



North Dakota Planning Association  
Testimony presented by Natalie Pierce #718

## House Bill 1222 Strongly Urging a “Do Not Pass” Recommendation

The very simple point NDPA wishes to convey is that HB 1222 is a completely unnecessary bill. There is no provision of the bill that could not be easily adopted by the political subdivision where supporters of the bill live and work, if it were seen to be in the best interest of the local community to do so.

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### *Bill language is vague, and has far-reaching, negative consequences*

The language of the bill is vague and inconsistent. If enacted, it would have a chilling effect on zoning and building code enforcement, as well as the enforcement of health codes, because political subdivisions would not have clear direction as to where their authority begins and ends, with respect to residential structures. The bill would also immediately, and categorically, legitimize those lots and structures that were created illegally.

### *Political subdivisions are not, and should not act as, insurance guarantors*

What are the circumstances in which this bill would be applied? In almost all cases, when a residential structure has been damaged beyond 50% of market value, the structure is a total loss. In a total loss scenario, private insurance will pay the full insured value of the structure. It is common for insurance policies to also pay out a premium for excess costs resulting from the imposition of local zoning regulations. Any argument that a political subdivision is “taking” all value from a property owner by holding a property in a non-conforming status is a gross over-simplification.

### *Legal basis for zoning regulation*

You will often hear the refrain “you can’t interfere with my private property rights” in debates about zoning regulation. This phrase is powerful and strikes at the heart of what many North Dakotans hold most dear. But, in its simplicity, this phrase falls short of being 100% accurate. So it is important to recall some facts:

Fact 1) Property boundaries have not existed since the beginning of time; they are a creation of the government.

Fact 2) The U.S. Supreme Court has ruled, for many decades, that it is a legitimate exercise of the police power of the state to organize land uses for the purpose of protecting and enhancing the overall health, safety and well-being of the community at large. This means that the bundle



of rights inherent in the ownership of real property is subject to some degree of compromise in the face of a compelling government interest.

Fact 3) Across the past century, the give-and-take between state law, local regulation, and legal review by the courts, has continued to better define where that compromise lies between a land owners' rights and the interests of the larger community, taken as a whole. And the process continues...

The status of a property as "non-conforming" is an example of one of those compromises between a property owner's rights and the legal ability of a political subdivision to intervene for the purpose of reducing land use conflicts, for the good of the community as a whole. Testimony from the cities of Grand Forks, Minot and Williston has provided some tangible examples of these conflicts. Hopefully these examples have been helpful to illustrate some of the ways in which the use of non-conforming status aims to reduce these conflicts over time, and why the categorical removal of this planning mechanism across the state would have negative consequences for many communities.

Again, if various political subdivisions in North Dakota see this as a critical issue, they have every ability to adopt those regulations at the local level. For these reasons and more, NDPA urges a "do not pass" recommendation.