

**HOUSE BILL NO. 1422**

Introduced by

Representatives Vetter, Klemin, Koppelman, Motschenbacher, Sanford, Toman

Senators Barta, Cleary, Clemens, Larsen, Meyer, Vedaa

1 A BILL ~~for an Act to amend and reenact subsection 3 of section 11-10.1-05, section 11-33-04,~~  
2 ~~subsection 1 of section 11-33-18, subsection 6 of section 40-05-02, sections 40-47-06,~~  
3 ~~40-19-01, and 58-03-13, subsection 2 of section 58-03-19, and section 58-09-03 of the North~~  
4 ~~Dakota Century Code, relating to notices triggering zoning inspections when assessments are~~  
5 ~~conducted and building permits are issued.~~ for an Act to create and enact sections 11-33-17.1,  
6 40-47-05.1, and 58-03-14.1 of the North Dakota Century Code, relating to nonconforming  
7 structures in counties, cities, and townships.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** ~~Subsection 3 of section 11-10.1-05 of the North Dakota~~  
10 ~~Century Code is amended and reenacted as follows:~~

11 ~~— 3. — The county director of tax equalization shall supervise all individuals performing~~  
12 ~~assessor services in the county and arrange for the assessment of property within the~~  
13 ~~county, except within the jurisdiction of a city or township in which the governing body~~  
14 ~~retains a certified class I or class II assessor. When an assessment is performed, the~~  
15 ~~county director of tax equalization immediately shall notify the planning commission of~~  
16 ~~the assessment for purposes of section 11-33-04.~~

17 ~~— **SECTION 2. AMENDMENT.** Section 11-33-04 of the North Dakota Century Code is~~  
18 ~~amended and reenacted as follows:~~

19 ~~— **11-33-04. County planning commissions authorized — Membership.**~~

20 ~~— 1. — The board of county commissioners of any county desiring to avail itself of exercise the~~  
21 ~~powers conferred by under this chapter shall establish, by resolution, a county planning~~  
22 ~~commission to recommend the boundaries of the various county zoning districts and~~  
23 ~~appropriate regulations and restrictions to be established therein in the districts. In~~  
24 ~~counties with three-member boards of county commissioners, the planning~~

1 commission consists of seven members, of whom at least one must be appointed from  
2 the governing body of the city that is the county seat, and of whom at most one may  
3 be appointed from the board of county commissioners. In counties with five member  
4 boards of county commissioners, the planning commission consists of nine members,  
5 of whom at least two must be appointed from the governing body of the city that is the  
6 county seat, and of whom at most two may be appointed from the board of county  
7 commissioners. The term of an ex officio member is coterminous with the member's  
8 term in the underlying office. The remaining members shall must be appointed from the  
9 county at large. In counties that elect county commissioners from districts, at least one  
10 at large member of the planning commission must be appointed from each district.  
11 When appointments to said the commission are first made, three members at large  
12 shall must be appointed for a two-year term and two members at large for a four-year  
13 term, after which all subsequent appointments for members at large shall must be for a  
14 four-year term. Appointments to fill vacancies shall must be for the unexpired portion of  
15 the term. All appointments to the county planning commission shall must be made by  
16 the board of county commissioners.

17 ~~2. Within six months of receiving a notice, from the board of county commissioners that a~~  
18 ~~building permit has been issued to a landowner under section 11-33-18 or an~~  
19 ~~assessment of real property under section 11-10.1-05 has occurred, the county~~  
20 ~~planning commission or its appointed agent or designee shall inspect the affected~~  
21 ~~property to determine if the property complies with the applicable county zoning~~  
22 ~~ordinances affecting a landowner's ability to repair or rebuild a structure if that~~  
23 ~~structure is more than fifty percent damaged or destroyed. After the inspection, the~~  
24 ~~county zoning commission or its appointed agent or designee shall furnish a written~~  
25 ~~report to the affected property owner. The report must address whether the affected~~  
26 ~~property complies with the applicable county zoning ordinances. A zoning inspection~~  
27 ~~under this subsection is not required if the county has adopted a zoning ordinance that~~  
28 ~~permits a property owner to repair or rebuild a nonconforming structure if that structure~~  
29 ~~is more than fifty percent damaged or destroyed. An inspection under this subsection~~  
30 ~~may occur only once every five years, unless an additional inspection is deemed~~  
31 ~~necessary by a majority of the county planning commission.~~

1 ~~— **SECTION 3. AMENDMENT.** Subsection 1 of section 11-33-18 of the North Dakota Century~~  
2 ~~Code is amended and reenacted as follows:~~

3 ~~— 1.— The board of county commissioners may authorize and provide for the issuance of~~  
4 ~~permits as a prerequisite to construction, erection, reconstruction, alteration, repair, or~~  
5 ~~enlargement of any building or structure otherwise subject to this chapter. When a~~  
6 ~~permit is issued under this section, the board of county commissioners immediately~~  
7 ~~shall notify the county planning commission of the issuance of a permit for purposes of~~  
8 ~~section 11-33-04.~~

9 ~~— **SECTION 4. AMENDMENT.** Subsection 6 of section 40-05-02 of the North Dakota Century~~  
10 ~~Code is amended and reenacted as follows:~~

11 ~~— 6.— Building permits. To provide by ordinance and to fix the fees for the issuance of~~  
12 ~~building permits. When a permit is issued under this section, the city council or city-~~  
13 ~~commission immediately shall notify the zoning commission of the issuance of a~~  
14 ~~permit for purposes of section 40-47-06.~~

15 ~~— **SECTION 5. AMENDMENT.** Section 40-47-06 of the North Dakota Century Code is~~  
16 ~~amended and reenacted as follows:~~

17 ~~— **40-47-06. Zoning commission -- Appointment -- Duties -- Preliminary and final report.**~~

18 ~~— 1.— The governing body of a city desiring to avail itself of exercise the powers conferred~~  
19 ~~by under this chapter shall appoint a zoning commission, to be known as the zoning~~  
20 ~~commission, to recommend the boundaries of the various original districts and~~  
21 ~~appropriate regulations to be enforced therein in the districts. In addition to the~~  
22 ~~members appointed by the city, the zoning commission shall must include at least one~~  
23 ~~person residing outside of the corporate limits of a city having a population of less than~~  
24 ~~five thousand, two persons residing outside the corporate limits of a city having a~~  
25 ~~population of five thousand or more, but less than twenty-five thousand, or three~~  
26 ~~persons residing outside the corporate limits of a city having a population of~~  
27 ~~twenty-five thousand or more if zoning authority is exercised pursuant to section~~  
28 ~~40-47-01.1. Such persons shall must be appointed by the board or boards of county~~  
29 ~~commissioners of the county or counties within which such zoning authority is to be~~  
30 ~~exercised and shall must reside within the territorial limits of the zoning regulation~~  
31 ~~authority exercised by the city, if such persons are available and will serve on the~~

1 zoning commission. Of the members of the commission appointed by a board or  
2 boards of county commissioners pursuant to this section, the first member appointed  
3 shall hold office for five years, the second member appointed shall hold office for three  
4 years, and the third member appointed shall hold office for one year. Thereafter, the  
5 members shall must be appointed for terms of five years. Such The commission shall  
6 make a preliminary report and hold public hearings thereon on the report before  
7 submitting its the final report. The governing body shall may not hold its public hearings  
8 or take action until it the governing body has received the final report of the zoning  
9 commission. If a city has a planning commission, it the planning commission may be  
10 appointed as the zoning commission.

11 ~~2. Within six months of receiving a notice, from the city council or city commission that a~~  
12 ~~building permit has been issued to a landowner under section 40-05-02, or an~~  
13 ~~assessment of real property under section 40-19-01 has occurred, the city zoning~~  
14 ~~commission or its appointed agent or designee shall inspect the affected property to~~  
15 ~~determine if the property complies with the applicable city zoning ordinances affecting~~  
16 ~~a landowner's ability to repair or rebuild a structure if that structure is more than fifty~~  
17 ~~percent damaged or destroyed. After the inspection, the city zoning commission or its~~  
18 ~~appointed agent or designee shall furnish a written report to the affected property~~  
19 ~~owner. The report must address whether the affected property complies with the~~  
20 ~~applicable city zoning ordinances. A zoning inspection under this subsection is not~~  
21 ~~required if the city has adopted a zoning ordinance that permits a property owner to~~  
22 ~~repair or rebuild a nonconforming structure if that structure is more than fifty percent~~  
23 ~~damaged or destroyed. An inspection under this subsection may occur only once~~  
24 ~~every five years, unless an additional inspection is deemed necessary by a majority of~~  
25 ~~the city zoning commission.~~

26 ~~SECTION 6. AMENDMENT.~~ Section 40-19-01 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28 ~~40-19-01. Duties of city assessor.~~

29 ~~The city assessor within the city shall perform all the duties necessary in assessing the~~  
30 ~~property within the city for the purpose of levying the municipal, county, school, and state taxes.~~  
31 ~~Such assessors shall be governed by and shall make assessments and returns as is provided~~

1 in title 57 and in this chapter. ~~When an assessment is performed, the city assessor immediately~~  
2 ~~shall notify the planning commission of the assessment for purposes of section 40-47-06.~~

3 ~~— **SECTION 7. AMENDMENT.** Section 58-03-13 of the North Dakota Century Code is~~  
4 ~~amended and reenacted as follows:~~

5 ~~— **58-03-13. Township zoning commissions – Membership – Reports and**~~  
6 ~~**recommendations – District boundaries – Hearings – Notice.**~~

7 ~~— 1. The board of township supervisors of a township desiring to avail itself of exercise the~~  
8 ~~powers conferred by under sections 58-03-11 through 58-03-15 shall establish, by~~  
9 ~~resolution, a township zoning commission to recommend the boundaries of the various~~  
10 ~~township zoning districts and appropriate regulations and restrictions to be established~~  
11 ~~therein in the districts. Membership of the commission must consist of three township~~  
12 ~~supervisors and two members appointed from the municipalities concerned in relation~~  
13 ~~to which the zoning is contemplated. Where lf the area to be regulated and restricted is~~  
14 ~~situated in two or more townships, a joint zoning commission may be established.~~  
15 ~~Membership of a joint zoning commission must consist of two township supervisors~~  
16 ~~from each township and two members from the municipality in relation to which the~~  
17 ~~zoning is contemplated. A zoning commission shall make a preliminary report and hold~~  
18 ~~public hearings before submitting its final report and recommendations to the board or~~  
19 ~~boards of township supervisors. The board or boards of township supervisors may~~  
20 ~~establish, and from time to time change, the boundaries of township zoning districts~~  
21 ~~and establish, amend, supplement, and enforce regulations and restrictions in the~~  
22 ~~districts. No A regulation, restriction, or boundaries may not become effective until after~~  
23 ~~a public hearing at which parties in interest and citizens have an opportunity to be~~  
24 ~~heard. At least fifteen days' notice of the time and place of the hearing must be~~  
25 ~~published in the official newspaper of the county and also in the official newspaper of~~  
26 ~~the municipality in relation to which the zoning action is taken, if in the municipality an~~  
27 ~~official newspaper other than the official newspaper of the county is published. The~~  
28 ~~description of any land within anya zoning district established by a zoning commission~~  
29 ~~together with any regulations and restrictions established must be filed with the~~  
30 ~~governing bodies of the township and municipalities concerned, and if amendments~~  
31 ~~are made to the boundaries of the zoning district or the regulations or restrictions, the~~

1           amendments must be filed in the same manner. A zoning commission established  
2           under this section and a board of township supervisors shall state the grounds upon  
3           which any request for a zoning amendment or variance is approved or disapproved,  
4           and written findings upon which the decision is based must be included within the  
5           records of the commission or board.

6     ~~2. Within six months of receiving a notice, from the township that a building permit has  
7           been issued to a landowner under section 58-03-19 or an assessment of real property  
8           under section 58-09-03 has occurred, the township zoning commission or its  
9           appointed agent or designee shall inspect the affected property to determine if the  
10          property complies with the applicable township zoning ordinances affecting a  
11          landowner's ability to repair or rebuild a structure if that structure is more than fifty  
12          percent damaged or destroyed. After the inspection, the township zoning commission  
13          or its appointed agent or designee shall furnish a written report to the affected property  
14          owner. The report must address whether the affected property complies with the  
15          applicable township zoning ordinances. A zoning inspection under this subsection is  
16          not required if the township has adopted a zoning ordinance that permits a property  
17          owner to repair or rebuild a nonconforming structure if that structure is more than fifty  
18          percent damaged or destroyed. An inspection under this subsection may occur only  
19          once every five years, unless an additional inspection is deemed necessary by a  
20          majority of the township zoning commission.~~

21     ~~**SECTION 8. AMENDMENT.** Subsection 2 of section 58-03-19 of the North Dakota Century  
22     Code is amended and reenacted as follows:~~

23     ~~2. If the building or structure for which a permit is requested meets all applicable zoning  
24           regulations and the board of township supervisors or other appropriate official fails to  
25           respond as required under subsection 1, the application is deemed to be approved  
26           and the applicant may proceed with the construction, erection, reconstruction, repair,  
27           or alteration of the building or structure and the township shall return any permit fee  
28           submitted with the application. When a permit is issued under this section, the  
29           township immediately shall notify the zoning commission of the issuance of a permit  
30           for purposes of section 58-03-13.~~

1 ~~— **SECTION 9. AMENDMENT.** Section 58-09-03 of the North Dakota Century Code is~~  
2 ~~amended and reenacted as follows:~~

3 ~~— **58-09-03. Assessors – How governed.**~~

4 ~~— The township assessor must be governed by, and shall make assessments and returns as~~  
5 ~~provided in, title 57. When an assessment is performed, the township assessor immediately~~  
6 ~~shall notify the township zoning commission of the assessment for purposes of section~~  
7 ~~58-03-13.~~

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

10 **11-33-17.1. Zoning - Nonconforming structure.**

11 1. Notwithstanding any other provision of law or local zoning ordinance, a structure  
12 devoted to residential use may be repaired, replaced, improved, maintained, restored,  
13 or rebuilt in its entirety even though the structure is damaged beyond fifty percent of its  
14 value if:

15 a. An application for a building permit is submitted within six months of the date the  
16 damage occurs;

17 b. Restoration begins within one year of the date the damage occurred; and

18 c. The new structure will not:

19 (1) Occupy a portion of the lot which was not occupied by the damaged  
20 structure;

21 (2) Have more square footage than the damaged structure;

22 (3) Exceed the height or number of stories of the damaged structure;

23 (4) Diminish the number of off-street parking spaces located on the property  
24 from the number of spaces before the damage;

25 (5) Violate existing building and fire codes;

26 (6) Violate existing sanitary or health standards imposed by the local health  
27 district; or

28 (7) Pose a risk to public health or safety.

29 2. Under subsection 1, expansion of a nonconforming structure is prohibited unless the  
30 expansion is in compliance with applicable state and local zoning regulations. The  
31 local zoning authority shall determine whether a proposed expansion is in compliance.



1        3. Under subsection 1, a nonconforming structure may not be moved unless the  
2        movement or relocation will bring the structure into compliance with all applicable  
3        zoning regulations.

4        4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair,  
5        replacement, improvement, maintenance, restoration, rebuilding, or expansion of  
6        nonconforming uses and structures in floodplain areas to the extent necessary to  
7        maintain eligibility in the national flood insurance program and adhere fully to all  
8        applicable floodplain management ordinances without increasing flood damage  
9        potential or increasing the degree of obstruction to floodflows in the floodway.

10       5. Notwithstanding subsections 1, 2, and 3, the local zoning authority may create a less  
11       restrictive ordinance or regulation.

12       6. Unless the county determines the repair, replacement, improvement, maintenance,  
13       rebuilding, or restoration of a structure will violate subdivision c of subsection 1, the  
14       county shall issue a building permit to a property owner that meets the qualifications  
15       under subsection 1.

16       **SECTION 2.** Section 40-47-05.1 of the North Dakota Century Code is created and enacted  
17 as follows:

18       **40-47-05.1. Zoning - Nonconforming structure.**

19       1. Notwithstanding any other provision of law or local zoning ordinance, a structure  
20       devoted to residential use may be repaired, replaced, improved, maintained, restored,  
21       or rebuilt in its entirety even though the structure is damaged beyond fifty percent of its  
22       value if:

23       a. An application for a building permit is submitted within six months of the date the  
24       damage occurs;

25       b. Restoration begins within one year of the date the damage occurred; and

26       c. The new structure will not:

27       (1) Occupy a portion of the lot which was not occupied by the damaged  
28       structure;

29       (2) Have more square footage than the damaged structure;

30       (3) Exceed the height or number of stories of the damaged structure;



1                   (4) Diminish the number of off-street parking spaces located on the property  
2                   from the number of spaces before the damage;

3                   (5) Violate existing building and fire codes;

4                   (6) Violate existing sanitary or health standards imposed by the local health  
5                   district; or

6                   (7) Pose a risk to public health or safety.

7                   2. Under subsection 1, expansion of a nonconforming structure is prohibited unless the  
8                   expansion is in compliance with applicable state and local zoning regulations. The  
9                   local zoning authority shall determine whether a proposed expansion is in compliance.

10                  3. Under subsection 1, a nonconforming structure may not be moved unless the  
11                  movement or relocation will bring the structure into compliance with all applicable  
12                  zoning regulations.

13                  4. Notwithstanding subsection 1, the local zoning authority shall regulate the repair,  
14                  replacement, improvement, maintenance, restoration, rebuilding, or expansion of  
15                  nonconforming uses and structures in floodplain areas to the extent necessary to  
16                  maintain eligibility in the national flood insurance program and adhere fully to all  
17                  applicable floodplain management ordinances without increasing flood damage  
18                  potential or increasing the degree of obstruction to floodflows in the floodway.

19                  5. Notwithstanding section 40-47-13 and subsections 1, 2, and 3, the local zoning  
20                  authority may create a less restrictive ordinance or regulation.

21                  6. Unless the city determines that the repair, replacement, improvement, maintenance,  
22                  rebuilding, or restoration of a structure will violate subdivision c of subsection 1, the  
23                  city shall issue a building permit to a property owner that meets the qualifications  
24                  under subsection 1.

25                  **SECTION 3.** Section 58-03-14.1 of the North Dakota Century Code is created and enacted  
26 as follows:

27                  **58-03-14.1. Zoning - Nonconforming structure.**

28                  1. Notwithstanding any other provision of law or local zoning ordinance, a structure  
29                  devoted to residential use may be repaired, replaced, improved, maintained, restored,  
30                  or rebuilt in its entirety even though the structure is damaged beyond fifty percent of its  
31                  value if:

- 1           a.   An application for a building permit is submitted within six months of the date the  
2                 damage occurs;
- 3           b.   Restoration begins within one year of the date the damage occurred; and
- 4           c.   The new structure will not:
  - 5                 (1) Occupy a portion of the lot which was not occupied by the damaged  
6                     structure;
  - 7                 (2) Have more square footage than the damaged structure;
  - 8                 (3) Exceed the height or number of stories of the damaged structure;
  - 9                 (4) Diminish the number of off-street parking spaces located on the property  
10                     from the number of spaces before the damage;
  - 11                 (5) Violate existing building and fire codes;
  - 12                 (6) Violate existing sanitary or health standards imposed by the local health  
13                     district; or
  - 14                 (7) Pose a risk to public health or safety.
- 15         2.   Under subsection 1, expansion of a nonconforming structure is prohibited unless the  
16                 expansion is in compliance with applicable state and local zoning regulations. The  
17                 local zoning authority shall determine whether a proposed expansion is in compliance.
- 18         3.   Under subsection 1, a nonconforming structure may not be moved unless the  
19                 movement or relocation will bring the structure into compliance with all applicable  
20                 zoning regulations.
- 21         4.   Notwithstanding subsection 1, the local zoning authority shall regulate the repair,  
22                 replacement, improvement, maintenance, restoration, rebuilding, or expansion of  
23                 nonconforming uses and structures in floodplain areas to the extent necessary to  
24                 maintain eligibility in the national flood insurance program and adhere fully to all  
25                 applicable floodplain management ordinances without increasing flood damage  
26                 potential or increasing the degree of obstruction to floodflows in the floodway.
- 27         5.   Notwithstanding subsections 1, 2, and 3, the local zoning authority may create a less  
28                 restrictive ordinance or regulation.
- 29         6.   Unless the township determines that the repair, replacement, improvement,  
30                 maintenance, rebuilding, or restoration of a structure will violate subdivision c of

1 | subsection 1, the township shall issue a building permit to a property owner that meets  
2 | the qualifications under subsection 1.