

MR Chairman, members of the Committee and attendees of this hearing:

My name is Dennis Huber, a residential appraiser based in West Fargo. I am a Government Affairs committee member of the ND Appraisers Association. I am in support of this bill.

Thank you for allowing me to present my full testimony. To show my respect for your time, my presentation will be concise, on point, non-repetitive and will touch only a few of the high points of why this bill is important.

This bill is not about restricting local control. This is about protecting our most sacred right, that is the safety and security of our own home. This legislative body has shown its support for this ideal by such laws as "the castle law" and by not allowing eminent domain for economic reasons. Why would we then allow zoning regulations, that if followed, would result in the forced demise of our own home over time? All we ask is to allow us to maintain, repair and, if necessary, rebuild our homes. All we want is to protect what we already have.

It is important here to define what this bill does, and more importantly what it does not do. It does allow for the maintenance, repair or rebuilding of a residential structure that is, by default, labeled as a non-conforming residential structure.

This bill does not affect use, or non-conforming use. It does not touch upon building code, fire code, sanitary or health safety regulations. Its not complicated, overreaching or connected to new development.

Let us take a moment to define what a non-conforming residential structure is and what it is not. It is simply a property that once was legal conforming, meaning that it met all of the requirements of the zoning classification or zoning regulations but due to a change in those regulations it now does not comply with one or more of the new rules.

It is not designated as such because of disrepair, or because it was built in violations of the zoning law. It is not a house located in an industrial zone, or any zone that forbids residential structures. Those are illegal or unpermitted structures. This bill does not affect any of those.

So, lets quickly review the non-conforming clauses that are found through out all of North Dakota.

The ubiquitous clause found in many of the ordinances includes the following:

"It is the intent of this chapter to permit these nonconformities to continue until they are removed, or for the reasonable useful life of the building, but not to encourage their survival.

On any nonconforming structure, work may be done in any period of twelve (12) consecutive months for ordinary repairs, or for repair or replacement on nonbearing walls, fixtures, wiring, or plumbing, to an extent not exceeding ten (10) percent of the current replacement cost of the nonconforming structure.

Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than sixty (60) percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter." Which usually means it cannot be reconstructed at all. To shorten my words, I shall hereafter refer to these sentences as the "**evil clause**". The bill replaces the evil clause with the least restrictive provisions possible to enable the public

to maintain and keep their home. It does it in a way that allows for local control without affected other methods of assuring us of safe housing and well-planned community growth.

As Joe Sheehan, a banker board member of the Appraisal Board has or will testify, restricting the maintenance, repair or rebuilding of a residential structure results in rejection by Fannie Mae. Why do they care? Because it imposes a risk to the financial markets as well as the financial security of the homeowner. It imposes risks upon an unsuspecting homeowner and financial liability upon Realtors, mortgage loan originators and appraisers.

Where are all these non-conforming houses? It is rare that a non-conforming house is a single property amongst conforming properties. Most typically it is the whole block or the whole neighborhood. Often this happened without intent, and other times it was the unintended consequence of political or administrative efforts to avoid the transition of a neighborhood into rentals. In fact, it results in the opposite because it prevents owner occupant buyers from getting a mortgage, thus leaving it for investors to buy at a discount.

Let us put the boots on the ground and see the affect. Behind me you see an actual case that came to me last August. This house had been totally and completely updated less than 5 years ago and now was being purchased subject to a VA loan. As you can see, the lot frontage is much less than Mayville's minimum of 75', the side yards are less than the minimum of 15', and the setback is much less than 30'. Are those requirements realistic in the inner city of any town in North Dakota? Of course not, but those requirements are similar to Hatton, Casselton, Kindred and Lisbon.

In my 28 years of appraising in Mayville, I had no reason to suspect that the minimums were so high, so we just relied upon the city clerk telling us that it was zoned residential, therefore legal. In this case, I requested and received a full copy of the zoning map and city ordinance. Unfortunately, it contained the ***Evil Clause***.

I immediately called the zoning administrator and asked if the city had ever issued or denied a variance for any violations of the minimum requirements. The only case found in the 8 years of her employment was for a side yard setback on the enlargement of a house on a large lot. I did this because sometimes a lender will accept a case like this if there is a history of variances for similar reasons. Those lenders are skating on thin ice, but some are known to take cases with such a history based on the "fairness doctrine" that all citizens are to be treated fair and equal. If a variance was issued before, then it likely will again be their thinking.

I informed the lender and VA, asked for permission to communicate with the city attorney to confirm my conclusion. In my discussion with the zoning administrator, I explored the possibility of obtaining a variance or a replacement of the Evil Clause with the wording present in this bill, hereafter referred to as the "Good Clause". The city attorney and the zoning administrator both agreed that if a variance were given, the commission would have no basis for ever denying any variance because the property in question violated all but one of the minimum requirements. Thus, the zoning minimums would be moot.

The Mayor, Realtors and buyer were made aware of the issue and the possible solution. I provided a letter showing that there were currently 6 homes under contract that were non-conforming and 16 sales in the past 2 years were also non-conforming. Had I informed the Realtors of the buyers on those 6 houses, some would have likely fallen apart, and most would have delayed their closing awaiting the

outcome. Had I informed the 16 homeowners of their situation, they would have shown up at the meeting in masses without masks. It would have disrupted the market, caused a loss of reputation for the Realtors involved. This is what we are trying to avoid by creating a statewide standard instead of alerting the affected.

The city attorney supported and even increased the reach of the Good Clause and the vote was 5-0 in favor. The house behind me got a very happy new owner, but the seller read me the riot act for delaying the sale. I guess no good deed goes unpunished.

So, why do we need a state law prohibiting the evil clause? Primarily because 99.9% of the homeowners do not know their property is non-conforming, 99.9% of the Realtors never check beyond conforming **USE**, 80% of the appraisers never investigate the specifics of the ordinance to see if there is a problem, and at least 50% of the city staff will get it wrong when the appraiser calls.

What are the primary risks?

To the homeowner, it is potential financial ruin. It would take too long to illustrate all the effects if a property is partially destroyed, and the political subdivision denied the right to repair it. Your own homeowner policy excludes losses caused by government actions. They are not going to pony up the difference between the cost of repairs versus the replacement cost just because the city denied a building permit. I have copies of three court cases in North Dakota and several settled cases to prove that point. Even if the court rules with the homeowner, these cases take years while you are either paying the mortgage on a house you cannot live in or let it go into foreclosure and ruin your credit for the next 6 years or more.

The Realtor who failed to inform the buyer of material facts affecting the property incurs a massive liability. Reputation and financial and possibly license sanctions.

To the lender. Upon review or foreclosure, if found, the originator has the liability to "cure" the loan. In the case of a foreclosure, they are liable for all losses whether the house had damage or not. This is your local banker, your local mortgage company.

To the Appraiser: The appraiser is supposed to be the gate keeper preventing any of the above from happening. Yet, those 16 sales in Mayville got mortgages most likely because the appraiser did not do their job. The lender can sue the appraiser, but its not likely that the homeowner will be successful because of the lack of a client relationship. Of course, the appraiser also risks a lifetime sanction on his license.

So, we have talked about what happens because one house is non-conforming. How does non-conformity affect the neighborhood, the community? When the appraiser does his job correctly, well informed buyers will not pursue the purchase. Likely terms for a mortgage on such properties include at least 25% down, an adjustable-rate mortgage starting at about 5.5% interest for an in-house loan and are only given to good banking clients. Thus, the market value of those houses falls low enough for investors to swoop in. Over time, the neighborhood turns into mostly rental houses, the exact opposite of what the zoning authorities intended.

The reality is that if the majority of the non-conforming houses were intentionally zoned that way for a solid reason, we would not be here because they would be rare. But that is not how it happens. That is

not how Fargo came to have at least 1000 non-conforming single-family houses, nor is it why hundreds of homes in Grand Forks do not comply with their zoning classification. The story is too long to tell, suffice it to say it resulted from trying to solve a problem without fore thought to the consequences. Simply inserting one sentence into the code that prevents an existing residential property from adding additional living units would have solved it. Instead, we have mass confusion.

When it comes to small towns and county zoning boards, their code seems to focus on how they want to see the growth going forward. Unfortunately, its almost always applied to the existing base resulting in a massive amount of non-conforming houses. Most of them have not taken out the "Evil Clause" and frankly I do not believe 10% of the commissioners know that it exists within their ordinance.

Variances: Always the solution to negligent zoning seems to be the easy answer. Their wording illustrates that their purpose is to allow a change or enlargement under certain circumstances. When one applies for one simply to allow something to continue to exist if something happens it usually results in a refusal to consider it. Variances granted set a precedent, so they are not granted without good reason. Although they can solve the issues that the "good Clause" seeks to cure, they are not intended or worded properly to be a catch all for zoning mishaps.

Opponents raise the concern that this should be handled locally, that it is not a statewide issue. Well, yes, this problem exists statewide. From Cass County to Burleigh County, from Mandan to Valley City the problem is present. 53 counties and 357 cities and I would suggest that if they have a zoning law, they have a non-conforming house. Is there a reason the State should not be concerned about their welfare?

The question should be, has the Evil Clause ever shown to be beneficial to the community? Any community, any neighborhood? ND Century Code 40-48 grants the authority to zoning boards on the basis that they use their authority to the benefit of the community. Facts are that it prevents homeownership and turns neighborhoods into rental housing. If its use does not meet the standards the constitution sets forth, shouldn't be illegal?

Opponents charge that removing the Evil Clause would impede their ability to properly address the needs of the community. Fact is it does nothing positive at all, not even on a house-by-house basis. The only time it comes into effect is if a property encounters a disaster. Is that the time to add insult to injury? Zoning authorities have other tools in their basket. They can target problem areas in ways that actually work by zoning them into illegal structures, by creating redevelopment zones, or by creating tax incentives to affect change. The Evil Clause is not proactive, its reactive to a disaster.

Opponents have charged that one size does not fit all. Do you have any testimony from the cities or states that have the Good Clause saying it was a bad idea? The language in the bill has been tested by large cities and small, by other states for many years.

In closing, all we wish for is for you to consider all the facts. Consider whether the Evil Clause actually makes a difference in any of the opponent's arguments. More likely, there is an alternate solution.

I ask that you hold the interests of your constituents over an outdated provision that jeopardizes the security of their home, the most basic of their needs for feeling safe. Let them sleep soundly.

Sincerely,

Dennis J Huber