



Date: March 31, 2023  
To: Mayor/City Council  
City Manager  
From: City Attorney's Office  
Re: Monthly Attorney Report (April, 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.**

Counsel: John Warcup  
Opposing Counsel: Bruce Schoenwald  
Current Status: 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.

**April:** Settlement Agreement is signed and closing is set for August 9, 2024.

#### **2. 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.

**April:** 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 Lautt

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.

**April:** 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.

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

### **3. Citizen's Alley Appeal** (RMM Properties, L.L.P.)

Counsel: Bryan Van Grinsven  
Appointed by NDIRF

Opposing Counsel: Nici Meyer and Ryan Quarne

Current Status: Closed at 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 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.

**April:** On February 28, 2024 the District Court entered an order affirming the City Council's decision. Notice of Entry of the Order was served on Defendants and filed with District Court on March 1, 2024.

#### **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.

**April:** City staff and Attorney Warcup are finalizing the City's 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. 2024 Goals and 2025 Budget:** City Attorney's Office staff are finalizing goals for 2024 and beginning to prepare their 2025 budget.

- b. **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.
- c. **Alleyway Speed Limit Ordinance:** Assistant City Attorney Schmitz is continuing work on a proposed alleyway speed limit ordinance.
- d. **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.
- e. **NAWS Finance Agreement:** Assistant City Attorney Schmitz reviewed and provided comment on a NAWS Financing Agreement to Utilities Director Sorenson.
- f. **Easement Agreements:** Assistant City Attorney Schmitz is presently reviewing draft easement documents with Project Manager Ben Cofell.
- g. **Midcontinent Easement:** Assistant City Attorney Dickerson worked with MOT staff on an easement with Midcontinent Communications.
- h. **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.
- i. **Airport Leases:** Assistant City Attorney Dickerson and City Attorney Stalheim assisted the Airport with reviewing/drafting car rental agreements that were before Council on March 18.
- j. **Airport Grant Applications and Letter Agreements:** Assistant City Attorney Dickerson and City Attorney Stalheim assisted the Airport with reviewing/drafting the memo for the SHE Contract for Taxiway C/C3 Reconstruction Final Design that was before Council on March 18.
- k. **Airport Electrical Vault Rehabilitation:** Assistant City Attorney Dickerson and City Attorney Stalheim assisted the Airport with reviewing/drafting the electrical vault rehabilitation memo that was before Council on March 18.
- l. **Facade Improvement Program Case No FI-12 (KAMP Collective, LLC):** Assistant City Attorney Schmitz and City Attorney Stalheim reviewed and discussed the facade improvement program agreements with the Community Development Director.
- m. **Hotel Licensing:** The City Attorney gathered information for the Mayor and Council regarding hotel licensing.
- n. **Open Records Requests Questions:** Assistant City Attorney Schmitz assisted the police department with responding to open records requests.
- o. **Problem Properties Unit (PPU) Meeting:** The City Attorney attended a Problem Property Unit meeting which is being reviewed by ACM Joyce to improve efficiencies.

## 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:** The City Attorney is continuing to work with City staff to prepare an ordinance requiring businesses and buildings that receive public funds to install at least one automatic door. Finance is presently compiling the financial information requested and an update will be provided at the next City Council meeting.
- d. **Assistant City Manager Ordinance/City Manager Contract Amendment:** The City Attorney drafted amendments to the City Manager Ordinance, and the City

Manager Contract to reflect the addition of the Assistant City Manager to the team and transition to the PTO leave system.

3. **City Manager Committees:** Assistant City Attorney Dickerson has been serving on the Employee Recognition Committee.
4. **CPR/Fire Extinguisher Training:** City Attorney staff attended CPR and Fire Extinguisher Training on March 1.
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
December	79	151	230
<b>totals</b>	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	140	274	414
<b>totals</b>	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
February	114	348	462
<b>totals</b>	255	608	863

- 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