



North Dakota Planning Association  
Testimony presented by Natalie Pierce #718

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

Very simply, 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 the handful of bill supporters live and work, if it were seen to be in the best interest of the local community to do so.

Vibrant and thriving communities do not come about by chance. Anyone who lives in such a community is reaping the benefits of decades of diligent work carried out by local leaders, planners, developers, stakeholder groups, and community champions. Planning work often incites conflicts between those who choose to prioritize short-term benefits, and those who understand that a little discomfort today is necessary to accrue benefits that will be reaped by the community as a whole in decades to come.

The success or failure of planning efforts is dependent on coordination between many moving parts: between community long-range plans, zoning and subdivision regulations, building codes, health and safety codes, development review processes, and host of other activities, plan types, and stakeholder involvements.

The state of North Dakota has granted to local jurisdictions the authority to plan and exercise zoning powers because it has been demonstrated that these activities are essential to healthy growth and prosperity. If the state legislature allows an isolated handful of bill proponents to chip away at the entirety of those zoning powers, for the limited benefit of a select few, we will see the effectiveness of planning activities unravel over time, to the detriment of many local communities.

At a minimum, this bill is vague and hardly in a state to move forward for adoption into law. For this reason alone, it is critical that the committee forward on a “do not pass” recommendation. Despite the ND Planning Association’s official position on this bill as a do not pass, NDPA is offering amendments to limit the detrimental impacts this bill will have.



## HOUSE BILL NO. 1222

Representatives Vetter, Dockter, Ertelt, Hatlestad, M. Johnson, K. Koppelman, Marschall, Sanford  
Senators O. Larsen, Meyer, Vedaa

A BILL for an Act to create and enact sections 11-33-17.1, 40-47-05.1, and 58-03-14.1 of the North Dakota Century Code, relating to nonconforming structures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 11-33-17.1 of the North Dakota Century Code is created and enacted as follows:

11 - 33 - 17.1. Zoning - Nonconforming residential structure.

1. If a legal non-conforming principal residential structure, located within a residential zoning district, on a conforming lot or a legal non-conforming lot, is damaged beyond fifty percent of its value, the local zoning authority shall not prohibit the reconstruction or restoration of a principal residential structure on the subject property unless the construction or restoration of a structure on the subject property would:
  - a. Violate existing building or fire codes.
  - b. Violate existing sanitary or health standards imposed by the local health district.
  - c. Jeopardize the ability of the local zoning authority to maintain eligibility in the National Flood Insurance Program or would increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.
  - d. Pose a risk to public health or safety.
2. Nothing in subsection 1 shall be interpreted as limiting the authority otherwise granted to a political subdivision to condemn, or compel a property owner to remedy, a structure that poses a hazard to public health or safety.
3. A zoning authority may still require a development review process related to the reconstruction or restoration of a residential structure that has been damaged beyond fifty percent of its value and may impose conditions on the reconstruction or restoration of the residential structure, as otherwise authorized. Any such review process must be completed within 90 days of receipt of a complete application. If a political subdivision requires such a review process, the owner of the destroyed or damaged structure must submit a complete review process application to the zoning authority within 6 months of the date the destruction or damage occurred and submit a complete building permit application within 12 months of the date the destruction or damage occurred.
4. If the property owner does not submit complete applications according to the timeframes detailed in subsection 3, the zoning authority may fully enforce existing regulations related to non-conformities, as otherwise authorized, up to and including the complete prohibition of the rebuilding of a residential structure on the subject property, if such a structure does not forward



the goals, or abide by the policies, established in the community's officially adopted comprehensive plan.

#### Definitions

**Development review process:** the process of a zoning authority considering an application for a property improvement for purposes of imposing requirements for setbacks, massing, building materials, availability of off-street parking and all other factors established by the zoning authority as being relevant to the safe and orderly development of the community.

**Legal non-conforming lot:** a lot or parcel which, in whole or in part, does not conform to the regulations of the district in which the lot is located, but existed as a legal lot of record prior to the adoption of the regulation(s) that now make the lot non-conforming.

**Lot of record:** a lot or parcel that was lawfully created through compliance with all applicable subdivision and land use regulations that were in effect at the time the lot or parcel was created.

**Principal structure:** the main building or structure on a lot that is utilized for the principal use that the property is zoned for. A principal structure is distinct and different from accessory structures such as detached garages, sheds or accessory dwellings.

**Residential zoning district:** a zoning district established by a zoning authority to provide areas of residential character, and only such uses and forms compatible with this purpose, and in which residential structures are allowed by right.

Same text for...

SECTION 2. Section 40-47-05.1 and SECTION 3. Section 58-03-14.1



### **HB 1222 Opposition Key Points**

- This is a completely unnecessary bill. Any political subdivision in North Dakota could adopt some or all of the provisions of this bill if local leaders decided it was in the best interest of the community to do so.
- Long-range plans, zoning codes, subdivision codes and building codes work together as a whole system to guide and shape development for the future benefit of a community. Allowing special interest groups to chip away at the legal foundations of planning will erode the ability of political subdivisions to achieve long-range community goals.
- Local governments impose review processes in order to help guide proposed development in such a way as to forward the goals and policies established in long-range plans. This bill would allow all residential structures (which is a very large share of all development) to completely circumvent that review process.
- The engrossed bill from the House leaves it unclear to local political subdivisions where their enforcement authority begins and ends.
  - The bill leaves it unclear if a Health District or zoning authority can enforce health code violations (related to condemnation of an unsafe structure, the requirement to clean up a failed septic system, etc.) on a non-conforming residential structure that becomes partially destroyed.
- This bill opens the door for structures that were never permitted in the first place or lots that were never formally subdivided to become legitimized. These problem properties will be allowed to persist indefinitely into the future.
- The bill doesn't go far enough to preserve a community's ability to regulate development in flood hazard areas. A political subdivision's NFIP Community Rating System status may be downgraded or lost. This would mean a loss of the flood insurance discounts that come along with CRS status.