

2023 HOUSE POLITICAL SUBDIVISIONS

HB 1174

2023 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1174
1/19/2023

Relating to the contents of a recorded declaration for a condominium project

Chairman Longmuir opened the hearing on HB 1174 at 9:30 AM. Members present: Chairman Longmuir, Vice Chairman Fegley, Rep. Hatlestad, Rep. Heilman, Rep. Jonas, Rep. Klemin, Rep. Motschenbacher, Rep. Rios, Rep. Toman, Rep. Davis, Rep. Hager. Absent: Rep. Warrey, Rep. Holle, Rep. Ostlie

Discussion Topics:

- Prior notice on a project
- Building inspection
- State to inform local authority.
- Grandfather clause

Rep. Hatlestad: Introduced the bill. No written testimony

Mark Schneider, Director of Development Services, Williston, ND: Testimony #20502

Blane Johnson, State Bar Association: Testimony #14800

Additional written testimony:

Rachel Laqua, Vice President, NDPA: Testimony #14473

Meeting closed at 10:04 AM

Delores Shimek, Committee Clerk

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1/19/2023

Relating to the contents of a recorded declaration for a condominium project

Chairman Longmuir opened the hearing on HB 1174 at 10:56 AM. Members present: Chairman Longmuir, Vice Chairman Fegley, Rep. Hatlestad, Rep. Heilman, Rep. Jonas, Rep. Klemin, Rep. Motschenbacher, Rep. Rios, Rep. Toman, Rep. Davis, Rep. Hager. Absent: Rep. Warrey, Rep. Holle, Rep. Ostlie

Discussion Topics:

- Committee action

Rep. Klemin moved a Do Not Pass Motion;
Seconded by Rep. Heilmann

Representatives	Vote
Representative Donald W. Longmuir	N
Representative Clayton Fegley	Y
Representative Jayme Davis	Y
Representative LaurieBeth Hager	Y
Representative Patrick Hatlestad	N
Representative Matt Heilman	Y
Representative Dawson Holle	A
Representative Jim Jonas	Y
Representative Lawrence R. Klemin	Y
Representative Mike Motschenbacher	Y
Representative Mitch Ostlie	A
Representative Nico Rios	N
Representative Nathan Toman	Y
Representative Jonathan Warrey	A

Roll Call Vote: 8 Yes 3 No 3 Absent Carrier: Rep. Klemin

Meeting closed at 11:15 AM

Delores Shimek, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1174: Political Subdivisions Committee (Rep. Longmuir, Chairman) recommends **DO NOT PASS** (8 YEAS, 3 NAYS, 3 ABSENT AND NOT VOTING). HB 1174 was placed on the Eleventh order on the calendar.

TESTIMONY

HB 1174



January 18, 2023

RE: Support of HB1174 regarding an amendment to Section **47-04.1-03**.

Chairman Dockter and members of the House Political Subdivisions Committee:

The North Dakota Planning Association is in full support of the proposed amendment requiring notarized certification of approval from the Building Official or Authority Having Jurisdiction, per the language in proposed House Bill 1174. It is important that all buildings meet the ND State Building Code and the International Building Code to reduce the risk of potential loss of life and loss of real property.

This simple requirement to notify local authorities having jurisdiction could potentially reduce the risks for property owners.

This requirement should not add a significant burden to state staff, and would allow for each proposed condominium to be properly evaluated at the time of application.

Thank you for your consideration.

Rachel Laqua
Vice President, NDPA

House Bill 1174

68th Legislative Assembly (2023-25)

Testimony of Blaine T. Johnson before the House Political Subdivisions Committee

Good morning, Chairman Longmuir and members of the House Political Subdivisions Committee. My name is Blaine Johnson. I am a partner with the law firm of Crowley Fleck PLLP in Bismarck, ND and chair of the Real Property, Probate & Trust Section of the State Bar Association of North Dakota. SBAND does not take a position on this particular bill but has identified it as a bill to track and provide technical assistance.

There are two primary concerns with House Bill 1174.

The first concern is timing of the approval and whether or not it is in fact necessary or even applicable. This concern requires a general understanding of what a condominium project entails and how they are generally developed. At its most basic level, a condominium is a development having both commonly owned elements and privately owned space within a structure on that property. These are often thought of as apartment like buildings with common areas such as parking lots, hallways, elevators, gyms, or other facilities together with private living spaces that the owner has sole access to. This is not always the case because they come in a variety of different options. Condominiums can consist of single family detached residences or twin homes with common areas such as pools, clubhouses, or other elements. Condominiums can be either residential or commercial in nature or have a mixture of both commercial and residential spaces.

When developing a condominium project we have to take into account the type of development that is intended, realizing that the condominium may be constructed in a single phase, or over the course of a number of years. It may be an existing apartment complex under single ownership that is being converted to a condominium type of ownership.

The current requirements of the declaration only require a diagrammatic floor plan of the structures built or to be built sufficient to detail the ownership of each unit, its relative location and approximate dimensions. These plans typically do not have the level of detail necessary to confirm compliance with building codes as the structure may not yet be designed or even contemplated at the stage of condominium declaration.

Take note that there are other methods of oversight that are required in the construction and development phase, such as obtaining the building permit, confirming zoning requirements, or platting of a condominium plat. The goals and objectives of local governments are being met through existing code enforcement.

The second and perhaps more important is the ambiguity of the bill itself. The approval is to be made by a building inspector or other appropriate official. The inclusion of "appropriate official" gives rise to concern. Who is the appropriate official; what qualifications and background must they have? The language of the bill provides no direction. The bill does not indicate what standard is to be applied in determining such approval nor does it indicate what the approval examines. Is this a determination that the condominium, in its early design phase, appears to pass muster under the International Building Code, is it something else? This is important from the local government's perspective as well, because once the condominium has received "approval" developers can and will argue that the local government cannot rescind that approval, or without clarification of what is being approved arguments will be made that "It has already been approved." These open-ended questions will lead to litigation between developers and local government. Ultimately hoping a court can fill in the gaps.

Amendment: HB-1174

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January 17, 2023

RE: Letter of Support, Amendment to NDCC Chapter 47-01.1 Condominium Ownership of Real Property

Dear City of Williston Director of Development Services Mark Schneider,

The City of Jamestown Inspection Department has reviewed the proposed amendment to the condominium of ownership of real property chapter that you have provided. The City of Jamestown Inspection Department is in full support of the proposed amendment requiring notarized certification of approval from the Building Official or Authority Having Jurisdiction.

The City of Jamestown Inspection Department would utilize this process to ensure that when buildings are seeking to be split into condominiums, these buildings will meet the North Dakota State Building Code and the International Building Code which should reduce the risk of potential loss of life and should result in less property damage in the event of one portion of the building experiencing a fire and spreading into other parts of the building.

In my opinion this simple amendment to the North Dakota Century Code is a way to better bolster building safety throughout the state of North Dakota.

Thomas R. Blackmore
Building Inspector
Zoning Administrator
City of Jamestown