arise.

House Bill 1165 is inconsistent with the intents and policies of bringing properties and structures into conformance with current zoning or building codes.

House Bill 1165 removes municipal authority to regulate property uses and structures for the protection of the public health, welfare and safety. To allow a nonconforming use or nonconforming structure to remain out of compliance with zoning or building codes in perpetuity will likely have adverse impacts upon adjoining or neighboring properties.

Tax Equalization Board
PTZ Board Council
Realtors
Don't know

Notified
By County Record
Title search on

Flood Zone
Rebuilt City Decision where to
build after flood.
H.B. 1165
3-21-2019
at 8 p.m.

Thursday 3-21-19

HB 1165 Non Conforming Structures

HB 1227

Points to make

① Again Citizen or Developer Driven } Explain
Citizen driven as in HB 1227

when a citizen or developer comes to City Council or Planning + Zoning Dept with a request. This sets off a process to inform and protect the Public Health, welfare and safety. Usually the engineering Dept - Planning Dept. and Building Code are set in motion.

After preliminary work and the project looks feasible legal notice are sent out about the project as was done in 1227. From that point on notice is sent out when ^{work} meetings are scheduled. There can be numerous meetings.

The Ordinance ^{states} after public meeting the request has to have ^{minimum of} 2 hearings with planning zoning.

Then it goes to City Council with ^{minimum of} two hearings before before it can be voted on. ^{+ appeal process.}

The reason I bring this up is HB 1165 Bypasses the whole process.

7000 sqft
②

Zoning laws before Financing Changes were made

③

Example 3500 sqft lot is usually the standard rebuilt say 2800 sqft lot in many cases a variance is requested to obtain a building permit.

Est. Side lot Variance - coverage of lot variance

Some owners apply and receive a variance before they sell these homes.

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Sometimes people don't do diligence in researching their options. As an example - Home in a Commercial zone - can build a detached garage - the only thing they can't do is change the sqft of the main structure.

Chair Burchard as you can see this is a due process that is being circumvented by this Bill. As has been brought to my attention many cities have a little different tweaks to their zoning ordinance. That is by design as cities meet the needs of their citizens.

Chairman Burchard I oppose HB 1165
and would stand of questions

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Dr. Kream

*H.B. 1165
3-21-2019*

*att # 9
p. 7*

513 4th Ave South



Legend

- Address Labels
- Road Labels
- Boundary City Limit
- Boundary Gray Area
- Boundary Two Mile
- Parcels

Notes

41.7 0 20.83 41.7 Feet

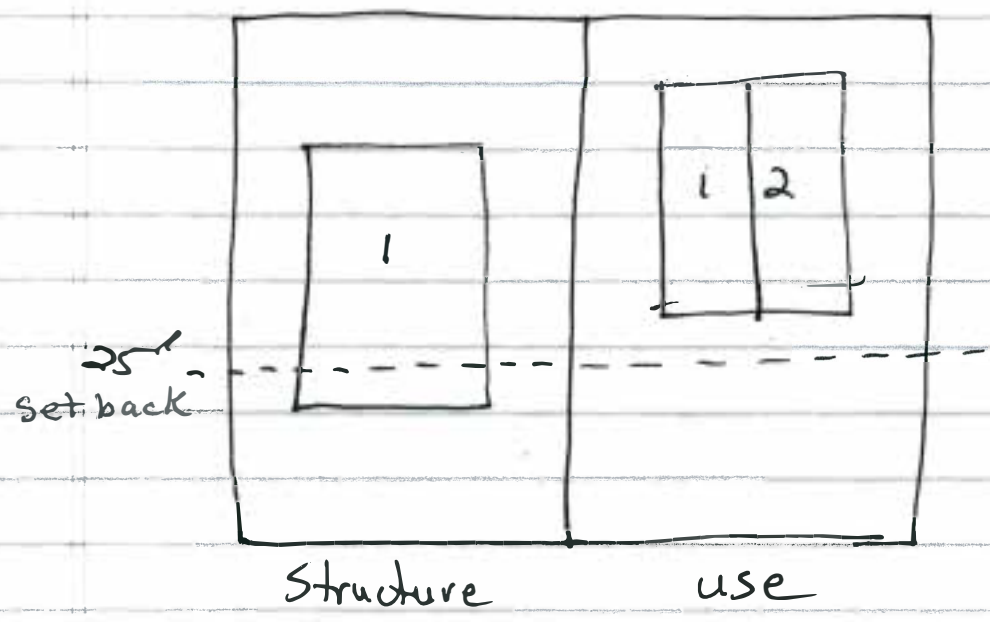
NAD_1983_StatePlane_North_Dakota_North_FIPS_3301_Feet
City of Grand Forks GIS

All dimensions, descriptions, measurements, boundaries and data contained in this nonstandard document are included for general information only. No warranties or covenants are made or given by the City of Grand Forks. Any user must confirm the accuracy of the same with official records, and/or by survey.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

X.O. 1165
3.21.2019
att #10

R-1 Zoning District



nonconforming

HB 1165
3.21.2019
att # 11 p.1

NDLA, Intern 02 - Carthew, Alexandra

From: Lee, Judy E.
Sent: Thursday, March 21, 2019 11:41 AM
To: NDLA, Intern 02 - Carthew, Alexandra
Subject: Fwd: HB 1165

Copies, please
Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
Phone: 701-282-6512
e-mail: jlee@nd.gov

Begin forwarded message:

From: "Larry M. Weil" <Larry.Weil@westfargond.gov>
Date: March 21, 2019 at 11:04:09 AM CDT
To: "Lee, Judy E." <jlee@nd.gov>, Natalie Pierce <Natalie.Pierce@mortonnd.org>
Cc: "Tim P. Solberg" <Tim.Solberg@westfargond.gov>, Natalie Pierce <Natalie.Pierce@mortonnd.org>
Subject: RE: HB 1165

Senator Lee,

In West Fargo, if the structure is a nonconforming use, we permit maintenance but limit to not more than 25% of the replacement cost in a 12 month period. If it is damaged to more than 50% it cannot be replaced, except in conformity.

Our thought on the Bill is that it should be a local decision rather than one dictated by State Law. My understanding is that Fargo handles it differently, but each community has it's own goals and visions for the community.

Larry M. Weil
Director of Community Development
City of West Fargo
701-433-5320

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

From: Lee, Judy E. [<mailto:jlee@nd.gov>]
Sent: Thursday, March 21, 2019 10:27 AM
To: Gilmour Jim <JGilmour@cityoffargo.com>; Larry M. Weil <Larry.Weil@westfargond.gov>
Subject: HB 1165

N.B. 1165
3-21-2019
Att #11 P. 2

Do Fargo and West Fargo now permit repairs, when a property is damaged by more than 50%? We're in a hearing right now, and I'd sure like to know what our local cities do.

Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
Phone: 701-282-6512
e-mail: jlee@nd.gov

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H.B. 1165
3.21.2019
att #12

NDLA, S PSD - Wocken, Mary Jo

From: Mark Rustad <markdrustad13@yahoo.com>
Sent: Tuesday, March 12, 2019 11:31 PM
To: NDLA, S PSD - Wocken, Mary Jo
Subject: Rental Liscense . Rustad, Fulp, Sanders

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

On behalf of myself, Mark Rustad, Dr. John Fulp, and Matthew Sanders

We are reaching out in favor of Rep Vetter's bill on prohibition on rental Liscenses. I happen to know many others beyond the three of us that are heavily in favor.

Regards
Mark Rustad, John Fulp, Matt Sanders. (Property owners)

Sent from Yahoo Mail for iPhone

House Bill 1165

Distinction between nonconforming use and nonconforming structure.

Cities typically adopt ordinances "grandfathering" in properties and structures that are nonconforming as a result of a change in local regulations. The terms of the ordinance will establish how long or under what conditions the "nonconforming use" or "nonconforming structure" can remain in a nonconforming status.

A nonconforming use is one which lawfully existed prior to an effective date of a zoning restriction or change wherein the effect of the change renders the use in a nonconforming status. By the adoption of a nonconforming use ordinance, the use will be allowed to continue to exist in nonconformity with the new requirements. Examples of nonconforming uses would be a residential use (single family home) located in an industrial or commercially zoned district. In such instance, the uses in the area may have changed due to various conditions or circumstances to an industrial or commercial use such that residential use in that district is no longer favored and is inconsistent with the new zoning designation. As a nonconforming use the residential use would be allowed to continue for such time as the property is continued to be used for residential purposes. In the event that the residential use is discontinued, any subsequent use must be in compliance with the current zoning requirements.

A nonconforming use is not the same as a nonconforming structure. A nonconforming structure is a structure that does not meet current building code requirements but is allowed to exist until such time as it is substantially remodeled, rebuilt or otherwise modified. In such an instance the structure is then required to be reconstructed in accordance with current building code and zoning requirements. An example of a nonconforming structure may be where an electrical code requirement has been adopted and the structure does not comply with the newly adopted electrical code.

Courts have consistently upheld the restrictions upon nonconforming uses and have further pronounced that it is improper to equate a nonconforming use with a nonconforming structure. (E.g., County of Lake v. Courtney, 451 N.W.2d 338 (Minn.Ct.App. 1990)).

A nonconforming use or a nonconforming structure typically is not defeated by a change in ownership as long as the subsequent owner continues the same nonconforming use or structure without modification, expansion or reconstruction. In other words, a change in ownership does not destroy the right to continue the use of structure in a nonconforming status.

Purposes of nonconforming restrictions

The intent of ordinances regulating nonconforming uses or nonconforming structures is to protect the public health, welfare and safety. The property owner has no right to substantially expand or change either the use or the structure without complying with current zoning and code requirements. Courts have routinely recognized that it is a proper public policy to minimize nonconforming uses. See McQuillan Municipal Corporation Section 25.183 (3rd Ed.).

Nonconforming uses are disfavored because they often reduce the effectiveness of zoning ordinances, depress property values, impair redevelopment and contribute to the growth of urban blight. The limitation is intended to result in a gradual elimination of the nonconforming uses and construction of new conforming buildings. The policy underlying nonconforming use restrictions is to increase the likelihood that nonconformities will in time be eliminated due to obsolescence, exhaustion or destruction and lead to a uniform use of the land or structure consistent with the overall comprehensive zoning plan or building codes. A municipality has the authority to establish a prescribed period, often referred to as an amortization period, before a nonconforming structure or use needs to be brought into conformity. Alternatively, cities can identify events that remove the grandfathering of nonconforming uses or structures such as destruction or expansion. The adoption of HB1165 would eliminate or emasculate the City's authority to regulate nonconforming uses and nonconforming structures indefinitely, thereby defeating the intended policies concerning nonconforming uses and structures.

Grand Forks regulation of nonconforming uses and structures

The City of Grand Forks has enacted ordinances which allow nonconforming uses and structures to exist without complying with current regulations until such use or structure is abandoned, changed or destroyed. Upon an abandonment, change or destruction, the subsequent use must conform with current zoning requirements. With respect to a nonconforming structure, such structure may remain in a nonconforming condition until such time as there is a major remodeling, expansion, reconstruction or substantial damage. Under the Grand Forks City Code, damage to a structure of more than 50% of its fair market value requires any reconstruction to meet current code requirements. The restrictions adopted by the City of Grand Forks are substantially similar to a vast majority of cities in the State of North Dakota and throughout the United States.

Comments regarding House Bill 1165

The language of House Bill 1165 is vague and ambiguous. It is unclear whether the Bill applies to a nonconforming use or a nonconforming structure. The Bill fails to distinguish between the two.

House Bill 1165 defeats the policy to bring uses or structures into conformity with current zoning districts or current building codes.

The argument that a mortgagee or owner would be at risk in the event that they were unable to rebuild a structure after substantial damage (more than 50%) ignores the typical requirement of having property insurance with the owner and/or mortgagee named as the insured. In the event a destruction by fire, weather, etc., the insured would receive the benefits of the insurance policy and any subsequent reconstruction of more than 50% of the fair market value would require compliance with the then existing building codes.

House Bill 1165 includes a provision prohibiting the moving of a nonconforming structure unless the movement or relocation will bring the structure into compliance with all applicable zoning regulations. This provision should be clarified to make it clear that the moving of the structure off of the premises for the purpose of bringing the lot into a conforming status should be allowed even

if the structure, which is being moved off the site, does not comply with all applicable building codes.

The Bill also prohibits a new structure from occupying a portion of the lot that was not occupied by the damaged structure, have more square footage than the damaged structure, or exceed the height or number of stories than the damaged structure. Prohibiting the occupation of a portion of the lot that was not occupied by the damaged structure could, depending upon the circumstances, bring a use or structure into compliance. For example, the noncompliance may be due to side yard, front yard or rear yard setbacks. A reconstruction in an area not previously occupied by the structure may actually bring the structure into compliance. Such an outright prohibition is inconsistent with the purposes of bringing property into conformity.

Another provision of the Bill allows expansion of a nonconforming structure if the expansion is in compliance with the applicable state and local zoning regulations. The likelihood of its applicability with respect to a nonconforming structure will largely depend upon the ability to provide structural, electrical and mechanical services to the expansion that comply with current codes. It is extremely unlikely that an expansion of any type of a nonconforming use would comply with applicable zoning regulations.

The Bill limits its application to a "residential use". However, there is no definition of a "residential use". It is unclear as to whether the reference to "residential use" would apply to a nonconforming residential use in a commercial or industrial zone. If so, is a residential use in a commercial or industrial zone a use that should be continued and protected by statute? Is it reasonable and appropriate to extend the nonconforming status under these circumstances? Depending upon the definition of "residential use" House Bill 1165 may apply to a multi-family structure located in a single family zoning district. If so, is the reconstruction of a multi-family dwelling in a single family zoning district appropriate? Should its indefinite continuation be promoted and protected by a state statute? Is this a situation in which a state statute is necessary or appropriate? Also depending upon the definition of a "residential use" the Bill may apply to a multi-family structure located in a commercial or industrial zone. The same issues arise.

House Bill 1165 is inconsistent with the intents and policies of bringing properties and structures into conformance with current zoning or building codes.

House Bill 1165 removes municipal authority to regulate property uses and structures for the protection of the public health, welfare and safety. To allow a nonconforming use or nonconforming structure to remain out of compliance with zoning or building codes in perpetuity will likely have adverse impacts upon adjoining or neighboring properties.