



Date: February 29, 2023
To: Mayor/City Council
City Manager
From: City Attorney's Office
Re: Monthly Attorney Report (March, 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 March 4, 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 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.

March: 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 was prepared and approved at February 20 th City Council meeting.

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.

March: Property acquired, payment rendered to Trinity. Plat was approved at the February 20th City Council meeting and sent to recorder. This will be the last city attorney report on this matter as it has concluded.

3. City of Minot v. Loyal Order of the 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 and have disclosed Kevin Ternes as an expert appraisal witness.

March: A three-day 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.

March: Discovery and negotiations are ongoing.

2. Todd Mickelson v. City of Minot

Counsel: Brian Schmidt
Appointed by NDIRF

Opposing Counsel: Leo Wilking

Current Status: Pending in District Court, Discovery is ongoing.

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.

March: Discovery is ongoing. Depositions of present and former city employees have been conducted and a deposition of the plaintiff is being scheduled. Scheduling order states parties agree to be ready for trial by October 1, 2024.

3. 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: District Court Order Entered on February 28, 2024

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 City 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, and RMM Properties, L.L.L.P. submitted a reply brief.

March: On February 28, 2024 the District Court entered an order affirming the City Council's decision. A copy of the Court's Order is attached to this report.

4. 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.

March: City staff is finalizing its response and the certified record on appeal.

C. City Business:

1. 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. Department Head Presentation:** The City Attorney prepared and delivered a broad overview of the City's contracting process at the February 27 Department Head meeting.
- b. ADP Training:** The City Attorney's Office staff has been completing training and evaluations on the City's new ADP software.
- c. 2024 Goals and 2025 Budget:** City Attorney's Office staff are finalizing goals for 2024 and beginning to prepare their 2025 budget.
- d. Superfund Site Meetings/Document Review:** The City Attorney and Assistant City 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.
- e. Alleyway Speed Limit Ordinance:** Assistant City Attorney Schmitz is continuing work on a proposed alleyway speed limit ordinance.
- f. Project BEE/Broadway Circle Project:** The City Attorney and other City staff continue to work through the mutual termination agreement terms and completion of the Broadway Circle Project.
- 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 reviewed the file to confirm all appropriate steps were taken, and an open records request is pending waiting clarification.
- h. NAWS Finance Agreement:** Assistant City Attorney Schmitz reviewed and provided comment on a NAWS Financing Agreement to Utilities Director Sorenson.
- i. CDBG Services Agreement:** Assistant City Attorney Dickerson is working with NDR Program Director Plank on edits to a service agreement with Resource Consultants.
- j. Easement Agreements:** Assistant City Attorney Schmitz is presently reviewing draft easement documents with Project Manager Ben Cofell.
- k. Midcontinent Easement:** Assistant City Attorney Dickerson worked with MOT staff on an easement with Midcontinent Communications.
- l. Development Agreement:** Assistant City Attorney Schmitz and City Attorney Stalheim are reviewing a development agreement for Highlander 5th Subdivision & 55th Crossing 9th Addition with the Planning Department.
- m. 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.

- n. **Edgewood Real Estate Investment Trust Development Agreement:** Attorneys Johnson and Lindgren have submitted a draft agreement for staff review, and it is presently being reviewed internally.

2. Ordinance/Policy Revisions:

- a. **Alcohol Ordinance Ad Hoc Committee:** The City Attorney attended meetings of the Alcohol Ordinance Ad Hoc Committee, and she and the City Clerk prepared some draft ordinances for the committee's consideration.
- b. **Emergency Action Plan Meeting:** The City Attorney attended an emergency action plan meeting with other Department Heads to discuss updates.
- c. **Automatic Door Ordinance:** Per Alderman Podrygula's direction the City Attorney prepared an ordinance requiring businesses and buildings that receive public funds to install at least one automatic door.

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

4. **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

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	91	138	229
December	79	151	230
totals	1181	2858	4039

November	155	250	405
December	140	274	414
totals	1554	3547	5101

	2022	2023	% change
Criminal	1181	1554	32%
Traffic	2858	3547	24%
	4039	5101	26%

2024	Criminal	Traffic	Total
January	141	260	401
totals	141	260	401

February 2024 Court case totals were unavailable as of the date of this memo.

- 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