

Mr Chairman and members of the Committee:

Thank you for allowing me a few minutes to present my testimony. Full disclosure, my name is Dennis Huber, and I am in support of this bill. I am an associate of Rep. Steve Vetter in the appraisal business covering the eastern part of North Dakota. I have been instrumental in changing the non-conformity provisions in the cities of Casselton, Lisbon and Mayville. I testified on behalf of a similar bill in the last legislative session that passed with a large majority in the House, but narrowly failed in the Senate. This bill includes a new provision that allows for an additional option for the local political subdivisions.

Whereas my prior testimony focused on the specifics of where and why properties became non-conforming and reasoned that it was mainly unintentional consequences of updating planning and zoning documents, today I charge that in most cases it resulted from gross negligence on the part of those in charge of designing and applying the residential classifications. The trust that homeowners grant to local government has been violated.

Sometime in history some organizations, such as the predecessors of today's League of Cities and Counties or the ND Planner's association, provided a boilerplate zoning document that was widely adopted thru out political subdivisions in ND and elsewhere. Inherent in their thinking, the non-conformity restrictions were designed to restrict maintenance and repair to existing houses that were legal conforming houses prior to the adaptation of the new plan for the simple purpose of forcing them into decline so that the neighborhoods could be rebuilt under the new requirements or redeveloped into a different use. There can't be any other explanation for the restrictive rules.

If effective and enforced the neighborhood containing these properties would deteriorate and collapse unless the homeowner kept up with maintenance and replacements on an ongoing basis. However, homeowners generally protected their properties by making those repairs whether legal or not. I know of zero areas where this provision has resulted in the total decline and redevelopment of a better land use. Instead, it has resulted in blight and a transition into rental houses.

Clearly the non-conforming restrictions on repair and replacement were not often recognized by local adopters of new ordinances, nor are they well known by commissioners, Realtors, or even appraisers. The statement that existing properties would be "Grandfathered" is prevalent, but the provisions just means that the house can stay as it is as long as it doesn't need maintenance, major repairs or reconstruction. Many restrict the amount of maintenance in a given time period and almost all prohibit repairs or rebuilding if the cost exceeds 50-60% of its value. The only solutions to the homeowner are either to change the zoning ordinance, or an application for a variance. These solutions take time and expertise the owner usually lacks.

How prevalent are non-conforming houses? My research shows that they are everywhere a political subdivision has updated their zoning ordinances in last 50 or more years. Some areas such as Minot and Mandan appear to have few, whereas Burleigh County, most small cities, Fargo and Grand Forks are littered with them. I estimate Fargo to have more than 1,000 and Grand Forks is in the 500 range.

Why does it matter? If properly disclosed, it prevents secondary market financing whether it be a sale, or a refinance to take advantage of today's low fixed interest rates. It also prevents senior citizens from accessing their equity to stay in their home. If undisclosed, it can result in losses to banks and financing

companies and liability for Realtors and appraisers. Most importantly, it can harm homeowners financially and turn their lives into chaos.

Fannie Mae's Selling Guide states that properties that have restrictions on maintenance, repairs, or rebuilding are not eligible for financing. They set the standard in the industry for most secondary market mortgages and many local bank lending is based on their standards even if the mortgage isn't originally sold.

Financial loss to a homeowner can be significant even if insured. In a partial loss, your homeowner's policy is going to want to pay the cost to repair even if the building permit is denied, leaving the homeowner with a 50% or more loss due to the exception in the policy from losses caused by government actions. Case law shows that in some lawsuits, Insurance law has been applied successfully to cover some these cases when the house was condemned. Even so, the homeowner may be faced with a two-year lawsuit while living in a motel.

Due to a lack of understanding, Realtors can be liable for material facts that affect the property that were not disclosed. Appraisers not fully investigating, reporting, and considering these facts in their appraisal are certainly liable and are also subject to licensure sanctions for material errors. Your local bank that sold the mortgage to Fannie Mae would get it back if it's caught on review.

We are taught in Real Estate Classes that Zoning Law is absolute. I can't sue the city because a change in zoning resulted in a drop in value of my house. However, ND Century Code provides the basis of zoning authority on the premise that their actions are in the best interests of the community. During the last session, I asked the opponents to cite examples of how this law has benefited any neighborhood or community. Not one reasonable individual case was cited that would have changed anything. If you measure the benefit to any community versus the harm to individual homeowners, how can the zoning authorities defend that they are acting within the authority given to them by ND Century Code.....?

The opponents of this bill will raise a number of concerns, and if last session's arguments persist, they will attempt to confuse us with situations that don't apply to this part of the zoning code. Items like "Use" instead of structure, property condition that applies to building code, hazards that applies to fire code and general safety and health provisions that aren't a part of this issue. Local control instead of a mandate from the state is the larger concern.

Realistically, there is no effective way to educate all of the political subdivisions on this issue in a timely manner. First of all, most do not understand that these restrictions exist in their ordinance. It simply seems too harmful to be true. Secondly, there is no motivation to do so until a citizen is harmed, and then they lack the expertise to change the ordinance in a way that works without unintended consequences.

Instead of opposing a reasonable solution to this bill, the League of Cities and Counties and the ND Planners Association should be supporting this change because they have been ineffective in providing a solution that is in the best interest of the homeowners without restricting the zoning boards of the tools to work in the best interest of the communities. This tool has never resulting in a meaningful benefit, and in fact if you talk to those cities that have a provision similar to this bill, the zoning administrator will often tell you that it has been a relief and actually allows them more flexibility in doing their job.

If the local authority wants to get rid of a property, or redevelop a neighborhood over time, the current provision isn't going to accomplish it. If they'd use their imagination there are more effective ways. Or just plagiarize a provision from Moorhead, MN used in specific redevelopment areas to work around the non-conformity law in their state to accomplish their goals.

In closing, I thank you for your time and consideration to this bill. I trust that you will discern the facts of the situation, turn a critical eye to the opposition's statements, and act in the best interests of your constituency.

I'd be happy to answer any questions now, or after the opposition to the bill has presented their case. I have attached a Question-and-Answer addendum that answers specific objections.

Sincerely,

Dennis J Huber

## Common Concerns:

Q: When new changes to the zoning classifications and provisions are proposed, are the owners fully informed and have the opportunity to object?

A: Fully Informed is the key here. When the new zoning documents rezoned much of Fargo in the late 90's, thousands of houses, in fact whole large neighborhoods fell into the non-conforming status. In fact, the provisions were worse than most found today because it expressly denied any variances due to lot size at the time. Even the mayor's house fell into this category. If homeowners were fully aware of the consequences, there would have been riots at city hall.

Q: Grand Forks City has been stating that it allows them to work with homeowners toward a better individual solution.

A: Since the prior legislative session, they have been very cooperative in granting zoning changes and variances. Never before in my 27 years of raising objections to city administrators has it resulted in a variance or a zoning class change. However, keep in mind that with this law change, they can continue to work with an owner on achieving a solution better than the minimum required under this bill.

Q: Since the last session, have political subdivisions made changes to reduce the number of non-conforming houses?

A: I've noticed changes in rural Grand Forks County's documents as well as West Fargo finally changing one of their neighborhoods from commercial to residential after a 40-year failed experiment that harmed a very needed 30 affordable and well-built houses. So, yes, some progress has been made.

Q: Why don't political subdivisions take a hard look at their properties and apply appropriate classifications so that this issue is reduced?

A: Sometimes these occurred for other intended reasons, such as preventing the addition of apartments to single family houses, as occurred in Fargo. The easy solution is to simply not allow adding them to existing single family dwellings in a single statement in the document. Instead, they developed a minimum site size per unit that exceeds the site size of lots in the areas.

Changing the zoning classification or documents that may restrict a homeowner's rights requires legal notices and public meetings. It's a lot of work that busy or small departments don't have the time for or money to pursue.

Q: Upon sale or financing, who is responsible for making sure that all parties are informed about the consequences of these restrictive zoning provisions:

A: To the inexperienced, a zoning ordinance is a complex document with provisions that appear to be in conflict with each other and must be cross referenced by plat maps, legal descriptions and physical measurements.

Realtors must inform parties to a transaction of anything they know that may affect the property. They are not experts in this venue, this issue has not been widely publicized, and venturing into it without expertise is a recipe for liability. When its zoned something other than residential they are likely to

consult the city. However, most non-conforming properties are within a zoning that allows residential by a right.

Title Opinion Attorneys and Title Companies never make any statements regarding compliance with zoning laws for similar reasons. It is beyond the scope of their responsibilities.

Appraisers must address it, but it is very common for it to be overlooked. The report requires us to answer whether the property is legal, legal non-conforming, or illegal. If it is anything other than legal, they ask if it can be rebuilt if partially or fully destroyed. If that answer isn't clearly positive, such as a variance is possible, most will then ask if there is a history of variances for this purpose. Other than Grand Forks on small lots, I've never been able to obtain a list of variances for site size mostly likely because variances are applied for when someone wants to enlarge a property rather than for financing.

Q: Can't Realtors and Appraisers just call the zoning authority and find these things out?

A: That is the common protocol. I stopped doing that after reading the Casselton Ordinance because when it comes to non-conforming properties, they are wrong more often than not. It's just not reliable. The standard in the industry is to seek readily available information, and or do what your peers do. Because of online information and prompt response via email, it is my standard to review all of the documents.

Q: Certainly, counties like Cass or Burleigh would give you correct answers?

A: Not likely. In Cass, many rural property's minimum lot size may be 2 acres, so you'd get the answer of it being legal conforming. However, because it has a septic system the minimum is 3 acres. In Grand Forks county the answer almost always was that it was conforming, and when questioned it was that the classification could be changed. Recently, they corrected this problem.

Q: What are your thoughts about safety because they are too close to each other?

A: Properly maintained, proximity to a neighbor creates limited risk due to building code on firewall provisions. Safety on a house that has 5' between foundations is clearly superior to a twinhome.

Q: What about being in dangerous places?

A: Being in an industrial zoned area turns that house into an illegal property which has its own provisions.

Q: What about being too close to the highway?

A: When the highway expanded, no doubt there was a government action that needed to be compensated for in the eminent domain provisions under state law. If they didn't consider this factor and didn't put any restrictions on it, someone failed to do the proper thing.

Q: Senator Lee stated that a task force would be formed to work on the non-conformity issue after the last session. What do you know of its recommendations or work that has been done?

A: Absolutely nothing even though I contacted Sen. Lee immediately after the prior session. I've asked for names, to be included, and if not to at least be informed at least 5 times. I have no knowledge if they exist, who they are if they exist, or any efforts they have made to reduce the problem.