



Date: December 22, 2023
To: Mayor/City Council
City Manager
From: City Attorney's Office
Re: Monthly Attorney Report (January, 2024)

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 January 2, 2023 City Council meeting:

I. Civil Matters

A. Floodplain Eminent Domain Cases:

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

<u>Counsel:</u>	John Warcup
<u>Opposing Counsel:</u>	Bruce Schoenwald
<u>Current Status:</u>	Closed at District Court Settlement Agreement signed, property transfer pending

Following commencement of eminent domain proceedings on this property, the City and Property Owners reached a resolution whereby the City agreed to purchase of the Dokken property at the appraised value of \$315,000 with the following terms 1) the Dokkens would be allowed to retain ownership of a shop and shed located on the property by reducing the purchase price by their salvage cost - \$4500 for the shop, and \$150 for the shed, respectively; 2) The Dokkens would be responsible for the cost of moving the shop and shed; 3) The Dokkens would waive any claim for recovery of attorney fees or costs; and 4) the Dokkens will continue to have full use and enjoyment of the property, but will be fully responsible for repairs, maintenance, utilities, taxes, and insurance on the property until closing, which should occur on or before August 9, 2024.

January: Settlement Agreement is signed, parties are working through the settlement terms, and closing is still set for August 9, 2024.

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

<u>Counsel:</u>	John Warcup
<u>Opposing Counsel:</u>	David Hogue
<u>Current Status:</u>	Closed at District Court Property acquired, and plat is being prepared.

Following commencement of eminent domain proceedings on this property, the City and Property Owners reached a resolution whereby the City agreed to purchase the Trinity property for \$850,000.00 inclusive of just compensation, damages, attorney fees, and costs.

January: Property acquired, payment rendered to Trinity, and staff is continuing to work on creating a new plat of the property that includes a metes and bounds description – a requirement of the Ward County Recorder.

3. City of Minot v. Loyal Order of Moose Minot Lodge #822

Counsel: John Warcup
Opposing Counsel: Jessica Klein
Current Status: Pending in District Court
Jury Trial scheduled for 4/30/2024, 5/1/2024, and 5/2/2024

On May 3, 2021, the City Council commenced eminent domain proceedings relating to a property owned by Minot Moose Lodge #822. The latest scheduling order in this case requires the parties to be ready for trial no later than April 1, 2024. A status conference was held on October 30, 2023.

January: A three jury trial is scheduled for 4/30/2024, 5/1/2024, and 5/2/2024. The parties also filed a stipulation to amend the complaint, which was approved by the Court. Defendants also filed an answer to the amended complaint.

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 Lutt
Current Status: Unfiled

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.

January: Discovery and negotiations are 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 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.

Cypress filed a motion for a new trial alleging juror misconduct, which was denied by the district Court. The City served a notice of entry of judgment. Thus far, the City received \$330,000.00 in exchange for a partial release of the judgment lien to allow for a sale of property within the City. The money is considered program income under CDBG Allocation 1. The City is still able to pursue collection efforts for the remaining amount owed pursuant to the judgment.

January: Post judgment collection efforts are ongoing. City Attorney is working with outside counsel to schedule a date for an executive session for attorney consultation.

3. Todd Mickelson v. City of Minot

Counsel: Brian Schmidt
Appointed by NDIRF

Opposing Counsel: Leo Wilking

Current Status: Pending in District Court
Scheduling Order states parties should be ready for trial by October 1, 2024.

On May 26, 2023, the City was served with a summons and complaint by the Plaintiff. The complaint alleges the Plaintiff's employment as a city employee was terminated as a result of retaliation. The North Dakota Insurance Reserve Fund (NDIRF) appointed Brian Schmidt to defend the City in this lawsuit. Complaint was filed in District Court on June 8, 2023. City's Answer was filed on June 16, 2023. An Alternative Dispute Resolution Statement was filed by the City on August 15, 2023.

January: Discovery is ongoing, Depositions are being scheduled. Scheduling order states parties agree to be ready for trial by October 1, 2024.

4. Citizen's Alley Appeal (RMM Properties, L.L.L.P.)

Counsel: Bryan Van Grinsven
Appointed by NDIRF

Opposing Counsel: Nici Meyer and Ryan Quarne

Current Status:

Briefs filed, Matter is pending in District Court

On October 17, 2023, RMM Properties, L.L.L.P filed a Notice of Appeal with the North Central Judicial District alleging the City of Minot applied the incorrect legal standard when approving an application for vacation of a plat, and approval of a new preliminary plat, and in doing so the action constitutes a taking of real property without compensation. NDIRF has appointed attorney Bryan Van Grinsven to represent the City in response to the appeal. The filed its Certificate of Record with District Court on November 13, 2023. The Court issued a briefing schedule on November 15, 2023 requiring the RMM Properties, L.L.L.P. to submit its appellate brief on or before December 6, 2023, and the City to submit its appellee brief within 10 days of service of the appellate brief. The City supplemented its records with links to the Planning Commission and City Council meetings regarding this matter on November 28, 2023.

January: The City and RMM Properties, L.L.L.P. filed their appellate briefs with the District Court. As of the date of this memo, RMM Properties, L.L.L.P. has not yet filed a reply brief, but have sent a letter to the Court indicating that they intend to do so.

C. City Business:

1. **MAGIC Fund Guidelines** – The City Manager and MACEDC President/CEO presented proposed changes to the MAGIC Fund Guidelines to the City Council on November 20, 2023. The City Attorney amended the draft guidelines to incorporate City Council input and circulated them amongst City staff and MACEDC staff/counsel on November 21, 2023. These were approved by the City Council at their meeting on December 4, 2023, and the guidelines are being finalized for publication on the City website.
2. **PFAS/AFFF Multi-District Litigation No. 2873 (“MDL”)** – The City Council directed the City Attorney and staff to take all steps necessary to opt out of the MDL at its November 6th City Council meeting. The City Attorney drafted the necessary opt out paperwork, secured signatures from the Mayor and Utilities Director, and served the same on MDL counsel and Notice Administrators via US Mail, both certified and regular, and via email, on November 27, 2023.
3. **Alcohol License Hearing** – The City Attorney and City Conflict Counsel expended considerable time preparing for the hearing held on December 22, 2023 regarding KP2, Inc.’s retail liquor, beer, and wine license.
4. **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 the following:
 - a. **Ward Co. Jail Contract:** The City Attorney reviewed an agreement with Ward County for Jail Services and provided comments to the Police Chief.
 - b. **MPO Memorandum of Agreement:** The City Attorney reviewed and provided redlines on a MOA among entities involved in the Central Metropolitan Planning Organization (“MPO”).
 - c. **MPO Services Agreement:** The City Attorney reviewed and provided redlines on a draft agreement between the City and proposed MPO.
 - d. **Airport Rules and Standards:** City Attorney Stalheim and Assistant Attorney Dickerson reviewed the Airport Rules and Standards with Airport staff.
 - e. **Airport Rental Car Agreements:** City Attorney Stalheim and Assistant Attorney Dickerson reviewed the Airport Rental Car Agreements.

- f. **ADP Training:** The City Attorney's Office staff has been completing training on the City's new ADP software.
- g. **Superfund Site Meetings/Document Review:** The City Attorney and Assistant Attorney Schmitz have been attending meetings with the Utilities Director, State Department of Environmental Quality, Environmental Protection Agency and Park District regarding the old Minot landfill superfund site and amending the operations and maintenance plan to allow the park district to use the site.
- h. **Special City Attorney Appointment:** Assistant City Attorney Dickerson prepared special appointment paperwork for the Council to approve Assistant Ward County State's Attorney Tina Snellings as a Special Assistant City Attorney to handle a conflict case.
- i. **Park Fee Collection Process Update:** Assistant City Attorney Schmitz met with Community Development and Planning staff to discuss amendments to the Land Development Ordinances to allow the Minot Park District to collect and process fees themselves, rather than the City collecting their fees and distributing the same.
- j. **Retail Coach Amendment:** City Attorney reviewed and provided comment to Community Development Director and City Manager regarding the proposed contract amendment to exercise the option to extend the original contract for an additional 12 months.
- k. **NDR Relocation Benefits Appeal:** City Attorney reviewed and discussed an NDR appeal for relocation benefits with the NDR Program Manager.
- l. **Alleyway Speed Limit Ordinance:** Assistant City Attorney Schmitz is meeting with the Engineering Department to discuss a proposed alleyway speed limit ordinance.
- m. **CDM Smith Contract to Assist with MI4 Acquisitions:** The City Attorney reviewed an Amendment drafted by the NDR Program Manager and CDM Smith to extend their contract to assist with MI4 acquisitions.
- n. **Actuarial Consulting Agreement:** The City Attorney reviewed and provided redlines to City Finance staff regarding a proposed agreement with Gallagher for actuarial consulting services.
- o. **Watermain Replacement Agreements:** The City Attorney and Assistant City Attorney Schmitz reviewed and provided comments on State Water Commission and Department of Water Resources cost share agreements for watermain replacements.
- p. **Agreement for Coroner Services:** The City Attorney and Assistant City Attorney Dickerson reviewed an MOU for coroner services and provided comment to PD/Fire Chiefs.
- q. **Civil Service Hearing:** The City Attorney and HR Department have been advised of an appeal to the City of Minot Civil Service and the City Attorney has began reviewing documentation related to that appeal.

5. **Ordinance/Policy Revisions:**

- a. **Human Relations Ad Hoc Committee:** The City Attorney attended the committee meetings and drafted a proposed ordinance to adopt on first reading.
 - b. **Alcohol Ordinance Ad Hoc Committee:** The City Attorney participated in staff meetings to discuss potential topics to bring to the committee.
 - c. **Fire Inspection Fees:** The City Attorney and Assistant City Attorney Dickerson assisted the Fire Chief with drafting an ordinance imposing fire inspection fees and an accompanying resolution.
6. **City Manager Committees:** Assistant City Attorney Dickerson has volunteered to serve on the Employee Recognition Committee.
7. **Assistant City Attorney Portfolios:** The City Attorney's Office has created portfolios for each of the attorneys in an effort to streamline inquiries from City Departments and Officials. Current portfolio assignments are:

- a. **Stefanie Stalheim:** City Council, City Manager, Human Resources, Finance/NDR-CDBG, Assessors, Library
- b. **Nick Schmitz:** Municipal Court, Engineering, Public Works, Community and Economic Development, Planning Commission
- c. **Corbin Dickerson:** Municipal Court, Police, Fire, Airport

While all city attorneys are available to City staff and officials for consultation, it is our hope that the portfolio system will allow our attorneys to develop an expertise within their assigned portfolios, and in turn increase response time and provide more specialized services.

II. **Criminal Matters**

- A. **Minot Municipal Court** – Assistant City Attorneys 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.

- a. **Annual Case Totals:** Below is a table of documenting the number of criminal and traffic matters opened in municipal court each month for 2022 and 2023 thus far:

2022	Criminal	Traffic	Total
January	94	208	302
February	91	269	360
March	75	321	396
April	104	209	313
May	114	345	459
June	114	324	438
July	92	235	327
August	134	241	375
September	118	217	335
October	75	200	275
November	91	138	229
December	79	151	230
totals	1181	2858	4039

2023	Criminal	Traffic	Total
January	83	177	260
February	84	208	292
March	121	256	377
April	154	361	515
May	145	318	463
June	119	357	476
July	170	404	574
August	147	372	519
September	112	260	372
October	124	310	434
November	155	250	405
December			
totals	1135	2713	3848

- B. **District Court** – Assistant City Attorneys attended 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,



Recoverable Signature

X *Stefanie Stalheim*

Stefanie Stalheim
City Attorney

Signed by: 48ae2bc4-fd85-4c0e-a0ea-7c87bc0c1a31