

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



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| ROLL NUMBER |
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DESCRIPTION

1229

2007 HOUSE NATURAL RESOURCES

HB 1229

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1229

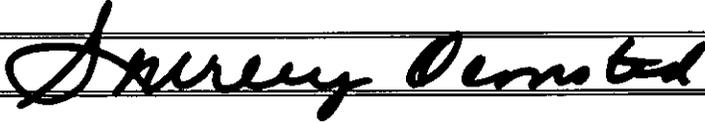
House Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 18, 2007

Recorder Job Number: 1229

Committee Clerk Signature



Minutes:

Chairman Porter opened the hearing on HB 1229.

Representative Drovdal testified on HB 1229 as the prime sponsor. See attached testimony marked as Item #1. He said he thought this was a reasonable request.

Representative Keiser asked if there currently was a definition of "occupied dwelling" in the North Dakota Century Code? What if it is a summer cabin or a hunting cabin? Is the intent to mean fully occupied?

Representative Drovdal indicated he thought there was such a definition.

Chairman Porter asked for additional support for HB 1229.

Representative Keith Kempenich from District 39 came forward to testify. He said that HB 1229 was trying to address common sense. When common sense fails, this is where legislation comes in. There is another bill that will be addressing this as well.

Mr. Tom Irgens from Springbrook, ND came in support of HB 1229. Please see attached written testimony marked as Item #2.

Representative Kelsh asked for clarification of "blowout".

Mr. Irgens indicated that something happens such as a valve turned the wrong way, or perhaps a lightning bolt, and it is a large explosion. What would happen to a house that is located 200 feet away? It hasn't happened, but there is a possibility of it happening.

Representative Keiser said that you were asking for a further setback. You comment that with horizontal drilling, you can put the well anywhere. Aren't there optimal places to put a well to minimize the costs?

Mr. Irgens said that there would be locations that would be farther away from the house. None of us are against the oil wells, but we just want this done right. I think this would help some of the relationships.

Ms. Cindy Klein, of the Dakota Resource Council, came forward in support of HB 1229.

Please see attached written testimony marked as Item #3. She said her testimony was a ditto to Mr. Irgens testimony. She handed out pictures (2) that showed the wells close to these homes. Please see pictures marked as items 4 & 5. They too were asking for a setback of 1320 feet.

Chairman Porter asked for further testimony in favor of HB 1229.

Seeing none, he asked for testimony in opposition to HB 1229.

Mr. Greg Steiner from Eagle Operating, Inc. came to the podium. He indicated that his company drills on a lot of 40, 80, 160, and 320 acre areas. The way this bill is currently written, if he is drilling on a 40 acre plot, it only leaves him 660 feet on either side of the section line. If there is a 500 foot setback, it only leaves him 160 feet to drill that well to not be in violation of the setback. In some cases, there would be no way to drill a well on that land without a waiver from the owner. This is a totally unacceptable situation for him. The costs for vertical wells are about \$25,000 per day. The cost per day on a horizontal well, it would be at least \$60,000 per day. There is a huge impact for him should this bill pass.

Mr. Ron Ness of the North Dakota Petroleum Council also came forward in opposition to HB 1229. He indicated that this is a very difficult situation and that common sense needs to prevail. He said you need to look at other parts of the country that are in the well drilling business. He listed a number of states and their setback rules. We currently have 330 feet in place that coincides with other states. He also thought that it should be a permanently occupied residence the full year round. This is a very contentious issue.

Mr. Robert Harms, President of Northern Alliance of Independent Producers came forward in opposition of HB 1229. Please see written testimony listed as Item #6. He again said that you cannot legislate common sense. This is currently working 99% of the time. He also indicated the 330 feet is working for most the state right now. They would encourage a do not pass on HB 1229.

Chairman Porter asked for further testimony in opposition to HB 1229. Since there was none, Chairman Porter closed the hearing on HB 1229.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1229

House Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 19, 2007

Recorder Job Number: 1428

Committee Clerk Signature

Shirley Demsted

Minutes:

Chairman Porter called the committee together on HB 1229.

Representative Drovdal came forward with the amendment he had prepared on HB 1229.

He referenced page 1, line 10. He said that he realizes that you cannot always find the occupants of these properties. They come and go. The owner of the property will be registered with the county. He wanted to change word "occupant" to "owner". The owner is the only one that can waive that distance. Also, on page 1, line 11 they indicated that this cannot be an old abandoned farm home or building. It must be a permanent residence where they intend to live. With that, he moved for a motion to pass HB 1229 as amended. There was a second by **Representative Keiser**.

Chairman Porter asked for discussion.

Representative DeKrey asked if the oil companies decided that they could live with 500 feet.

Chairman Porter indicated that was correct.

Representative Drovdal said that before this bill was introduced he had indicated ¼ mile.

After some discussion he went down to 1/8 mile. He did that because most everything is set up in North Dakota on the section line and it is a little easier to figure out. They did agree so they must think it is far enough.

There was no discussion on the motion. A voice vote was taken and the motion carried.

Representative Meyer asked if the setback was now 330 feet. Is that correct?

Chairman Porter said that the current setback in the administrative code for the oil and gas is 330 feet.

Representative DeKrey made a motion for an amendment from 660 feet to 500 feet as referenced on line 11. **Representative Keiser** seconded the motion.

Chairman Porter said that typically we are thinking about the oil exploration out in the western part of the state where there are large distances and horizontal drilling and things that really don't come into play with the vertical well. He thought the gentlemen from Kenmare, Mr. Steiner, gave good argument why the 660 feet would not work for the vertical type operations and how they do their work across that area. I am definitely going to support the 500 feet.

Representative Drovdal said he was not opposed to 500 feet although I don't think that is bad. It gives some bargaining power to those home owners. The money is great on these wells, but they are not much fun to have in your backyard. This gives some negotiating power to not only the oil companies but also for the landowner. I think that is important.

Representative Keiser was there any discussion about shallow wells and the implications on the distance for shallow wells?

Representative Drovdal said that actually based on the testimony of Mr. Steiner from the Kenmare area, with the 40 acres parcels, this would cover that situation.

Representative Keiser said he thought he said the distance would prohibit him from operating.

Chairman Porter said he said it wouldn't necessarily prohibit him from operating but he did say it would definitely put an increased burden on their operations for doing the vertical type wells which the shallow wells would be a part of.

Representative Charging reminded them of the picture that was passed around of the Kaye's residence.

Chairman Porter took a voice vote. The motion passed.

Representative DeKrey made a motion for a do pass as amended. It was second by

Representative Meyer. There was no further discussion. The clerk took roll.

Let the record show that this motion prevailed with 13 yes, 0 no 1 absent.

Representative Kelsh will carry this bill to the floor.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1229

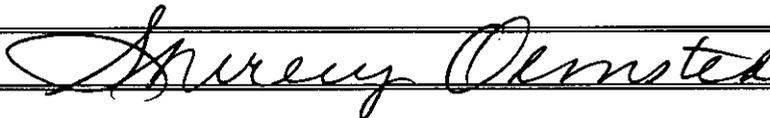
House Natural Resources Committee

Check here for Conference Committee

Hearing Date: January 25, 2007

Recorder Job Number: January 25, 2007

Committee Clerk Signature



Minutes:

Chairman Porter asked the committee to pull HB 1229.

Representative Drovdal asked for reconsideration on this bill. He made a motion for reconsideration on HB 1229 and it was second by Representative Keiser.

Chairman Porter took a voice vote and it prevailed.

Representative Drovdal said he wanted to thank the committee for the indulgence. As one of the sponsor of this bill he feels like they came up with a solution that will work. What he did was come up with a proposed amendment numbered 70247.0202.0300 which is attached as Item #1. This will still give the owner of an occupied building an opportunity to have his well tested. They will be a good neighbor by doing this policy. Page 1, line 11 goes back to the original bill. He asked for a motion to move the amendments he had just read.

Representative Nottestad seconded the motion.

Representative Keiser asked what it means to give notice twenty days prior. Does it mean certified mail, or what does it mean?

Representative Drovdal said and he thought the oil companies would do it by certified mail.

They would need that record that the people were notified.

Representative Charging said there is a difference between what this says and what you originally said.

Representative Drovdal said what they did was combine some of things we were trying to solve in 1182. We just changed it from 650 to 500 feet.

Chairman Porter called for a voice vote. The motion carried.

Representative DeKrey made a motion for a do pass as amended on HB 1229.

Representative Clark seconded the motion.

Representative Meyer asked if this affected in way the notification you have to give the surface owner.

Representative Drovdal said it shouldn't. We are not changing the existing code.

Chairman Porter asked the clerk to call the roll for a **do pass as amended** on HB 1229.

Let the record show there were 12 yes, 1 no and 1 absent. **Representative Kelsh** will carry this bill to the floor.

Proposed Amendments to House Bill 1229
Prepared for Representative Drovdal

Page 1, line 10, replace "occupant" with "owner"

Page 1, line 11, replace "an" with "a" and insert "permanently" immediately thereafter

Renumber Accordingly

Date: 1-19-07
 Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1229

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken to amend as attached

Motion Made By Drovdal Seconded By Keiser

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-----------------|-----|----|
| Chairman - Rep. Porter | | | Rep. Hanson | | |
| Vice-Chairman - Rep Damschen | | | Rep. Hunskor | | |
| Rep. Charging | | | Rep. Kelsh | | |
| Rep. Clark | | | Rep. Meyer | | |
| Rep. DeKrey | | | Rep. Solberg | | |
| Rep. Drovdal | | | | | |
| Rep. Hofstad | | | | | |
| Rep. Keiser | | | | | |
| Rep. Nottestad | | | | | |
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[Handwritten signature/initials]

Total Yes 14 No 0

Absent _____

Floor Assignment _____

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

Item #1

Proposed Amendments to House Bill 1229

Prepared for Representative Drovdal

Page 1, line 9, after the period insert "At least twenty days prior to applying for a permit, the applicant shall give notice of intention to apply for a permit to the record owner, as set forth in the office of the county treasurer; and, the applicant shall also notify the owner of any permanently occupied dwelling located within one-quarter mile of the proposed oil or gas well. However, if the occupied dwelling lies within city limits, notification may be given by contacting the local governing board."

Page 1, line 11, replace "six" with "five" and remove "sixty" and replace "201.17" with "152.4"

Renumber accordingly

Date: 1-19-07
Roll Call Vote #: 3

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1229

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass as amended

Motion Made By DeKrey Seconded By Meyer

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-----------------|-----|----|
| Chairman - Rep. Porter | ✓ | | Rep. Hanson | ✓ | |
| Vice-Chairman - Rep Damschen | ✓ | | Rep. Hunskor | ✓ | |
| Rep. Charging | ✓ | | Rep. Kelsh | ✓ | |
| Rep. Clark | ✓ | | Rep. Meyer | ✓ | |
| Rep. DeKrey | ✓ | | Rep. Solberg | | |
| Rep. Drovdal | ✓ | | | | |
| Rep. Hofstad | ✓ | | | | |
| Rep. Keiser | ✓ | | | | |
| Rep. Nottestad | ✓ | | | | |
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Total Yes 13 No 0

Absent 1

Floor Assignment Kelsh

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

REPORT OF STANDING COMMITTEE

HB 1229: Natural Resources Committee (Rep. Porter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1229 was placed on the Sixth order on the calendar.

Page 1, line 10, replace "occupant" with "owner"

Page 1, line 11, replace "six" with "five", remove "sixty", replace "201.17" with "152.4", and replace "an" with "a permanently"

Renumber accordingly

January 25, 2007

VK
1/26/07

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1229

Page 1, line 9, after the period insert "At least twenty days before applying for a permit, the applicant shall give notice of intention to apply for a permit to the record owner, as set forth in the office of the county treasurer. The applicant also shall notify the owner of any permanently occupied dwelling located within one-quarter mile [402.34 meters] of the proposed oil or gas well. If the occupied dwelling lies within city limits, notification may be given by contacting the local governing board."

Page 1, line 11, replace "six" with "five", remove "sixty", and replace "201.17" with "152.4"

Renumber accordingly

0404

Date: 1-25-07
Roll Call Vote #: HB 1229 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1229

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken re-amended amendments to 1229

Motion Made By Drovdal Seconded By Nottestad

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-----------------|-----|----|
| Chairman - Rep. Porter | | | Rep. Hanson | | |
| Vice-Chairman - Rep Damschen | | | Rep. Hunskor | | |
| Rep. Charging | | | Rep. Kelsh | | |
| Rep. Clark | | | Rep. Meyer | | |
| Rep. DeKrey | | | Rep. Solberg | | |
| Rep. Drovdal | | | | | |
| Rep. Hofstad | | | | | |
| Rep. Keiser | | | | | |
| Rep. Nottestad | | | | | |
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Vote

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

0404
5:00

Date: 1-25-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1229

House Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as amended

Motion Made By DeKrey Seconded By Clark

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|-----------------|-----|----|
| Chairman - Rep. Porter | ✓ | | Rep. Hanson | ✓ | |
| Vice-Chairman - Rep Damschen | ✓ | | Rep. Hunsakor | ✓ | |
| Rep. Charging | ✓ | | Rep. Kelsh | ✓ | |
| Rep. Clark | ✓ | | Rep. Meyer | ✓ | |
| Rep. DeKrey | ✓ | | Rep. Solberg | | |
| Rep. Drovdal | ✓ | | | | |
| Rep. Hofstad | ✓ | | | | |
| Rep. Keiser | | ✓ | | | |
| Rep. Nottestad | ✓ | | | | |
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Total Yes 12 No 1

Absent 1

Floor Assignment Kelsh

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

REPORT OF STANDING COMMITTEE

HB 1229: Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1229 was placed on the Sixth order on the calendar.

Page 1, line 9, after the period insert "At least twenty days before applying for a permit, the applicant shall give notice of intention to apply for a permit to the record owner, as set forth in the office of the county treasurer. The applicant also shall notify the owner of any permanently occupied dwelling located within one-quarter mile [402.34 meters] of the proposed oil or gas well. If the occupied dwelling lies within city limits, notification may be given by contacting the local governing board."

Page 1, line 11, replace "six" with "five", remove "sixty", and replace "201.17" with "152.4"

Renumber accordingly

2007 SENATE NATURAL RESOURCES

HB 1229

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1229

Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 23, 2007

Recorder Job Number: # 3776

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee opened the hearing HB 1229 relating to oil and gas well location restrictions.

All members of the committee were present.

Representative David Drovdal of District 39 prime sponsor of HB 1229 introduced the bill stating it is a simple bill but became complicated. He explained his intent of the bill to first set a distance of 500n feet from an occupied building as it is currently 330 feet which he feels to too close. The issue does not appear as a problem very often, but is does from time to time. A property owner of the occupied building does have the right to waive the notice. The Industrial Commission also has the ability to waive that notice. The second intent of the bill is for the owners of the occupied building that do not own any minerals rights of the well location would receive notification. The notification would give responsibility to those owners to report any expected damage to water wells to be tested or other concerns to be addressed. Those notifications to the building occupants would be of the same time frame as the surface rights owner of the well site which is 20 days before drilling commences. He further stated he would submit amendments as well as amendments from the Petroleum Council that his in agreement with. One other issue is details of the notifications, which by current language is by letter. The

amendment includes a phrase may be in the local county newspaper. This gives the oil companies an option which relieves some burden and gives some responsibilities back to the home owner. He feels this is a small step but a good step in the right direction as there can be issues with health issues. This does not require any reclaim or beautification of sights or building next to sites. This is a good policy to notify property owners although it does not empower the land owner to stop the process of oil well drilling. The tenant of the property is not notified which is the responsibility of the land owner. He has an amendment to change the notification of 20 days before the permitting and should be the drilling process.

Senator Lyson asked he have the amendments drawn up by the legislative council.

Cindy Klein representing the Dakota Resources Council testified in support of HB 1229 (see attachment #1).

Senator Lyson asked with all the public notification just how many ranchers, land owners do not have their wells tested.

Cindy Klein guessed that maybe half have not had their wells tested.

Senator Lyson disagreed and feels they have the responsibility to do so.

Cindy Klein responded that without notification land owners do not know of the testing.

Tom Irgens of Springbrook, North Dakota testified in support of HB 1229 stating he is a board member of the Dakota Resources Council and serve on the oil and gas task force working on responsible development of oil and gas resources (see attachment #2).

Senator Lyson asked if he was aware of any conflicts in the century code with this bill.

Tom Irgens answered with the aid of Cindy Klein that 38-11.1-02 requires that if a water well test has been conducted one year preceding the drilling activity within a one mile radius of that well and someone has a problem with that water well, they will then have recourse against the

company. He also responded to concept of the land owner's responsibility and does not think they do it every year. If a landowner is on vacation, they might miss the time requirements.

Senator Lyson asked for opposing testimony.

Ron Ness representing the North Dakota Petroleum Council testified in opposition to HB 1229 (See attachment #3). He further stated the current state of the HB 1229 is unacceptable to the industry. He agreed with Tom Irgrens' statements that with increased activity there will be more instances of disagreements but in the long run communications will be the key. There are other economic activity that impact people, their homes and other property like bridges, roads, feedlots, electrical sub stations, power lines, gravel pits, and propane storage facilities. No one wants to live near these things but it is a reality of economy moving forward. He further listed the set back footage of other states. He referred to the seven reasons in opposition to HB 1229 asking the committee to read them. He referred to the amendments proposed that will give the Industrial Commission some latitude as they have in their powers to adjust well locations as deemed appropriate as it should be. He hopes the committee will amend HB 1229 for discussion because as in the present state it is very problematic for the industry. Let the Industrial Commission who is very qualified continue to be the organization that regulates the industry.

Senator Lyson asked if he has reviewed the amendments as proposed by **Representative Drovdal**.

Ron Ness confirmed that he has reviewed the amendments and they improve the bill but are still oppose the bill.

Senator Lyson stated he would like to have Representative Drovdal work with the Legislative council to create the amendments so they say exactly would he prefer.

Senator Urlacher asked if the Industrial Commission can negotiate distance in certain situations.

Ron Ness answered the Commission does have the authority for public health and safety reasons to negotiate the distance as they issue the permits.

Senator Heitkamp questioned the last line "unless waived by the occupant" saying this means he already has notification, "the commission may not issue a drilling permit for oil and gas well that may be located within 500 feet of an occupied dwelling". He continued to ask the question if he was against that.

Ron Ness stated the reality is the minerals need to be developed and some people will not be happy no matter what the setback footage is.

Tom Luttrell, Sr. Vice President of Continental Resources, Inc. testified in opposition to HB 1229 (see attachment # 4).

Kelly Triplett representing MaraThon Oil Co. testified in opposition to HB 1229 stating that he worked for the oil and gas division of North Dakota Industrial Commission. In that position he was responsibility of issuing 1200 oil and gas permits and during that time period, there were not complaints regarding well placement. He does think the change of 330 to 500 ft will not make much difference and believes that footage is okay and the 20 day notification will add to the burden on the oil and gas division to make sure those are given.

David Klym, land supervisor for MaraThon Oil Co, testified in opposition to HB 1229 stating he has worked as a land man in the oil industry for 27 years. One of his main duties is to help the staff settle surface owner agreements on drilling locations and right of ways. They work with the highest standards negotiating with landowners. The company has very strong relationships with mineral and land owners and has not seen any evidence or reason to change their way of doing business in setting up drilling sites near occupied dwellings. There are tens of thousands

of mineral leases in North Dakota and very few have been amended by the mineral and land owner when it comes to the lease clause that provide the opportunity to become within 200 ft of buildings. Only a handful of the company's 4000 leases in North Dakota have been changed that required an operator to be beyond 200 feet from a building.

North Dakota has already up the footage compared to other states for well setback. He further stated mineral owners have the right to have them harvested.

Senator Ben Tollefson asked how his company handles a situation when the property occupants have a health problem.

David Triplett answered they look at each situation to find out what can be done and that communications is very important.

Senator Ben Tollefson asked if property owners can appeal to the Industrial Commission if needed.

David Triplett confirmed this can be done although it is very rare because of the negotiating done by the company.

Senator Urlacher asked if the company ever offer to pay for water well testing.

David Triplett confirmed this can happen and has been done.

Greg Steiner representing Eagle Operating testified in opposition to HB 1229 stating the company is currently working in an area where wells are still on 40 and 80 acre spacing rather than the mentality that wells are on a 1-2 mile spacing and are all horizontal. Many shallow wells are drilled with all kinds of restrictions. He further stated the North Dakota Health Department has rules and regulations and is very active regulating that regard. He further presented an example of family and their health issues and how the company accommodated those issues.

Robert Harms , President of the Northern Alliance of Independent Producers testified in opposition to HB 1229 (See attachment #5).

Senator Lyson closed the hearing on HB 1229.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1229

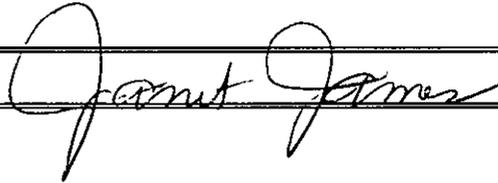
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: March 2, 2007

Recorder Job Number: # 4300

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee brought the committee to order for committee work on HB 1229.

All members of the committee were present.

Senator Lyson distributed amendments proposed by Representative Drovdal to the committee (see attachment #1) and another amendment as proposed by the Dakota Resources Council (see attachment #2).

Discussion was held regarding the amendments and if they were are really amendments.

Senator Joel Heitkamp commented he understood the propose of the amendment as empowering the water commission but the essence of the bill is that a well cannot be drilled within 500 ft of a dwelling. He stated he did not feel he would want a well 250 feet from his home without having the ability to say something.

Senator Ben Tollefson stated testimony stated that the well itself could be 250 feet from the dwelling but the fumes and other emissions would be offset a ways away.

Senator Herbert Urlacher commented this bill is the result of one incident and there were no problems up to that point.

Senator Jim Pomeroy commented all the media coverage resulting from that incident.

Senator Layton Freborg stated that the problem in this one incident was not the well but the dust, odor and things associated with the drilling process.

Senator Constance Triplett stated the last section of the amendment does add quit a bit to the bill although the grammar is bad, it states that unless waived by the owner, the commission may not issue a drilling permit located within 500 feet unless that well location is reasonably necessary to prevent waste or to protect correlative right. This would take care of the issue of not getting vertical wells on 40 acre spacing. Although that right already exists, the amendment clearly defines it.

Senator Lyson said he would visit with Representative Drovdal for more clarification.

Senator Urlacher stated he had hoped the bill could be fixed although he was not aware of any of the amendments. He agreed the bill should be delayed for clarification as well as Senator Triplett's blending of the wording.

Representative David Drovdal, prime sponsor of HB 1229 joined the committee stating he went to Legislative Council to have amendments drawn up.

Senator Triplett explained the awkward use of words within the amendment.

Representative Drovdal stated he had not problem changing the grammar of the amendment to read better.

Representative Drovdal commented on being reminded of the problems with the severance of mineral owners and surface owners. He presented to the committee his personal story of leasing mineral under some land and questioned the spacing. 200 feet spacing was automatic in the lease unless it was questioned. All this has helped him become more aware of the problems with severance between mineral and surface rights. He suggested a future study should be made of this issue. He further stated the amendments were an agreement between

himself, **Lynn Helms** of the North Dakota Industrial Commission and **Ron Ness** of the North Dakota Petroleum Council.

Senator Heitkamp asked in adding the amendments will everyone previously against the bill now be happy

Representative Drovdal stated the oil companies are never totally happy when they are told to do something, but in visiting with and explaining the amendments with some of those at the hearing; they are okay with them especially with the waiver in the bill.

Senator Triplett further explained how the language of the amendment should read to sound better.

Senator Lyson questioned Representative Drovdal if he is satisfied with the changes to the bill.

Representative Drovdal agreed that it was a small but important step, it is a good neighbor policy and that the oil companies agree with the changes.

Senator Urlacher asked again for confirmation that all involved were reasonably accepting of the amendment changes.

Representative Drovdal confirmed it to be true.

Senator Urlacher made a motion to accept the amendment with the adjustment of the language as proposed by Senator Triplett.

Senator Triplett seconded the motion.

Roll call #1 was taken by voice vote for adoption of the amendment, indicating 7 Yeas, 0 Nays and 0 absent or not voting.

Senator Ben Tollefson made a motion for a Do Pass as Amended of HB 1229.

Senator Urlacher seconded the motion.

Roll call vote #2 for a Do Pass as Amended of HB 1229 was taken indicating 7 Yeas, 0 Nays and 0 absent or not voting.

Senator Herbert Urlacher will carry HB 1229.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1229

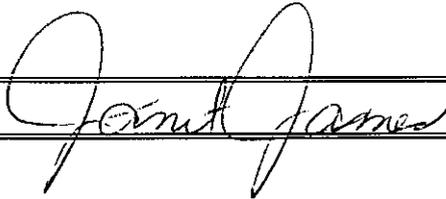
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: March 9, 2007

Recorder Job Number: # 4762

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee opened committee work on HB 1229.

All members of the committee were present.

Senator Lyson: the bill has been brought back to the committee for additional work.

Ron Ness, President of the North Dakota Petroleum Council took the podium.

Senator Joel Heitkamp: was the Dakota Resource Council part of this reconsideration of the bill.

Ron Ness; their issue has always been 500 feet and the notice to the homeowner within a ¼ of a mile from the well location. They have not really involved with the details. This is more of issue of how that notice is provided. There was an amendment that referenced section 38.11.1 which is the surface owner protection act and some of our legal council If you provide the notice as provided in the section, they get a whole set of surface owner rights material. These people do not have any rights under this bill; it is just a notice to them in order to test their water wells or what ever. So if you give them all this information that discusses all of these rights, it is misleading. There was an effort to have the industrial commission provide the notice through administrative rules, and then they would have provoke a rule to get into

this discussion. So what came up is a notice that the industry is responsible to provide notice.

We have agreed to the two primary issues.

Senator Heitkamp; have you talked to Representative Drovdal about the amendments.

Ron Ness: has and if he is going to be happy or not, I don't know.

Senator Lyson: he has talked to him and he is fine.

Senator Constance Triplett: made a motion to reconsider the motion of passage of HB 1229.

Senator Herbert Urlacher second the motion.

Senator Heitkamp; this motion takes the bill back to the original form of the bill with no amendments.

Roll call vote # 1 to reconsider committee action on HB 1229 was taken by voice vote and indicated 7 Yeas, 0 Nays and 0 absent or not voting.

Senator Ben Tollefson made a motion to adopt the amendments as proposed on HB 1229.

Senator Urlacher second the motion.

Roll call vote # 2 for adoption of the amendments as proposed was taken indicating 7 Yeas, 0 Nays and 0 absent or not voting.

Senator Constance Triplett made a motion for a Do Pass as Amended of HB 1229.

Senator Ben Tollefson second the motion.

Discussion was held as to proper procedure.

Senator Heitkamp made a motion to reconsider the action taken on the amendments on engrossed HB 1229.

Senator Triplett second the motion.

Roll call vote #3 for reconsider the action taken on the amendments on engrossed HB 1229

was taken by voice vote indicating 7 Yeas, 0 Nays and 0 absent or not voting.

Roll call vote # 4 for a Do Pass as Amended of HB 1229 was taken indicating 7 Yeas, 0 Nays and 0 absent or not voting.

Senator Herbert Urlacher will carry HB 1229.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1229

Page 1, line 9, delete "At least twenty days"

Page 1, delete lines 10, 11, 12, 13 and 14

Page 1, line 15, delete "occupant,"

Page 1, line 16, insert "unless waived by the ^{owner} occupant or unless the commission determines that such is reasonably necessary to prevent waste or protect correlative rights and may impose such conditions on the permit as the commission deems reasonably necessary to minimize impact to the owner of the dwelling."

Renumber accordingly.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1229

Page 1, line 9, remove "At least twenty days"

Page 1, remove line 10

Page 1, line 11, remove "the record owner, as set forth in the office of the county treasurer."
and remove "also"

Page 1, line 12, replace "notify" with "provide the same notice to"

Page 1, line 13, after "well" insert "as provided to the surface owner under section 38-11.1-05"

Page 1, line 15, replace "occupant" with "owner"

Page 1, line 16, after "dwelling" insert "unless the commission determines that the well location is reasonably necessary to prevent waste or to protect correlative rights. If the commission issues a drilling permit for a location within five hundred feet [152.4 meters] of an occupied dwelling, the commission may impose such conditions on the permit as the commission determines reasonably necessary to minimize impact to the owner of the dwelling"

Renumber accordingly

Date: 3-207

Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1229

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Tollefson Seconded By Urlacher

| Senators | Yes | No | Senators | Yes | No |
|----------------------------------|-----|----|-------------------------|-----|----|
| Sen. Stanley Lyson, Chairman | ✓ | | Sen. Joel Heitkamp | ✓ | |
| Sen. Ben Tollefson, ViceChairman | ✓ | | Sen. Jim Pomeroy | ✓ | |
| Sen. Layton Freborg | ✓ | | Sen. Constance Triplett | ✓ | |
| Sen. Herbert Urlacher | ✓ | | | | |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment Urlacher

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

Date: 3-9

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1209

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken reconsider action on Bill

Motion Made By Trip Seconded By Urlacher

| Senators | Yes | No | Senators | Yes | No |
|----------------------------------|-----|----|-------------------------|-----|----|
| Sen. Stanley Lyson, Chairman | | | Sen. Joel Heitkamp | | |
| Sen. Ben Tollefson, ViceChairman | | | Sen. Jim Pomeroy | | |
| Sen. Layton Freborg | | | Sen. Constance Triplett | | |
| Sen. Herbert Urlacher | | | | | |
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Total (Yes) 1 No 0

Absent 0

Floor Assignment _____

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

March 9, 2007



Handwritten signature and date: 3-9-7

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1229

Page 1, line 9, remove "At least twenty days"

Page 1, remove line 10

Page 1, line 11, remove "the record owner, as set forth in the office of the county treasurer."
and remove "also"

Page 1, line 12, replace "notify" with "provide the same notice to"

Page 1, line 13, remove "If the occupied dwelling lies within city limits."

Page 1, line 14, remove "notification may be given by contacting the local governing board."

Page 1, line 15, replace "occupant" with "owner or if the commission determines that the well location is reasonably necessary to prevent waste or to protect correlative rights"

Page 1, line 16, after the underscored period insert "If the commission issues a drilling permit for a location within five hundred feet [152.4 meters] of an occupied dwelling, the commission may impose such conditions on the permit as the commission determines reasonably necessary to minimize impact to the owner of the dwelling."

Renumber accordingly

Date: _____

Roll Call Vote #: 3

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1209

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Reconsider 1st Amendments

Motion Made By Heit Seconded By Trp

| Senators | Yes | No | Senators | Yes | No |
|----------------------------------|-----|----|-------------------------|-----|----|
| Sen. Stanley Lyson, Chairman | | | Sen. Joel Heitkamp | | |
| Sen. Ben Tollefson, ViceChairman | | | Sen. Jim Pomeroy | | |
| Sen. Layton Freborg | | | Sen. Constance Triplett | | |
| Sen. Herbert Urlacher | | | | | |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

HB 1229, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1229 was placed on the Sixth order on the calendar.

Page 1, line 9, remove "At least twenty days"

Page 1, remove line 10

Page 1, line 11, remove "the record owner, as set forth in the office of the county treasurer." and remove "also"

Page 1, line 12, replace "notify" with "provide the same notice to"

Page 1, line 13, remove "If the occupied dwelling lies within city limits."

Page 1, line 14, remove "notification may be given by contacting the local governing board."

Page 1, line 15, replace "occupant" with "owner or if the commission determines that the well location is reasonably necessary to prevent waste or to protect correlative rights"

Page 1, line 16, after the underscored period insert "If the commission issues a drilling permit for a location within five hundred feet [152.4 meters] of an occupied dwelling, the commission may impose such conditions on the permit as the commission determines reasonably necessary to minimize impact to the owner of the dwelling."

Renumber accordingly

2007 TESTIMONY

HB 1229

Item # 1

NORTH DAKOTA LEGISLATIVE ASSEMBLY

Testimony

HB 1229

Jan 18, 2007

Chairman Porter and members of the House Natural Resource Committee. For the record, I am David Drovdal Representative from District 39 which includes 6 counties in Western North Dakota. I am the prime sponsor on HB 1229 which you have before you today.

HB 1229 does one simple thing, it requires an oil and or gas well site to be at least 660 feet from an occupied building. It does have a waiver included that would allow the occupant to give their permission to locate closer. It is someplace in law that the well can not be closer than 200 feet and I believe by administrative rule that has been set at 330 feet. Let me say first off that this is not intended to be an anti oil field bill but a common sense bill. 330 feet is about the length of a football field with wide open spaces and it seems to me that with the technological directional drilling or horizontal drilling that we can recover the oil reserve without causing negative effect on the quality of life for our North Dakota residents. I say quality of life because oil sites are not known to be a beautiful site, we do not require landscaping around them, they can be smelly and if H2S gas is captured they can be hazardous to the health of everyone. I know that beauty is in the eyes of the beholder, if you have minerals under the well somehow the site is much more pleasant. In this state that has had development for 50 years many time the occupant doesn't own any minerals. The site can lower property valuation for a home owners as well as potential health risks.

In defense of companies that are in North Dakota, probably 98% work hard to have a good relationship with adjacent landowners and this bill would not affect them. Regardless if this bill is ever applied or not, I believe it is our duty as legislators to set policy for the good of all citizens and this is just a good guideline to have and it's easy to understand.

Thank you for you time and I ask your favorable consideration for HB 1229.

David Drovdal

Representative

Item # 2

Tom Irgens Testimony
HB 1229

Chairman Porter and members of the House Natural Resources Committee, thank you for the opportunity to submit testimony on House Bill 1229.

My name is Tom Irgens and I farm near Springbrook, North Dakota. I have lived in close proximity to oil and gas development for many years and I want to take this opportunity to thank Representative Drovdal and the other sponsors of this bill for their concern in regards to the close proximity of wells to homes.

I am a board member of Dakota Resource Council and serve on its oil and gas task force. We have had a lot of discussion on setbacks in the last several years and we are pleased that this group of legislators has decided to address them.

Today, I am here to talk about the effects that oil and gas development has had on my and others who are impacted by this industry.

I would like to take this opportunity to ask that the setback distance in this bill be revised from 660 feet to 1320 feet. This is not too much to ask, since it is the surface owner or their neighbor to will have to live with the impacts that a drilling rig or a producing well has on a surface owner. 660 feet is just too close to have a well from your home.

Some of the impacts that we deal with are truck traffic at all times of the day or night, flaring, noise from the pumping unit, having to farm around well pads and producing wells, and damages to our roads. There is always the chance there will be a blowout. They do not occur often, but when they do, the damages can be great. Think about the impacts to Bruce and Paula Kaye, or others like them, if the well so close to their home would have a blowout.

There is always the danger of H₂S. This gas is not only offensive to the senses; it is lethal, if you come into close proximity to it.

When you have oil development near your home, there is the decrease in the value of your land, a change in your quality of life and the aesthetics of your land are changed for years.

I ask at this time that you consider an amendment, granting landowners a setback of at least 1320 feet.

We put up with a lot out in oil and gas country, we have had to make a lot of concessions and a mandatory setback of 1320 feet will go a long way in making right some of the things that we, as surface owners, have had to put up with over the years, easier to take.

With that, I ask that the Natural Resources Committee, with the proper amendment, give a do-pass recommendation.

Thank you for your time.

Item # 3

HB 1229
Testimony by Cindy Klein, Dakota Resource Council

Chairman Porter and members of the House Natural Resources Committee, thank you for the opportunity to submit testimony on House Bill 1229.

My name is Cindy Klein and I am a community organizer for Dakota Resource Council. Created in 1978, *Dakota Resource Council forms citizen groups dedicated to protecting North Dakota's families and its air, water, land and natural resources.* I work with our Oil and Gas Task Force

We would like to Representative Drovdal and the other sponsors of this bill for recognizing the problems that surface owners and tenants face in oil and gas country. One problem that exists is wells being located in close proximity to occupied homes.

To pass this legislation is a step in the right direction; however, we feel that the distance of 660 feet is still too close. The well located directly north of Bruce and Paula Kaye near Belfield, is roughly 400 feet. Frankly, another 260 feet would not have made much difference. We ask, at this time, that the distance in this bill be changed to 1320 feet.

I have pictures available that were taken just north of the Kayes last week. The noise from the well was annoying the short time I was out there. One cannot imagine living next to it for the next 30 years.

The impacts to surface owners and their neighbors are great. Decreased quality of life, loss of value to homes, damage to the aesthetics that they have grown to love.

There are other impacts as well. Truck traffic day and night, the danger of a blowout, H₂S, gradual damage and decrease on the quality of the roads, litter, noise and flaring.

We know that this committee wants to do what is right by the surface owners. Those who do not own their minerals or the owners of the property adjoining them are impacted through no fault of their own. They have little, if any say, in the development of a well.

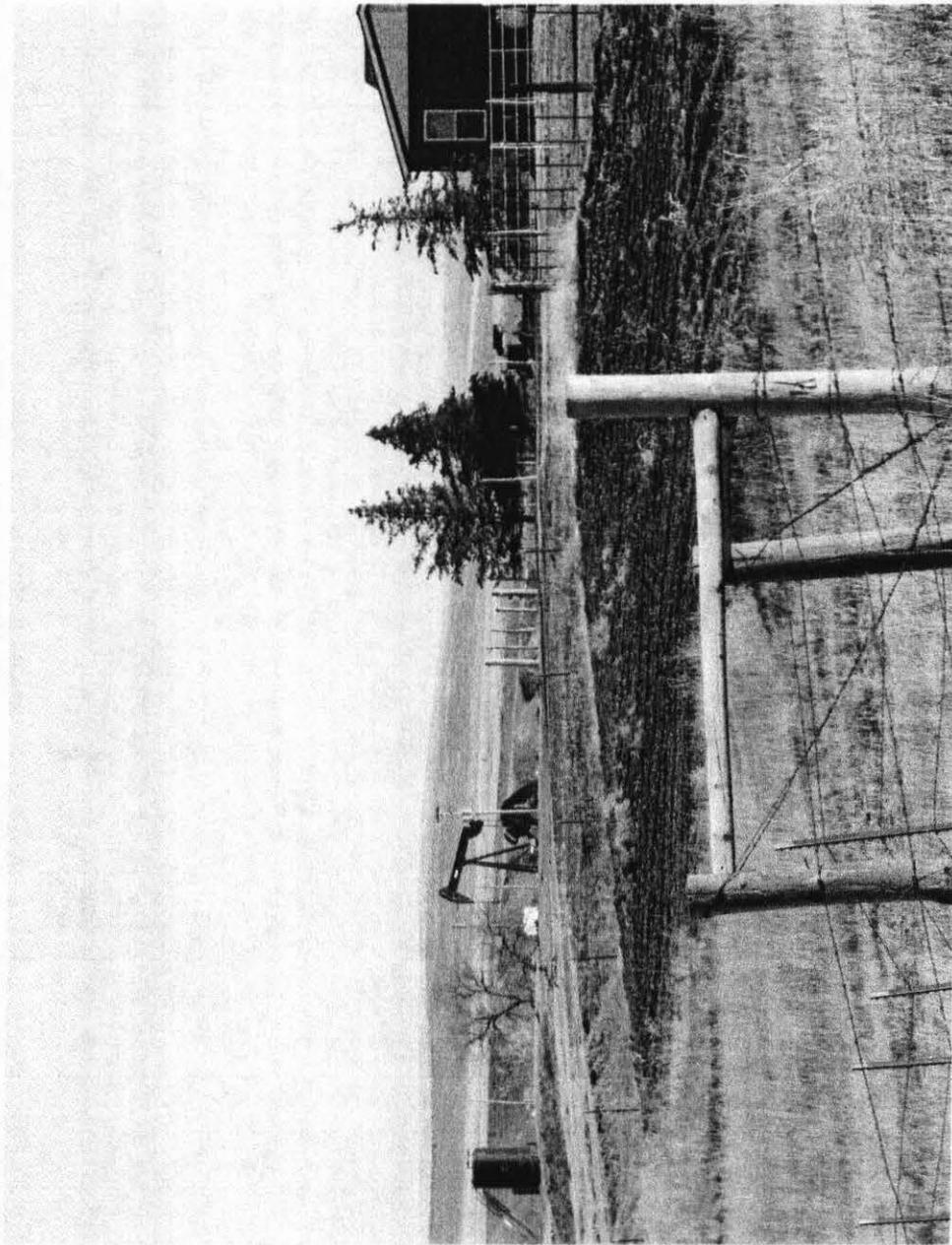
We ask that you give this bill a do-pass recommendation with a 1320 foot setback.

Thank you for your time. I will pass the photo's that I brought along around to the members if the committee at this time.

Respectfully Submitted,

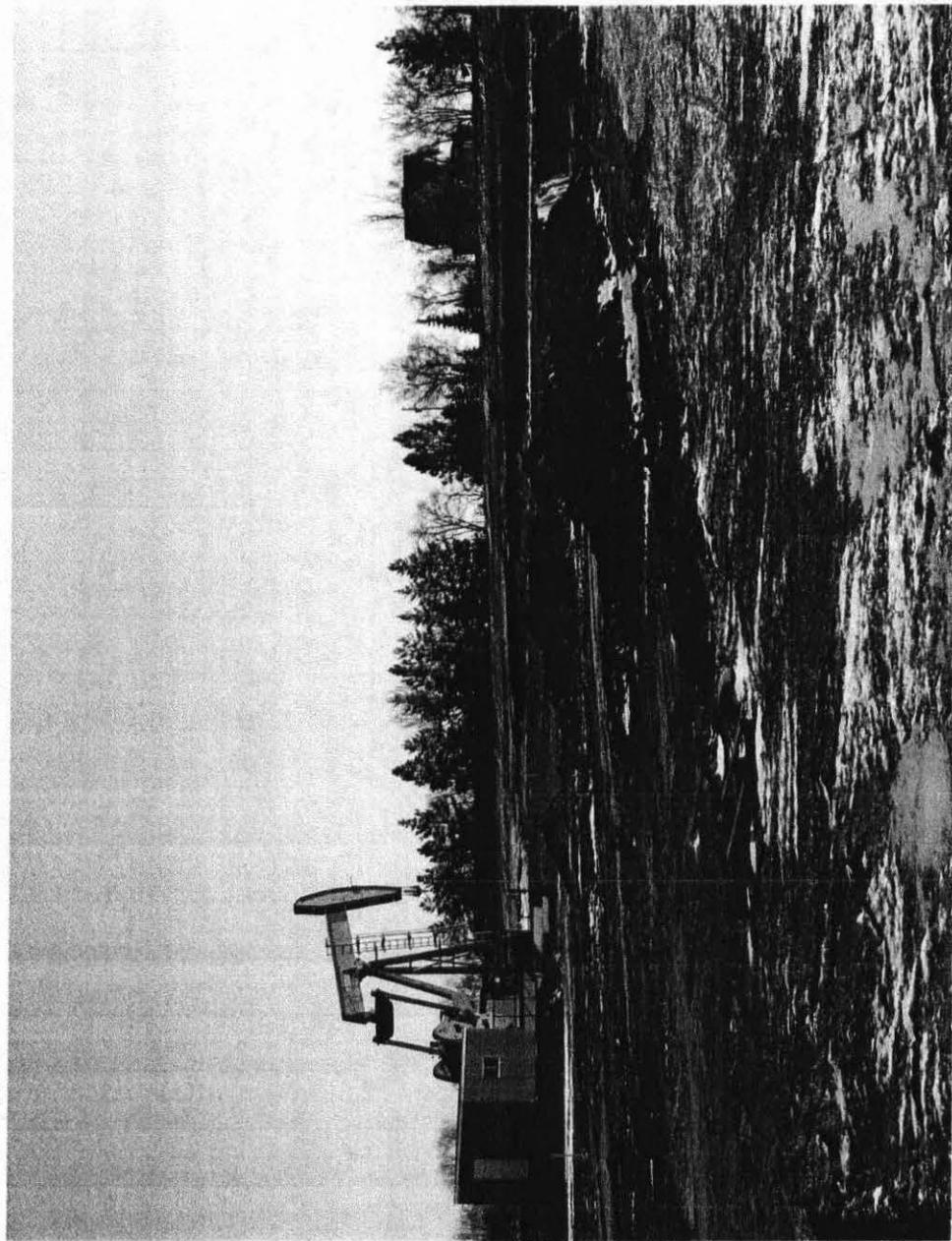
Cindy Klein
DRC Staff

Stem # 4



WEST OF DICKINSON
Between I-94 and
Old 10

Item 5



Bruce & Paula Kaye
No 6 Bel field

Item #6

Northern Alliance of INDEPENDENT PRODUCERS

PO Box 2422 • Bismarck, North Dakota 58502-2422 • Phone 701-224-5037 • Fax 701-224-5038 • email NProducers@aol.com

Natural Resources Committee
North Dakota House of Representatives
January 18, 2007

HB 1229 (Oil well set back 660 from occupied dwelling)

Robert W. Harms, President of Northern Alliance of Independent Producers
40+ producers operating in Williston Basin
45% of wells drilled in North Dakota 2006 (\$900 million investment)

Oppose HB 1229

1. Bill is not necessary. The NDIC has a current rule requiring 330' set-back from dwellings - that is sufficient. If unusual circumstance arises, NDIC may intervene. Result of an isolated instance(s) – a problem that does not warrant legislation.
2. Often covered by the oil and gas lease (the customary lease requirement is 200').
3. Impinges upon the mineral owner's property rights as the dominant estate to develop their minerals.
4. May impact development. For example, consider the impact of adding a 660' set-back in addition to the set-backs from unit boundary lines created on drilling and spacing units (e.g., 40, 80 or 160 acre spacing units with 330' set-backs are prevalent in ND – when you add another 660' radius around a house, which limits placement of the well and potential success). Even in 640 acre units for horizontal wells, the 1,320' no drilling area this creates considerably impacts the placing and viability of wells.
5. Shallow gas plays (and CBM that we hope to develop in ND) which rely on high density development will be affected by this bill – customary spacing is at least 40 acre density, which couldn't occur with this law.
6. Waiver available to "occupant" but not the owner; may create problems between surface owner and surface tenant (even more likely if surface and minerals have same owner, and surface rented to a tenant "occupant").





"Watchdogs of the Prairie"
Organizing North Dakotans Since 1978

Dakota Resource Council • PO Box 1095 • Dickinson, ND 58602
Phone: 1-701-483-2851 • Fax: 1-701-483-2854

House Bill 1229
Senate Natural Resources Committee

Good Morning, Chairman Lyson and members of the Senate Natural Resources Committee. Thank you for the opportunity to testify in support of House Bill 1229. We are extremely pleased that this bill overwhelmingly passed the House and it has made it to you today.

My name is Cindy Klein and I am a community organizer for Dakota Resource Council. I work with our Oil and Gas Task Force on responsible development of oil and gas resources.

We would again like to thank Representative Drovdal for sponsoring this bill and for recognizing the problems that surface owners and their tenants face in oil and gas country.

One problem that exists is the distance that a well can be drilled in proximity to an occupied building. When we started this legislative session in January the setback distance was 330 feet. Initially Representative Drovdal asked for a setback of 660 feet. In the course of the committee work the bill was amended to a setback of 500 feet.

I have attached photos that I took in January of occupied homes that have wells in very close proximity. The home of Bruce and Paula Kaye has a well roughly 400 feet away. The other pictures were taken north of Belfield right off of Highway 85 at two different sites. As you can see, these wells are very close to homes.

I talked to a man named Hamed Omar last week and again yesterday, who lives southwest of Tioga. There is a company who is building a location and drilling a well 500 feet from his home. The home and property that he has spend the last 20 years developing. The roads are very close and so is the proposed well pad. They fear that with the truck traffic in and out and the dust that they will not be able to open their windows this summer and enjoy the fresh air. Mrs. Omar has a chemical sensitivity allergy. Even the slightest unnatural smells, such as perfume or soap, give her migraine headaches. With an oil well so close to their home, they fear she will become even more chemically sensitive because of the smells associated with oil production.

Mr. Omar was preparing a location on his property for his daughter and family to move to. They were going to move a mobile home to that location until the oil well came along. Now, it will be impossible to put this home where they have planned as it is only about 200 feet away from the well location. The Omar's were looking forward to having their daughter and grandchildren close by. They were looking forward to the quality of life that only a family can give. Those dreams are all gone.

Hamed Omar can be contacted at 664-2414.

It is for the safety and quality of life that we ask this committee to consider a set back of 1320 feet. The 500 feet allowed in this bill is just not enough. There is a real decrease in the quality of life, a decrease in the value of the property and no compensation for damages to the area that landowners have grown to love.

These situations are not rare. They are happening all the time. Some you hear about in the news others you don't. The Omar's told me that in their area there are many wells that have been drilled very near to homes. This committee can do its part by amending this bill to a setback of no less than 1320 feet.

The other portion of this bill is the notification provision. The bill will require that a surface owner of record will now be notified at least 20 days prior to a company applying for a drilling permit. This extra time is necessary so that a surface owner can evaluate the damages that will occur to the land and have some extra time to negotiate a surface use agreement with the developer.

This bill originally required that adjoining landowners within ½ mile also be notified. It was amended to require that there be notification of adjoining resident notification within only ¼ mile of a proposed oil or gas well.

Notification is important not only to the surface owner where the development will occur but to the adjoining landowners. Other portions of Century Code require that landowners within one mile who have conducted a water quality and quantity within one-year proceeding the drilling of an oil well will be protected should there be damages to their water sources. Without such a test, a landowner has no recourse. Without notification, there is no reason that a landowner within that one-mile radius would have their wells tested. We ask that the notification area be expanded to one-mile to match other sections of the Century Code that pertain to oil and gas drilling. I have attached those sections to the testimony.

We ask that you adopt our suggested amendments and then give this bill a DO PASS recommendation.

Thank you.

Randy Kline

CHAPTER 38-11.1

OIL AND GAS PRODUCTION DAMAGE COMPENSATION

38-11.1-01. Legislative findings. The legislative assembly finds the following:

1. It is necessary to exercise the police power of the state to protect the public welfare of North Dakota which is largely dependent on agriculture and to protect the economic well-being of individuals engaged in agricultural production.
2. Exploration for and development of oil and gas reserves in this state interferes with the use, agricultural or otherwise, of the surface of certain land.
3. Owners of the surface estate and other persons should be justly compensated for injury to their persons or property and interference with the use of their property occasioned by oil and gas development.

38-11.1-02. Purpose and interpretation. It is the purpose of this chapter to provide the maximum amount of constitutionally permissible protection to surface owners and other persons from the undesirable effects of development of minerals. This chapter is to be interpreted in light of the legislative intent expressed herein. Sections 38-11.1-04 and 38-11.1-05 must be interpreted to benefit surface owners, regardless of whether the mineral estate was separated from the surface estate and regardless of who executed the document which gave the mineral developer the right to conduct drilling operations on the land. Sections 38-11.1-06 through 38-11.1-10 must be interpreted to benefit all persons.

38-11.1-03. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not the animals are to be sold commercially.
2. "Drilling operations" means the drilling of an oil and gas well and the production and completion operations ensuing from the drilling which require entry upon the surface estate and which were commenced after June 30, 1979, and oil and gas geophysical and seismograph exploration activities commenced after June 30, 1983.
3. "Mineral developer" means the person who acquires the mineral estate or lease for the purpose of extracting or using the minerals for nonagricultural purposes.
4. "Mineral estate" means an estate in or ownership of all or part of the minerals underlying a specified tract of land.
5. "Minerals" means oil and gas.
6. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
7. "Surface owner" means any person who holds record title to the surface of the land as an owner.

38-11.1-03.1. Inspection of well site. Upon request of the surface owner or adjacent landowner, the state department of health shall inspect and monitor the well site on the surface owner's land for the presence of hydrogen sulfide. If the presence of hydrogen sulfide is indicated, the state department of health shall issue appropriate orders under chapter 23-25 to protect the health and safety of the surface owner's health, welfare, and property.

38-11.1-04. Damage and disruption payments. The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages, consideration must be given to the period of time during which the loss occurs and the surface owner may elect to be paid damages in annual installments over a period of time; except that the surface owner must be compensated for harm caused by exploration only by a single sum payment. The payments contemplated by this section only cover land directly affected by drilling operations. Payments under this section are intended to compensate the surface owner for damage and disruption; any reservation or assignment of such compensation apart from the surface estate except to a tenant of the surface estate is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

38-11.1-05. Notice of drilling operations. Except for exploration activities governed by chapter 38-08.1, the mineral developer shall give the surface owner written notice of the drilling operations contemplated at least twenty days prior to the commencement of the operations, unless waived by mutual agreement of both parties. If the mineral developer plans to begin drilling operations within twenty days of the termination date of the mineral lease, the required notice under this section may be given at any time prior to commencement of drilling operations. This notice must be given to the record surface owner at that person's address as shown by the records of the county recorder at the time the notice is given. This notice must sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. Included with this notice must be a form prepared by the director of the oil and gas division advising the surface owner of the surface owner's rights and options under the chapter, including the right to request the state department of health to inspect and monitor the well site for the presence of hydrogen sulfide. If a mineral developer fails to give notice as provided under this section, the surface owner may seek any appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

38-11.1-06. Protection of surface and ground water - Other responsibilities of mineral developer. If the domestic, livestock, or irrigation water supply of any person who owns an interest in real property within one-half mile [804.67 meters] of where geophysical or seismograph activities are or have been conducted or within one mile [1.61 kilometers] of an oil or gas well site has been disrupted, or diminished in quality or quantity by the drilling operations and a certified water quality and quantity test has been performed by the person who owns an interest in real property within one year preceding the commencement of drilling operations, the person who owns an interest in real property is entitled to recover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the commencement of drilling operations. Any person who owns an interest in real property who obtains all or a part of that person's water supply for domestic, agricultural, industrial, or other beneficial use from an underground source has a claim for relief against a mineral developer to recover damages for disruption or diminution in quality or quantity of that person's water supply proximately caused from drilling operations conducted by the mineral developer. Prima facie evidence of injury under this section may be established by a showing that the mineral developer's drilling operations penetrated or disrupted an aquifer in such a manner as to cause a diminution in water quality or quantity within the distance limits imposed by this section. An action brought under this section when not otherwise specifically provided by law must be brought within six years of the time the action has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence.

A tract of land is not bound to receive water contaminated by drilling operations on another tract of land, and the owner of a tract has a claim for relief against a mineral developer to

recover the damages proximately resulting from natural drainage of waters contaminated by drilling operations.

The mineral developer is also responsible for all damages to person or property resulting from the lack of ordinary care by the mineral developer or resulting from a nuisance caused by drilling operations. This section does not create a cause of action if an appropriator of water can reasonably acquire the water under the changed conditions and if the changed conditions are a result of the legal appropriation of water by the mineral developer.

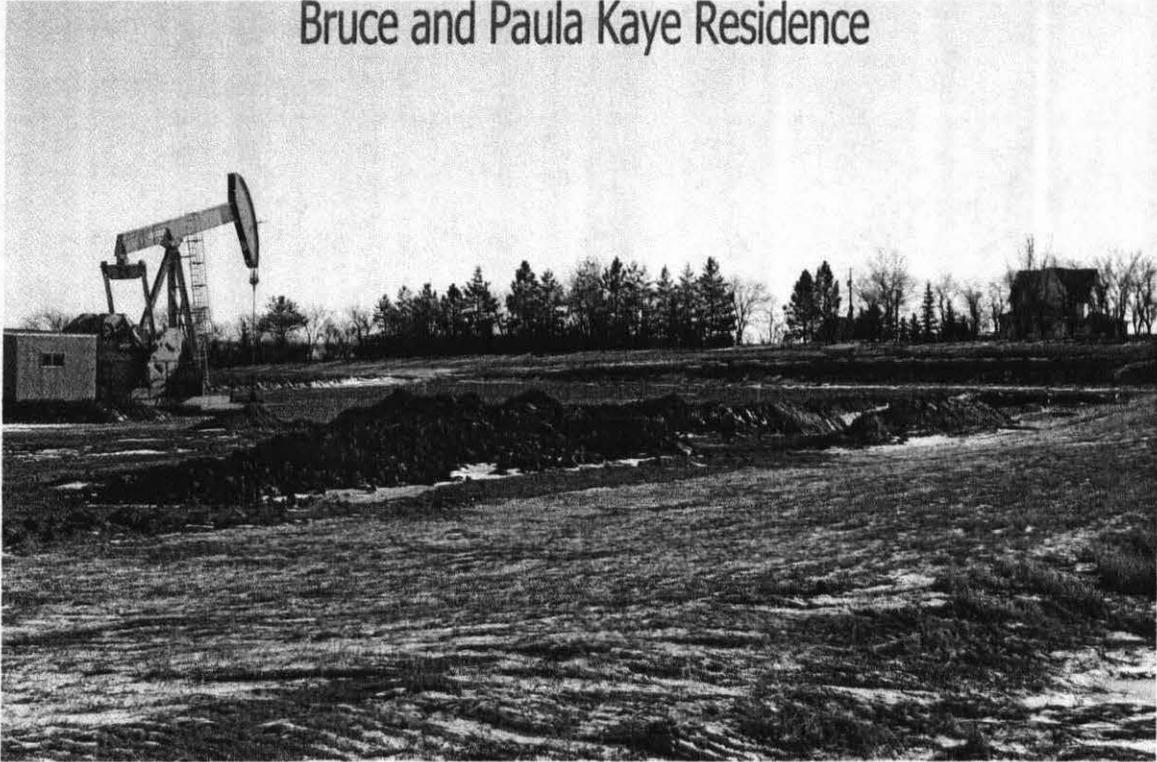
38-11.1-07. Notification of injury. Any person, to receive compensation, under sections 38-11.1-08 and 38-11.1-09, shall notify the mineral developer of the damages sustained by the person within two years after the injury occurs or would become apparent to a reasonable person.

38-11.1-08. Agreement - Offer of settlement. Unless both parties provide otherwise by written agreement, at the time the notice required by section 38-11.1-05 is given, the mineral developer shall make a written offer of settlement to the person seeking compensation for damages when the notice required by section 38-11.1-05 is given. The person seeking compensation may accept or reject any offer so made.

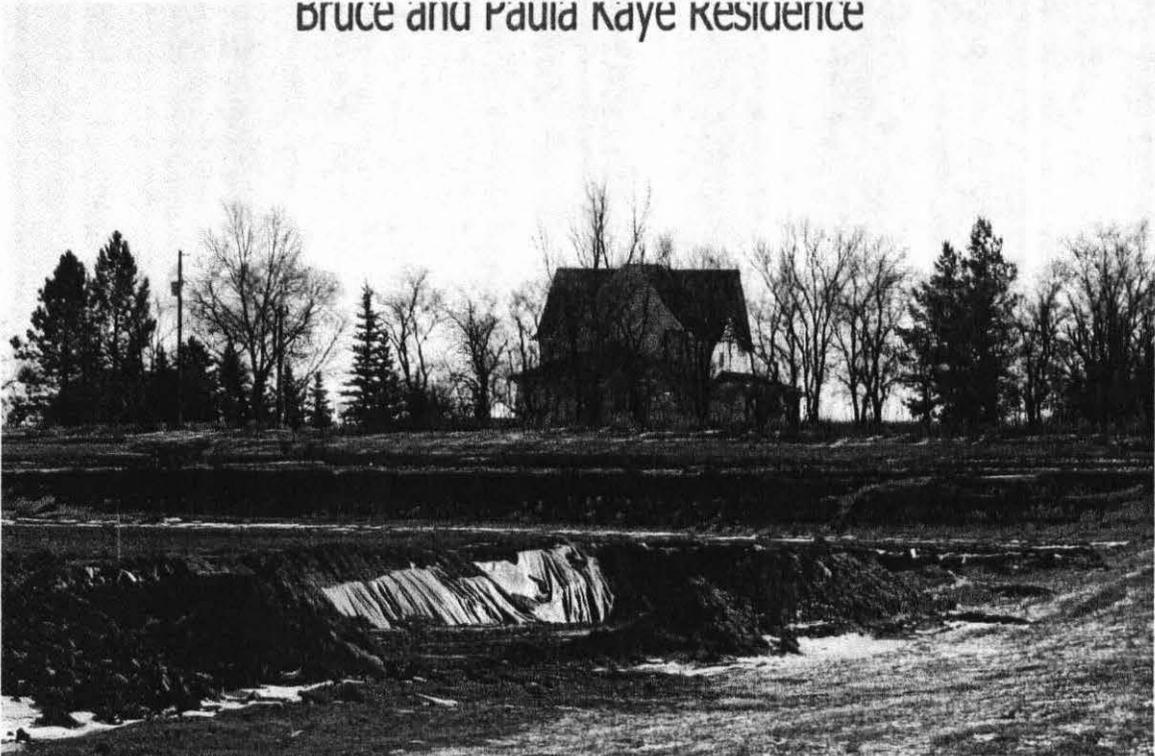
38-11.1-09. Rejection - Legal action - Fees and costs. If the person seeking compensation rejects the offer of the mineral developer, that person may bring an action for compensation in the court of proper jurisdiction. If the amount of compensation awarded by the court is greater than that which had been offered by the mineral developer, the court shall award the person seeking compensation reasonable attorney's fees, any costs assessed by the court, and interest on the amount of the final compensation awarded by the court from the day drilling is commenced. The rate of interest awarded must be the prime rate charged by the Bank of North Dakota on the date of the judgment.

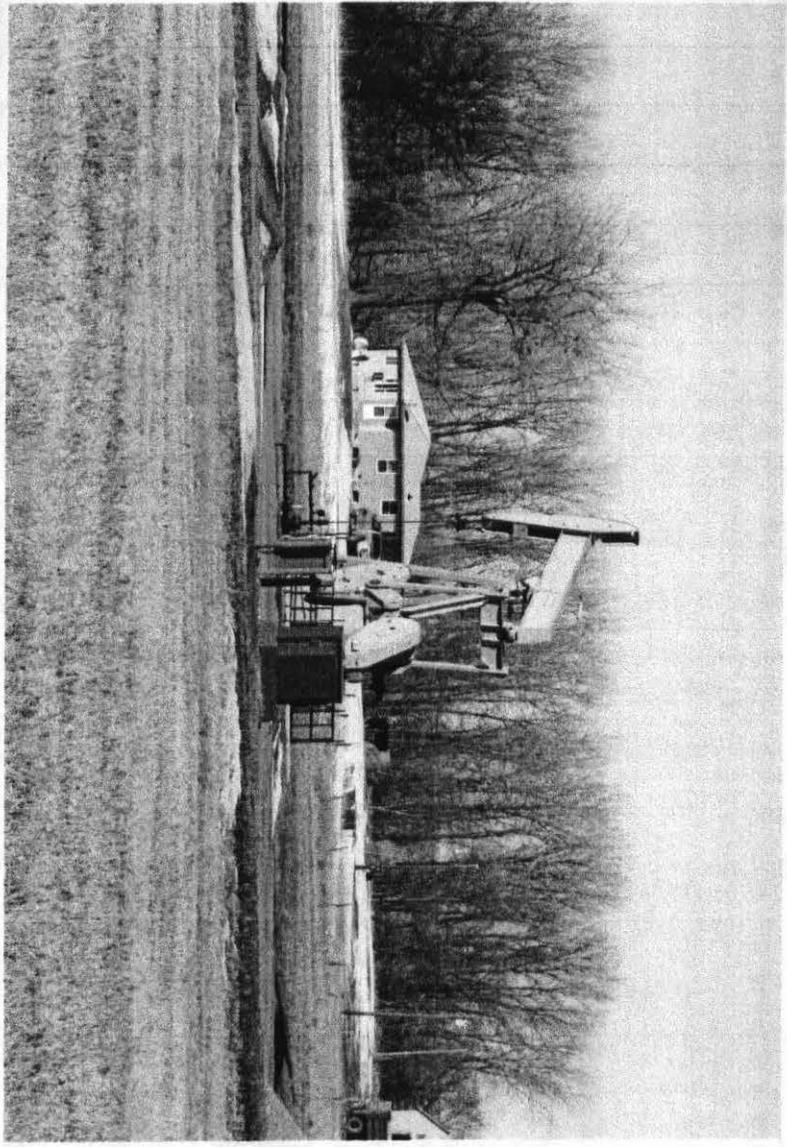
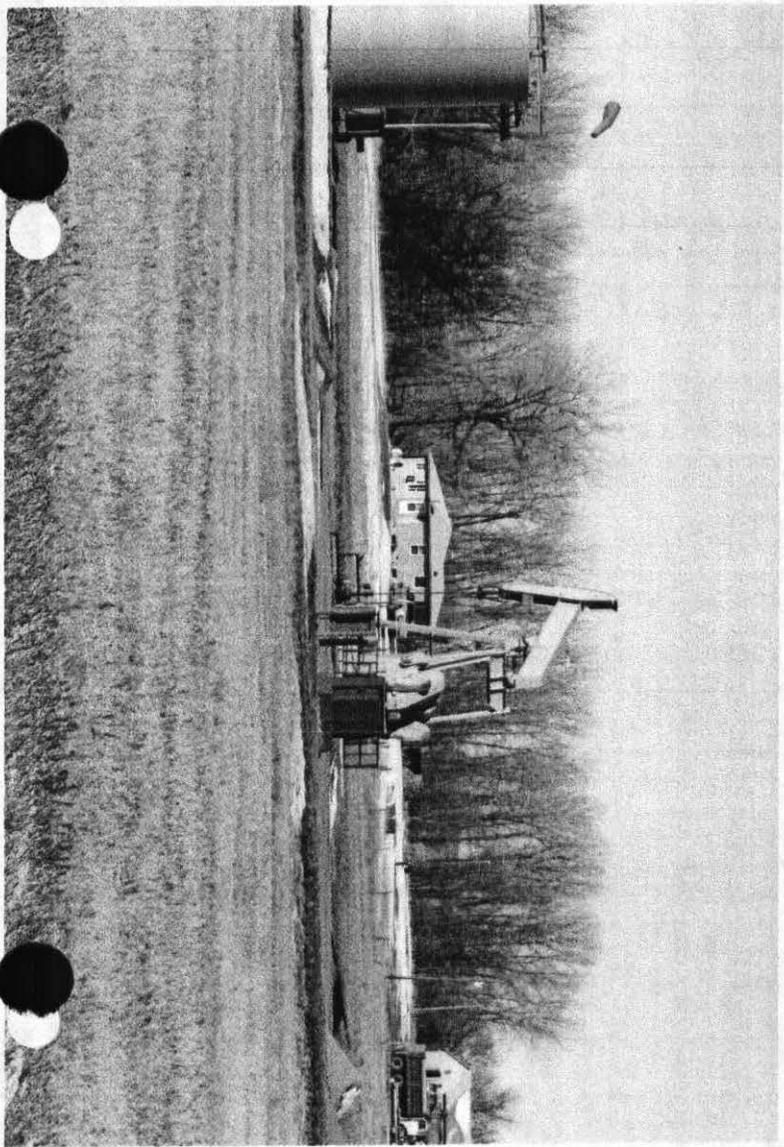
38-11.1-10. Application of chapter. The remedies provided by this chapter do not preclude any person from seeking other remedies allowed by law. This chapter does not apply to the operation, maintenance, or use of a motor vehicle upon the highways of this state as these terms are defined in section 39-01-01.

Bruce and Paula Kaye Residence



BRUCE AND PAULA KAYE RESIDENCE





HB 1229
Testimony of Tom Irgens

Good Morning Senator Lyson and members of the Senate Natural Resources Committee. Thank you for the opportunity to provide you with testimony supporting House Bill 1229.

My name is Tom Irgens and I farm near Springbrook North Dakota, northeast of Williston. I am a board member of Dakota Resource Council and also serve on its Oil and Gas Task Force working on responsible development of oil and gas resources.

Today I am here to talk about the impacts of oil and gas development on landowners such as myself.

I would like to thank Representative Drovdal and the other sponsors of House Bill 1229.

No one can argue that oil and gas development is not good for the economy of North Dakota. But, there is another side to oil and gas drilling.

I fully support this legislation, however, I feel that the distance from a drilling rig or production well should be no less than 1320 feet.

There must be a distance greater than 500 feet from an occupied home to protect those that live in the impacted areas. The noise from a well is disruptive and diminishes the quality of life of those in the immediate area. This is not a temporary situation. The impacts from production locations last for years. There are wells that were drilled over 30 years ago that are still producing oil.

Some of the other impacts that face surface owners and occupants experience are truck traffic, heavy equipment noise, disturbed soils that enable noxious weed growth, littering, air pollution, flaring of gases, dangers from H₂S, and blowouts.

I ask you to consider amending this distance to 1320 feet, for the sake of those residents who live in areas of oil and gas development.

The other portion of this bill is an extension of the notification time frame.

Notification of intent to drill to ALL parties in the area of a proposed well is extremely important. The area of notification to adjoining landowners within ¼ mile is not enough and is in conflict with other sections of North Dakota Century Code. This notification should be extended to a one-mile radius of the proposed well location.

One reason for such a change is so that ALL surface owners and tenants have the opportunity to have their water sources tested for quality and quantity prior to commencement of drilling. WITHOUT such a test, there is no recourse should a water

supply in that area become damaged or contaminated by drilling operations. Without notification within one mile, how can those landowners and operators know with certainty that they need to have their wells tested?

I hope that this committee will consider the suggested amendments and then give this bill a DO PASS recommendation.



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House Bill 1229
Senate Natural Resources Committee
February 23, 2007

Chairman Lyson and Members of the Committee, my name is Ron Ness. I am President of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents 130 companies involved in all aspects of the oil and gas industry including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky Mountain Region. Petroleum Council members produced 80% of the nearly 36 million barrels of oil produced in North Dakota in 2006. I appear before you today in opposition to engrossed House Bill 1229.

Based on the way things are currently run in North Dakota, the set-back law and notice law change is not necessary. It seems to be a reaction to an isolated instance which doesn't need a legislative fix. The North Dakota Industrial Commission uses the tools in place to address problems when warranted. We believe our industry can avoid the type of conflict that occurred this past summer by communicating with the landowner early in the process. That was an isolated incident and that person would probably have been upset/disturbed if the well was a mile away. Oil companies have been exploring in North Dakota in close proximity to homes for over 50 years without major problems. In Dickinson, there are numerous wells in the city and there are a number of wells in a subdivision west of the city of Williston. The current rule requires a 330 foot set-back. If an unusual matter arises, the North Dakota Industrial Commission has jurisdiction to intervene.

1. The requirement of 20 days notice before applying for a permit is unnecessary and confusing. Current law (Section 38-11.1-05) requires that the company give at least 20 days notice to the surface owner before conducting drilling operations. There is no need for duplicative notice requirements.
2. The requirement of notice to owners of occupied dwellings within ¼ mile will result in delay and added expense. A ¼ mile radius will frequently include lands outside the spacing unit for a well. This will require companies to conduct surface inspections on adjoining lands (where they may not even have the legal right to enter the lands) and will require title opinions or other investigations as to who owns land outside the spacing unit.
3. A 500 foot set-back is excessive. Under current regulations, it's 330 feet. While there is some ability to move the surface locations of horizontal wells, many vertical wells are still drilled in North Dakota and moving a surface location 200 feet, more or less, on some vertical wells will greatly increase the risk of drilling a dry hole or a sub-economic well, or require the company to spend hundreds of thousands of extra drilling dollars to drill a directional well.
4. At a minimum, there should be some ability for the Industrial Commission to grant an exception to any 500 foot set-back after notice and hearing, if it's necessary, and the Commission finds that any adverse impact will be adequately mitigated.
5. Wyoming's set-back requirement is 350 feet and South Dakota doesn't have a requirement.
6. Shallow gas and oil well plays that rely on density development would be greatly affected by this change.
7. This law would infringe upon the mineral owner's right to ingress and egress to develop their minerals and gives the surface owner special rights. I don't believe the concept of the law was to favor the surface over the development of minerals.

We urge a Do Not Pass on HB 1229. Thank you for your consideration. I would be happy to answer any questions.

Senate Natural Resources Committee
HB 1229
February 23, 2007

Testimony of Tom Luttrell

My name is Tom Luttrell; I am a Sr. Vice President of Continental Resources, Inc. I am here in opposition to House Bill 1229. Mr. Chairman and members of the Committee, thank you for providing me this opportunity to speak with you.

We believe that House Bill 1229 is not needed and if implemented will impose onerous and unwarranted restrictions on companies exploring for oil and gas in North Dakota. The Oil and Gas Division of the North Dakota Industrial Commission is charged with oversight of matters concerning well locations and drilling permits, and they do a good job. The Oil and Gas Division has rules covering the matters which are the subject of this legislation, including a rule requiring wells be located at least 330' from any building or residence. Also, by law the Director of the Oil and Gas Division "may impose such terms and conditions on the permits issued under this section as the director deems necessary". In the particular instance that we believe initiated this legislation, the owners of a dwelling nearby a well we operate contacted the Oil and Gas Division and they responded by imposing several unusual conditions on the permit to drill. The Oil and Gas Division is the best party to fairly consider all aspects of any controversy concerning these matters and take appropriate action if warranted – more law is not needed.

A requirement to keep a well 500' from any dwelling can be problematic to placing wells in the most optimum location for maximizing production and preventing waste. Companies spend millions of dollars shooting state-of-the art 3 dimensional seismic surveys for the very purpose of pinpointing the best location to place a well drilling for North Dakota's complex and erratic oil and gas deposits. In many instances, several hundred feet can mean the difference between a good producer and a dry hole. In smaller well spacing units such as 80 or 40 acres, the 500' set-back may prevent drilling altogether depending on the location of the occupied dwelling. In enhanced recovery units, which comprise a big part of North Dakota's production, exact placement of producer and injection wells is critical.

The requirement to provide notice to occupied dwellings twenty days prior to issuing a drilling permit is difficult from several perspectives. Under current law, a company desiring to drill must first contact the owner of the surface where the well is to be located. The proposed law expands that notice to include even parties located outside the spacing unit for the well. Since such parties will not share in production from the well it is easy to imagine they will take advantage of this opportunity to object, same as they probably would if any other business was proposed to be built. The added time and expense of determining this additional ownership, the 20 day waiting period and the probable additional delays that will result from objections makes it very difficult for exploration companies to plan and conduct business. It is especially difficult for companies who have 5 – 10 drilling rigs operating simultaneously, which is hopefully the activity your state desires to see.

As I mentioned, we have good reason to believe this bill was initiated because of a single, isolated incident which involved a well that our company drilled in Billings County. This well is located in a 1,280 acre spacing unit and is drilled horizontally with one lateral extending north and another drilled to the south, which is necessary to effectively produce the most oil and gas from the Bakken formation. The surface location of the well is moved to the northern most location from which we felt both lateral portions could be effectively drilled. The well is not located on the objecting party's land and is in fact located across the section road and beyond a shelter belt of trees north of the residence, which blocks the view of the well.

Continental has attempted to be a good neighbor to these owners:

- At additional expense, we voluntarily moved the well location to the furthest north placement and re-routed the well access road to be from the north rather than near the party's property;
- We have complied with the additional requirements placed on the drilling permit by the NDIC Oil and Gas Division, which required additional expense;

- We utilized an especially quiet engine muffler, referred to in the industry as a "hospital muffler" during the time a gas engine was on site;
- We paid an additional \$44,000 to bring three-phase electricity to the location to run an electric pumping unit motor which is quieter than a conventional gas-fired motor;
- We paid \$253,000 as aid-in-construction to expedite a pipeline connection to avoid extended flaring of natural gas.

You should know that during the communications with the objecting party, their attorney tried to sell us the land and residence for a price we believe to be far in excess of the fair market value, to resolve the matter and avoid further "political" intervention.

I've attached to my testimony a list of problems caused by HB 1229. There will surely be plenty more problem scenarios caused by this bill. Please take the time to read and consider these problems that will be encountered from an exploration company's perspective.

Please vote NO on HB 1229 and not place further onerous and undue restrictions on the oil and gas exploration industry, especially when further law is not needed.

Problems With HB 1229

Using multiple rigs drilling in a play (like the Bakken) requires months advanced planning to stay ahead by having title work done, agreements in place with all working interest owners, locations and access roads built, permits obtained and ready to drill:

- Exact well locations regularly change at the last minute due to topographic problems, obtaining additional geologic information and other reasons. **If a revised permit is needed due to a slight change of location, does the 20 day notice apply?** If so, the rig doesn't have any place to go for at least 20 days – if someone objects, it's longer (drilling rigs cost \$20,000 or more a day to keep on stand-by).

Companies will need to get title opinions done, locations staked, operating agreements in place, notice given to surface owners and locations built on numerous redundant extra locations to avoid having a rig stranded. This will mean millions of extra dollars potentially wasted building undrilled locations or drilling wells at less than optimum locations!

THIS CREATES A HUGE PROBLEM FOR COMPANIES

This bill requires notice be given to surface owners outside the well's spacing unit who have no interest in the well whatsoever.

- These outside owners will surely complain – why not, they don't benefit from the well and will take the notice as a chance to object or request consideration for not objecting.

The bill requires notice to the owner of a permanently occupied dwelling – how is that determined?

- Does someone have to knock on the door of every house and ask if it is “permanently occupied”?
- What proof of compliance can be obtained? (Does a company take someone's word that they “permanently occupy” the dwelling?).

The bill requires non-interest owners outside the wells spacing unit to waive the 500 ft. set-back.

- The owner of the land where the well is located can waive and want the well drilled in the best spot, but an outside owner with no interest in the well can keep it from drilling in the best spot.

Northern Alliance of INDEPENDENT PRODUCERS

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Natural Resources Committee
North Dakota Senate
February 23, 2007

HB 1229 (Oil well notice; set back 500' from occupied dwelling)

Robert W. Harms, President of Northern Alliance of Independent Producers
40+ producers operating in Williston Basin
45% of wells drilled in North Dakota 2006 (\$900 million investment)

Oppose HB 1229: The bill is unnecessary; and begins us down a path that will hamper development of private property and the industry has is doing so much to assist our economy to date. Seems like an innocent bill that appears to establish some reasonable parameters (notice, and set back of at least 500') that shouldn't cause such alarm. But, the concerns regarding the bill are real and justified.

The Bill examined:

1. "At least twenty days before applying for a permit the applicant shall give notice of intention to apply for a permit to the record owner as set forth in the office of county treasurer."

- Give notice how? (by personal service, certified mail, newspaper) i.e., how effectuated?
- Give notice to which record owner—i.e., the owner of what? (the well site? the adjoining land? record owner of the minerals? Fee owner? Development rights/easement owner? All adjacent surface owners?)
- How long does the notice last? What impact if well location is modified slightly?

- And what effect does the notice provide? Does the “record owner” then have some rights associated with notice? (If not this year, will we face a “record owner” of adjacent surface (who owns no minerals) assert a right to notice, and legal remedies that should attach thereto?)

2. *“The applicant also shall notify the owner of any permanently occupied dwelling located within one-quarter mile of the proposed oil or gas well.”*

- Notify of what? (intention to apply? Proposed well location?)
- Does the same 20 day period apply?
- How do we determine if dwelling is “permanently occupied”?
- Does notify apply to owner of dwelling who does not own minerals under the bit? What property right does an “owner of an occupied dwelling” to notice for ANY activity occurring within ¼ mile of their home? Is that where ND is going?)
- What remedy is afforded as a result of such notice this year, or should we expect to see legislation to define the remedy in coming sessions?
- Affording property rights where none exist, at the cost and expense to other property owners.

3. *“If the occupied dwelling lies within city limits, notification may be given by contracting the local governing board.”*

- Similar concerns as above.

4. *“Unless waived by the occupant the commission man not issue a drilling permit for an oil or gas well that will be located within five hundred feet of an occupied dwelling.”*

- Can the “owner” waive for locating the well within 500’?
- If the owner is different than the occupant, who may waive?
- Do the occupants have property rights 500’ from his dwelling that override the mineral owner’s private property rights?
- What do we do in case of impasse, where a mineral owner’s oil well is significantly limited by well location (which may impact profitability or

even decision to drill) that a non-mineral owner "occupant" refuses to waive? Who has priority and can it be transferred (leased)?

Additional concerns:

1. The NDIC has a current rule requiring 330' set-back from dwellings - that is sufficient. If unusual circumstance arises, NDIC may intervene. Result of an isolated instance(s) – a problem that does not warrant legislation.
2. Often covered by the oil and gas lease (the customary lease requirement is 200').
3. Will impact development that we are trying to nurture in our state. For example, consider the impact of adding a 500' set-back in addition to the set-backs from unit boundary lines created on drilling and spacing units (e.g., 40, 80 or 160 acre spacing units with 330' set-backs are prevalent in ND – when you add another 500' radius around a house, which limits placement of the well and potential success). Even in 640 acre units for horizontal wells, the 1,000' no drilling area this creates considerably impacts the placing and viability of wells.
4. Shallow gas plays (and CBM that we hope to develop in ND) which rely on high density development will be affected by this bill – customary spacing is at least 40 acre density, which couldn't occur with this law.
5. Impinges upon the mineral owner's property rights as the dominant estate to develop their minerals. Extends protections (rights) without a remedy, to neighboring surface owners where none previously existed. Creates a significant shift in historical property values and rights between a mineral estate (dominant) and subservient surface and extending adjoining property owners. For example:
 - Surface of drill site is owned by A. (being compensated for surface use).
 - Mineral estate of drill site is owned by B.

-Drill site best location for resource development (and tax revenues) is within 500 feet of home occupied by C and who has NO interest in mineral or surface estate being affected, but who can impede property rights and development of his neighbors.

The notice provisions create problems for rig management, and create liability concerns when trying to site a well and questions arise regarding compliance with Notice.

Likewise, the set back requirements also create practical problems that are real and impact decisions and abilities to proceed with drilling a well if set backs impede the best place to site the well based upon the resource.

In short, the limited problems that generated this legislation do not warrant this legislation. The unintended consequence may impede legitimate property rights and mineral development in our state because of what appears to be an innocent, but potentially damaging bill like HB 1229.