

2011 SENATE FINANCE AND TAXATION

SB 2049

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2049
1/12/2011
Job Number 12783

Conference Committee

A. B. Miller

Explanation or reason for introduction of bill/resolution:

Relating to exclusion of certain subsidized rental property from the property tax exemption for property used for charitable or other public purposes

Minutes:

Attachments

Chairman Cook opened SB 2049 relating to exclusion of certain subsidized rental property from the property tax exemption for property used for charitable or other public purposes.

Chairman Cook - For the record, Dwight Cook State Senator, District 34. I was Chair of the Tax Interim Committee in which this bill came out of. I'll briefly explain it. Then I believe Mr. Walstad will walk you through some of the testimony and discussion during the committee and also we have Marcy Dickerson here from the Tax Department to answer any questions. I think as people who said in a tax policy, one of your first obligations should be that the tax laws that we create and write are clear and not ambiguous. That they do not have to be litigated in court. I think the first problem we need to address with this is, we have a law that over time has become unclear, it has ended up in court, I believe that history will show that probably the first place for this to surface is in the city of Minot North Dakota when property owners of low income housing that was offering housing credits, or taking subsidized housing, challenged whether or not the city could levy property tax on it. They believed that they were offering charity or fell under the constitutional requirements that it was charitable. There was an Attorney General's opinion that agreed with them, and I believe Minot quit levying property taxes. The second priority is of course what is going to be the tax policy.

John Walstad, Legislative Council – I serve this council for the interim Tax Committee. Senator Cook explained the controversy and I will try to lay out a little bit of background. This is a copy (attachment A) of the portion of the committee's report delivered to the Legislative Council. Our constitution article 10 section 5 contains a statement that property used exclusively for schools, religious, cemetery, charitable, or other public purposes shall be exempt from taxation. Our statutory provision which is in the bill, it is subsection 8 of 570208 provides that buildings belonging to institutions of public charity, etc, etc, used wholly or in part for public charity. So this is more liberal than the constitutional provision. The constitution says used exclusively, the statutory says used wholly or in part for public charity. The bill draft amends the statutory provision. The legislature can not amend the constitutional provision, but it is the combination of the two that is causing controversy in the

state. The interim committee's feeling after looking at it, was that obviously since differing decisions are being made around the state, uniformity is necessary and the bill was prepared so that this issue is brought before the full legislature for decision. What the bill does is expand on the statutory provision and what it is really, is a statement of legislative intent about what the constitutional provision means with regard to these kinds of property, and what the statutory provision means. And, property is not used wholly or in part for public charity or charitable or other public purposes if it is residential rental units leased to tenants based on income levels that enable the owner to receive a federal low income housing income tax credit.

Chairman Cook asked Marcy Dickerson if she had any testimony or if she would like to answer questions now.

Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner – Mr. Chairman I don't have any prepared testimony, but I am in favor of this bill and I'm happy to answer any questions for you. **Chairman Cook** asked do you know how long a project like this, which receives housing credits, has to offer the subsidized rental rates to low income people. **Ms. Dickerson** – I'm not sure but I think it's about 20 years; the credits generally expire in a shorter period of time than the restrictions expire.

Chairman Cook asked for testimony in favor of SB2049.

Keith Magnusson, North Dakota League of Cities – We are here today in support of SB 2049 because we realize it's been very inconsistently applied across the state. When we did put this out to our cities people they said there are a couple other federal programs that we should address to make this more complete, and I would offer some amendments to do that. (See attached amendments B)

Chairman Cook asked for testimony opposed to SB 2049. No one came forward.

Chairman Cook asked for neutral testimony on SB 2049.

Mike Anderson, Executive Director, North Dakota Housing Finance Agency – I did not come here today prepared to make any comments, but there was a lot of questions about how the tax credit program works as well as some other federally subsidized programs and I think it's important to try to clear the air on some of that. First of all the Housing Tax Credit Program isn't like any other federally subsidized rental program. There is no rent subsidy specifically put to these projects. Tax credits are provided to the developer who sells those credits and creates equity up front. They use that equity to reduce their debt, thus their operating expenses are reduced and the trade off is that they are required to charge less rent for income restricted units. So there is no ongoing subsidy. Projects are required to keep those units affordable for a minimum of 15 years and they can choose up to 30 years. Most of them go 30 years simply because of the competition of getting credits. The longer you hold those units for affordability the better your score is in getting the credits. Most projects can opt out at 15 years, if they opt out they are free to go to the market.

No further action was taken.

Chairman Cook closed hearing on SB 2049.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2049
1/18/2011
Job Number 13044

Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to exclusion of certain subsidized rental property from the property tax exemption for property used for charitable or other public uses

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2049.

Chairman Cook – This deals with the ambiguity in the law as far as whether or not subsidized low rent income housing finance with federal tax credits is taxed or not taxed. The bill before us would make it clear that they are taxed. The issue arose in Minot; it was settled in Minot with an Attorney General's opinion that said they are not to claim that it was charitable. It again arose in Grand Forks and that one is going to the Supreme Court as to whether or not you do or do not tax these low income housing projects subsidized with federal tax credits. I could tell you the issue arose in Mandan, they just never fought the situation, they just tax exempt them. We do have an amendment that has been offered. I don't think it hurts to add it but I think our challenge, number one is to make sure we clear up the ambiguity, have a law that's black and white, that's not litigated in courts and I would certainly argue that federal tax credits are not charity.

Senator Hogue – I think I would move a Do Pass with this League of Cities amendment.

Seconded by **Vice Chairman Miller**.

Chairman Cook asked all in favor of the motion to amend, the League of Cities amendment. 7 yeas, 0 nays

Chairman Cook – We have before us SB 2049 as amended.

Vice Chairman Miller – I move Do Pass as Amended.

Seconded by **Senator Hogue**.

Chairman Cook- We will ask the clerk to take the roll on a Do Pass as Amended on SB 2049. 7 yeas, 0 nays

Carried by **Chairman Cook**

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2049
1/25/2011
Job Number 13469

Conference Committee

A. R. H. Miller

Explanation or reason for introduction of bill/resolution:

Relating to exclusion of certain subsidized rental property from the property tax exemption for property used for charitable or other public purposes

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2049.

Donnita Wald, Office of Tax Commissioner – Based on my quick review of what the amendment does, it does appear to broaden the scope of who is not eligible for the exemption.

Chairman Cook – How does this affect a nonprofit? Nonprofits are exempt.

Donnita Wald, Office of Tax Commissioner – There are some for instance in the lawsuit that we are currently waiting for an opinion from the Supreme Court, the plaintiffs in that case too were nonprofit, so they claimed. Marcy had a different opinion of whether or not they were nonprofits. They identified themselves as a nonprofit and I think some of the other similar providers of low income housing may also be nonprofits but they are paying property in lieu of taxes. It's possible. Nonprofit status for federal income tax purposes does not necessarily equal that you are providing a public or charitable purpose, for the purposes of the constitution or the statute that is executing that particular provision.

Chairman Cook – I'm going to see if we can hold this bill on the calendar today. I was a little concerned with the amendments. I didn't think they were needed to be honest, but I didn't think they did any harm. You are indicating that maybe they expand the scope.

Donnita Wald, Office of Tax Commissioner – Yes, because that credit that they are referring to, that's just a small universe of low income housing landlords.

Chairman Cook closed discussion on SB 2049.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2049
1/25/2011
Job Number 13470

Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to exclusion of certain subsidized rental property from the property tax exemption for property used for charitable or other public purposes

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2049.

Marcy Dickerson, State Supervisor of Assessments - I understand your question is on the amendment that was added. I take it that is the amendment in 8b at the bottom of page 1.

Chairman Cook – Yes

Marcy Dickerson, State Supervisor of Assessments – Is the question that this might preclude exemption for places because the renters receive some kind of subsidy as opposed to the owners of the property receiving a subsidy?

Chairman Cook – All I know is that there is people out there that think there are a lot of properties that are exempt right now. Owned by nonprofits, that will suddenly become subject to tax because of this amendment.

Marcy Dickerson, State Supervisor of Assessments – I don't know for sure. There could be some because not all counties or cities have addressed the request for exemptions for this type of property. The same way Minot was opposed to exempting a complex and they went to the Attorney General and got an opinion which in my opinion didn't say that they were exempt but it indicated that they could be. They left it up to the local body but the local body took it as an order and did exempt them.

Chairman Cook – I think the key here you pointed out is, on income levels that enable the owner to receive a federal grant or financing subsidy or a federal low income housing income tax credit. I understand what low income housing income tax credits are. I do not understand what a federal rent or financing subsidy is. It has to be some subsidy from the federal government and it has to be a subsidy that goes to the owner. Correct?

Marcy Dickerson, State Supervisor of Assessments – That is the way I read it. There are a number of different programs. I dug out some material from some emails that took place when there was a question of how these properties should be taxed, not whether they should be taxed, but how they should be taxed and what should and should not be counted. There are all kinds of programs and calculations of the credit award, how they are determined, it is quite a document. There are a number of programs, there use to be the old Section 8 Program, there is a Section 42 Program, and I read an interesting email from the city of Fargo, that, December of 2009 where we had sent out a questionnaire about if they had the low income properties and how they assessed them, or if they did. They had properties owned by for profits under the low income housing tax credit program that are taxed but were granted pilots, payments in lieu of taxes. They can run for as much as 20 years which would equal or exceed the time of restriction on most of those properties and would exceed the time during which they were receiving the income tax credits or whatever benefits they were getting. They also had properties where the nonprofit housing authority was involved as a partner and manager. It was taxable but they were granted the pilots also. Then they had properties owned by profit or nonprofit under any other government subsidy program, they were taxed at market value. That was just the Fargo position, how they did it. That's not anything in statute. I think there are plenty of opportunities for local recognition of the benefits of having these programs, these types of housing. There is no question they are a good thing to have, but not everything that's good necessarily qualifies as charitable.

Chairman Cook – If a housing authority in North Dakota owns an apartment are they subject to tax?

Marcy Dickerson, State Supervisor of Assessments – They are exempt from tax but they may, and it is may, they are not required, but they may make payments in lieu of taxes.

Chairman Cook – If they want to. And this bill doesn't change that.

Marcy Dickerson, State Supervisor of Assessments – No, that doesn't affect housing authority at all.

Chairman Cook – Housing authority is a political subdivision?

Marcy Dickerson, State Supervisor of Assessments – Well I'm not sure if it's a political subdivision. It can't levy or anything but it is exempt from tax but may make payments in lieu of taxes.

Chairman Cook – Maybe we need to get the person who offered these amendments down here and say, what do you think you were including with these amendments that we didn't include before?

Dan Rouse, Office of Tax Commissioner – I agree. We are going to take a lot for granted if we don't understand really what their intent was. I don't think we can presume that.

Chairman Cook – Remember folks, that this bill, the whole intent of it was to remove the ambiguity that causes taxing decisions to go to the court. I don't want to go home and make this cloudier that it is when we started.

Dan Rouse, Office of Tax Commissioner – I think it would stay cloudy in this fashion.

Chairman Cook closed discussion on SB 2049.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2049
1/26/2011
Job Number 13464

Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to exclusion of certain subsidized rental property from the property tax exemption for property used for charitable or other public purposes

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2049.

Chairman Cook – Can the League of Cities again explain their amendment and what it is they are trying to accomplish?

Jerry Hjelmsted, North Dakota League of Cities – It was pointed out to us that there were other subsidies, federal subsidies, for low income housing other than the subsidy contained in the original bill draft the low income housing income tax credit. It was also pointed out to us that there are properties receiving federal rent subsidies and federal financing subsidies under different sections of the IRS code. In order to provide some uniformity the group consensus was to propose an amendment to add the language federal rent or financing subsidy or federal low income housing income tax credit. So that all federal subsidies that apply to low income housing would be covered by the bill.

Chairman Cook – It is possible though that with adding that amendment we actually are changing tax policy. We actually could be putting on the tax rolls, property that has been tax exempt for some time. Is that correct?

Jerry Hjelmsted, North Dakota League of Cities – My understanding was that the bill, to add the language of the low income housing income tax credit would also be doing that. This would be expanding it to other entities as well.

Chairman Cook – I think the bill, as introduced, basically clarified a law that is being litigated in court. I believe there are some properties that have obtained an exemption through either an Attorney General's opinion or by council digression based on that Attorney General's opinion and I believe there are other properties out here that are still paying tax on their properties. Marcy, correct me if I'm wrong but that was the original intent of the bill, is just to clarify tax policy.

Jerry Hjelmsted, North Dakota League of Cities – Our intent was to clarify this.

Marcy Dickerson, State Supervisor of Assessments – To me, the original bill would have put some currently exempt housing on the tax roll.

Chairman Cook – I agree

Marcy Dickerson, State Supervisor of Assessments – I interpret this new language to only mean payments to the owner of the property, your housing company. If individual renters receive a check in the mail or however, I don't think this language would...

Chairman Cook – But the Federal Housing Voucher Program does not send a check to the renter. It pays a portion of the rent. It sends the check to the owner.

Marcy Dickerson, State Supervisor of Assessments – Then I agree that could happen.

Senator Triplett – I'm still fuzzy about whether they are complaining about just the amendments or the actual bill. When the chairman took his action today to have this bill brought back I sent out a joint email to the three folks we've been hearing from. I said "If you are following the issue today Senator Cook requested that this bill be returned to the Senate Finance and Tax Committee which was just approved by the Senate on a voice vote. You may think this is good news for your position but in committee this morning Senator Cook indicated his only intention in bringing this bill back is to remove the amendment that was added in the committee. If you receive this email within the next hour will you let me know what your preference would be? Please be aware that I am a member of the minority and can only promise to carry the message". I only got a response from one person and he requests that we either kill the bill or convert it to a study so that all the stake holders can come to the table or if it's possible, reopen it for a hearing so that people can come to the table. I think that their concerned not just about the amendments that were added but about the original bill also.

Chairman Cook – We put this in as a study last session. We studied it during the interim. This bill is a product of that study. We had 2 or 3 discussions during the interim prior to coming out with this legislation. We held a hearing here, nobody testifying in opposition to this. If we pass it, it will go to the House and anybody then that has a concern with what we have done or what we might do, has a chance there. Again, what brought this issue to the forefront is courts and Attorney Generals opinions deciding tax policy. I think it should be clear, and no matter what we do, I hope we go through passing this bill and making it clear in law whether they are taxed or not taxed.

Chairman Cook – Committee, we have the bill before us. I would certainly like to remove the amendments that we did put on it.

Vice Chairman Miller – I move to reconsider the action on SB 2049.

Seconded by **Senator Triplett**.

Chairman Cook – We have a motion and a second to reconsider. (verbal vote 7-0-0)

Vice Chairman Miller – I move to remove the amendment.

Seconded by **Senator Burckhard**.

Chairman Cook – All in favor of removing the amendments signify by saying yea. Opposed? (7-0-0)

Chairman Cook – One thing I want to point out again on this bill as far as what it does, it makes it clear that federal tax credits do not act as charity and therefore allow somebody to claim that their property is exempt because it's charitable. That is the intent of the bill, and that is what the bill does. If any of these projects want a tax exemption they can go to their local government and get one.

Senator Dotzenrod – If we pass this, and it becomes state policy that they are taxable, my note here says that the city can still offer tax exemption. I have question marks on both sides of that because it surprised me when I heard it so I wrote it down and wanted to get clarity on that. I didn't think that local jurisdictions could opt on their own to make a decision that this property or that property will on our own decide not to tax it. Is that just unique to these kind of properties or can they pick out any establishment, business, section of town, or certain area and decide that they don't want to tax them?

Marcy Dickerson, State Supervisor of Assessments – I would say a qualified yes. The local community cannot just exempt something as charitable of the law specifically says that kind of thing doesn't qualify. However, for a new or expanding business they can exempt them for up to 5 years. They can do either an exemption and a combination of payments in lieu of taxes, or just the pilot alone for up to 20 years, but that would apply to a new operation. I'm not aware of some way they could exempt an existing property that is already in operation unless it were expanding.

Senator Dotzenrod – Then, just in this narrow area where you've got housing units, there may be some interpretation that they are charitable. Is that an area where they do have that right? If it's the determination of the local taxing authorities?

Marcy Dickerson, State Supervisor of Assessments – Only to the extent that they have the right to determine whether they think it is charitable. The state says it has to be 501C3 and it has to be charitable. But, whether it's charitable or not is at the digression of the local governing body and that's what gets them into Attorney Generals opinion and court. When the applicant disagrees with what the governing body decides.

Senator Hogue – Now that the bill is in its original form, one proposed amendment I thought we could soften the blow, would be to amend the effective date back 1 year to 2011. The reason for that is Minot Housing Authority has various projects, some they own, some they manage, and one point is this is going to be effective for 2011, if this passes they are accruing real property taxes in 2011. They have not budgeted for this. They will have to do some rent increases and adjust some of their other operating expenses in order to try to budget for the tax that would be due in January of 2012. My thought is if we change that to 2011, they would have a year to budget to start paying taxes at least on the one that's in Minot. I don't know if there's other ones around the state.

Marcy Dickerson, State Supervisor of Assessments – Properties owned by a housing authority are exempt by another portion of the law but may make payments in lieu of taxes. That is negotiated. Another thing, you said about raising rents, for those people who are under the subsidized programs, their rents are determined by HUD based on their family income and the size of the family. Not on the expenses of the landlord. So in the case of one of these buildings that is currently exempt, becoming taxable, they could not raise the rent on any of those people. If they are renting some of the units at market rent, which they may do. There is a certain percentage they are allowed to rent to people who don't qualify for assistance. The ones paying at market rent, they could raise the rent for those people. But the ones under the subsidized programs, they can't.

Chairman Cook – I agree with what you just said but let's go to the properties that the housing authority does not own but could possibly manage. Those properties are either owned by a nonprofit or a for profit is that correct?

Marcy Dickerson, State Supervisor of Assessments – That is correct, or sometimes a combination.

Chairman Cook – If it's owned by a for profit it's taxed with or without this bill. If it's owned by a nonprofit, they are not taxed.

Marcy Dickerson, State Supervisor of Assessments – That is one of the questions that came up in Minot. It was a combination of nonprofit and profit and the Attorney General's opinion addressed that and said the nonprofit prevailed on it.

Chairman Cook – A lot of these are partnerships between nonprofits and profits and then when the housing credits expire, usually 15 years, the nonprofit goes away and the for profit takes full ownership. If it's a nonprofit, for profit combination, does this bill affect them?

Marcy Dickerson, State Supervisor of Assessments – I think this bill is saying that wouldn't make any difference. That if they get the federal benefits, it doesn't matter who owns them. You are not going to be considered charitable. You have to have the 501C3 nonprofit designation and you have to be doing a charitable deed in this property to qualify under existing law.

Chairman Cook – I'm going to make one more statement and you tell me if I'm correct. The only properties that this bill could probably reverse the tax status of, are properties that have been built with federal tax credits and have argued that because of those federal tax credits they have to offer so many subsidized apartments, and they are trying to call that charity.

Marcy Dickerson, State Supervisor of Assessments – I agree.

Senator Hogue – I move page 2 line 2, that 2010 be over struck and replaced with 2011.

Seconded by **Vice Chairman Miller**.

Chairman Cook – Discussion? All in favor say yea. Opposed? (7-0-0)

Chairman Cook – Now we have before us again SB 2049 as amended.

Vice Chairman Miller – I move SB 2049 Do Pass as Amended.

Seconded by **Senator Burckhard**.

Senator Triplett – I will vote against this just because I have requests from constituents saying that they would like a better hearing on it and they apparently were not aware of the interim study because there is no indication that they participated so, I intend to vote against the motion for that reason.

Chairman Cook – Any other discussion? Ask the clerk to take the roll. (6-1-0)

Chairman Cook closed discussion on SB 2049.

To: Senate Taxation Committee
From: North Dakota League of Cities
Date: January 12, 2011
Re: Senate Bill No. 2049

PROPOSED AMENDMENTS TO SENATE BILL NO. 2049

Page 1, line 23, after "federal" insert "rent or financing subsidy or a federal"

Renumber accordingly

Date: 1-18-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2049

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Hogue Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman			Jim Dotzenrod		
Joe Miller – Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 7 No _____

Absent _____

Floor Assignment _____

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

Verbal vote

11.0282.03001
Title.04000

Adopted by the Finance and Taxation
Committee

January 20, 2011


1-21-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2049

Page 1, line 23, after "federal" insert "rent or financing subsidy or a federal"

Renumber accordingly

Date: 1-18-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2049

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Miller Seconded By Senator Hogue

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman	X		Jim Dotzenrod	X	
Joe Miller – Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke	X				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Senator Cook

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

Date: 1-26-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2049

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Miller Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman			Jim Dotzenrod		
Joe Miller - Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

verbal vote

Date: 1-26-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2049

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Miller Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman			Jim Dotzenrod		
Joe Miller - Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
motion to remove previous amendment

Date: 1-26-11
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2049

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Hogue Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman			Jim Dotzenrod		
Joe Miller – Vice Chairman			Connie Triplett		
Randy Burckhard					
David Hogue					
Dave Oehlke					

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Verbal Vote

Date: 1-26-11
Roll Call Vote # 4

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2049

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Senator Miller Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Dwight Cook – Chairman	x		Jim Dotzenrod	x	
Joe Miller – Vice Chairman	x		Connie Triplett		x
Randy Burckhard	x				
David Hogue	x				
Dave Oehlke	x				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Cook

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

REPORT OF STANDING COMMITTEE

SB 2049: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2049 was placed on the Sixth order on the calendar.

Page 1, line 23, after "federal" insert "rent or financing subsidy or a federal"

Re-number accordingly

REPORT OF STANDING COMMITTEE

SB 2049, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2049 was placed on the Sixth order on the calendar.

Page 1, line 23, remove "rent or"

Page 1, line 24, remove "financing subsidy or a federal"

Page 2, line 2, replace "2010" with "2011"

Renumber accordingly

2011 HOUSE FINANCE AND TAXATION

SB 2049

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2049
March 2, 2011
#14830

Conference Committee

Committee Clerk Signature

May Brueker

Explanation or reason for introduction of bill/resolution:

A bill relating to exclusion of certain subsidized rental property from the property tax exemption for property used for charitable or other public purposes; and to provide an effective date.

Minutes:

See attached testimony #1, #2, #3, #4, #5, #6, #7, #8

John Walstad, Legislative Council: Introduced bill. Please refer to attached testimony #1, Article X. I served as counsel for the interim taxation committee and that is where this bill has come from. There is a constitutional provision, Article X, attached. In section 5 I've underlined the phrase of importance, "property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation." The constitution is talking about property tax. The legislature has adopted a statutory provision that is very similar and yet not exactly the same as that language in the constitution. In the bill draft on line 8 the statutory provision says that all buildings belonging to institutions of public charity...used wholly or in part for public charity together with the land is exempt from property taxes. The most significant thing you see there is the constitution says it is used exclusively and the statutory provision says used wholly or in part. There's a little bit different standard in the statutory provision than the constitutional provision. The issue that came up during the interim related to subsidized housing. Decisions in different places in the state are coming to different conclusions about the status of subsidized housing. The State Supervisor of Assessments expressed the opinion that she doesn't think there is really any charitable aspect to this. There is a federal program in place that provides a significant income tax credit to developers of this kind of property. The tenants have to meet certain income restrictions so it's deemed to be like low income housing. The developer receives a federal income tax credit for developing these properties which the State Supervisor of Assessments said removes any charitable aspect of developing that housing because the loss or the forbearance on profit on these kinds of properties is replaced by that income tax credit's value to the developer. The bill draft puts in a provision that is sort of a statement of legislative intent about what the constitutional and this statutory provision means with respect to these kinds of property. It says that property is not used wholly or in part for public charity or charitable or other public purposes if that property is residential rental units leased to tenants based on income restrictions that enable the owner to receive a federal low income housing income tax credit.

Representative Patrick Hatlestad: The individual who owns the property gets both a federal income tax break which would roll into the state as well; there would be a state income tax break?

John Walstad: I don't believe it would carry over to the state income tax because it is a federal credit. Our income tax starting point is taxable income which is before the credits are subtracted.

Lynn Fundingsland, Director of the Housing Authority in Fargo: Opposition. Please refer to attached testimony #2.

Representative Mark S. Owens: You mentioned that current rent covered mortgages only so what about repairs to the facilities, how does that occur?

Lynn Fundingsland: It covers mortgage and operations. None of the nonprofits take money out of these projects. They weren't designed to do that.

Representative Bette Grande: You mentioned that in Dickinson explanation that is goes on in perpetuity and that was a minimum of \$343,000 that was being lost in perpetuity. Are you saying that once on subsidies always on subsidies?

Lynn Fundingsland: Perpetuity is probably the wrong word. Those are always subject to change. If the program stays in place Dickinson is eligible for those funds as long as the program is in place. The problem is we can't use them in Dickinson because they don't have any affordable housing there.

Representative Patrick Hatlestad: You talked about a payment in lieu of taxes to cover essential services. Who determines that amount of money, is that a local determination or do you just volunteer?

Lynn Fundingsland: It is a local determination and is negotiated. Most commonly it is 5 or 10% of the collected rents.

Vice Chairman Craig Headland: In order to qualify for the federal tax credit do you have to have a nonprofit entity set up as ownership of the complex?

Lynn Fundingsland: You do not.

Vice Chairman Craig Headland: So it is possible that a private individual or enterprise who chose to enter this type of program could receive the tax credit and in turn generate a profit.

Lynn Fundingsland: That's accurate. There's really not so much profit involved in these. The tax credit is received up front one time and the credit is taken over a 10 year period. You get a \$100 worth of credits and they will sell those credits to somebody for \$90 and then the buyer....for the \$100 worth of credits as a nonprofit I sell it to somebody for \$80 or \$60 and their return typically ranges 8-10% return over a 10 or 12 year period.

Vice Chairman Craig Headland: But they are also getting the benefit of being exempt from property tax?

Lynn Fundingsland: That's true but that property tax benefit doesn't translate to additional profits over time. All the benefit from the low income housing tax credit is a onetime up front benefit. The property tax exemption benefits the building operations over time and allows for lower debt services so the building can have lower rents. The original owner isn't getting any additional benefit over time from the property tax exemption.

Vice Chairman Craig Headland: In a competitive environment with one investor versus another, anybody who can qualify for this federal tax exemption and the property tax abatement has a competitive advantage over his neighbor.

Lynn Fundingsland: On the surface that is accurate and it is competitive in that they can charge lower rents. They can only rent to tenants that are very low income. Theoretically these tenants can't afford the higher rents that are charged next door.

Vice Chairman Craig Headland: Theoretically their rent is somewhat guaranteed because they are going to be on the federal government.

Lynn Fundingsland: There isn't an ongoing subsidy for the project. It may be that some tenants are eligible for a housing voucher. They can take that voucher and use it anywhere in the community that there is a level of rent that is accessible to that voucher. Most of those vouchers are paid to private landlords. In a case like Dickinson, for example, there aren't private landlords that have a low enough rents so that somebody with a voucher can get into that building. There isn't an ongoing subsidy to these projects, it's a onetime up front....all that does is lower their debt so that they don't have to have such high rents to pay over time. Instead of having to borrow 60% of the project costs they would only have to borrow 30% of the project costs. They can have lower rents as a consequence and still cover their expenses.

Representative Kreun: Neither in support or opposition. I am here to testify on a personal level on what I have seen over the past 10 or 12 years in this particular case. There has been a lot of discussion on affordable housing issue. The low income housing tax credit program is the primary program available for the production of affordable housing throughout the United States. This has been done since its inception. In North Dakota it has created over 5,000 housing units dedicated to the lower income households. That is \$30 million of tax credit and investment that results in \$360 million of capital investment which is towards the affordable portion of housing in the state. The low income housing tax credit program allows a partnership between the private investor who brings equity which is affordability along with the project and the mission to the nonprofit organizations who develop and manage the projects. Many of the developers of these projects are nonprofits as well. Those nonprofits need the recognition of the tax exemption in order to make the project work. It's the capital which they need in order to keep the operating costs down. The nonprofits are willing to sit down with the local taxing entities to work out the cost of fire, police, street maintenance, and all that kind of thing. You have to find a nontaxable property first otherwise it has to be taxed. You have to create the nontaxed entity before you can have a pilot and that is one of the problems in this area. Somewhere between 11

and 15% of the people in North Dakota live in this low to moderate level and these people need the safe and affordable housing and the tax exemption provides that by using the low income housing tax credit. In Northwood after the tornado they built a 12plex and without that tax exemption I don't think you would have found a developer to invest the money in order to do that and 51% of those people are low to moderate income. Over the years a segment of the population who were fortunate enough to live and move into more of an independent setting in their own abilities is after the law changed in Grafton and dispersed a lot of these people over 50% of the people that are utilizing these housing have a physical or mental disability. The conversation comes up about charity as there is a debate. In those housing units there is a huge amount of charity and time donated in those units and without that charity and people donating their time those places would not operate as well as they do. We need to have a place where these people can have these kinds of services and function in society and this housing provides this. There is extra maintenance when you become a provider. We have signed contracts with the people that rent and they have to let this management company come in and inspect their property on a regular basis to make sure it is maintained to this higher level by the federal government. There are extra services that are provided for the people who have the disabilities and then there is a host of paperwork that needs to be recorded and transcribed so the federal government can manage the income level that comes back. Another thing that has come up is the buildings that are already there and have been put together and you add \$20,000 worth of taxes on top of that, even over and above some of the pilot that they have already been doing does not cash flow. Eventually I'm afraid some of those counties will get some of those properties back and then we are back in the same scenario again as what do we do with them. Those are some of the issues that I was hoping this committee could take a look at and consider. Maybe during the interim you could sit down with the stakeholders and take a look at these issues. These housing issues need to be heard on this level rather than a higher level to accommodate the needs of the individuals.

Representative Steven L. Zaiser: Are you aware of any other projects that have been foreclosed on?

Representative Kreun: We have the old St. Anne's guest home where they added over \$18 or 20,000 of taxes on that project that is owned and operated now by one of the churches in that group and the cash flow is not there in order to make that payment. They haven't made a payment in the last two years and we have one more year and then it will come back to the county at that level. That one is in process now. It is a real life situation at this point in time.

Representative Mark S. Owens: I am going to ask you to delve into your city experience here because I want to understand something that was said in past testimony. It was said that money coming to Dickinson from the federal government was around \$300,000. We are talking about an upfront tax credit. There is no continuing subsidy for rent, is that correct so far?

Representative Kreun: Yes, that is correct.

Representative Mark S. Owens: With the money that is coming to the city, is there money that the federal government provides to a city that supports and helps encourage low income housing?

Representative Kreun: As indicated, if you meet the qualifications of the requirements needed to maintain the level of service to these individuals it is a very intense portion and sometimes maybe that is why your maintenance companies are a percent or two higher to manage it than what it would be in the private sector. If you maintain that level and you stay eligible with the voucher program you are then able to utilize those vouchers in these facilities and in private sector facilities as well who meet the criteria too. In our case it is well over \$6 million a year that is brought in to the Grand Forks area to offset the costs of rent for low to moderate income people throughout the city. If you own an apartment and you meet the qualifications part of my voucher will pay the rent. In the private sectors it evens and keeps the rents level without the spiking up and down. It turns out to be a positive thing for the private sector landlord.

Representative Mark S. Owens: It acts as a rent subsidy and it comes to the community, it doesn't come to the city itself. It is revenue that pours into the local economy.

Representative Kreun: That is correct; it comes to the community through the voucher program.

Representative Mark S. Owens: You mentioned that some of these were physically and mentally disabled that use these facilities but that's not all of them so where do all these people work? They're employed, are they bank presidents?

Representative Kreun: A lot of these people have medium to low income jobs. They function in society and have certain jobs they are capable of handling. They live independently but they have a large amount of outside help which is usually sponsored and put together by a nonprofit that is operating the facility. They provide a labor force in the community. These people are just sitting at home waiting for a subsidy handout; most of them are productive in the community in some shape and form. If you watch the Grand Forks Herald a young man was shown who shovels the sidewalks in front of the police station, he donates his time and has a job as well. He works 20 hours per week and donates his time and shovels all the sidewalks in front of the police station. That is one of the individuals that this program benefits, he has Down's Syndrome and is a very smart guy. Those are the type of situations who are utilizing these funds. If we don't house these people what happened in the past in Grafton the legislation created that need in the community and this particular program fits a large amount of that need. In our case, over 50% of the utilization of the nonprofit units is with people who have physical and mental disabilities.

Representative Mark S. Owens: You agree that these people who use these facilities are a key component to the economy.

Representative Kreun: They are a part of the economy in each and every city, yes.

Vice Chairman Craig Headland: This bill came to the interim taxation committee because there is a problem out there. There are properties that take advantage of this situation that are for profit.

Representative Kreun: I don't disagree. I am just asking that those components be considered as what you go through because what you're indicating I believe is true as well.

Senator Cook: We put this bill in for a study resolution so that we might address the ambiguity and the law on how these properties are treated as far as their tax status. We have a history in North Dakota where these properties have been taxed until somewhere along the line an argument was made that they should not be taxed because of the charitable nature of these properties. There was question over what the charity was. I think it started in Minot with an Attorney General's opinion when the owner of the property questioned whether the property should be taxable and he said it should not because it is charitable. I think the issue rose in Grand Forks and I think that issue now is in the Supreme Court as to whether or not these properties are really tax exempt or whether they are taxable and the question arises around the charitable status of the property; are they providing charity? My community had a piece of property that because of the Attorney General's opinion in Minot came to the city and said they should no longer be taxed. There was a property that was built around seven years ago and they were paying tax but they didn't feel they should be and my community agreed to let them be tax exempt. The purpose of this study is to remove the ambiguity to make it clear whether they were taxable or not. You will see the amendment at the bottom of the page with the change in it which says "receiving federal tax credits as a means of financing a property tax credits does not constitute charity." If you take the tax credits to finance these projects you are required to offer so many of the units at a low rent to low income people. The argument that I would have that we should make it clear that they are taxable that they are receiving tax credits up front that reduces these out of pocket expenses that it takes to build it and in lieu of that then you have to offer so many properties to low income people at a reduced rate of rent. I would hope that no matter what we do we should not put into law tax policy that is ambiguous and has to give a lot of legal attorneys the right to make a living trying to determine what our tax policy is. Tax policy should not be determined in the court, it should be determined right here in these public policy bodies. These should be taxable as they are limited properties and properties that can be owned by a nonprofit or a for profit. The people that they house could also be housed in any properties that any one of us owned that we take vouchers on. They compete with private sector properties owned by private people who pay taxes.

Representative Lonny B. Winrich: You indicated that one of the current cases is before the Supreme Court; could you clarify the status of that?

Senator Cook: I believe it's been heard by the Supreme Court.

Representative Lonny B. Winrich: If the Supreme Court rules that the property is not taxable as an interpretation of the constitutional provision then this bill is unconstitutional, is it not?

Senator Cook: I would say that this bill could still be unconstitutional. We are clarifying in code that tax credits are not charity. Their interpretation would be that without our interpretation it is.

Representative Lonny B. Winrich: It seems to me that introduces a whole new complication as well. Currently, the tax status of a property is normally determined by its ownership whether the property is privately owned or owned by a nonprofit organization or something else. This would make the tax status of a property dependant on the federal program. What if the federal program changes? That makes the law more ambiguous, does it not?

Senator Cook: I believe what the question is here is "what is charity?" If you're a nonprofit you have to be involved in charity and not for profit. I think the question here is whether tax credits are charity or not. I think it is a legitimate decision for public policy to address.

Michael Anderson, Executive Director of Housing Finance Agency: Please refer to attached testimony #3 A and B.

Representative Shirley Meyer: Would you explain the difference between your two sheets?

Michael Anderson: The second sheet is assuming that this project negotiated a pilot at 50% of full taxation. The impact of that is about \$70 a month in additional rent to cover full taxation. That's the only difference between these two sheets.

Representative Lonny B. Winrich: It appears to me that even with that 50% reduction the rent still doesn't fall within the limits that would be imposed on it by the federal program, is that correct?

Michael Anderson: That is correct. That \$70 a month cheaper rent reduces that additional \$900,000 in equity by about \$200,000. I need to lower my debt by less than \$200,000 if I have property tax relief at 50%.

Representative Shirley Meyer: If you have a property that is built with the tax credits and then a few years down the road can those be repurchased when you are no longer offering the lower rent?

Michael Anderson: First of all, these projects are only obligated for that 15 or the extended 30 year period. After that point in time those projects can and will go to market rate. This tax credit that this investor buys, he gets the tax credit for 10 years. Even though he's only getting the federal income tax break for 10 years that project is still subject to at least a 15 year affordability period and then it is extended. Repurchase, no. What happens when they become market rate in terms of property taxes I would assume they would be at full taxation at that time? It would make sense at least.

Vice Chairman Craig Headland: From prior testimony it was stated that these properties were not exempt from taxation prior to a judge's decision that our statute was ambiguous so clearly it seems that there was legislative intent that these properties not be exempt from

property taxation. This bill with the new language is trying to clarify that. Doesn't the bill do that?

Michael Anderson: Two things, one is that by specifying only one type of subsidized housing you really haven't cleared the air but that remains to be seen I guess. The other thing is that offering clarity, which direction do you want to go? Could subsidized housing in general be considered to be a public purpose?

Vice Chairman Craig Headland: What you're saying is that prior to the judge's decision the intent was that this property was taxable. You're questioning whether or you think we should be deciding policy in a different direction other than what the intended direction was prior to this judge's decision.

Michael Anderson: Yes, I do. Maybe we are back to the suggestion of an interim study. What we found working with our rural communities is getting housing done where housing is difficult to develop is that it takes local commitment and community participation to make that work. My point here is that I don't think that is bad policy for the community to get involved. I think that is a policy that would be beneficial to the whole state when it comes to affordable housing.

Charles Bisnett, CEO for Pride, Inc.: Opposition. Please refer to attached testimony #4.

Michael Carbone, Executive Director of North Dakota Coalition for Homeless People: Opposition. Please refer to attached testimony #5.

Representative Steven L. Zaiser: In terms of the homeless population would you be able to determine if there were a lessening of low income public housing if that would exacerbate many of the mental health problems and worsen the situations where people are going into the emergency rooms and worse yet dying in frozen weather? Have you done any studies on this?

Michael Carbone: One of the leading causes of homelessness is mental illness and other disabilities. If you are stable housed you have the opportunity to address your mental illness, chemical dependency, developmental disability, or whatever your serious obstacles may be. However, if you are in a shelter or on the street the ability to address those higher concerns is greatly diminished or eliminated altogether. No one ever escaped mental illness while residing in a homeless shelter, it doesn't happen. If you are receiving any care it is intermittent at best. There is a preliminary study occurring in Fargo right now that compares the cost of not addressing homelessness and allowing people to use the emergency response system to address their homelessness as opposed to supportive housing that provides housing that is safe, secure, and decent housing combined with supportive services. It is far less expensive to provide this type of housing and the services than it is to provide the emergency shelter and the other emergency services that are required without the supportive housing. There are studies around the country that show this and the study that is in its early stages in Fargo the numbers are bearing out what we've learned on a national level.

Representative Lonny B. Winrich: It is my understanding that a significant portion of those that we refer to as the homeless because of particular problems that are unique to the situation in North Dakota now a significant portion of those people are veterans from the wars. Do you have any data on that?

Michael Carbone: Yes. Approximately 10-11% of the general populations are veterans. The number for the homeless population is quite a bit higher. I don't recall the precise percentage but in Fargo where you are close to the VA that number is well above 30%. That number diminishes as you go more towards the western part of the state and further away from the VA. Even in the western extremities of the state it is well above 10 or 11%, I think it's 16%.

Representative Lonny B. Winrich: Potentially this bill would have greater impact on the veterans than it would have on the rest of the population?

Michael Carbone: Absolutely.

Representative Bette Grande: You had a statement that said North Dakota has a 10 year plan to end long term homelessness. What stage are we in or what year of the 10 year plan are we in?

Michael Carbone: I believe we are in the third or fourth year.

Tom Alexander, Minot State University: Opposition. Please refer to attached testimony #6, #7, #8.

Vice Chairman Craig Headland: I would like some of your thoughts on this. Can you explain for the benefit of the rest of the committee and my own recollection how we got to where we are and that includes the timing of when the judge decided that this type of property was exempt from property tax?

Marcy Dickerson, State Supervisor of Assessments: I believe the issue that you've been referring to was an Attorney General's opinion, not a court decision. That Attorney General's opinion was in response to a question that basically asked if a nonprofit organization was building or going to build that type of housing project if it was in partnership with a profit making organization disqualified it from being eligible for an exemption. For a charitable exemption the owner has to have a 501 c3 designation and the property itself must be used for charitable purposes. That AG's opinion just came to the conclusion that its partnership with the profit making organization did not disqualify it from being a recipient of an exemption. It didn't say in so many words that is should be exempt it just said that the locals were not prohibited from offering an exemption. The Minot governing body did give an exemption to that property. Since then we have found that in some cities this type of project is taxable and in some cities it is not taxable. In Grand Forks these projects have been taxed for a length of time and they went through the abatement process and were not successful and have gone through the court process and that now is in the Supreme Court. One thing I would like to mention is there has been a lot of reference today to pilots, payments in lieu of taxes, the only housing projects that are eligible to make pilots are those that are owned by a housing authority, not owned by

someone else and operated by housing authority but actually owned by a housing authority. The existing law says that the housing authority property is exempt but it may negotiate payment in lieu of taxes that shall not exceed the cost of the political subdivisions providing services to those properties. A 501 c3 that is not a housing authority is not authorized to make payments in lieu of taxes.

Vice Chairman Craig Headland: How far are we down the road on this? When was the Attorney General's opinion?

Marcy Dickerson: I think it was about five or six years ago. I'd have to look.

Representative Lonny B. Winrich: Do you know the citation for the Supreme Court case?

Marcy Dickerson: I think it is Grand Forks Homes et al versus City of Grand Forks. They also have a case against the State Board of Equalization because their issue that they had not prevailed in the abatement process they then brought it to the State Board of Equalization asking them to make a determination and it was determined by legal counsel and the board that they did not have authority to rule on exemption of property. The same complaints from Grand Forks have also filed a case that is going to the Supreme Court as to whether or not the State Board of Equalization does or does not have that authority. This gentleman just handed me the Attorney General's opinion we were just talking about and it is number 2003 L16 on March 2003.

Chairman Wesley R. Belter: No further testimony. Closed hearing on SB 2049.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2049
March 21, 2011
#15724

Conference Committee

Committee Clerk Signature <i>Mary Buckner</i>

Explanation or reason for introduction of bill/resolution:

A bill relating to exclusion of certain subsidized rental property from the property tax exemption for property used for charitable or other public purposes; and to provide an effective date.

Minutes:

<i>No attachments.</i>

Representative Lonny B. Winrich: I move a DO NOT PASS.

Representative Steven L. Zaiser: **Seconded.** I don't believe there was anybody that came in to testify on this bill. I know there was opposition to the bill but I don't recall any support for the bill. It seems like this isn't the appropriate way. We have nonprofits running these section 8 housing programs and it seems to be working quite well.

Vice Chairman Craig Headland: I am going to resist the Do Not Pass. I think at the very least we need to look into it further. I received a letter from Mike Anderson from the Housing Authority asking us to at least consider studying the issue. So for that reason I will resist the Do Not Pass.

Representative Steven L. Zaiser: Did Mr. Anderson pass out an amendment?

Vice Chairman Craig Headland: He did bring down an amendment for a different bill. We are waiting for a ruling on this from the Supreme Court on this bill. I think we can expect it any day.

Representative Bette Grande: I would like to hold on this a bit and not act on it today.

Representative Roscoe Streyle: I would support a study as I think we should wait for the Supreme Court decision. If that has to be next session then it has to be next session. I would either support passing it as is or a study.

Representative Bette Grande: I would like to check with Mr. Walstad on where he thinks we are at with the Supreme Court. I agree to see it as least as a study. I don't think killing this is helpful at this point as there are some issues that has to be dealt with.

Donnita Wald, General Counsel for Office of State Tax Commissioner: (Inaudible as she was not at the speaker).

Representative Shirley Meyer: I am envisioning months before we get a Supreme Court decision.

Representative Lonny B. Winrich: I certainly would not oppose a study. This particular form of the bill came from the interim tax committee and Senator Cook, the Chairman for that committee, testified in opposition. The bill as it stands I think is very inappropriate but if we want to prepare a hog house amendment to study it for the next interim or something I would be willing to withdraw my motion for a Do Not Pass if the person who seconded would do the same.

Representative Steven L. Zaiser: I will withdraw also.

Vice Chairman Craig Headland: I have on my information here that Senator Cook testified in support. We will just hold this bill then until somebody gets a chance to talk to Mr. Walstad.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2049
March 22, 2011
#15801

Conference Committee

Committee Clerk Signature *Mary Brucker*

Explanation or reason for introduction of bill/resolution:

A bill relating to exclusion of certain subsidized rental property from the property tax exemption for property used for charitable or other public purposes; and to provide an effective date.

Minutes:

See attached amendments.

Representative Mark S. Owens: Distributed and reviewed amendments. Please refer to attached amendments.

Vice Chairman Craig Headland: I think after discussions we are not going to act on this bill. We will wait for the Chairman to get back.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2049
March 23, 2011
#15875

Conference Committee

Committee Clerk Signature

Mary Bricker

Explanation or reason for introduction of bill/resolution:

A bill relating to exclusion of certain subsidized rental property from the property tax exemption for property used for charitable or other public purposes; and to provide an effective date.

Minutes:

See attached testimony #1 A and B.

Donnita Wald, General Counsel for Office of State Tax Commissioner: Distributed the Supreme Court decision. Please refer to attached testimony #1 A and B. There was an issue in Grand Forks County with respect to certain rental properties that were receiving federal subsidies specifically the low income housing tax credit. During the interim these properties claimed that they were exempt because they were performing charitable acts for their tenants by charging lower than market rent. There were some other facts in the decision. Grand Forks County and the state believe the properties were not exempt. During the interim this issue came up and the taxation committee introduced SB 2049 which specifically clarified that rental housing or those that receive subsidies is not charitable so they would be subject to the property tax. The Supreme Court agreed with us. The bill you have before you is really what the Supreme Court said. If you pass SB 2049 status quo, nothing changes. If you don't pass SB 2049 nothing changes because of the court's decision. It was a win-win for us in any event. In the decision it says that each of these properties who are claiming the exemption is reviewed on a case by case basis. The facts of the situation will determine the outcome as to whether those are exempt or not exempt. One of the outcomes if you do not pass this bill there may be certain circumstances where this similar type housing is exempt.

Vice Chairman Craig Headland: I think this would be very important. Committee, what are your wishes?

Representative Mark S. Owens: In the interest in making sure this is applied equally throughout the state I move a Do Pass.

Representative Glen Froseth: We have an amendment that offered a study and I don't know if that amendment is necessary.

Representative Mark S. Owens: We never did act on the amendment I brought in yesterday. You tabled it pending further discussion.

Vice Chairman Craig Headland: That's correct.

Representative Roscoe Streyle: **Seconded.**

Representative Shirley Meyer: Would the tax department provide for us a half page synopsis?

Donnita Wald, General Counsel for Office of State Tax Commissioner: We are in the process of doing that right now and we will get you a copy of that.

**A roll call vote was taken: YES 10 NO 2 ABSENT 2
MOTION CARRIED FOR DO PASS.**

Representative Mark S. Owens will carry SB 2049.

Donnita Wald, General Counsel for Office of State Tax Commissioner: In addition to the most recent decision that came out yesterday Grand Forks Homes had for a number of years been paying property taxes and so that case was an abatement action where Grand Forks Home was looking to get back their payments that they had made. They had changed their mind midstream. We still have an issue with the current year property taxes as they have protested those. Now whether that will continue to go I don't know. That case the court decided they weren't getting their money but they were going to call the payment they made "payments in lieu of taxes" and that's what they really were. Grand Forks Homes was not successful in their abatement action.

Date: 3-21-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2049

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. Winrich Seconded By Rep. Zaiser

** WITHDRAWN **

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Scot Kelsh		
Vice Chair. Craig Headland			Shirley Meyer		
Glen Froseth			Lonny B. Winrich		
Bette Grande			Steven L. Zaiser		
Patrick Hatlestad					
Mark S. Owens					
Roscoe Streyle					
Wayne Trottier					
Dave Weiler					
Dwight Wrangham					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 3-23-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2049

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. Owens Seconded By Rep. Streyle

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	AB		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich	✓	
Bette Grande	AB		Steven L. Zaiser		✓
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler		✓			
Dwight Wrangham	✓				

Total (Yes) 10 No 2

Absent 2

Floor Assignment Rep. Owens

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

REPORT OF STANDING COMMITTEE

SB 2049, as reengrossed: Finance and Taxation Committee (Rep. Belter, Chairman)
recommends **DO PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING).
Reengrossed SB 2049 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2049

Federally Subsidized Low-Income Housing

For a number of years, there has been disagreement on how subsidized housing should be assessed and what method is best for valuing those properties. Legislation has been considered in North Dakota and defeated which would have reduced assessed values for subsidized housing. In a 2003 letter opinion, the Attorney General concluded if a housing project is used exclusively for charitable or other public purposes the project is exempt from property taxes and that it is a question of fact for cities whether low-income subsidized housing is used exclusively for charitable or other public purposes. Since this opinion, cities in the state have come to differing conclusions, and it was suggested that legislation be considered to make uniform the statewide treatment of these properties.

It appears federally subsidized low-income housing results in federal subsidies that allow the owner to operate the property at a profit. The state supervisor of assessments expressed the opinion that it is not a charitable use of property when federal subsidies are the only charitable component of ownership and use of the property.

The committee considered a bill draft that established a statutory interpretation that residential rental property is not used for a charitable purpose if the owner receives a federal low-income housing income tax credit.

To: Senate Taxation Committee
From: North Dakota League of Cities
Date: January 12, 2011
Re: Senate Bill No. 2049

PROPOSED AMENDMENTS TO SENATE BILL NO. 2049

Page 1, line 23, after "federal" insert "rent or financing subsidy or a federal"

Renumber accordingly

ARTICLE X

FINANCE AND PUBLIC DEBT

Section 1. The legislative assembly shall be prohibited from raising revenue to defray the expenses of the state through the levying of a tax on the assessed value of real or personal property.

Section 2. The power of taxation shall never be surrendered or suspended by any grant or contract to which the state or any county or other municipal corporation shall be a party.

Section 3. No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied. Notwithstanding the foregoing or any other provisions of this constitution, the legislative assembly, in any law imposing a tax or taxes on, in respect to or measured by income, may define the income on, in respect to or by which such tax or taxes are imposed or measured or may define the tax itself by reference to any provision of the laws of the United States as the same may be or become effective at any time or from time to time, and may prescribe exceptions or modifications to any such provision.

Section 4. All taxable property except as hereinafter in this section provided, shall be assessed in the county, city, township, village or district in which it is situated, in the manner prescribed by law. The property, including franchises of all railroads operated in this state, and of all express companies, freight line companies, dining car companies, sleeping car companies, car equipment companies, or private car line companies, telegraph or telephone companies, the property of any person, firm or corporation used for the purpose of furnishing electric light, heat or power, or in distributing the same for public use, and the property of any other corporation, firm or individual now or hereafter operating in this state, and used directly or indirectly in the carrying of persons, property or messages, shall be assessed by the state board of equalization in a manner prescribed by such state board or commission as may be provided by law. But should any railroad allow any portion of its railway to be used for any purpose other than the operation of a railroad thereon, such portion of its railway, while so used shall be assessed in a manner provided for the assessment of other real property.

Section 5. Taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax. The legislative assembly may by law exempt any or all classes of personal property from taxation and within the meaning of this section, fixtures, buildings and improvements of every character, whatsoever, upon land shall be deemed personal property. The property of the United States, to the extent immunity from taxation has not been waived by an act of Congress, property of the state, county, and municipal corporations, to the extent immunity from taxation has not been waived by an act of the legislative assembly, and property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation. Real property used for conservation or wildlife purposes is not exempt from taxation unless an exemption is provided by the legislative assembly. Except as restricted by this article, the legislative assembly may provide for raising revenue and fixing the situs of all property for the purpose of taxation. Provided that all taxes and exemptions in force when this amendment is adopted shall remain in force until otherwise provided by statute.

Section 6. The legislative assembly may provide for the levy, collection and disposition of an annual poll tax of not more than one dollar and fifty cents on every male inhabitant of this state over twenty-one and under fifty years of age, except paupers, idiots, insane persons and Indians not taxed.

Section 7. The legislature may by law provide for the levy and collection of an acreage tax on lands within the state in addition to the limitations specified in article X, section 1, of the constitution. The proceeds of such tax shall be used to indemnify the owners of growing crops against damages by hail, provided that lands used exclusively for public roads, rights of way of common carriers, mining, manufacturing or pasturage may be exempt from such tax.

Testimony

#2

P. 1

Finance and Taxation Committee - SB-2049 Hearing

Testimony provided by Lynn Fundingsland – March 2nd 2011

Mr. Chairman and Members of the Committee – thank you for the opportunity to speak with you today. My name is Lynn Fundingsland and I am the Director of the Housing Authority in Fargo. I am also the current president of the North Dakota Chapter of the National Association of Housing and Redevelopment Officials (NAHRO) which is the professional association of Housing Authorities. We have over 50 member agencies across the state working to provide affordable housing. At our last meeting the membership voted to advocate a do-not-pass for SB-2049.

We propose a no vote on this bill due to it ^{will} potentially take away needed existing affordable housing and make it more difficult to develop new projects. We ask that the issue be sent to an interim legislative committee who can craft legislation that will give communities the tools they need to provide the housing they need and, give some clarity and stability to Housing Authorities and the other non-profit providers whose mission it is to provide affordable housing.

We see some very negative consequences to several existing housing projects across the state if this bill becomes law. Unfortunately, for a variety of reasons, none of the stakeholders we represent were able to attend the hearing when the bill was in committee on the Senate side and, consequently, not all of the ramifications of the bill were brought up and considered.

The bill began with the thought that it might be unfair that Low Income Housing Tax Credit (LIHTC) projects are given property tax breaks and, doesn't that amount to government subsidy to projects which are in competition with private developers and landlords? On the surface that may seem the case but, there are several facts which show us that this is a misconception.

- **Folks who are renting in the LIHTC projects cannot afford to pay the market rate rents charged by private owners.** So, they are not potential tenants to those properties in any case. They are seniors on fixed incomes, people who have disabilities that limit their

earning potential and, young working families that are in poverty. They are working to their abilities but have low wage jobs and children to support. All of the renters in this group would need to pay more than a third of their income for shelter costs if they were forced to pay market rate rents. Paying one third of a household's monthly income is generally accepted as "affordable" in the housing sector.

- **These projects are not allowed to rent to tenants that earn over a certain income** - which is never greater than 60% of the area median household income (AMI) and ranges down to 50%, 40% and even 30% of AMI. In Fargo the average income of our tenants is around 20% of AMI or about \$8,550 for a single person or \$16,520 for a family of 3.
- **The projects also have rent restrictions.** Even though a LIHTC project and a market rate project may look the same and cost the same to construct, the LIHTC building is ~~not~~^{can't} able to generate as much ^{so} rental income as a market rate building due to this constraint. Most communities which have these projects allow them a property tax exemption. Nearly all of the projects do make a payment in-lieu-of tax ^{through} (PILOT) which is intended to cover essential services.
- The existing projects were financed with the understanding and agreement that they would ~~be~~^{be} paying no tax or, more commonly, a PILOT. If they are now required to pay full taxes, which 2049 proposes, they just don't have a way to do that and, will fairly quickly be put into a default status. None of these properties generate any income to the owners. They are underwritten so that rents cover their mortgage obligation and expenses only. **They were designed to provide affordable housing, not to generate profits.** Rents can't be raised due to program restrictions and, even if they could be, that would only price the units out of the range of the people they were built to serve.

We looked at existing projects in Grand Forks, Fargo, Devils Lake, Minot and Lisbon to see what it would mean if this bill were made law and the properties were now made to pay full taxes. We found that rents would have to be raised anywhere from \$100 to \$140 a month to pay the new tax rate.

There also seems to be a misconception about how the tax credit works. This credit never hits the bottom line of operations of the project. The LIHTC program is designed so that the credit is sold up front to investors, who then act as silent partners. The equity generated by the sale of the credits helps reduce the need for debt on the projects so that lower rents are possible. The private investors who helped to capitalize these buildings are getting their return on investment strictly from the federal tax credits generated by the projects. Their return is guaranteed by the non-profit developer so, if the property is not serving the low income households it promised to serve and needs to revert to market rate in order to meet the proposed new tax obligation, then the credits are taken back and the non-profit has a significant financial liability to the investors to return their investment, with interest. Obviously all of this is not in the interest of the tenants who now live in these affordable properties, it's not in the interest of the non-profits who developed and operate the properties and, it's not in the interest of the communities where the housing is located and.

We are also concerned about future affordable housing

development. In Dickinson last year, for example, the Housing Authority issued 96 Federal Section-8 Housing Vouchers to low income families and not one of them was used. This represents a loss of \$343,000 in lost subsidy to the community. There is no housing in Dickinson with rents low enough to accommodate a voucher. One of the state's non-profit developers (Beyond Shelter, Inc.) is working with the city to develop housing with rents in the range that is acceptable to the voucher program. The development simply can't reach down to those rent levels without the benefit of a property tax break – without it the project would not happen.

Currently these projects are removed from the tax rolls in one of two ways. The first is by non-profit ownership, which this bill seeks to amend and which has been used by 6 or 8 projects that we are aware of. The second way is a statute designed to promote development of new and expanding businesses and will allow a municipality to establish a PILOT for up to 20 years. Most communities have used this statute. Those properties and communities will be facing a problem when the term of the original PILOT runs out though, since the statute only applies to "new" businesses. We agree the issue does need attention.

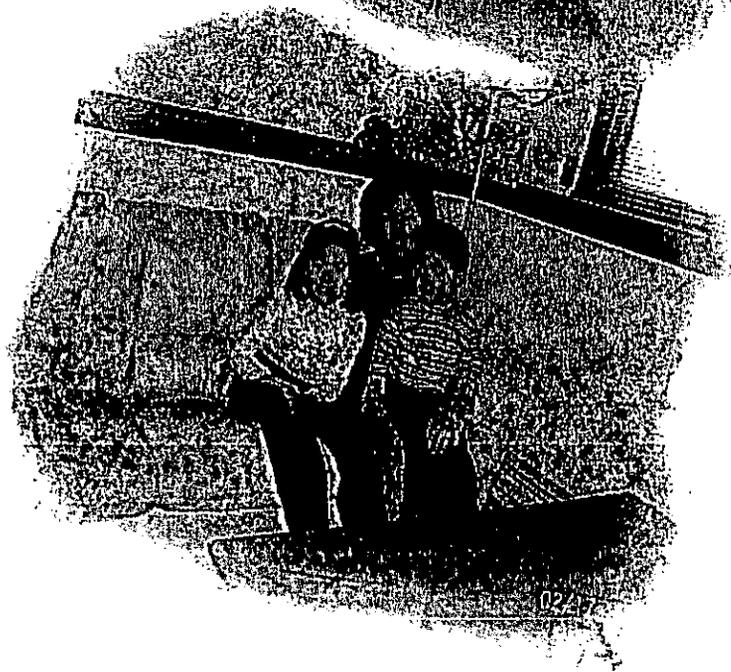
#2 p.4

As I said to begin with though, and you can now see after hearing some of the issues that we raise, **this bill has not been fully thought through and should be voted down.** The issue should be sent to an interim committee that can come up with a more comprehensive solution with all stakeholders having an input. We are confident that a fair solution can be found which doesn't put these existing projects out of business and sacrifice needed affordable housing. As an example, some kind of an income based tax might be a solution for the projects and the communities they serve.

Thank you for your time and your service and, I will be happy to respond to any questions you may have.

Sincerely,

Lynn Fundingsland
ND NAHRO President





Michael A. Anderson Executive Director

INDUSTRIAL COMMISSION

Jack Dalrymple Governor

Wayne Stenehjem Attorney General

Doug Goehring Agriculture Commissioner

SB 2049

March 2, 2011

**North Dakota Housing Finance Agency
Division of the State Industrial Commission
Testimony by Michael Anderson, Executive Director
House Finance and Taxation Committee**

Chairman Belter and members of the House Finance and Taxation Committee:

My name is Mike Anderson. I am the executive director of the North Dakota Housing Finance Agency (NDHFA). Senate Bill 2049 specifically targets Low Income Housing Tax Credit (Tax Credit) properties. NDHFA allocates these tax credits and provides compliance oversight once the projects are placed in service. My goal today is to make certain you understand how the Tax Credit program works in comparison with other subsidized housing projects and provide my best estimation of the impact SB 2049 will have on the Tax Credit program.

The Tax Reform Act of 1986 established the Tax Credit program under Section 42 of the Internal Revenue Code (IRC). The tax credits are an incentive for investment in affordable housing for lower income tenants in exchange for a dollar-for-dollar reduction in federal income tax liability. The amount of tax credits allocated to a project is based on the cost of the project and the number of units that meet program income targeting requirements and rent restrictions. Our charge, among other things, is to allocate only enough tax credits so as to make the project economically feasible.

The tax credits are converted to cash (equity) when sold through syndication. This equity, which approximates 60 percent of total project costs, serves to lower the amount of debt needed to build the project and consequently reduces project operating costs. The tradeoffs for all this equity up front are the aforementioned income and rent restrictions for the term of the affordability period. Once the Tax Credit property is placed in service, it receives no rent or operating subsidies.

Tax Credit developer/owners must commit to complying with the income and rent restrictions for a period of 15 years beginning with the development's first taxable year, and can opt to extend for an additional 15 years (extended use period) for a total of 30 years. Due to a very competitive market for Tax Credits, projects typically choose the extended use period in order to score better in the allocation selection process.

The maximum amount of rent that can be collected in a Tax Credit project is capped at 30 percent of 60 percent of area median income (AMI) and is based on the number of bedrooms in each rental unit. The maximum rent calculation includes all utilities. If the tenant pays any utilities, the maximum rent that can be charged is adjusted downward accordingly. Nearly all projects are subject to deeper income and rent restrictions as part of a very competitive application process.

#3A 9.2

Currently there are 148 Tax Credit projects across North Dakota containing 4,344 units. This year we will be allocating \$2,465,000 of tax credits that should generate \$17 to \$19 million of equity.

Under the Tax Credit program all the subsidy is realized up front and the project is on its own in managing its day to day operations over time. In contrast, HUD's Section 8 and USDA's Section 515 subsidized projects are under contracts that provide ongoing rent subsidies and operating assistance through budgets that are negotiated annually. Thus, as operating costs increase they can apply for additional assistance.

To get an economic perspective of Tax Credit projects, I've also handed out spreadsheets depicting two scenarios of a New Construction Tax Credit Model. They break down project construction costs, financing scenarios, and provide an abbreviated pro forma on operations. At the bottom I have also included housing affordability information at targeted household incomes for western North Dakota. The first spreadsheet includes the project paying full property tax. The second includes property tax reduced by about half.

If you look at the first spreadsheet which includes full property taxation, a project in Williams County with a 20-year mortgage and targeted to 50 percent of AMI would require \$344 more rent per unit per month than allowed under the Tax Credit program. This assumes that the tax credits yielded 60 percent equity. In order to stay compliant and make the project feasible the developer would have to find an additional \$900,000 of equity or soft debt. And depending on how many units are income targeted below 50 percent AMI this number would go up.

This additional equity requirement typically comes from a combination of HOME, CDBG, FHLB, local development funds, and deferred developer fees.

Many of these projects are owned by non-profits who have been able to negotiate a payment in lieu of taxes (PILOT) which lowers their property tax liability by roughly 50 percent. A PILOT at this level would reduce the per unit/per month rent required to cash flow the project by \$70 and the additional equity requirement by \$200,000. See 2nd spreadsheet.

During the Senate Finance and Taxation Committee hearing on this bill I was asked about the impact it would have on the Tax Credit program. I indicated it would be negligible as long as the ability for non-profits to negotiate a PILOT is left unfettered. However, since then and upon further examination of the NDCC (the Code) with the help of our Assistant Attorney General, I now believe that will not be the case.

Section 57-02-03 of the Code states that all property in this state is subject to taxation unless expressly exempted by law. Throughout the Code the language regarding property taxation consistently draws no median between ad valorem (full value) taxation and tax exemption. The only exceptions in the Code which discuss the possibility for a PILOT is with regards to game and fish department, the board of universities and school lands, BND, and new and expanding businesses. There is no mention of a PILOT option whenever the Code discusses housing.

Therefore it is my strong belief that if SB 2049 passes and it renders Tax Credit projects owned by non-profits **NOT** to be a public purpose so as to qualify for property tax

#3A p. 3

exemption under subsection 8 of 57-02-08, they will become subject to ad valorem taxation.

This would also directly affect a number of housing authorities which otherwise are exempt as a political subdivision under subsection 3 of 57-02-08. In order to protect the assets of the housing authority, they create separate non-profits which develop and own Tax Credit projects. Direct ownership becomes a liability issue not only to them but also to the tax credit syndicator. These non-profits are not afforded the same tax status as their sponsoring housing authority and come under the jurisdiction of subsection 8.

This being the case, going forward non-profit developers participating in the Tax Credit program will have to find additional soft funding to cover the additional expense of full taxation so as to make their projects feasible. Unfortunately, competition for this type of funding is already making this commodity a scarce resource.

Existing Tax Credit projects will be in an even more difficult position under this legislation. These projects are already locked in with their debt service structure, income and rent restrictions, and do not get any additional subsidy to offset unexpected additional costs. Under the IRC there is no option for renegotiating their obligation. In order to continue to honor their commitment to targeted households, they may be forced to cut corners on maintenance and other operating costs. The net effect may lead to run down structures.

Based on the Taxation Interim Committee minutes of its August 24, 2010, meeting, the intent of SB 2049 is to "make clear that subsidized housing is not eligible for property tax exemption" and to "remove inconsistencies in application of property tax exemptions for subsidized housing in the state." Yet the bill only singles out the Tax Credit program while there are many other housing projects across North Dakota that receives subsidies under HUD and USDA programs. And many of these properties are owned by non-profit entities some of which also own Tax Credit projects.

By singling out one subsidy program, it inherently raises questions about the status of other subsidized properties owned by the same non-profit housing developer. And I question whether SB 2049 will make clear any legislative intent regarding subsidized housing and property tax exemption, as well as will remove inconsistencies between taxing authorities regarding application of granting property tax exemption.

I am not suggesting that ALL subsidized housing be brought under the umbrella of SB 2049 as it is currently written, but rather to the contrary. As I've already mentioned, current public policy already exempts housing authorities from property taxation under subsection 3 of NDCC 57-02-08. And this is currently being restated even more to the point in HB 1416 which just passed the House by an 84-7 margin. The bill states "...property of an [housing] authority used for low and moderate income housing is declared to be public property used for essential public and governmental purposes and is exempt from all taxes...".

That tells me there is recognition by state and local leaders that affordable housing is essential to our communities. This bill grapples with the question as to whether affordable housing in general that is owned by a nonprofit organization fills the same public purpose.

#3 AP.4

NDHFA strives through the Tax Credit program to make sure affordable housing can and is happening in our communities. But, it is my concern that this bill could get in the way of that happening by removing the local taxing authorities' flexibility should they choose to play a role in making its housing affordable for all its community residents.

The Tax Credit program is a classic example of how public/private partnerships can successfully achieve a public policy of meeting the essential needs of our citizens. In this case, increased property tax costs for the private side of this equation risks increased difficulties in putting Tax Credit deals together and thus threatens a slow down in affordable housing development and it risks the continued viability of some of our desperately needed current affordable housing stock.

Thank you for your time and I would be happy to answer any questions.

New Tax Credit Rental Housing Construction Model

Rental Housing Project Development Costs		
Building Construction		Land Acquisition
Average Square Feet Per Unit:	1,000	Total
Number of Units:	24	Land Acquisition: \$ 200,000
Construction per Sq Ft:	\$ 141.22	Grading* \$ -
Contractor Fees:	\$ -	Graveling* \$ -
Architect Fees (7% of hard cost):	\$ -	Paving* \$ -
Other Construction Fees or Costs:	\$ -	Water & Sewer* \$ -
Total Costs per Sq Ft:	\$ 141.22	Other* \$ -
	\$ 3,389,280.00	Total Site Development: \$ 200,000.00

Financing Scenario		
Grand Total Development Costs:	\$ 3,589,280.00	Projected Assessed Value: \$ 2,584,282
Tax Credit Contribution Percentage:	60%	Projected Appraised Value: \$ 2,871,424
Tax Credit Contribution in Dollars:	\$ 2,153,568.00	Property Tax as a % of Assessed Value: 1.750%
Required Debt Financing:	\$ 1,435,712.00	Target Debt Coverage Ratio: 1.2
Debt Interest Rate:	7.000%	

Expense Per Unit									
Term Scenarios	Monthly Debt Service	Administrative Expenses	Maintenance Expenses	Utility Costs	Property Tax	Hazard Insurance	Minimum Required Average Unit Rent	Annual Housing Cost	Annual Income Required to Afford Housing Costs (30%)
10 year payback	\$694.58	\$ 74.83	\$ 80.38	\$ 80.53	\$ 157.03	\$ 25.00	\$ 1,251.26	\$ 15,015.15	\$ 50,050.51
15 year payback	\$537.69	\$ 74.83	\$ 80.38	\$ 80.53	\$ 157.03	\$ 25.00	\$ 1,063.00	\$ 12,756.00	\$ 42,520.01
20 year payback	\$463.79	\$ 74.83	\$ 80.38	\$ 80.53	\$ 157.03	\$ 25.00	\$ 974.32	\$ 11,691.89	\$ 38,972.96
25 year payback	\$422.80	\$ 74.83	\$ 80.38	\$ 80.53	\$ 157.03	\$ 25.00	\$ 925.14	\$ 11,101.64	\$ 37,005.47
30 year payback	\$397.99	\$ 74.83	\$ 80.38	\$ 80.53	\$ 157.03	\$ 25.00	\$ 895.36	\$ 10,744.35	\$ 35,814.50

* Site development costs are calculated into the construction cost per square foot

Annual Operating Costs 21,551 23,149 23,193 45,225 7,200

Income Limits (2bdm/3 family):	60% AMI	50% AMI	30% AMI
Williams/McKenzie/Mountrail	30,240	25,200	15,120
Ward	31,860	26,550	15,930
Stark	31,980	29,600	15,990
Maximum Rents (2 bdrm/3 family):	60% AMI	50% AMI	30% AMI
Williams/McKenzie/Mountrail	756	630	378
Ward	796	663	398
Stark	799	666	399

Testimony # 3 B p. 1

Testimony # 4

March 2, 2011

Representative Belter, and members of the House Finance and Taxation Committee, my name is Charles Bisnett, CEO for Pride Inc.

This is the first time in six years I have felt compelled to testify before a legislative group. I am testifying today to urge you to vote against SENATE BILL NO. 2049.

Pride, Inc., owns and operates one Low Income Tax Exempt housing project consisting of 30 apartments, a common area and laundry room. Pride pays the heat, water, garbage, and sewer, and the tenant pays their electric. Most of the individuals receive other assistance including food stamps, Medicare, Medicaid, and in some situations housing assistance through Burleigh County Housing Authority. When Pride first accepted responsibility for this apartment complex in 2006, the average rent was \$391.00 per month and the average monthly income for an individual living in the apartment was \$777.75 or \$7,173.00 a year.

Today the average rent is \$397.00 and the average monthly income is \$782.25 or \$9,387.00 a year.

If the property is assessed and has a tax obligation of \$26,356.00 (this number is based on average tax on other 30 to 32 unit apartment buildings in Bismarck ND) I would need to increase the rents \$73.00 dollars a month. While that may not be a lot to you or me, for someone living on \$782.25 per month it comes out to a 9.35 percentage increase in one year. As of this fiscal year (July 2010 to January 2011) the apartment building has a loss of -\$2,209.

The reason we have Tax Exempt Bonds is to help establish housing projects for individuals who income is low. The passage of this bill would make it hard, if not impossible, for some of the low income projects to be developed. Most established projects will be forced to increase rent to cover this expense.

Thank you for your consideration.

Charles Bisnett, CEO
Pride Inc.

charlesb@prideinc.org

Testimony #5

Michael Carbone
Executive Director
North Dakota Coalition for Homeless People
4023 State St North Suite 40
Bismarck, ND 58503
director@ndhomelesscoalition.org
Lobbyist # 504

SB 2049 Testimony

Chairman Belter, committee members, my name is Michael Carbone and I am the executive director of the North Dakota Coalition for Homeless People (NDCHP). Thank you for the opportunity to testify on SB 2049.

The NDCHP works to coordinate and facilitate the development of housing for North Dakota's poorest citizens. We are responsible for the state's combined Continuum of Care Competitive Grant application to HUD. This application brings 1.7 million dollars per year into ND to provide permanent supportive and transitional housing to North Dakotans with disabilities and other barriers to housing stability who would otherwise be homeless. Currently, 19 housing projects receive funding through the Continuum of Care process. Additionally, we work with the North Dakota Interagency Council on Homelessness to coordinate and oversee the implementation of North Dakota's 10 Year Plan to End Long Term Homelessness. SB 2049 would work at odds with the objectives of the state's 10 year plan.

Homelessness in North Dakota has seen significant increases in each of the past three years. One of the driving factors of this rise in homelessness is a shortage of low income housing. The state's plan calls for the development of 50 units of supportive housing per year. Funding for these projects is usually several layers deep and the Low Income Housing Tax Credit program is one of the tools used to develop the funding these projects require. These projects frequently receive assistance from the communities they serve in the form of property tax exemptions. This assistance helps projects keep rents low enough so that North Dakota's poorest citizens can afford a place to live, a place they can call home and from which they can strive to live productive lives. SB 2049 will eliminate a valuable tool in developing new projects for low income citizens and will subsequently become another driving factor in the state's growing homelessness problem.

Existing housing developments that depend on the property tax exemptions to keep rents affordable will have no other choice but to raise rents on the lowest income North Dakotans. Some North Dakota citizens may find themselves out in the cold seeking emergency shelter at a cost to communities that far exceeds the cost of the property tax exemptions. At a time when North Dakota's economy is strong and the state is working to provide tax relief to its citizens, it would be unwise and unfair to eliminate a property tax exemption for nonprofits that provide housing for low income citizens of our state. North Dakota's poorest citizens will ultimately pay for the elimination of property tax credits for nonprofits that cannot provide low income housing without the credits, and North Dakota's taxpayers will ultimately pay for the cost of rising homelessness.

For these reasons the NDCHP opposes SB 2049 and urges the committee to give SB 2049 a Do Not Pass.

Testimony # 6 p. 1

ND House of Representatives
Finance and Taxation Committee
SB 2049
March 2, 2011

Chairmen Belter and members of the committee my name is Tom Alexander. I am the Project Director for the ND Medicaid Infrastructure Grant (NDMIG) with the North Dakota Center for Persons with Disabilities at Minot State University. I am providing written testimony before you today as Chair of the Housing Alliance of North Dakota (HAND). HAND is a statewide network of over 25 organizations established to identify and address the diverse unmet housing needs in North Dakota.

Some general principles which HAND operates from include the following:

- Works to promote the fact that housing is a basic human need;
- Works to make housing a top priority for all North Dakotans;
- Educate others to see that without housing all other activities, including work, are unattainable;
- Works to achieve the development and adoption of a uniform, statewide housing policy; and
- Works to encompass a full range of unmet housing needs for all populations, in all areas of the state.

A safe and decent place to live is the cornerstone of a high quality of life. North Dakota is a great place to live, but rehabilitation and replacement of aging housing stock will be key to maintaining livability in many North Dakota communities. New and refurbished housing adds to the value of the neighborhood and community and further enhances the quality of life for everyone. Housing is an investment that yields returns and creates revenue at all levels—income taxes from construction jobs; sales taxes on materials; property

6 p. 2

taxes; and ongoing participation in the local economy by the new residents and those who are able to afford to continuing living in a community. Investment in housing provides substantial financial benefits for a community as well as the basic benefit of having new and available housing options for families.

If SB 2049 would pass it would dramatically increase the operating costs of projects throughout North Dakota that are currently not taxed. This would cause existing and future development projects to increase rental rates to offset the cost of taxes to individuals and families who cannot afford the increase in rent. Leaving many of them without a place to live.

The HAND members are encouraging this committee to send SB 2049 to the House floor with a DO NOT PASS recommendation.

Thank you for your time and I would be happy to answer any questions that you may have at this time.

Tom Alexander, Project Director
North Dakota Center for Persons with Disabilities
Memorial Hall
Minot State University
500 University Ave West
Minot, ND 58707

tom.alexander@minotstateu.edu
701-858-3436
1-800-233-1737
Fax 701-858-3483

#6 p.3



Ensuring every North Dakotan has access to a decent, safe, affordable, accessible place to live.

Housing Alliance of ND - Membership

**AARP - North Dakota
Centre, Inc.
Dakota Center for Independent Living
Domestic Violence and Rape Crisis Center
ND APSE
Hettinger County JDA
Independence, Inc.
Interagency Program for Assistive Technology (IPAT)
Mental Health America of ND
Missouri Valley Coalition for Homeless People, Inc.
ND Association of Builders
ND Coalition for Homeless People, Inc.
North Dakota Center for Persons with Disabilities
North Dakota Council on Abused Women's Services
North Dakota Department of Human Services
North Dakota Disabilities Advocacy Consortium
North Dakota Economic & Prosperity Alliance
Prairie Harvest Mental Health
Protection & Advocacy Project
Red River Human Services
Rural Collaborative
Salvation Army
Urban Development Department City of Grand Forks
USDA Rural Development
Youthworks
YWCA Cass Clay**

Testimony #7 p. 1

Senate Bill 2049
Testimony in Opposition to the Bill
Neighborhood Development Enterprises, Inc.
Neil Scharpe, President
701-721-0663

My name is Neil Scharpe; I am the president of Neighborhood Development Enterprises, Inc. a non-profit organization located in Minot, ND. On behalf of the Board of Directors of NDE I am expressing my opposition to SB 2049.

NDE was established in 1995 with a mission to provide affordable housing in the Minot area. After sixteen years we have developed/purchased 181 units of affordable housing. We have used a variety of methods to acquire these units including the Targeted Tax Credit Program. We have also purchased units that were under HUD guidelines to be affordable but were in danger of being sold off and would have been converted to market rents.

As a non-profit all of the proceeds of the corporation are returned to the benefit of the corporation to accomplish its mission. NDE only provides affordable housing and we are therefore similar to the individual Housing Authorities that exist with the state. Housing Authorities are exempt from paying property taxes and to treat NDE differently from them should raise issues of equality in taxation.

NDE currently participates in two projects that were funded under the Targeted Tax Credit Program; these two projects incorporate 55 rental units. It is estimated by the Minot City Assessor that taxes on these two projects would total \$84,000 per year. To pay these taxes NDE would have to raise rents an average of \$127/month. Based on HUD allowable rent rates it is impossible to operate these units without an annual negative balance when taxes are included.

The position of NDE is that the guidelines for these projects were established years ago, they were built with the understanding that no taxes would have to be paid. If fact, the very nature of a non-profit is that if we comply with our established mission state law excludes us from property taxes. If this bill passes you have effectively changed the rules on taxes in the middle of the game but continue to enforce all of the other rules that apply to the projects. This does not seem right.

Tax credit projects were developed to provide an incentive to establish affordable housing. Corporations are afforded "tax credits" over a number of years for their contribution of dollars to build the housing development. The projects must have a non-profit organization as a collaborator who eventually can purchase the project when the credits expire. What is the incentive to a non-profit to partner on such a project if it ends up costing money that they have no means of recouping?

Affordable housing in ND has been, is, and will be a major issue for those households that meet the income standards established by HUD. Western ND has a housing crisis right now and this bill offers a disincentive to maintain those we currently and does nothing to address adding more. NDE will be forced to convert some of our units to market rents to generate funds to pay these taxes. This will mean

#7 p. 2

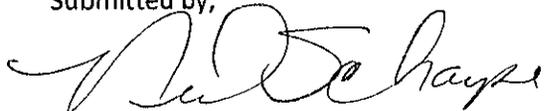
that people who currently have the benefits of affordable housing will be forced to leave so someone with greater income can take their place.

Is this what you want in your communities? Please ask yourself if there is a need for affordable housing in ND. Then ask yourselves, who should be responsible for providing this service? Does the local government play a role? If so, what would that be? It is our contention that if the local governmental entity only has to forego taxes it is a small price to pay to have employees that fill entry level jobs in those communities.

We understand that streets need to be repaired, fire, police and other necessary services need to be provided. If local governments will not do this for families who cannot afford market rents then they should put a sign at the city entrance saying only those who can afford market rents can enter.

If you do not understand the entire Targeted Tax Credit Program and how it benefits a large population of NDs please do not pass this bill.

Submitted by,



Neil Scharpe, President

Neighborhood Development Enterprises, Inc.

Minot, ND

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2049

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of whether subsidized rental property should be entitled to the property tax exemption for property used for charitable or other public purposes, after consideration of court decisions on the issue.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SUBSIDIZED RENTAL HOUSING. During the 2011-12 interim, the legislative management shall consider studying whether subsidized rental property should be entitled to the property tax exemption for property used for charitable or other public purposes, after consideration of court decisions on the issue. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly."

Renumber accordingly



Testimony Before
North Dakota House of Representatives
Finance and Taxation Committee
March 2, 2011

RE: S.B. 2049

Chairman Belter and distinguished committee members. I am providing written testimony before you today to ask that you vote **NO** on SB 2049. Why? Because in my opinion it is just bad legislation. As a state we need to be providing more affordable housing opportunities for our citizens of the state of North Dakota. Not one affordable housing developer or current owner of affordable housing was at the table during the time that this legislation was being developed. If this legislation is passed into law it will hinder future development of affordable housing in the state of North Dakota and also put existing affordable housing developments in financial turmoil.

Minot Housing Authority (MHA) manages 2 apartment complexes in Minot for a 501(c)3 nonprofit corporation. Oakwood Court and South Glen Village were developed with the use of Low Income Housing Tax credits (LIHTC). Both developments have a property tax exemption due to the 501(c)3 status of the corporation.

Oakwood Court has 7-1 bedroom units and was built in 1999. Oakwood Court houses people with severe mental illness and North Central Human Service Center provides onsite services for these tenants. If Oakwood Court were to lose its tax exemption it would no longer be affordable for the target population. We estimate that property taxes would be \$8,000 per year. This would add \$95 per unit per month in expense. \$8,000 is 24% of the 2010 annual rental income of \$32,748. In order to cover this cost rent would increase from \$415 to \$510 for a 1 bedroom unit.

South Glen Village is a 48 unit 2 and 3 bedroom apartment complex in southeast Minot that was completed in 2002. 5 of the units are set aside and are affordable for families that are at or below 30% of the area median income and 43 units are for families that are at or below 60% of the area median income. We estimate that property taxes would be \$75,000. This adds \$130 per unit per month in expense and rents would have to increase by that amount to cover the additional expense.

Both developments are subject to maximum rent caps set by the LIHTC program and the Housing Choice Rental Assistance Program (HCV). 79% of the residents at South Glen Village and 43% of Oakwood Court residents receive help from the HCV Program. If rents were increased to cover the additional cost, the developments would no longer meet the requirements of these programs and tenants would have to move. Due partly to energy development in northwest North Dakota and expansion of the mission at Minot Air Force Base the rental housing market in Minot is very tight. The vacancy rate of apartments in Minot has been less than 1% for many months.

Both developments depend on the property tax exemption to remain financially viable. If these properties were to lose the property tax exemption it will be only a matter time before both of properties will go into foreclosure process due to the fact that there will not be enough monies to go around to service all the debt, pay operating expenses and property taxes.

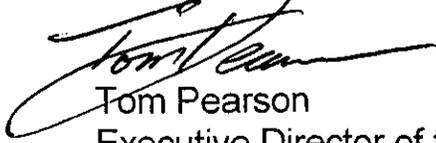
I believe the current state law strongly support and without question exempt property from taxation that are used either exclusively for charitable or other public purposes as mandated by Article X. Section 5 of the North Dakota Constitution, or properties that are used wholly or in part for public charity as required by N.D.C.C. § 57-02-08(8). There is no question in my mind as to whether the affordable housing throughout the state is eligible for this exemption. What difference does it make whether the charitable or public purpose provides medical care, social care or housing? If the property is used to provide charitable purpose or other public purpose it should be found exempt from taxation regardless of what the charity is.

Representative Belter and Committee Members, I respectfully ask you to vote **NO** on SB 2049. Affordable Housing is an issue that needs to be addressed for the entire state with all stakeholders having their input when it is being discussed and developed.

#8 p. 3

Thank you for your time and thank you for your service to the people of North Dakota.

Respectfully submitted,



Tom Pearson

Executive Director of the Minot Housing Authority

**This opinion is subject to petition for rehearing
Filed 3/22/11 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2011 ND 50

In the Matter of Appeal of Grand Forks Homes, Inc.,
Continental Homes, Inc., Homestead Place, MDI
Limited Partnership #35, and Faith & Hope, LP, Appellants

v.

Grand Forks Board of County Commissioners, Appellee

No. 20100197

In the Matter of Appeal of Terzetto Village, LLC, Appellant

v.

Grand Forks Board of County Commissioners, Appellee

No. 20100202

Appeals from the District Court of Grand Forks County, Northeast Central
Judicial District, the Honorable Debbie Gordon Kleven, Judge.

AFFIRMED.

Opinion of the Court by Crothers, Justice.

Russell John Melland, P.O. Box 5849, Grand Forks, N.D. 58206-5849, for
appellants.

John Alan Warcup (argued), Special Assistant State's Attorney, P.O. Box 12909, Grand Forks, N.D. 58208-2909, for appellee.

Grand Forks Homes, Inc. v. Grand Forks Bd. of County Comm'rs

Nos. 20100197 & 20100202

Crothers, Justice.

[¶1] Grand Forks Homes, Inc., and several other property owners (collectively “property owners”) appeal from the district court judgments affirming the Grand Forks County Board of Commissioners’ (“Board”) denial of their applications for abatement of real estate taxes and denying their motions for an extension of time and for a remand to the Board to consider additional evidence. We conclude the district court did not abuse its discretion in denying the property owners’ motions. We further conclude the Board did not misapply state law on tax exemptions for public charities and property used exclusively for charitable or other public purposes and did not act arbitrarily, capriciously or unreasonably in denying the applications for abatement of real estate taxes. We affirm.

I

[¶2] Most of the property owners in these cases are nonprofit corporations owning and operating apartment complexes in Grand Forks and renting units to low-income families or to physically or mentally disabled persons. Grand Forks Homes, Inc., is a North Dakota nonprofit corporation that owns Oak Manor Apartments, Cherry Height Apartments and LaGrave Place Apartments, which are all operated and managed by the Grand Forks Housing Authority. Apartment occupants must meet low-income eligibility requirements. Continental Homes is owned by Continental Homes, Inc., a North Dakota nonprofit corporation. Continental Homes’ occupant services include a resident service coordinator and a learning center. Tenants must meet low-income eligibility requirements. Homestead Place, a North Dakota nonprofit corporation owning and operating Homestead Place Apartments, is designed to house elderly families and persons with disabilities. Tenants must meet low-

income eligibility requirements, and occupant services include a resident services coordinator and a learning center. Members of the board of directors of the Grand Forks Housing Authority comprise the board of directors of Homestead Place.

[¶3] Riverside Manor Apartments provides low-income housing and is owned by MIDI Limited Partnership #35. Riverside Manor, LLC, is the general partner which owns one percent of the limited partnership, and National Tax Credit Fund 37 L.P. owns the remaining 99 percent. Riverside Manor, LLC, is a wholly owned subsidiary of Grand Forks Homes, Inc., and has an option to purchase Riverside Manor Apartments. Redwood, Oakwood, and Westwood are three separate apartment buildings owned by Faith & Hope, LP, a limited partnership in which the general partner, Grand Forks Homes, Inc., owns 99.9 percent and Faith and Hope, LLC, owns the remaining 0.1 percent. Faith and Hope, LLC, is also a wholly owned subsidiary of Grand Forks Homes, Inc. Occupancy in Redwood is limited to persons who are developmentally disabled. Occupancy in Oakwood is limited to persons who are chronically mentally ill. Occupancy in Westwood is limited to persons with physical disabilities. All tenants must also meet low-income eligibility requirements.

[¶4] Terzetto Village, LLC, a limited liability company owned by Westend Terzetto's, also a North Dakota nonprofit corporation, owns single-family residential lots in Grand Forks. Terzetto Village provides low- to moderate-income families the opportunity to own homes. At least 51 percent of its homes must be sold to low- to moderate-income families.

[¶5] These property owners filed applications for abatement of real estate taxes for 2006, 2007, and 2008 with the city of Grand Forks, claiming their properties were exempt from taxation under state law because they are used for charitable or other public purposes. Following several hearings on the applications, the Grand Forks City Council ("Council") recommended the abatement requests be denied. The Board, based on the record before the Council, concurred with the Council's recommendations.

[¶6] The property owners appealed the Board's decision to district court. The property owners also moved to extend time or stay the proceedings and to remand the case to the Board so the Board could consider the testimony offered during Council proceedings. The district court denied the motions and affirmed the Board's decision to deny the tax abatement requests. The cases were consolidated for appeal.

II

[¶7] The property owners argue the district court erred in denying their motions to remand the cases to the Board for consideration of the transcripts or recordings of the hearings held before the Council. The Council passed a motion that the transcripts be forwarded to the Board, but the transcripts or recordings were not available to the Board before it ruled on the abatement applications. The property owners contend the transcripts or recordings were material evidence necessary for the Board to review before reaching its decision.

[¶8] Under N.D.C.C. § 28-34-01(3), a "court may order that . . . additional evidence be taken, heard, and considered by the local governing body" if the "additional evidence is material and . . . there are reasonable grounds for the failure to adduce such evidence in the hearing or proceeding had before the local governing body." A district court's decision whether to order the taking of additional evidence under N.D.C.C. § 28-34-01(3) is discretionary. Grand Forks Hous. Auth. v. Grand Forks Bd. of County Comm'rs, 2010 ND 245, ¶ 11. "'A district court abuses its discretion when it acts arbitrarily, capriciously, or unreasonably' or when it misinterprets or misapplies the law." Id. (quoting In re Pederson Trust, 2008 ND 210, ¶ 12, 757 N.W.2d 740).

[¶9] Here, the district court found the transcripts or recordings of the hearings before the Council did not constitute material evidence necessary to review the decision to deny the abatement applications. The court noted the Board gave the property owners an opportunity to present evidence in support of the applications and

received all evidence and testimony they offered. The court reasoned that if the property owners wanted the Board to consider the oral testimony presented in the Council proceedings, the property owners should have offered the testimony at the hearing before the Board.

[¶10] The district court's decision is not arbitrary, capricious or unreasonable, and the court did not misapply the law. We conclude the court did not abuse its discretion in denying the property owners' motions to remand the cases to the Board for consideration of additional evidence.

III

[¶11] The property owners argue the Board erred in denying their applications for abatement of real estate taxes.

[¶12] “[W]e apply a very limited and deferential standard of review when considering an appeal from a decision of a local governing body.” Grand Forks Hous. Auth., 2010 ND 245, ¶ 6.

“When considering an appeal from the decision of a local governing body under N.D.C.C. § 28-34-01, our scope of review is the same as the district court's and is very limited. This Court's function is to independently determine the propriety of the [Commission's] decision without giving special deference to the district court decision. The [Commission's] decision must be affirmed unless the local body acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. ‘A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation.’”

Hagerott v. Morton County Bd. of Comm'rs, 2010 ND 32, ¶ 7, 778 N.W.2d 813 (quoting Gowan v. Ward County Comm'n, 2009 ND 72, ¶ 5, 764 N.W.2d 425) (internal quotations and citations omitted). “A local governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct.” Hector v. City of Fargo, 2010 ND 168, ¶ 5, 788 N.W.2d 354.

[¶13] The property owners argue the Board erred in refusing to exempt their properties from taxation because the Board erroneously interpreted North Dakota law on tax exemptions for public charities and for property used exclusively for charitable or other public purposes.

[¶14] “All property in North Dakota is subject to taxation unless expressly exempted by law.” Grand Forks Hous. Auth., 2010 ND 245, ¶ 8; see also N.D.C.C. § 57-02-03. The North Dakota Constitution exempts from taxation “property used exclusively for . . . charitable or other public purposes.” N.D. Const. art. X, § 5. Section 57-02-08(8), N.D.C.C., also exempts from taxation “[a]ll buildings belonging to institutions of public charity . . . under the control of religious or charitable institutions, used wholly or in part for public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit.” The “burden of establishing that property comes within the tax-exemption statute is upon the person or entity who claims the exemption” and “any doubt as to whether the property is used for charitable or benevolent purposes so as to exempt it from taxation must be resolved against the claimant.” Riverview Place, Inc. v. Cass County, 448 N.W.2d 635, 640 (N.D. 1989). “Each case where a claim for tax exemption is made . . . must be decided upon its own facts.” Y.M.C.A. of North Dakota State Univ. v. Board of County Comm’rs, 198 N.W.2d 241, 244 (N.D. 1972).

[¶15] Several North Dakota cases have set the parameters for determining whether property is eligible for the charitable tax exemption under state law. In North Dakota Soc’y for Crippled Children and Adults v. Murphy, 94 N.W.2d 343, 344 (N.D. 1959), the taxpayer, a nonprofit corporation organized for charitable purposes, sought a refund of taxes paid on the residence of its executive director. The taxpayer contended the residence was exempt from taxation because the taxpayer was an institution of public charity and the property was “used wholly or in part for public

charity.” Id. Noting that the “property is used as a residence and for no other purpose,” id. at 345, this Court rejected the taxpayer’s argument and held:

“[T]he use contemplated by our statute is one that results in a benefit that has at least some direct and primary connection with the public charitable activities of the institution. A monetary saving or a mere convenience is not such a benefit. In this case the property is exclusively residential. Its location with respect to the plaintiff’s charitable activities is remote. While there may be an economical advantage and an administrative convenience in ownership, the connection between that ownership and the charitable activities of the plaintiff is nebulous and not of sufficient substance to support the claim of exemption.”

Id. at 347.

[¶16] In Y.M.C.A. of North Dakota State Univ., 198 N.W.2d at 243, the taxpayer sought a charitable tax exemption for two apartment buildings constructed to house college students. The taxpayer, a charitable institution, rented the apartments at their fair market value in competition with privately owned apartments, and the income from the apartments that exceeded the cost of maintenance was used for the “general charitable purposes” of the taxpayer. Id. In affirming denial of a tax exemption to the taxpayer, this Court ruled the “mere fact that the apartments are owned by . . . a nonprofit corporation, is not sufficient to make them tax-exempt under our law.” Id. at 246. The Court noted no charitable purpose existed under the circumstances because “[t]here is no evidence that the cost to the tenants is below ordinary rent charged by commercial enterprises for similar services furnished,” the “apartments compete with commercial housing facilities,” and “the property produced an income sufficient for the plaintiff to realize a profit each year.” Id. The Court said, “Property which is not used directly for the charitable and benevolent purposes of the [taxpayer], but is used for profit, is not exempt from taxation even though the profit derived from such property is, in fact, used to support the [taxpayer’s] charitable programs.” Id. at 247.

[¶17] In Evangelical Lutheran Good Samaritan Soc’y v. Board of County Comm’rs, 219 N.W.2d 900, 902 (N.D. 1974), the taxpayer operated a “home for the aged and infirm” and claimed it was entitled to a tax exemption for that property. The Home earned a profit, but the profit was reinvested into the Home for upkeep and expansion. Id. at 906, 907. The Home employed a full-time activities director, and 64 percent of the residents were welfare recipients. Id. at 902, 903. The Court noted the “average daily cost incurred by the Home for each resident, both welfare and non-welfare recipient, exceeds the average daily payment received by the Home for each welfare patient.” Id. at 903. Although the Home charged fees for its services and did not provide free care, no person would be denied admittance to or be removed from the Home for inability to pay. Id. at 908. This Court, in affirming the granting of a tax exemption to the Home, said that “[t]he use of property for the care of the aged is generally recognized as a charitable use,” at least where “it has always been the policy of the Society that no person would be refused admittance because of financial inability to pay, and that no person would be removed from a Society Home because of inability to pay,” and that “64 percent of the Home’s residents were welfare recipients, for each of whom the Home received less than the average daily cost of care for such welfare recipient.” Id. at 906, 908. Under these circumstances, the Court concluded the Home did not lose its charitable character, even though it charged for its services and did not provide free care. Id. at 909.

[¶18] In Riverview Place, Inc., 448 N.W.2d at 636, a “minimum-care, residential facility for the elderly” sought an exemption from taxes claiming it was a public charity within the meaning of N.D.C.C. § 57-02-08(8). This Court, in reversing a decision granting a tax exemption to the facility, said that merely providing housing for the elderly is not a charitable use, where the residents had not demonstrated any need for considerable care or supervision and residents could be evicted if they were 60 days in default of their monthly occupancy fee. Id. at 637, 642. The Court summarized North Dakota law on charitable tax exemptions:

“[T]he determination of whether an institution falls within the exemption is, essentially, a two-step process in which it must be determined ‘whether the organization claiming the exemption is in fact a charitable one, and whether the property on which the exemption is claimed is being devoted to charitable purposes.’ The ownership of the property in question by an institution of public charity does not, by that fact alone, exempt the property from taxation. Additionally, ‘[t]he mere fact that the services performed by a charitable corporation also are rendered by profit-making organizations [does] not of itself preclude [a charitable organization’s] right to tax exemption.’ Rather, ‘[i]t is the use made of the property . . . which determines whether the property is exempt from taxation.’ The property’s use must be devoted to charitable purposes, and it must actually be used in carrying out the charitable purposes of the organization claiming the exemption. Moreover, we have noted that when a charitable organization charges a fee for its services and operates at a small net profit which is reinvested back into the organization’s charitable operations, those facts do not automatically disqualify the entity’s property from an exemption on the basis that it was operated ‘with a view to profit,’ as the concept of charity encompasses ‘something more than mere almsgiving’ and therefore a ‘benevolent association is not required to use only red ink in keeping its books and ledgers.’”

Id. at 640 (internal quotations and citations omitted).

[¶19] We use these basic guidelines in reviewing the Board’s denial of the property owners’ applications for tax abatements to determine if the denial was arbitrary, capricious or unreasonable.

B

[¶20] The Board adopted the Council’s recommendations to deny the property owners’ applications for tax abatements. The Council found the property owners who provided rental housing were not entitled to tax exemptions because:

“Each owner of property . . . receives monthly rents from its rental operations and a governmental rental subsidy from the Housing Assistance Program which, when combined, equals or exceeds the fair market rents received by other property owners in the City of Grand Forks.

“The amount of rent which the property owner can charge a tenant is limited by the property owner’s participation in the Housing Assistance Program.

“Each owner of property . . . has a written policy to evict tenants who fail to pay rent or other charges due.

“Each owner of property . . . has a written policy of prohibiting tenants who are ineligible to participate in or who are unwilling to comply with government rent assistance programs.

“Each owner of property . . . is not supported by private donations.

“Each owner of property . . . is in competition with other for profit property owners within the City of Grand Forks.

“Grand Forks Homes, Inc. allows access to its facilities by government or charitable organizations to provide services to its residents with the cost of such services being borne by such charitable organization or governmental entity.

“[A]side from each respective Board of Directors, none of the properties . . . are staffed by volunteers or other persons who donate their time.

“Elderly residents are not required to demonstrate a need for care in order to qualify for residency.

“The property owners . . . do not provide any care to disabled or elderly tenants.

“The property owners . . . do not provide any rental assistance or maintain any programs for tenants who are unable to afford rent.

“The property owners . . . do not provide goods or services free or at considerably reduced rates.”

[¶21] The Council found the property owner with the single family residential development was not entitled to a tax exemption because:

“[T]he properties . . . were vacant, undeveloped lots for years 2006 and 2007. In 2008, [six] parcels . . . were developed with vacant single family dwellings.

“[T]he properties . . . were purchased by the property owner with funds provided by a federal Community Development Block Grant.

“[T]he property owner . . . is not supported by private donations.

“{T]he property owner . . . is in competition with other for profit property owners within the City of Grand Forks.

“[T]he properties . . . are available for sale on the open market to the highest bidder.

“[T]he property owner has made sales of similar nearby properties at market value[.]

“[T]he property owner does not provide goods or services free or at considerably reduced rates.”

[¶22] Even if the property owners are charitable organizations, the property owners failed to establish their properties are being devoted to charitable purposes. The basic concept of charity is to provide a “gift” to assist those in need. See Black’s Law Dictionary 235 (6th ed. 1990); American Heritage Dictionary 260 (2d College ed. 1985). A consistent thread in our caselaw is that, to qualify for the charitable tax exemption, a property owner must, at the very least, be subject to the possibility of either providing assistance or forbearing to act under circumstances in which other owners of property would not be required either to act or to refrain from acting. Those circumstances are not present in these cases. The property owners receive fair market prices for their rental properties through governmental subsidies and sell property at its fair market value. Indeed, Terzetto Village may sell almost one-half of its homes to persons who exceed low- to moderate-income levels. The property owners compete with for-profit property owners in the Grand Forks area. They do not provide any additional services to renters or home buyers, but only allow others to provide additional services at no cost to the property owners. They will evict tenants who are unable to meet their rent obligations.

[¶23] Under our caselaw, restricting the use of property for charitable purposes such as providing housing for the handicapped, the elderly, or persons with low incomes does not alone suffice to qualify for the charitable tax exemption. In these cases, the property owners are basically shielded from becoming the purveyors of any charity. Rather, they serve as the conduit for the charity of governmental entities and others.

We do not hold that governmental subsidies automatically disqualify a property owner from successfully claiming the charitable tax exemption. But the property owner must show a possibility that it may be called upon to forbear or provide services for which the property owner is not guaranteed recoupment. The property owners failed to establish they are entitled to charitable tax exemptions under state law.

[¶24] The Board did not misapply state law because substantial evidence supports its decisions. We conclude the Board did not act arbitrarily, capriciously or unreasonably in denying the property owners' applications for abatement of real estate taxes.

IV

[¶25] We have considered the other arguments raised and conclude they either are unnecessary to the decision or are without merit. The district court judgments are affirmed.

[¶26] Daniel J. Crothers
Mary Muehlen Maring
Carol Ronning Kapsner
Dale V. Sandstrom
Gerald W. VandeWalle, C.J.

This opinion is subject to petition for rehearing
Filed 3/22/11 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2011 ND 65

In the Matter of Appeal of Grand Forks Homes, Inc.;
Continental Homes, Inc.; Homestead Place; MDI Limited
Partnership #35; Faith & Hope, LP; Terzetto Village, LLC;
and GFH Supportive Housing, LLC,

Appellants

v.

State of North Dakota, by and through State Board of
Equalization, and Grand Forks County,

Appellees

No. 20100198

Appeal from the District Court of Grand Forks County, Northeast Central
Judicial District, the Honorable Debbie Gordon Kleven, Judge.

AFFIRMED.

Opinion of the Court by Sandstrom, Justice.

Russell John Melland, P.O. Box 5849, Grand Forks, N.D. 58206-5849, for
appellants.

Daniel Lucian Rouse (argued), Donnita Ann Wald (appeared), Special
Assistants to the State Board of Equalization, Office of State Tax Commissioner, 600
East Boulevard Avenue, Bismarck, N.D. 58505-0599, for appellee State of North
Dakota, by and through State Board of Equalization.

John Alan Warcup, Special Assistant State's Attorney, P.O. Box 12909, Grand
Forks, N.D. 58208-2909, for appellee Grand Forks County.

Grand Forks Homes, Inc. v. State

No. 20100198

Sandstrom, Justice.

[¶1] Grand Forks Homes, Inc., and several other property owners (collectively “property owners”) appeal from a district court judgment dismissing their appeals from decisions of the State Board of Equalization (“State Board”) and the Grand Forks Board of County Commissioners (“County Board”) denying their applications for exemptions from real estate taxes. The property owners also challenge the court’s denial of their motions to amend the pleadings to seek a writ of mandamus and to allow the filing of amici curiae briefs. We conclude the court did not err in dismissing the property owners’ appeals because the State Board had no authority to grant their requests for tax exemptions and the property owners’ appeal from the County Board’s decision was untimely. We further conclude the court did not abuse its discretion in denying the property owners’ motions. We affirm.

I

[¶2] Most of the property owners are nonprofit corporations that own and operate apartment complexes in Grand Forks and rent units to low-income families or to physically or mentally disabled persons. They are described in more detail in Grand Forks Homes, Inc. v. Grand Forks Bd. of County Comm’rs, 2011 ND 50, ¶¶ 2-4. GFH Supportive Housing, LLC, which was not a party in that case, is a limited liability company described in this record as “an initiative for transitional housing in the City of Grand Forks” and the “recipient of a Community Development Block Grant, [which] provides a public benefit, and is a charitable, non-profit.”

[¶3] The property owners filed applications with the city of Grand Forks for real estate tax exemptions for 2009, claiming their properties were exempt from taxation under N.D. Const. art. X, § 5, and N.D.C.C. § 57-02-08(8) because they are used for

I

charitable or other public purposes. After the city denied the applications, the property owners appealed to the County Board, acting as the Grand Forks County Board of Equalization. The County Board denied the requests for tax exemptions on July 7, 2009. The property owners then appealed the County Board's decision to the State Board, which made no change to the assessments. On October 22, 2009, the property owners appealed the September 22, 2009, State Board decision and the July 7, 2009, County Board decision to district court.

[¶4] The State Board and the County Board moved to dismiss the property owners' appeals. In response, the property owners sought to amend their pleadings to seek a writ of mandamus directing the State Board to act on their tax exemption requests. The property owners also moved to allow the filing of amici curiae briefs in district court. The court ruled the State Board had no authority to grant the property owners' requested relief and dismissed their appeal from the County Board's decision because it was not filed within 30 days from the County Board's July 7, 2009, decision. The court denied the motion to amend the pleadings, concluding it could not issue a writ of mandamus directing the State Board to perform an act it had no authority to perform. The court also denied the property owners' request to allow the filing of amici curiae briefs.

II

[¶5] The property owners argue the district court erred in concluding the State Board had no legal authority to determine whether their properties are entitled to charitable tax exemptions under state law.

[¶6] Assessment of taxable property in this state is addressed in N.D. Const. art. X, § 4, which provides in relevant part:

All taxable property except as hereinafter in this section provided, shall be assessed in the county, city, township, village or district in which it is situated, in the manner prescribed by law. The property, including franchises of all railroads operated in this state, and

of all express companies, freight line companies, dining car companies, sleeping car companies, car equipment companies, or private car line companies, telegraph or telephone companies, the property of any person, firm or corporation used for the purpose of furnishing electric light, heat or power, or in distributing the same for public use, and the property of any other corporation, firm or individual now or hereafter operating in this state, and used directly or indirectly in the carrying of persons, property or messages, shall be assessed by the state board of equalization in a manner prescribed by such state board or commission as may be provided by law.

The State Board is given the constitutional authority to make assessments of “centrally assessed property” owned by statewide entities. Soo Line R.R. Co. v. State, 286 N.W.2d 459, 465 (N.D. 1979).

[¶7] Statutes address “locally assessed property,” Soo Line R.R. Co., 286 N.W.2d at 465, and outline the assessment duties of the various local taxing jurisdictions. See N.D.C.C. chs. 57-09 (township board of equalization), 57-11 (city board of equalization), and 57-12 (county board of equalization). Under N.D.C.C. § 57-02-11(1), “[a]ll real property subject to taxation must be listed and assessed every year with reference to its value” by a local taxing jurisdiction. Section 57-02-14, N.D.C.C., provides that in assessing property, “the assessor shall enter in a separate list each description of property exempt by law and shall value it in the same manner as other property, designating in each case to whom such property belongs and for what purpose used.” A person or entity claiming a tax exemption must file a certificate with “the assessor and with the county auditor,” and if no certificate is filed, “the assessor shall regard the property as nonexempt property and shall assess it as such.” N.D.C.C. § 57-02-14.1.

[¶8] Under N.D.C.C. § 57-09-04, the “township board of equalization shall ascertain whether all taxable property in its township has been properly placed upon the assessment list and duly valued by the assessor.” Under N.D.C.C. § 57-11-03, a city “board of equalization shall proceed to equalize and correct the assessment roll” and “may change the valuation and assessment of any real property upon the roll by

increasing or diminishing the assessed valuation thereof as is reasonable and just to render taxation uniform” Under N.D.C.C. § 57-12-04, a “county board of equalization shall examine and compare the assessments returned by the assessors of all the districts within the county and shall proceed to equalize the same throughout the county between the several assessment districts.”

[¶9] The North Dakota Constitution directs that “[t]axes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax.” N.D. Const. art. X, § 5. The State Board, comprised of the “governor, state treasurer, state auditor, agriculture commissioner, and state tax commissioner,” N.D.C.C. § 57-13-01, meets on the first Tuesday of August to “assess all of the taxable property which such board is required to assess,” N.D.C.C. § 57-13-02, and meets on the second Tuesday of August to “examine and compare the returns of the assessment of taxable property as returned by the several counties in the state, and shall proceed to equalize the same so that all assessments of similar taxable property are uniform and equal throughout the state” N.D.C.C. § 57-13-03.

[¶10] The State Board performs its duties “by adding to the aggregate value thereof in any assessment district in a county and in every county in the state in which the board may believe the valuation too low, such percentage rate as will raise the same to its proper value . . . , and by deducting from the aggregate assessed value thereof, in any assessment district in a county and every county in the state in which the board may believe the value too high, such percentage as will reduce the same to its proper value” N.D.C.C. § 57-13-04(1). The State Board may also raise or lower assessments with regard to equalizing aggregate parcels of property, see N.D.C.C. § 57-13-04(2), and equalizing individual assessments. See N.D.C.C. § 57-13-04(3)(a) and (b).

[¶11] We see nothing in the Constitution or in this statutory scheme providing the State Board with the authority to reclassify as tax exempt locally assessed properties. We give words in constitutional and statutory provisions their plain, ordinary, and

commonly understood meaning. Thompson v. Jaeger, 2010 ND 174, ¶ 7, 788 N.W.2d 586; Arnegard v. Cayko, 2010 ND 83, ¶ 10, 782 N.W.2d 54. An “assessment” differs from an “exemption.” An “assessment” has been defined as, “[i]n a general sense, the process of ascertaining and adjusting the shares respectively to be contributed by several persons towards a common beneficial object according to the benefit received. A valuation or a determination as to value of property.” Black’s Law Dictionary 116 (6th ed. 1990); see also Merriam-Webster’s Collegiate Dictionary 74 (11th ed. 2003). An “exemption” is defined as “[f]reedom from a general duty or service; immunity from a general burden, tax, or charge.” Black’s Law Dictionary 571 (6th ed. 1990); see also Merriam-Webster’s Collegiate Dictionary 437 (11th ed. 2003). The State Board is by law given authority to make assessments of centrally assessed property, and local taxing jurisdictions are given authority to make assessments of locally assessed property. Although the State Board is charged with the duty to equalize the valuation of locally assessed taxable properties throughout the state, it is not authorized to declare locally assessed taxable properties exempt from taxation. Only local taxing authorities are given statutory authority to classify locally assessed properties as exempt from taxation.

[¶12] The property owners argue the State Board would not be reclassifying their properties as tax exempt, but would be equalizing the valuation of their Grand Forks properties to zero to match the valuations of allegedly similarly situated properties in Bismarck and Minot which have been granted tax exemptions by the respective local taxing authorities. The property owners’ argument is not persuasive. The property owners’ argument rests upon the incorrect premise that tax exempt property has no value. However, under the statutory scheme, properties that are exempt from taxation are valued in the same manner as taxable properties, but the owners of the tax exempt properties are not required to pay the taxes that would otherwise be assessed. See N.D.C.C. §§ 57-02-14 and 57-02-14.1. The statutory scheme does not contemplate the burden the property owners seek to impose upon the State Board, which is neither

a tax appeals court nor an administrative agency. See N.D.C.C. § 28-32-01(2)(i); Koch Hydrocarbon Co. v. State, 454 N.W.2d 508, 511 (N.D. 1990). The property owners are not merely requesting the State Board to “equalize” the valuation of their properties, but are requesting the State Board to overturn the County Board’s decision and reclassify their properties as exempt from taxation.

[¶13] The property owners rely on a 2000 letter of the Attorney General indicating that the State Board “is the body charged by law with making such determinations [on the ‘taxability’ of properties] when presented to them.” Letter from Attorney General Heidi Heitkamp to Traill County State’s Attorney Stuart A. Larson, November 28, 2000, at 1. The property owners’ reliance on this letter is misplaced because the Attorney General determined “it would be inappropriate for me to issue an opinion on the matter at this time” and cautioned that “[t]his discussion should not necessarily be considered a formal legal position of this office.” Id. Moreover, even if the letter was a formal opinion, we follow opinions of the Attorney General only if they are persuasive. See, e.g., Great W. Bank v. Willmar Poultry Co., 2010 ND 50, ¶ 20, 780 N.W.2d 437. The Attorney General’s letter is not persuasive because it contains no analysis supporting its suggestion that the State Board has the authority to determine the “taxability” of locally assessed properties.

[¶14] The property owners argue the State Board has itself “recognized and exercised its legal authority to recognize [tax] exemption[s] in the past.” However, a governmental body may certainly reexamine prior decisions or legal positions and correct erroneous interpretations of the law. See Amerada Hess Corp. v. State, 2005 ND 155, ¶ 22, 704 N.W.2d 8, and cases collected therein. The property owners also attempt to support their position with Trollwood Vill. Ltd. P’ship v. Cass County Bd. of County Comm’rs, 557 N.W.2d 732, 735 (N.D. 1996), in which this Court made the innocuous statement that “[t]he owner of any property assessed by a county may appeal the assessment to the state board of equalization, which meets in August to equalize assessments throughout the state. N.D.C.C. §§ 57-12-06(3), 57-13-03, and

57-13-04.” Trollwood Vill. Ltd. P’ship involved the property owners’ appeal from a board of county commissioners’ decision on the valuation of the property, not the tax exempt status of the property. 557 N.W.2d at 734. This Court’s statement cannot be interpreted to provide the State Board with the authority to consider matters unauthorized by state law.

[¶15] We conclude the State Board has no authority under state law to reclassify locally assessed property as exempt from taxation. The district court did not err in ruling the State Board “is without any legal authority to reverse [the County Board’s] decision and grant [the property owners’] request for exemption.”

III

[¶16] Our conclusion the State Board has no authority to grant the property owners the relief they seek necessarily disposes of their arguments that the district court erred in dismissing the State Board from the action under N.D.R.Civ.P. 21 and that the court erred in denying their motion to amend the pleadings and issue a writ of mandamus “requiring the State Board to act.”

[¶17] A motion under N.D.R.Civ.P. 21, which governs misjoinder and nonjoinder of parties, is left to the discretion of the district court. See Reiling v. Bhattacharyya, 270 N.W.2d 562, 564 (N.D. 1978). A court’s decision on a motion to amend a pleading will not be overruled on appeal unless the court has abused its discretion. See Kambeitz v. Acuity Ins. Co., 2009 ND 166, ¶ 11, 772 N.W.2d 632. Mandamus requires the showing of a clear legal right to performance of the particular acts sought to be compelled by the writ, and whether to grant the writ is within the court’s sound discretion. See Lamb v. State Bd. of Law Examiners, 2010 ND 11, ¶ 4, 777 N.W.2d 343. A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, or when it misinterprets or misapplies the law. See Estate of Cashmore, 2010 ND 159, ¶ 21, 787 N.W.2d 261.

[¶18] Here the district court correctly ruled the State Board had no legal authority to grant the property owners the relief they sought. Consequently, we conclude the court did not abuse its discretion in dismissing the State Board from the action and in denying the property owners' motion to amend the pleadings to seek a writ of mandamus.

IV

[¶19] The property owners argue that under the circumstances, the district court erred in dismissing their appeal from the County Board's decision "because it was not timely filed."

[¶20] An "aggrieved person" may appeal to district court "from any decision of the board of county commissioners." N.D.C.C. § 11-11-39. Appeals from decisions of a board of county commissioners are governed by N.D.C.C. § 28-34-01. See N.D.C.C. § 11-11-43. Under N.D.C.C. § 28-34-01(1), the "notice of appeal must be filed with the clerk of the court within thirty days after the decision of the local governing body." Timely filing of an appeal from a decision of a board of county commissioners is mandatory to invoke a district court's appellate subject matter jurisdiction over the appeal. See Smith v. Burleigh County Bd. of Comm'rs, 1998 ND 105, ¶ 6, 578 N.W.2d 533.

[¶21] The property owners do not dispute that they did not file a notice of appeal within 30 days of the County Board's July 7, 2009, decision. Rather, the property owners argue the County Board's decision was not "finalize[d]" until the State Board issued its decision. However, the property owners acknowledge that an appeal to the State Board under N.D.C.C. § 57-12-06(3) and an appeal to district court under N.D.C.C. § 11-11-39 were "both . . . available as remedies." The circumstances here are analogous to those present in City of Grand Forks v. Board of County Comm'rs, 284 N.W.2d 420 (N.D. 1979). In City of Grand Forks, this Court addressed whether

the Legislature's creation of a tax appeals board¹ superseded an aggrieved person's right to appeal an adverse tax decision of a board of county commissioners to district court under N.D.C.C. § 11-11-39. 284 N.W.2d at 421. This Court said:

We find nothing irreconcilable about an apparent intent to continue to give taxpayers, or others aggrieved by a tax abatement determination, the alternative of appealing directly to the district court or proceeding first through the Tax Appeals Board.

This does not mean that we now encourage that which we criticized in Shark Bros., Inc. v. Cass County, 256 N.W.2d 701, 705 (N.D. 1977), where we said:

"We do not favor or encourage, nor can we sustain, bifurcated self-induced or self-initiated procedures, one in the administrative process and one in the judicial process covering the same legal questions."

Accordingly, the City having elected to use the remedy provided by § 11-11-39, other remedies which might have been utilized will not be available.

Id. at 422. Here, the property owners elected their remedy by appealing the County Board's decision to the State Board. A decision by the State Board was not necessary to "finalize" the County Board's decision. The County Board's decision was final when it was issued.

[¶22] The property owners also contend the time for filing a notice of appeal from the County Board's decision should have been extended under the doctrine of equitable tolling. The doctrine of "equitable tolling is an exception to a statute of limitations," Kimball v. Landeis, 2002 ND 162, ¶ 29, 652 N.W.2d 330, which has never been adopted by this Court. See Superior, Inc. v. Behlen Mfg. Co., 2007 ND 141, ¶ 28, 738 N.W.2d 19. "The equitable tolling doctrine operates to protect the claim of a plaintiff who has several legal remedies and pursues one of the remedies reasonably and in good faith, thereby tolling the limitation for the other remedies."

¹The Tax Appeals Board was later held to be unconstitutional in Paluck v. Board of County Comm'rs, 307 N.W.2d 852 (N.D. 1981).

Id. The 30-day time limit for filing an appeal from a decision of a board of county commissioners is not a statute of limitations, but is a statute conferring appellate subject matter jurisdiction upon a reviewing court. See Smith, 1998 ND 105, ¶ 6, 578 N.W.2d 533. The terms of the statutes governing appeals control whether the time for taking an appeal may be tolled. Id. at ¶ 8. In Smith, this Court rejected the argument that a petition for reconsideration tolled the running of the time within which to appeal a decision of a board of county commissioners, explaining “neither N.D.C.C. § 11-11-39 nor N.D.C.C. § 28-34-01 recognizes any post-decision motions which would extend the time to appeal a decision by a board of county commissioners.” 1998 ND 105, ¶ 8, 578 N.W.2d 533. Likewise, neither N.D.C.C. § 11-11-39 nor N.D.C.C. § 28-34-01 recognizes a tolling exception to the 30-day time limit while related proceedings are pending before the State Board. Compare Investors Title Ins. Co. v. Herzig, 2011 ND 7, ¶¶ 10, 17, 793 N.W.2d 371 (pendency of related appeals in state Supreme Court did not toll statute providing for cancellation of judgments after certain periods of time have elapsed where there was no statutory authority for tolling under those circumstances). The 30-day period for appealing from the County Board’s decision was not tolled under the circumstance present here.

[¶23] Because the property owners’ appeal from the County Board’s decision was untimely, we conclude the district court did not err in dismissing the appeal.

V

[¶24] The property owners contend the district court erred in denying their request to allow the filing of “amicus curiae b[r]iefs from other North Dakota property owners of similarly situated properties which are granted exemption from taxation.” They cite no authority in support of the proposition and concede that “this is apparently a moot point.” We, therefore, decline to address it. See State v. Witzke, 2009 ND 169, ¶ 4, 776 N.W.2d 232 (citing Owens v. State, 2001 ND 15, ¶ 31, 621

N.W.2d 566 (VandeWalle, C.J., concurring)) (“[W]e will not consider issues where there is a failure to cite supporting authority and briefing is inadequate.”); State v. Fischer, 2008 ND 32, ¶ 27, 744 N.W.2d 760 (Ordinarily, we do not address moot issues.)

VI

[¶25] We have considered other arguments raised and conclude they either are unnecessary to the decision or are without merit. The judgment is affirmed.

[¶26] Dale V. Sandstrom
Daniel J. Crothers
Mary Muehlen Maring
Carol Ronning Kapsner
Gerald W. VandeWalle, C.J.