



Date: February 1, 2023  
To: Mayor/City Council  
City Manager  
From: City Attorney's Office  
Re: Monthly Attorney Report (February, 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 February 5, 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.

**February:** Settlement Agreement is signed, parties are working through the settlement terms. Closing is 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 prepared and will be on the February 20 <sup>th</sup> City Council meeting consent agenda.

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. Staff retained Houston Engineering to prepare a new plat of the property that includes a metes and bounds description – a requirement of the Ward County Recorder.

**February:** Property acquired, payment rendered to Trinity. Plat was received from Houston Engineering and will be on the February 20<sup>th</sup> City Council's consent agenda for minor plat approval.

### **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. 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.

**February:** Defendant filed an expert witness disclosure disclosing Kevin Ternes as their expert witness. Also filed is Mr. Ternes' Appraisal Report. A three jury trial remains on the District Court calendar for 4/30/2024, 5/1/2024, and 5/2/2024, but negotiations are ongoing.

## **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.

**February:** 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, Judgment

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.

**February:** An executive session for attorney consultation was held on January 16, 2024. Post judgment collection efforts are ongoing. City Attorney will remove this matter from the monthly report and will update the City Council on any further opportunities to enforce the judgment.

### **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.

**February:** Discovery is ongoing, Depositions of present and former city employees were conducted on January 22-23, 2023. 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.

**February:** RMM Properties, L.L.L.P. filed a reply brief and the matter is pending before the District Court.

**5. Nathan Properties, LLC Appeal**

Counsel: John Warcup  
Appointed by NDIRF

Opposing Counsel: Jessica Lee Klein

Current Status: Notice of Appeal served on the City and filed in District Court on January 26, 2024. City is preparing a response and certified record.

On January 26, 2024, Nathan Properties, LLC filed a Notice of Appeal with the District Court seeking judicial review of a denial of relocation benefits.

Nathan Properties, LLC was denied relocation benefits because the NDR Program Manager determined that they were ineligible pursuant to 49 CFR Part 24.305(b), which determines eligibility when one or more displaced entities could be considered a single business, entitled to only one fixed payment. Nathan Properties, LLC shared the same premises as Minot Welding, Inc., which also applied for and received relocation benefits. The same person owns, controls, and manages the affairs of the two entities. The relocation benefits rendered to Minot Welding, Inc. contemplated moving everything in the building that Minot Welding, Inc. allegedly shared with Nathan Properties, LLC and there is no personal property left in the building. Given these facts and others, the NDR Program Manager determined that Nathan Properties, LLC’s request for relocation services should be denied.

**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. 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. **ADP Training:** The City Attorney’s Office staff has been completing training and evaluations on the City’s new ADP software.
- b. **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.
- c. **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.
- d. **Alleyway Speed Limit Ordinance:** Assistant City Attorney Schmitz is continuing work on a proposed alleyway speed limit ordinance.
- e. **Civil Service Hearing:** The City Attorney, HR Department, and Engineering staff participated in a civil service hearing on Friday, January 18 concerning an appeal of a PIP and Letter of Reprimand. The Civil Service Commission upheld the PIP and had the Letter of Reprimand removed from the file because the details in the letter were also in the PIP.
- f. **Project BEE/Broadway Circle Project:** The City Attorney and Assistant City Attorney Dickerson drafted a mutual termination agreement, purchase agreement, bill of sale, and other termination documents and reviewed the same with City staff and other interested parties.
- g. **Travis Stewart Restitution Claim:** The City Manager and Community and Economic Development Director forwarded the City Attorney’s Office correspondence from a resident claiming the City owes him restitution for conducting abatement efforts on his property. Assistant City Attorney Schmitz is reviewing the file to confirm all appropriate steps were taken.
- h. **Airport Emergency Fuel Pump Purchase:** The City Attorney and Assistant City Attorney Dickerson met and conferred with Airport and Finance staff regarding the emergency purchase of a fuel pump.
- i. **NAWS Finance Agreement:** Assistant City Attorney Schmitz reviewed and provided comment on a NAWS Financing Agreement to Utilities Director Sorenson.
- j. **CDBG Services Agreement:** Assistant City Attorney Dickerson is working with NDR Program Director Plank on edits to a service agreement with Resource Consultants.
- k. **Easement Agreements:** Assistant City Attorney Schmitz is presently reviewing draft easement documents with Project Manager Ben Cofell.
- l. **Depositions:** City Attorney Stalheim attended some of the staff depositions in the civil case concerning Todd Mickelson.
- m. **Development Agreement:** Assistant City Attorney Schmitz and City Attorney Stalheim are reviewing a development agreement for Highlander 5<sup>th</sup> Subdivision & 55<sup>th</sup> Crossing 9<sup>th</sup> Addition with the Planning Department.
- n. **Big M/Tracks TIF Agreement Progress:** The City Attorney reviewed and discussed progress on the BIG M/Tracks TIF Agreements with City staff and external stakeholders.
- o. **Edgewood Real Estate Investment Trust Development Agreement:** The City Attorney has confirmed attorney Kate Johnson is interested in assisting with this project pending a conflict check. Ms. Johnson indicated that she will likely pull in her partner Jay Lindgren, to participate in the drafting of this agreement. Mr. Lindgren is

licensed to practice law in North Dakota and has extensive experience in agreements of this nature.

### **3. Ordinance/Policy Revisions:**

- a. **Alcohol Ordinance Ad Hoc Committee:** The City Attorney has attended two meetings of the Alcohol Ordinance Ad Hoc Committee, and she and the City Clerk will be preparing some draft ordinances for the committee's consideration.
- b. **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.
- c. **Emergency Action Plan Meeting:** The City Attorney attended an emergency action plan meeting with other Department Heads to discuss updates.

- 4. **City Manager Committees:** Assistant City Attorney Dickerson has been serving on the Employee Recognition Committee.

- 5. **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, 2023, and now 2024:

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

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

<b>December</b>	79	151	230
<b>totals</b>	1181	2858	4039

<b>December</b>	140	274	414
<b>totals</b>	1554	3547	5101

	<b>2022</b>	<b>2023</b>	<b>% change</b>
Criminal	1181	1554	32%
Traffic	2858	3547	24%
	4039	5101	26%

<b>2024</b>	<b>Criminal</b>	<b>Traffic</b>	<b>Total</b>
<b>January</b>	141	260	401
<b>totals</b>	141	260	401

- 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