



Date: April 27, 2023  
To: Mayor/City Council  
City Manager  
From: City Attorney's Office  
Re: Monthly Attorney Report (May, 2023)

Pursuant to Minot City Code of Ordinances, Section 2-30(7), the following items or issues are submitted as a summary of some of the matters addressed by the City Attorney's Office prior to the May 1, 2023 City Council meeting:

**I. Civil Matters**

**A. Floodplain Eminent Domain Cases:**

**1. City of Minot v. John Dokken, et al.**

Counsel: John Warcup  
Opposing Counsel: Bruce Schoenwald  
Current Status: Pending at District Court  
Trial Dates: August 15-17, 2023

On May 3, 2021, the City Council approved a resolution to move forward with eminent domain relating to this property. On July 16, 2021, the City filed its complaint relating to the eminent domain proceeding. On July 30, 2021, the Property Owner filed an answer and also a counterclaim relating to the operation of the business. On August 23, 2021, the City filed an answer to the Property Owner's counterclaim. On July 2, 2022, the Defendant filed a motion for summary judgment. The City responded on July 5, 2022 and the Defendants replied on July 19, 2022. The Court held a hearing on the Motions and a Pretrial Conference on August 22, 2022. The matter was taken under advisement, and the Court issued an Order denying the Defendant's Motion for Summary Judgment on September 14, 2022. A three-day jury trial was scheduled at the status conference on January 13, 2023.

**May:** Jury trial is scheduled for August 15-17, 2023.

**2. City of Minot v. Daniel Pfau**

Counsel: John Warcup  
Opposing Counsel: Jessica Merchant

Current Status: Closed – Property acquired.

On June 21, 2021, the City Council approved a resolution to move forward with an eminent domain related to this property. On July 16, 2021, the City filed its complaint relating to the eminent domain proceeding. On August 5, 2021, the Property Owner filed an answer.

City Council held an Executive Session was with Attorney Warcup on December 19, 2022 and in open session accepted the Property Owner’s offer to settle the case for \$73,000.00. The settlement sum includes \$60,000.00 for the property itself (mineral rights reserved to the Property Owner), and an additional sum of \$13,000.00 to cover attorney fees, court costs, and any and all other expenses associated with the case.

**May:** Settlement Documents have been executed. Warranty Deed has been sent to Ward County for recording. The Property is now owned by the City.

**3. City of Minot v. Anneliese Roberts, et al.**

Counsel: John Warcup

Opposing Counsel: Jessica Merchant

Current Status: Closed – Property acquired.

On May 3, 2021, the City Council approved a resolution to move forward with eminent domain relating to this property. On July 16, 2021, the City filed its complaint relating to the eminent domain proceeding. On July 28, 2021, the Property Owner filed an answer.

On January 11, 2023, a mediation was facilitated by attorney Steve Storslee. City Council held an Executive Session with Attorney Warcup on January 12, 2022 and in open session accepted the settlement reached at mediation. The settlement agreement requires the City to pay the Property Owner a total sum of \$450,000.00 to resolve the case. The \$450,000.00 settlement number includes the purchase of the property, the Property Owner’s costs and attorney fees, claims for damages and any other claim from the Property Owner for just compensation.

Payment terms were agreed upon as follows: \$10,000.00 will be paid fourteen days after final approval by the City Council, and the remaining \$440,000.00 will be payable at closing. The Property Owner will sign a warranty deed free and clear of all liens and encumbrances, which will be held in escrow until closing. Closing shall occur between March 1 and June 1, 2023. The 2022 real estate taxes will be paid by the Property Owner, and the 2023 real estate taxes will be paid by the City.

Following acceptance of the settlement agreement by the City Council, the Property Owner inquired about purchasing some of the fixtures on the property back from the City. Attorney Warcup provided salvage values for each of the items and the Property Owner indicated they did not want to purchase the items.

**May:** Settlement documents have been finalized. Closing on the Property was held on April 21, 2023. The Property is now owned by the City of Minot.

**4. City of Minot v. Trinity Health, a North Dakota non-profit corporation, et al.**

Counsel: John Warcup  
Opposing Counsel: David Hogue  
Current Status: Pending in District Court  
Trial Cancelled, Negotiations ongoing

On June 21, 2021, the City Council approved a resolution to move forward with eminent domain relating to this property. On July 22, 2021, the City filed its complaint relating to the eminent domain proceeding. On August 3, 2021, Property Owner filed an answer. A Special City Council Meeting with an Executive Session was held on October 3, 2022. Depositions occurred on November 2-3 and the City Council held additional Executive Sessions with Attorney Warcup on November 7, 2022 and on December 5, 2022.

**May:** The December jury trial in this matter was cancelled, but negotiations are ongoing.

**5. City of Minot v. Loyal Order of Moose Minot Lodge #822**

Counsel: John Warcup  
Opposing Counsel: Jessica Merchant  
Current Status: Pending in District Court  
Status Conference set for May 8, 2023  
Parties must be prepared for trial no later than April 1, 2024

On May 3, 2021, the City Council approved a resolution to move forward with eminent domain relating to this property. On August 19, 2021, the City filed its complaint relating to the eminent domain proceeding. On September 7, 2021, the Property Owner filed an answer. An amended scheduling order was entered on September 6, 2022 requiring the parties to be ready for trial no later than June 30, 2023.

**May:** The Court approved an amended scheduling order allowing the parties until September 30, 2023 to complete written fact discovery and depositions; until October 15, 2023 to disclose experts; until November 30, 2023 to complete expert depositions; and until January 15, 2024 to file dispositive motions. The scheduling order now requires the parties to be ready for trial no later than April 1, 2024. A status conference has been scheduled for May 8, 2023.

**B. Other Civil Matters:**

**1. Marianne Bender and Doug Bender v. City of Minot**

Counsel: Howard Swanson  
Appointed by Airport Premises Insurance

Opposing Counsel: Steve Lautt

Current Status: Unfiled at District Court

On February 3, 2022, the City was served with a summons and complaint by Plaintiffs. The complaint alleges the City was negligent in properly maintaining its entry ways at the Minot International Airport which caused a slip and fall incident to occur on or about February 17, 2019. The airport's premises insurance (Endurance) appointed Howard Swanson to defend the City in this lawsuit. Attorney Swanson has served an answer on Plaintiffs.

**May:** Discovery is ongoing.

## **2. City of Minot v. Cypress Development, LLC**

Counsel: Jocelyn Knoll and Kate Johnson  
Dorsey & Whitney  
Appointed by City Council/NDIRF

Opposing Counsel: Attorneys from Schwabe, Williamson & Wyatt P.C.

Current Status: Closed at District Court

This matter relates to a mixed development project in the City of Minot. The project involves the construction of two city-owned parking structures on City lots, plus retail or office space and residential units on top of the parking ramps. A private developer, Cypress Development, LLC, was to manage the City's parking structures and develop the residential units and commercial improvements. Several agreements exist, including, but not necessarily limited to, 2015 Lease Agreements, 2015 Management Agreement, 2013 Development Agreement, and a Development and Disposition Agreement. Cypress failed to pay amounts owed to the City as rent and then, upon notice of its material breach, failed to cure its breach within the 120 day period. Cypress failed to properly manage the parking structures. Cypress failed to pay all costs for the development and construction of the Parking Structures in excess of the City's obligation. Because Cypress failed to maintain a lease, due to its failure to pay the rent, Cypress also violated the Development and Disposition Agreement. On March 15, 2018, the City served a summons and complaint on Cypress. Ultimately, a jury trial occurred and the jury returned a verdict in favor of the City. The jury determined that Cypress Development breached its contracts with the City; in addition, the jury determined that the City was entitled to damages in the amount of \$2,442,479.94. Cypress's countersuit, which sought more than \$50 million in damages, was denied by the jury in its entirety.

On December 13, 2021, Cypress filed a motion for a new trial, alleging juror misconduct and claiming certain selected jurors provided inaccurate answers in voir dire and injected extraneous information into the jury room. On March 11, 2022, the district

court issued an order denying Cypress’s motion for a new trial. The City served a notice of entry of judgment on March 11, 2022. Cypress did not file a notice of appeal. An Executive Session for an attorney consultation and negotiation conversation occurred on June 6, 2022. A Resolution Agreement was executed by both parties on or about August 1, 2022 wherein the Cypress agreed to pay, through escrow, the sum of \$330,000.00 (the current assessed value for a Property owned by Cypress) and, in exchange, the City agreed to execute a partial release of the judgment lien as it relates to the Property. The City is still able to pursue collection efforts for the remaining amount owed pursuant to the judgment. The money will be considered program income under CDBG Allocation 1. The City received \$330,000.00 and remitted the partial release of the judgment lien.

An executive session was held on December 19, 2022 to afford the City Council the opportunity to discuss negotiating strategy and provide negotiating instructions to its attorney.

**May:** Post judgment collection efforts are ongoing.

### **C. Other Matters**

**1. International Municipal Lawyer Association (IMLA) Conference** – The City Attorney attended the IMLA Mid-Year Seminar from Friday, April 21 through Monday, April 24<sup>th</sup>. The City Attorney attended sessions regarding Regulating Short Term Rentals, Sovereign Citizens and Local Government, Marijuana/CBD/Delta-8 and Employer Drug Testing, use of Drones as First Responders, State Preemption Efforts Regarding Housing/Land Use, PFOS Damages, Alternative Project Delivery in Public Construction, Local Government Telecommunications Practices, Supreme Court/Circuit Court Case Law Updates, Legal Consequences and Responses to Councilmember Bad Behavior, Section 1983 Appellate Practice Pointers, Section 1983 Demolitions and Due Process, and The New Affirmatively Furthering Fair Housing Rule and the Impact on Siting of Affordable Housing. If any of these topics are of interest to you, the City Attorney’s Office has the materials provided at the sessions available in her office.

Overall, the Conference was extremely informative and in addition to satisfying required continuing legal education requirements, it gave the City Attorney the opportunity to discuss local legal topics with and gain insight from nationwide experts.

**2. City Hall Move** – This Office completed its move from the prior City Hall to the new City Hall location by Friday, April 21, 2023. Its Offices are located on the 3<sup>rd</sup> Floor of the New City Hall, Suite 321.

**3. City Council Retreat** – The City Attorney attended the City Council Retreat April 11-12.

**4. MAGIC Fund Guidelines** – This Office is reviewing proposed changes to the MAGIC Fund Guidelines with City and MACEDC staff and MACEDC’s counsel. Several meetings have been blocked off to give staff time to review and discuss the proposed

changes and any concerns. Once the comprehensive review is complete, City staff and MACEDC will return the proposed guidelines to the Council for its consideration.

5. **PFAS Multidistrict Litigation** – This Office is researching this multidistrict legislation and reviewing proposals from law firms interested in representing the City of Minot. The City Attorney attended a PFAS roundtable discussion at the International Municipal Attorney’s Conference, which has generated more questions to review and consider alongside City staff. The Bismarck City Attorney advised that Bismarck is not planning on joining the PFAS litigation at this time. Additionally, the Airport Director has advised that federal legislation addressing PFAS is being discussed. I plan on scheduling a meeting with City Departments to discuss the PFAS concerns and next steps, then draft a memo making a recommendation to the Council regarding the PFAS litigation.
6. **City Department Legal Support** – This Office provided legal support to the City’s City Manager, Department Heads, and Planning Commission regarding contracts, human resources/personnel issues, and other legal matters. Including, but not limited to, the notable matters listed below:
  - a. **CTE Joint Powers Agreement:** This Office drafted a joint powers agreement contemplating use of the City’s HUB City funding allocation for the CTE renovation, and has forwarded the same to the City Manager and Finance Director for their review and to circulate to the interested parties.
  - b. **PTO/Personnel Policy Committee Changes:** The City Attorney has spent considerable time with the City Manager and Department Heads discussing the proposed PTO/Personnel Policy changes.
  - c. **FAA Complaint:** The City Attorney assisted the Airport Director with responding to an ADA complaint concerning the location of a service animal relief area (SARA).
7. **Open Records/Open Meetings Training** – Mark your calendars for this training with the North Dakota Attorney General’s Office. **Wednesday, July 26 at 10am** the **New City Hall Council Chambers**.
8. **Ordinance/Policy Revisions:**
  - a. **Alcohol Licensing:** The City Attorney has a memo prepared for the Council to discuss a comprehensive update to the City’s alcohol licensing ordinances, and once discussed and finalized with City staff, will add it to a future Council agenda.
  - b. **Administrative Approvals:** This Office is working with the City Manager and Department Directors to review processes for approval of certain matters and determine if ordinance revisions are appropriate.
  - c. **Contract Processes:** This Office is working with the City Manager to review current contract processes, policies, and ordinances to determine whether modifications are appropriate.

- d. **PRIDE Committees:** Various members of this Office are participating on the City Manager's three PRIDE Committees, the personnel policy committee; the employee evaluation committee; and the employee recognition committee.

**9. Recruitment:**

- a. **Staff Attorney:** The staff attorney position remains unfilled. The City Attorney has received a few calls regarding the position. Those conversations primarily concern flexibility of the position and salary. Presently the position is advertised as open until filled.
- b. **Summer Extern:** Our office will no longer be hosting a summer extern, as the interested individual accepted a position with another entity/agency.

**10. Liaison Committee Research:** The City Attorney attended the latest City/County/Park/Health Unit Liaison Committee to discuss enclave county properties within the City and a possible JPA whereby the City could assist the County with nuisance abatements. City staff is discussing/reviewing the JPA internally and will be providing information and recommendations to the City Council once their research is complete.

**II. Criminal Matters**

- A. Minot Municipal Court** – Handled routine and daily matters in Minot Municipal Court for criminal prosecution (trials) and civil ordinance violations, as well as approval or initiation of criminal complaints for ordinance violations.
- B. District Court** – Appeared and responded to the scheduling of District Court transfer cases involving initial appearances, motion responses, motion hearings, status conferences, pretrial conferences, and order to show cause proceedings for criminal cases originating in the Minot Municipal Court and subsequently transferred to the Ward County District Court.

Respectfully Submitted,

X *Stefanie Stalheim*

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Stefanie Stalheim  
City Attorney