

City of Minot

City Attorney's Office



Date: January 29, 2019
To: Mayor/City Council
City Manager
From: City Attorney's Office
Re: Monthly Attorney Report (January, 2019)

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 4, 2019 City Council meeting:

I. Civil Matters

A. Floodplain Eminent Domain Cases:

1. City of Minot v. Jane Ballantyne Hegeler Trustee of the Jean Ballantyne Living Trust of 1997, et al.

Counsel: John Warcup

Opposing Counsel: Robert Rau

Current Status: Pending at District Court

On May 31, 2017 the City filed an eminent domain action against the Defendants to acquire property for the construction of a flood control project and related infrastructure. Defendants filed an Answer on June 22, 2017. On December 21, 2017 Judge Todd Cresap entered an order requiring the parties to consider and discuss alternative dispute resolution.

On February 20, 2018, the parties filed an Alternative Dispute Resolution Statement with the Court indicating they believe mediation or a court-sponsored settlement conference would be appropriate in this matter. In response, Judge Cresap indicated that given the North Central Judicial District is understaffed by almost 2 judges, there may be considerable delay in accommodating court sponsored mediation and encouraged the parties to pursue a mediation option outside of court sponsored mediation. A scheduling conference was held February 26, 2018. Prior to the conference, the parties' attorneys had disagreements regarding the order for disclosure of expert witnesses and the burden of proof in eminent domain matters. In response, the City filed a proposed scheduling order with the court along with a memorandum of law regarding the disclosure of expert witnesses in eminent domain matters and judicial review of eminent domain takings. The Defendant's counsel was not prepared to discuss these matters at the scheduling conference, and the Court granted their counsel seven days to file a brief or other documentation supporting their position. A scheduling order has not yet been entered.

On March 5, 2018, the Defendant filed a motion for summary judgment, arguing that a taking is not necessary or permitted, and that the City's taking exceeds the permitted taking authorized by the

resolution. The City responded on April 4, 2018 and Defendant replied on April 5, 2018. A hearing took place on April 6, 2018 and the Court took the matter under advisement.

On August 24, 2018, the district court issued an order denying the motions for summary judgment and ordering that the City fully comply with NDCC 32-15-06.1 and (2) that an evidentiary hearing take place to determine what interest in the Defendants' property is necessary to fulfill the public purpose for the taking. That same day, a status conference occurred.

On September 13, 2018, the Court issued a notice of trial date for the taking portion of the eminent domain action. On September 26, 2018, the City inspected the Defendants' property.

January: A court trial took place on January 14, 2019 with the issue being whether the Defendants' property is necessary to fulfill the public purpose of flood control. The Court directed the parties to submit written closing argument, which were due on January 25, 2019. Attorney Warcup submitted a closing argument on behalf of the City. The Court will review the evidence submitted and issue a written opinion. If the Court determines the taking is necessary, a trial relating to the value of the property will be scheduled.

B. Filed Civil Matters:

1. Leanne R. Grondahl and Estate of Jean Laskowski v. City of Minot (1124 6th Ave. Southwest)

Counsel: John Warcup
Appointed by NDIRF

Opposing Counsel: Jessica Merchant and Richard Olson

Current Status: Pending at District Court

Since 2017, the City has been attempting to acquire 1124 6th Avenue Southwest from Jean Laskowski for the proposed flood control project. The City had been negotiating with Ms. Laskowski, however, she has since passed away. The City continued negotiations with Ms. Grondahl, the personal representative of Ms. Laskowski's estate. The parties have not reached an agreement on the value of the property.

On December 5, 2018, the City accepted service of a summons and complaint relating to this matter. Plaintiffs claim the value of the property has significantly diminished due to the flood control project and the proposed acquisition of the property and, therefore, a taking has occurred. Plaintiffs, therefore, request just compensation for the property, attorney fees, costs, and any other relief the Court deems just and equitable. The City filed an answer on December 21, 2018.

2. Leanne R. Grondahl, et al v. City of Minot (517 12th Street Southwest)

Counsel: John Warcup
Appointed by NDIRF

Opposing Counsel: Jessica Merchant and Richard Olson

Current Status: Pending at District Court

Since 2017, the City has been attempting to acquire 517 12th Street Southwest from Leanne and Shane Grondahl. The parties have been negotiating but have not reached an agreement on the value of the property.

On December 5, 2018, the City accepted service of a summons and complaint relating to this matter. Plaintiffs claim the value of the property has significantly diminished due to the flood control project and the proposed acquisition of the property and, therefore, a taking has occurred. Plaintiffs, therefore, request just compensation for the property, attorney fees, costs, and any other relief the Court deems just and equitable. The City filed an answer on December 21, 2018.

3. Kenn Simensen and Lynette Simensen v. City of Minot (210 7th Street Northeast)

Counsel: John Warcup
Appointed by NDIRF

Opposing Counsel: Jessica Merchant and Richard Olson

Current Status: Pending at District Court

The City has been attempting to acquire 210 7th Street Northeast from Kenn and Lynette Simensen. The parties have been negotiating but have not reached an agreement on the value of the property.

On December 6, 2018, the City accepted service of a summons and complaint relating to this matter. Plaintiffs claim the value of the property has significantly diminished due to the flood control project and the proposed acquisition of the property and, therefore, a taking has occurred. Plaintiffs, therefore, request just compensation for the property, attorney fees, costs, and any other relief the Court deems just and equitable. Beyond that, Plaintiffs also make claims relating to governmental liability, unlawful interference with business, negligence, and due process violations; for those claims, Plaintiffs request damages, as well. The City intends to file an answer to the complaint.

4. Kenn Simensen and Lynette Simensen v. City of Minot (706 4th Avenue Northeast)

Counsel: John Warcup
Appointed by NDIRF

Opposing Counsel: Jessica Merchant and Richard Olson

Current Status: Pending at District Court

The City has been attempting to acquire 706 4th Avenue Northeast from Kenn and Lynette Simensen. The parties have been negotiating but have not reached an agreement on the value of the property.

On December 6, 2018, the City accepted service of a summons and complaint relating to this matter. Plaintiffs claim the value of the property has significantly diminished due to the flood control project and the proposed acquisition of the property and, therefore, a taking has occurred. Plaintiffs, therefore, request just compensation for the property, attorney fees, costs, and any other relief the Court deems just and equitable. Beyond that, Plaintiffs also make claims relating to

governmental liability, unlawful interference with business, negligence, and due process violations; for those claims, Plaintiffs request damages, as well. The City intends to file an answer to the complaint.

5. City of Minot v. Cypress Development, LLC

Counsel: Jocelyn Knoll and Kate Johnson
Dorsey Whitney
Appointed by City Council

Opposing Counsel: Attorneys from Perkins Coie

Current Status: Pending at District Court

This matter relates to a mixed development project in the City of Minot. The project involves 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. With that, on March 15, 2018, the City served a summons and complaint on Cypress, initiated a lawsuit in Ward County.

Cypress filed an answer and various counterclaims on April 23, 2018. In its counterclaims, Cypress's claims for relief include indemnification, unintentional misrepresentation, constructive fraud, breach of contract, and declaratory relief. On May 14, 2018, the City filed an answer to the counterclaims.

On July 27, 2018 a hearing on Cypress's motion to change venue took place before Judge Gary Lee. The Court has not issued a decision on that motion.

The City previously served discovery requests on Cypress. In September Cypress provided its responses to those discovery requests. The City's counsel is currently evaluating the responses and determining the appropriate next steps.

On October 23, 2018, the Court issued its order denying Cypress's motion to change venue.

January: In January 2019, the City's counsel was notified that another attorney from Cypress's firm would be handling the litigation. The scheduling conference originally scheduled for January 14, 2019 was rescheduled to February 19, 2019.

6. City of Minot v. 16th Crossing, LLC

Counsel: Shawn Grinolds and Brad Wiederholt
Appointed by City Council

Opposing Counsel: Wayne Carlson and Todd Zimmerman

Current Status: Pending at District Court

In 2013, the City entered into a Development Agreement with 16th Crossing, LLC. The City contributed five million dollars in CDBG-DR funds to provide water, sewer, drainage, and access infrastructure to 16th Crossing, LLC's development. In exchange, 16th Crossing, LLC agreed to, among other things, within two years, (1) construct 178 townhomes, of which a minimum of 51% of the proposed townhome would be set aside and offered at a price affordable to LMI buyers; and (2) provide 350 manufactured homes, of which a minimum of 51% of the manufactured homes lots would be set aside and leased to LMI households.

On August 1, 2017, the City notified 16th Crossing, LLC of several deficiencies, including but not limited to those outlined in the preceding paragraph, under the Development Agreement and permitted 16th Crossing, LLC with thirty days, per the Development Agreement, to either cure the deficiencies or provide documentation of diligent efforts to correct the failures. If 16th Crossing, LLC failed to cure the deficiencies or provide documentation of diligent efforts to correct the failures, the City set a termination date of September 15, 2017. City staff has extended the termination date two additional times to allow for 16th Crossing, LLC to provide proposals for resolving this matter without litigation.

The current termination date was set for December 8, 2017. This matter was discussed in executive session at the December 4, 2017 City Council meeting. Following executive session, the City Council convened in public session and moved to terminate the Development Agreement with 16th Crossing, LLC and pursue any action necessary to recoup the funds relating to the Development Agreement. The City sent a letter to 16th Crossing, LLC on December 8, 2017 advising 16th Crossing the City was placing 16th Crossing, LLC in default and terminating the Development Agreement for cause effective December 8, 2017.

This matter was discussed in executive session on January 8, 2018 by the City Council pursuant to N.D.C.C. 44-04-17.1, 19.1, and 19.2 so that Attorney Shawn Grinolds could advise the Council regarding the pending action, and deliver his advice and guidance on the legal risks, strengths, and weaknesses, which, if held in public, would have an adverse fiscal effect on the Council. Attorney Grinolds also allowed for an opportunity for the Council to discuss negotiating strategy and provide negotiating instructions, which if held in public, could have an adverse fiscal effect on the bargaining or litigating position of the City.

On May 29, 2018, the City received 16th Crossing, Inc.'s Answer and Counterclaims. On June 19, 2018, the City filed and served its answer to Defendant's Counterclaims.

On September 7, 2018, the Court issued an order for a scheduling conference and an order for alternative dispute resolution. At a special meeting on October 1, 2018, the City Council will discuss this litigation matter in executive session.

On October 11, 2018, the Court issued a scheduling order setting motion and discovery deadlines for the parties.

7. First Western Bank & Trust v. ND Port Services; City of Minot

Counsel: Shawn Grinolds
Appointed by City Council
Appointed by NDIRF against NDPS Counterclaim

Opposing Counsel: FWBT: Richard Olson/Jessica Merchant
NDPS: Jon Brakke

Current Status: Pending at District Court

In 2009, the City entered into a lease relating to city-owned property with NDPS. At the same time, the City agreed to a subordination agreement with State Bank of Kenmare, where the City agreed that NDPS could use its interest in the lease as security for one or more loans. A subsequent subordination agreement was signed in 2013 to amend the vender from State Bank of Kenmare to FWBT.

Allegedly, NDPS has defaulted on its obligations to FWBT. As a result, FWBT initiated foreclosure proceedings by filing a Summons and Complaint against NDPS and the City on May 16, 2017.

On June 8, 2017, the City filed an Answer to the FWBT Complaint and a Crossclaim against NDPS, alleging NDPS materially breached the lease agreement by failing to pay rent and failing to promptly pay and discharge real estate taxes and assessments against the subject leased property. On June 28, 2017, NDPS filed an Answer and Crossclaim against the City, alleging that the City is in breach of the lease agreement because it failed to return the lease property to the condition it was in prior to commencement of construction activities pursued by the City; it failed to insure proper drainage with respect to City improvements on or near the leased property; and construction of improvements on or near the leased property prevented NDPS from being able to properly use and develop the leased property. Additionally, NDPS's Crossclaim alleges that the City failed to permit NDPS to exercise its right to purchase certain portions of the leased property pursuant to the lease agreement because the City was unable to convey title to the subject property to NDPS. On July 19, 2017, the City responded to the Crossclaim, denying NDPS claims.

On November 15, 2017, NDPS filed a Motion for Summary Judgment against FWBT, arguing that FWBT did not fully comply with the statutory requirements relating to the foreclosure notice and complaint. The motion was not directed at the City.

The matter is still pending in District Court. On December 4, 2017, FWBT filed a brief in opposition to the Motion for Summary Judgment, arguing that it met all the statutory requirements relating to the foreclosure notice and complaint, and that even if it did not, NDPS is not entitled to summary judgment. On December 7, 2017, NDPS filed a response replying to NDPS's assertions claiming that FWBT's failure to meet the statutory notice requirements renders their foreclosure fatally defective and the Court should award summary judgment in their favor.

On January 25, 2018, First Western Bank & Trust filed proposed orders regarding the pending motions for summary judgment. Neither proposed order directly implicates the City.

On March 1, 2018, the Court granted Summary Judgment to First Western Bank & Trust to foreclose on NDPS's leasehold and other security interests and denied NDPS's motion for summary judgment. The Court did conclude however, that a genuine issue of material fact remains as to the amount owed First Western Bank & Trust by NDPS, and has requested affidavits be filed with the Court within 20 days describing the amounts owed for purposes of entry of final judgment on the foreclosure action. The City's claim against NDPS for accrued rents, and NDPS's cross-claim against the City for alleged damages, remain pending before the Court.

On April 19, 2018, Attorney Grinolds filed a motion for summary judgment on behalf of the City. On April 11, 2018, Attorney Grinolds mailed a notice to terminate the lease, and on May 31, 2018 the lease between the City and NDPS terminated.

On August 3, 2018, an amended judgment was entered in favor of FWBT establishing the specific amount owed to the bank. Previously, the Court entered judgment in favor of FWBT finding breach of the loan documents by NDPS. On August 22, 2018, the Court issued a special execution ordering the Sheriff to proceed with the sale of the property described in this matter. On August 28, 2018, the City filed a motion to amend the special execution to clarify that the Sheriff should include only NDPS's underlying interest in the lease with the City, not City's real property.

On September 7, 2018, the Court issued its order granting summary judgment and finding that NDPS materially breached the lease agreement by failing to pay rents in 2016, 2017, and 2018 and failing to pay real estate taxes in 2016, 2017, and 2018 through the termination date. The Court granted the City monetary damages against NDPS for breach in the amount of \$248,216.59 in relation to the 129.16 acres not genuinely in dispute; the Court also determined there is a genuine issue of material fact in dispute with regard to 5.70 acres leased to NDPS and summary judgment was not granted with regard to that portion of the lease. In addition, on September 19, 2018 the Court granted its order that the special execution should be amended and on September 21, 2018 an amended special execution was issued by the Court.

On October 31, 2018 a sheriff's sale for NDPS's real property, personal property, and interest in the City of Minot lease were auctioned at the Ward County courthouse. FWBT was the only bidder.

On November 28, 2018, the Court issued an order confirming the sale; the redemption period expired on December 30, 2018.

8. Lenertz v. City of Minot

Counsel: Randall Bakke and Brad Wiederholt
Appointed by NDIRF

Opposing Counsel: Robert Rau

Current Status: Pending at ND Supreme Court

On August 23, 2016, the City was served with, among other documents, a Summons and Complaint, alleging that the City's street (and other) improvements, repairs, and development caused damage to his property and, therefore, amounted to a taking by inverse condemnation. Plaintiff's claims relate to improvements to the approximate area of 4th Street SW to 33rd Avenue SW (Paving District 473). Plaintiff is requesting (1) an order that his land has been taken by inverse condemnation without payment; (2) award for the taking, costs, disbursement, attorney fees, and expert witness fees; and (3) other relief as just an equitable. On September 13, 2017, the City filed an Answer.

The parties attended mediation on December 12, 2017 with attorney Steven Storslee acting as mediator. No agreement was reached.

This matter was discussed in executive session with Attorney Bakke at the January 8, 2018 City Council meeting pursuant to N.D.C.C. 44-04-17.1, 19.1, and 19.2 so that he could advise the Council regarding the pending action, and deliver his advice and guidance on the legal risks, strengths, and weaknesses, which, if held in public, would have an adverse fiscal effect on the Council. Attorney Bakke also allowed

for an opportunity for the Council to discuss negotiating strategy and provide negotiating instructions, which if held in public, could have an adverse fiscal effect on the bargaining or litigating position of the City.

On April 16, 2018, Plaintiff filed a notice of appeal with the North Dakota Supreme Court. Separately, the City requested costs and a hearing is scheduled to take place in district court on May 16, 2018.

On May 16, 2018 a hearing on the City's motion for costs was held at district court. The district court ultimately ordered that Plaintiff pay \$3,070.00 in costs. The appeal process at the North Dakota Supreme Court, relating to the court's prior dismissal, is ongoing.

Oral argument took place at 1:30 PM on October 27, 2018 before the North Dakota Supreme Court. Attorney Randall Bakke argued on behalf of the City. The audio of the argument is available on the North Dakota Supreme Court website.

9. Stone Ridge Condominium Association v. Karl Buechler, Brad Beeter, and City of Minot

Counsel: Randall Bakke and Brad Wiederholt
Appointed by NDIRF

Opposing Counsel: Paul Sanderson

Current Status: Pending at District Court

The City was served with a Summons and Complaint on November 16, 2016. The matter relates to a fire that occurred December 27, 2013 at Stone Ridge Condominiums in Minot. The Plaintiff alleges that the City of Minot is at least partially responsible for damages to the condominium property because (1) the City's inspections department did not properly inspect the building throughout the construction and did not ensure the building was built in compliance with the building codes and (2) the City's fire department failed to fully extinguish all potential fire sources which caused the fire to rekindle and spread through the concealed floor and roof truss space above the main level which caused significant fire and smoke damage. Plaintiff ultimately alleges that the City of Minot breached its duties and obligations when it negligently issued a certificate of occupancy certifying the building met the applicable building codes and that the City breached its duty by failing to fully extinguish the fire and failing to properly inspect the scene to ensure the fire was completely extinguished. The City filed an Answer on December 5, 2016. The Court entered a scheduling order requiring the parties to be prepared for trial no later than April 1, 2019. On June 27, 2018, the Plaintiffs filed an amended complaint, adding Tom Weltikol as an additional defendant.

A status conference took place on September 24, 2018 and an amended scheduling order was issued on October 5, 2018.

January: Depositions took place January 8-9, 2019. Discovery is ongoing.

10. Joshua Peterson v. City of Minot and Brandon Schmitt

Counsel: Randall Bakke and Shawn Grinolds,
Appointed by NDIRF

Opposing Counsel: Michael Schmiede (pro hac vice)
Mark Larson (sponsoring attorney)

Current Status: Pending at Federal District Court

On May 27, 2016, the City received a demand letter from Joshua Peterson's attorney for \$4,000,000.00 to settle all claims against all defendants in this matter. The City responded, indicating it would vigorously defend any claims brought by or on behalf of Peterson. Peterson filed a lawsuit in federal court against the City and a former City police officer, alleging excessive force, battery, and negligence; Peterson is requesting damages and fees. The allegations of the lawsuit stem from an officer-involved shooting that took place in the City in August 2014 after an officer responded to a call for service relating to an early morning burglary at a local business; the reports indicate that at the time of the shooting, the officer was investigating a suspicious vehicle and the officer fired his weapon at the vehicle after it drove at him.

On April 30, 2018, Attorney Bakke filed a motion for summary judgment on behalf of the City and Brandon Schmitt.

This matter is ongoing. On May 31, 2018, Attorney Bakke filed a motion to compel relating to discovery of Plaintiff's computer.

On August 1, 2018, Plaintiff filed a response to the City's motion for summary judgment. On August 15, 2018, the City replied. The matter is fully briefed and the City is awaiting a decision from the Court.

In September, the Court granted the City's motion to compel, in part, and denied it, in part. The City's motion for summary judgment is still pending before the Court.

In October, a scheduling conference took place and Judge Miller extended the November 26, 2018 trial date. The new trial dates, which are tentative, are April 29-May 9, 2019.

December/January: In October, the City's counsel filed motions in limine relating to a deposition video; cell phone video and use of force reports; and accident reconstruction expert testimony. In December, the Plaintiff responded and the City replied. On January 3, 2019, the Court denied the City's motion with regard to the deposition video and granted the City's motions with regard to the cell phone video and use of force reports.

On January 16, 2019, the Court denied the City's motion to exclude or limit the testimony of the Plaintiff's accident reconstruction expert.

Also on January 16, 2019, the Court issued an order for a mandatory settlement conference. The mandatory settlement conference is scheduled to occur on February 11, 2019 at the Federal Courthouse in Bismarck. The City Manager (or his delegate), the Chief of Police, and the City Attorney will attend with Attorney Bakke and NDIRF representatives on behalf of the City.

On January 22, 2019, the City filed a motion for default judgment and other sanctions relating to a spoliation issue with the Plaintiff's computer. The Plaintiff has an opportunity to respond before the issue is ripe for the Court's decision.

11. Lucke v. Solsvig et al.

Counsel: Scott Porsborg
Appointed by NDIRF

Opposing Counsel: Robert Martin

Current Status: Appeal at 8th Circuit Court of Appeals

The City was served with a Summons and Complaint on March 8, 2016; former Airport Director, Andrew Solsvig, is also named as a Defendant. The lawsuit concerns a commercial ground lease between the City and the Plaintiff's family business. The business is operated in a building owned by the Plaintiff, located on real estate that is owned by the City. Essentially, Lucke alleges that the City and its former airport director, Andrew Solsvig, discriminated against her based on her race, in the negotiating of commercial leases at the Minot International Airport. Lucke requested the City be enjoined from any action relating to the discriminatory and disparate lease terms in the commercial lease; that the City be required to offer comparable lease terms to Lucke; that the City be required to pay reasonable costs including attorney's fees; and for other relief that the Court deems just and equitable. City filed an Answer on March 28, 2016.

The City filed for Summary Judgment on July 14, 2017. The Defendants filed a response on August 9, 2017. On November 2, 2017, the District Court granted the City's Motion for Summary Judgment and determined there was no discrimination and that the City presented a "race-neutral" rationale for the disparate terms of the Plaintiff's lease. On November 15, 2017, the parties filed a stipulation of Defendants' costs and disbursements in the amount of \$685.77. On November 29, 2017, Plaintiff filed a notice of appeal, appealing the Court's Order granting Defendants' motion for summary judgment to the Eighth Circuit Court of Appeals.

On January 10, 2018, the Plaintiffs filed a Brief and Addendum asking the Eighth Circuit Court of Appeals to reverse the District Court's granting of summary judgment and remand the matter to proceed to a full trial on its merits.

On February 12, 2018, the City filed a response to the Plaintiff's Brief asserting that the District Court correctly found summary judgment in favor of Andrew Solsvig and the City of Minot and that their grant of summary judgment be affirmed.

In October, the Eighth Circuit Court of Appeals further reviewed the matter and, on October 4, 2018, determined the matter could be submitted on briefs without oral argument.

December/January: On January 3, 2019, the Eighth Circuit Court of Appeals affirmed the District Court's decision to grant the City's motion for summary judgment. Ms. Lucke can file for a rehearing "en banc"; Ms. Lucke could also appeal the decision to the United States Supreme Court.

On January 9, 2019, the Plaintiff's attorney sent a letter to the City's counsel and indicated Ms. Lucke elected not to proceed with a rehearing or appeal.

12. Envy Gentlemen's Club Lawsuit

Counsel: Bryan Van Grinsven,
Appointed by NDIRF

Opposing Counsel: William Delmore

Current Status: Pending at District Court

In November of 2010, the City of Minot was served with a Summons and Complaint with regard to a prior zoning decision rendered by the City wherein a liquor establishment employing exotic dancers was

required in July of 2011, to be located and operated only in an M-2 Zoning District, which is designated as an industrial zone. The Plaintiff's lawsuit asserted United States constitutional violations, an unconstitutional taking of property, and a request for attorneys' fees with respect to the filing of this action. This case is being defended by the City and the North Dakota Insurance Reserve Fund has appointed Bryan Van Grinsven of the McGee Law Firm in Minot, North Dakota, to represent the City's interests. The City filed a motion seeking to vacate the temporary injunction which had been previously granted against the City in the enforcement of the zoning restriction. On September 20, 2011, District Court Judge William McLees granted the City's request to vacate the temporary injunction and thereby allowed the City, at that time, to prohibit the operation of the sexually oriented business. Remaining issues have been left before the Court with respect to the sufficiency of alternative sites available within the City. The Court administratively closed this file.

On May 30, 2017, the City of Minot was served with a Summons and Complaint by Envy's Gentlemen's Club. This matter is filed in federal court. The Summons and Complaint relate to a zoning ordinance change that was effective in September 2011 which required adult entertainment centers to be located in M-2 zoning districts. The Complaint alleges a takings claim and requests that the Court either permit Plaintiff to have adult entertainment pursuant to grandfathering, or award Plaintiff damages for the loss of value in its property. On June 20, 2017, the City filed an Answer. The matter is ongoing at federal district court.

On February 19, 2018, the City filed a motion to dismiss the federal litigation due to the ongoing state court proceeding in Ward County District Court.

A hearing on the City's motion to dismiss was held on July 20, 2018. After the hearing, Judge Miller issued an order suspending pending discovery deadlines and cancelling the pretrial conference and trial. On July 26, 2018, Judge Miller issued an order staying the federal court proceedings. This essentially shifts jurisdiction, at this point, back to state court.

C. Other Civil Matters

1. Ordinance Revisions:

a. Liquor License Ordinances:

1. This office is working with the City Clerk and Police Department on process issues relating to liquor licenses. After the October 30, 2018 Committee of the Whole meeting, the group will also consider revisions to the inactive license process and present that information to the City Council at a later date.

2. Dean Melius and Margo Ehr v. City of Minot:

Counsel: City Attorney's Office

Opposing Counsel: Debra Hoffarth (Melius Ehr)
Bryan Van Grinsven (Water Board)

Current Status: Pre-litigation/Appeal to Office of State Engineer

Dean Melius and Margo Ehr own property outside of the corporate city limits. Melius and Ehr ("Property Owners") filed a complaint with the Ward County Water Resource Board on July 7, 2014, alleging that their property has been damaged because City development has caused storm water drainage to be

diverted to their property. The Board determined the complaint was not valid. The Property Owners appealed that decision to the State Engineer, and the State Engineer returned the complaint to the Board for further review after finding that the Board failed to determine whether any activities conducted upstream of the Property Owner's property were conducted contrary to NDCC Title 61.

The City Engineer and City Attorney met with members of Board and Property Owners in February 2016. The City Engineer was tasked with researching the developments and/or storm sewer districts in Minot. In September, 2016, the City Engineer and City Attorney met with members of Board and Property Owners in September 2016. The Board asked its engineer survey the property.

On January 22, the City of Minot received notice from the Ward County Water Resource Board that an apparent drain (as defined by N.D.C.C. § 61-21-01) appears to have been constructed on property, some of which is owned by the City of Minot. The Ward County Water Resource Board alleges that this drain is an unpermitted drain opened or established contrary to N.D.C.C. Title 61 and has asked the City to either remove the unpermitted drain or obtain a drainage permit. Failure to do so would result in the Board procuring closure of the drain and assessing the cost of doing so against the City's property.

On February 12, 2018, a hearing was held regarding the notice to remove an unpermitted drain. After the parties presented evidence, Loren Johnson moved that the City be required to remove the drain identified in the Board's notice, and the motion passed 3-2 (Maurice Foley and Tom Klein opposed). Maurice Foley moved to allow the City 6 months to remove the drain; seconded by Jason Zimmerman. The Motion passed 5-0. The City plans to appeal the decision of the Ward County Water Resource Board to the Office of the State Engineer.

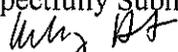
On March 23, 2018, the City submitted an appeal to the Office of the State Engineer.

3. **NAWS**: In August 2017, the District Court in Washington, DC concluded that the Environmental Impact Statement for the NAWS project met the requirements of the National Environmental Protection Act (NEPA). The State of North Dakota received notices in October 2017 that Manitoba and Missouri are appealing the District Court's decision. On June 22, 2018, Manitoba moved to dismiss its appeal and Missouri filed its appellate brief. The response brief was due August 3, 2018.

II. **Criminal Matters**

- A. **Minot Municipal Court** – 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.
- B. **District Court** – Appeared 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.
- C. **Prosecution Contract** – On January 2, 2019, Attorney Caitlyn Pierson began prosecuting City of Minot ordinance violations at municipal and district court per the City Council's action to appoint her Special Assistant City Attorney; she will maintain this role for 2019.

Respectfully Submitted,


Kelly Hendershot