



Date: May 1, 2023
To: Mayor/City Council
City Manager
From: City Attorney's Office
Re: Monthly Attorney Report (May, 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 May 6, 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.

May: Settlement Agreement is signed and closing is set for August 9, 2024, but the property owners have been in touch about potentially closing before August 9th. City staff and CDM Smith are coordinating logistics to attempt an earlier closing. If an earlier closing is feasible, a negotiated a purchase agreement addendum will be brought before the City Council for its consideration.

2. City of Minot v. Loyal Order of the Moose Minot Lodge #822

<u>Counsel:</u>	John Warcup
<u>Opposing Counsel:</u>	Jessica Klein
<u>Current Status:</u>	Pending in District Court Executive Session scheduled for May 6 Jury Trial Cancelled

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.

May: An executive session has been scheduled before the May 6th regular City Council meeting to discuss present negotiations on this matter – given the status of negotiations, the three-day jury trial on the District Court calendar for 4/30/2024, 5/1/2024, and 5/2/2024 was cancelled.

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.

May: 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.

May: Discovery is ongoing. Depositions of present and former city employees and the plaintiff were conducted. 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: Appealed to ND Supreme 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. 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.

May: On April 29, 2024, RMM Properties filed an appeal to the North Dakota Supreme Court arguing the District Court erred in affirming the City of Minot's approval of the application and preliminary plat.

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.

May: City staff and Attorney Warcup continue to finalize the City's response and gather materials to certify the record on appeal. Negotiations are ongoing.

5. **Liberty Sierra Vista, LLC /Storm Sewer District 121 – Hotel Revel**

Counsel: John Warcup
Retained by City of Minot

Opposing Counsel: Trevor Hunter

Current Status: Negotiations ongoing

On January 16, 2024, Liberty Sierra Vista, LLC sent a letter to the City’s contractor in connection with Storm Sewer District 121’s impact on the Hotel Revel and its operations. Liberty Sierra claims that while they are not opposed to improving drainage and flood protection in the area, the storm sewer project will allegedly have significant economic impacts on the hotel and is demanding compensation well in excess of what City staff and its contractor believes is reasonable or appropriate for a temporary drainage easement. In February, the City Council approved retaining John Warcup, of Swanson & Warcup, Ltd, to assist with negotiations for this storm sewer project and any necessary eminent domain proceedings.

May: Negotiations are ongoing.

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 monthly 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. **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. The City Attorney assisted NDR staff recently with a contract amendment to extend the substantial completion deadline for Mattson Construction to complete the project due to the delays resulting from the departure of their executive director.
- d. **Easement Agreements:** Assistant City Attorney Schmitz continues to review draft easement documents with Project Manager Ben Cofell.
- e. **Edgewood Real Estate Investment Trust Development Agreement:** Attorneys Johnson and Lindgren have submitted a draft preliminary agreement for staff review. Attorneys are waiting for confirmation from city staff that they have reviewed the agreement and once that confirmation is received, a final draft will be sent to Edgewood for review and comment.
- f. **Facade Improvement Program Case No FI-8 (Big M Building):** Assistant City Attorney Schmitz and City Attorney Stalheim reviewed and discussed the facade improvement program agreements with the Community Development Director.
- g. **Facade Improvement Program Case No FI-9 (111 Main St. S.):** Assistant City Attorney Schmitz and City Attorney Stalheim reviewed and discussed the facade improvement program agreements with the Community Development Director.

- h. **Open Records Requests Questions:** Assistant City Attorneys Dickerson and Schmitz assisted the police department with responding to open records requests. The City Attorney also worked through an open records request with the Bus Transit Superintendent and the City Clerk.
- i. **Problem Properties Unit (PPU) Meeting:** The City Attorney attended a Problem Property Unit meeting which is being reviewed by ACM Joyce to improve efficiencies.
- j. **Demolition/Remedial Work Orders:** The City Attorney discussed remediation and demolition orders with the Building Official and PD.
- k. **Special Assistant City Attorney Davis:** The City Attorney made arrangements with the Ward County State's Attorney's Office to transfer prosecution of a case concerning a present city employee to their office to dispel any concerns of impropriety. The City Attorney prepared pleadings, council memo, and council appointment paperwork to complete the appointment and staff assisted with transferring the police file.
- l. **Contract Extension for Broadway Circle Construction Contract:** The City Attorney assisted with a first amendment to the Broadway Circle Construction Contract extending their substantial completion deadline.
- m. **Language Services Agreement:** The City Attorney reviewed and provided feedback to the HR Director regarding a language services agreement.
- n. **Firefighter FLSA Concerns:** The City Attorney, City Clerk, CAO staff, and HR Director spent considerable time attempting to locate documents to assist outside counsel with researching and addressing PTO concerns raised by the Fire Department. These documents were from the late 1980s, and some of the documents are a concern.
- o. **NDSWC Cost-Share Reimbursement Agreement:** The City Attorney reviewed the cost share agreement on the City Council's agenda for May 6, 2024.
- p. **Planning Department Variance Questions:** The City Attorney and Assistant City Attorney Schmitz assisted the Planning Department with work through a variance application.
- q. **Rock Solid Contract Discussion:** The City Attorney attended a meeting with the City Engineer, Utility Director, and representatives from the Rock Solid app to work through concerns with the Rock Solid app.
- r. **MIMG CCXXXI Plaza Sub, LLC Temporary Easement:** The City Attorney reviewed and provided comment to the City Engineer regarding a temporary easement.
- s. **GMRI Memorandum of Agreement and Temporary Easement:** The City Attorney reviewed and provided comment to the City Engineer regarding a memorandum of agreement and temporary easement.
- t. **St. John Utility Easement:** The City Attorney reviewed and provided comment to the City Engineer regarding a utility easement.
- u. **Memorandum of Understanding between Souris River Joint Board, Minot Park District, City of Minot, and Ward County Water Resources District:** City Attorney reviewed and provided comment to Utilities Director.
- v. **Antenna Leases:** Assistant City Attorney Schmitz provided comment to the Utility Director regarding some Antenna Leases.
- w. **MOT Electrical Vault Rehabilitation Contract:** Assistant City Attorney Dickerson reviewed and provided comment to the Airport Director regarding the contract.
- x. **MOT GSA Lease Amendment:** Assistant City Attorney Dickerson reviewed and provided comment to the Airport Director regarding a unilateral GSA lease agreement that requires MOT to complete and be reimbursed for water quality testing.
- y. **Required Fire Hydrant Testing Notifications:** Assistant City Attorney Dickerson assisted Fire Department with drafting letters regarding mandatory annual testing of privately-owned fire hydrants.
- z. **Human Resource Policy Updates:** Assistant City Attorney Dickerson worked with HR Generalist Thurston on some policy updates.

- aa. **Airport Advertising Agreement:** Assistant City Attorney Dickerson received and has began reviewing an advertising agreement at MOT.
- bb. **Structure at 1700 Burdick Expy. E:** The NDR Director briefed the City Attorney on a structure at this address that the City acquired and the property owner intends to move. The property owner was contacted and advised that they have plans to move the structure to Surrey. This move is behind schedule, and the City Attorney and staff are monitoring the situation.
- cc. **Executive Session Preparations:** The City Attorney met with staff in advance of the May 6th Executive Sessions to review documents and coordinate logistics.

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. Additionally, the City Attorney was asked to reach out to outside counsel to gauge their interest in assisting with advising on the City's options in regard to removing the cap on liquor licenses. The City's conflict counsel, Katie Schmidt with Ohnstad Twichell, P.C. advised she would be interested in the topic and has provided a draft retainer agreement. The City Attorney also reached out to Swanson & Warcup, Ltd. to see if they were interested, but has not yet received a response.
- 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 met and discussed the memo and ordinance attached to the May 6th agenda with City staff.
- d. **Taxi Fare Fees Ordinance/Resolution:** The City Attorney, and Assistant City Attorney Schmitz worked with the Assistant City Manager and other staff to draft a tax fare ordinance/resolution addressing concerns raised by a taxi company operator.
- e. **Alleyway Speed Limit Ordinance:** The City Attorney, Traffic Engineer, and Assistant City Attorney Schmitz finalized the alleyway speed limit ordinance before the Council for consideration.
- f. **Airline Rates and Charges Resolution:** Assistant City Attorney Dickerson assisted the airport with drafting a corrected rates and charges resolution.

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

4. **Continuing Legal Education (CLE):** The City Attorney attended CLEs on working with public health units and managing difficult clients and colleagues. Assistant City Attorney Schmitz attended the Mid-Year International Attorney's Conference in Washington, D.C. April 18-21. He attended courses relating to a variety of municipal law topics including planning and zoning issues, municipal contracts, the First Amendment, the Pregnant Workers Fairness Act, probable cause and other policing matters, and a general case law update on cases related to municipal matters. The materials related to these courses are available upon request. Assistant City Attorney Schmitz has also dispersed the materials to relevant city departments. Assistant City Attorney Dickerson also attended a CLE related to artificial intelligence and its use in law enforcement.

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. The City Attorney's Office also has a weekly staff meeting to brief our group on office and City activities.

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
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	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
February	114	348	462
March	114	345	459
totals	369	953	1322

- 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