



**TO:** Mayor Shawn Sipma  
Members of the City Council

**FROM:** Harold Stewart  
Dan Jonasson  
Kelly Hendershot  
John Warcup, Swanson & Warcup, Ltd.

**DATE:** 2/8/2022

**SUBJECT:** Minot v. D & S Rentals II, LLC (Eminent Domain)

**I. RECOMMENDED ACTION**

City staff recommends that the City accept a tentative agreement reached with the property owner and their attorney which is summarized as follows:

1. Agree to purchase the D & S Rentals II, LLC property at 405 Railway Avenue for the sum of \$629,000.00;
2. The City will pay an additional \$15,000.00 to the property owner's attorney for reasonable attorney's fees and costs pursuant to N.D.C.C. §32-15-32;
3. Closing of the sale will occur at North Dakota Guaranty & Title Company on or before April 22, 2022;
4. The City will pay the closing costs with the exception of the abstract of title which will be provided by D & S Rentals II, LLC; and
5. D & S Rentals II, LLC will be permitted to keep the open steel-framed tin roof structure currently on the property and remove such structure at its own expense on or before April 22, 2022.

**II. DEPARTMENT CONTACT PERSONS**

Harold Stewart - (701) 857-4750  
Dan Jonasson - (701) 857-4112  
Kelly Hendershot - (701) 857-4755

**III. DESCRIPTION**

See memo from Special Assistant City Attorney John A. Warcup dated 2/2/22 provided separately.

**IV. IMPACT**

If the City accepts this offer, it will be reduced to writing, the City will complete the acquisition of the property for the flood control project, and the eminent domain litigation would be dismissed. Upon acquisition of the property, the City would be able to commence construction of the flood protection project on the property promptly.

If the City rejects the offer or submits a counteroffer, the property owner can review and consider the same. If they accept the counteroffer, the agreement can be reduced to writing and the property acquisition completed. If the property owner rejects the offer, a trial before Judge Louser is scheduled to occur on February 18, 2022.

**V. ALTERNATIVES**

1. The City Council could decline to accept the offer and proceed to trial.
2. The City Council could decline the offer and submit a counteroffer.

**VI. TIME CONSTRAINTS**

Construction of the flood control project is ongoing and acquisition of the property will allow construction of the project to continue without any undue delay.

**VII. LIST OF ATTACHMENTS**

None

**VIII. ADDITIONAL INFORMATION**

Special Assistant City Attorney John Warcup will be available to attend the City Council meeting by telephone to discuss this matter or answer questions or concerns that you may have.