

January 25, 2023

**Sixty-eighth Legislative Assembly of North Dakota
Bismarck, ND
Senate Energy and Natural Resources Committee
Chairman, Senator Dale Patten**

RE: City of Minot Opposition for Senate Bill 2313

Chairman Patten and members of the Senate Energy and Natural Resources Committee, my name is Paul Pitner and I serve as President of the Minot City Council.

The City of Minot would like to express its strong opposition to Senate Bill 2313.

While the use of eminent domain is often unpopular it is seldom used and does have an important role as this procedure is only utilized when there is a significant public purpose.

Most recently the City of Minot has used the process to acquire properties necessary for the installation of flood control infrastructure following the 2011 flood event. To date the City of Minot has acquired approximately 535 residential and commercial properties to address the needed flood control improvements.

Despite the large number of properties acquired, the eminent domain process was started on only 27 properties. Some property owners refuse to sell or negotiate, others demand exorbitant prices. The eminent domain process ensures that the property owner is paid a fair market value (a \$100,000 property isn't purchased for \$10,000) and that the taxpayers aren't forced to pay significantly more than a property is worth (paying \$100,000 for a \$10,000 property). Of the 27 properties: 3 went to trial; 5 properties the property owner didn't respond and a default judgement was entered; 2 are still in process; and the remaining 17 were settled before trial. Using these numbers only 8 properties (3 at trial and 5 awarded by default) of the 535 acquisitions were obtained by eminent domain, or approximately 1.15%. The City of Minot has not used the eminent domain process for any property acquisition outside of flood mitigation according to current staff recollection.

As is outlined above, many acquisitions are settled without using the eminent domain process or before trial. All of these are typically settled at, or reasonably above, fair market value. Should this bill pass, all acquisitions will likely go through the court process because property owners and their attorneys will know that even if an entity wins an eminent domain proceeding

they will be paid at least 133% of the fair market value of their property. In addition, typically once these eminent domain cases are awarded the entity is required by the court to pay all costs of the property owner, including attorney fees and appraisal costs. As a result, not only will Cities, Counties, and the State pay the additional 33%, they will also have to pay the increase in additional court costs, attorney fees, and appraisal fees of more cases going through the entire eminent domain process.

In Minot's situation, the State helps fund 65% of acquisition costs. To date the City has invested \$81,244,027 in acquisition. If this bill was in effect at the time of acquisition another \$26,810,529 would be needed to complete the sorely needed public improvement of flood mitigation infrastructure. With the current funding commitment of the State this increase would represent an additional \$17,426,844 in State funding. This figure does not include the increase in court fees and attorney costs of the property owners.

If this bill passes entities needing to build public improvements would have to decide whether or not to proceed with the infrastructure project, delay projects to allow more time to raise the needed funding and potentially resulting in increased inflationary costs, or raise the tax burden on citizens to pay the additional cost.

Given the eminent domain process is rarely used, and paying fair market value is reasonable, the City of Minot respectfully requests a **Do Not Pass** vote on SB 2313.