

THE PARTICIPATOR

SUMMER 2024

MEMBER FEATURE:
**Grand Forks
Park District**

CUTTING DOWN ON LIABILITY CLAIMS, P. 4

DON'T GET CAUGHT IN A
PHISHING SCAM, P. 5

IT'S ALL YOUR FAULT...
OR IS IT?, P. 14

NORTH DAKOTA
NDIRF
INSURANCE
RESERVE FUND



DEAR MEMBER:

As announced March 1, Brennan Quintus resigned as CEO to pursue a new and exciting opportunity within the insurance industry. The Board of Directors appointed me as CEO effective July 16, 2024.

I am excited to take on the challenges of this role and, first things first, want to thank NDIRF's staff and management team for keeping our operations moving forward while our board completed its executive search.

While there are too many examples to list here, there were many instances of great teamwork that took place, and I am honored to work alongside such a talented and professional group of people who are dedicated to the NDIRF mission and providing service to our members.

It is important that we understand what your expectations

as a member-owner are, so we again asked for your feedback in September as part of our all member survey. Thank you for responding to this year's survey, and we're currently reviewing responses and considering suggestions.

While our survey is a great opportunity for us to be intentional about collecting feedback, please know we look forward to hearing from you throughout the year. To share your feedback or pass along your suggestions, please use the Contact Us page on our website, available at www.NDIRF.com>Contact.

Thank you for your NDIRF membership!



CEO KEITH PIC

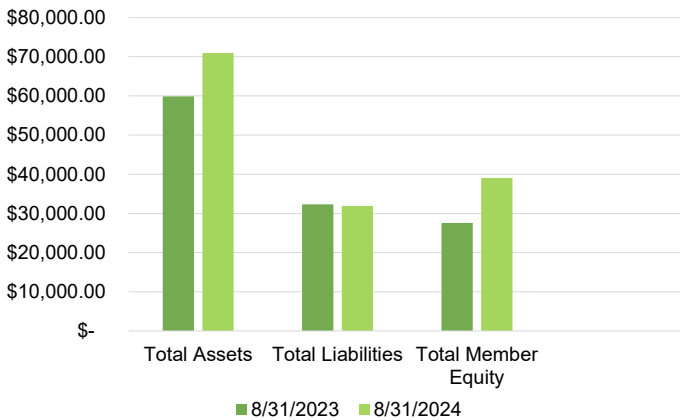
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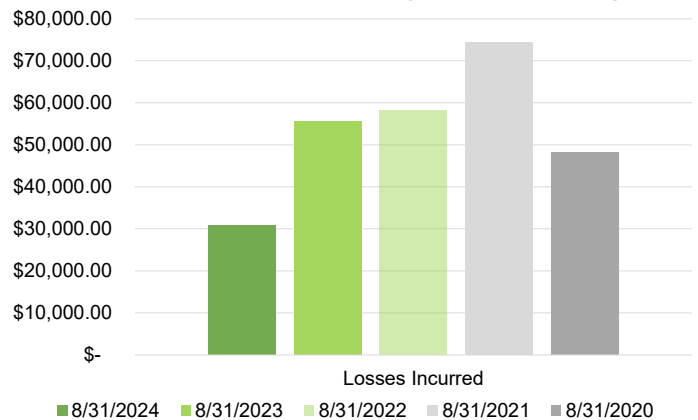
FINANCIAL INSIGHTS

As of August 31, 2024, the NDIRF remains in a strong financial position with assets at \$70.97 million, including over \$39 million in member equity. Our loss ratio through the month was 23.7%, well below our budgeted amount (60%).

BALANCE SHEET (IN THOUSANDS)



YTD LOSSES INCURRED (IN THOUSANDS)



Cover Photo: Veteran's Memorial Park. Photo Credit: Grand Forks Park District. Opposite Page Photo: Veteran's Memorial Park. Photo Credit: Grand Forks Park District.

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CUTTING DOWN ON LIABILITY CLAIMS

PROVIDED BY BRIAN D. SCHMIDT

ATTORNEY AT LAW AND PARTNER AT SMITH PORSBORG SCHWEIGERT, ARMSTRONG,
MOLDENHAUER & SMITH

Lawnmowers throw rocks through windows. It is an unfortunate fact of life and can happen even when nobody did anything wrong. If your political subdivision's mower throws a rock through a car window, you will likely get an angry phone call demanding it be fixed. You may wonder: "Do we really have a legal duty to pay for this?" The answer is, "it depends."



In general, a political subdivisions and private individuals have the same liability for injuries caused by negligence. *M.M. v. Fargo Public School Dist. No. 1*, 2010 ND 102, ¶ 9, 783 N.W.2d 806. While political subdivisions do enjoy statutory immunity in certain circumstances, routine mowing activities will not likely fall within any exception to this general rule. This means your political subdivision will be liable for damage caused by its mowers if the operator failed to "exercise reasonable care under the circumstances." *Doan ex rel. Doan v. City of Bismarck*, 2001 ND 152, ¶ 25, 632 N.W.2d 815. This duty of care extends to "injuries that are foreseeable." *Nelson v. Gillette*, 1997 ND 205, ¶ 40, 571 N.W.2d 332. In other words, a political subdivision's standard of care is measured "by reference to the circumstances of danger known to one at the time or which...should reasonably have [been] foreseen." *N.D.J.I. C-2.05 Negligence*. However, just because "a mishap occurred" does not necessarily mean anyone was negligent. *Id.*

Courts generally acknowledge there is no duty to "minutely inspect [a] yard before mowing" because this would "impose an impossible burden and, in effect, make one who operates a...mower an insurer of the world at large."

Stayton v. Funkhouser, 263 N.W.2d 764 (Ind. Ct. App. 1970). However, courts have found mower operators liable when the circumstances made it reasonably foreseeable that mowing activities would cause damage. See *Loonan Lumber Co. v. Wannamaker*, 131 N.W.2d 78 (S.D. 1964) (operator held liable for broken window which occurred while

mowing a ditch near a gravel surface that contained an abundance of rocks and stones.); *Jones v. St. Louis Housing Authority*, 726 S.W.2d 766 (Mo. Ct. App. 1987) (operator held liable for death of young child struck by stick propelled from lawnmower when operator knew of wooden debris in area and mower's propensity to propel objects).

Liability for a damage caused by mowers will turn on the facts and circumstances of each case. Common sense and basic precautions can limit your potential for liability. For example, mow areas near parking lots before cars show up or after they leave. Mow areas abutting streets during low-traffic times. If there is - or was - construction near the area you need to mow, check for broken concrete, tools, and debris before you do so. If mowing next to a gravel road, be mindful of passing vehicles. Also, inspect rock guards on your mowers to ensure they are in proper working order.

There is no way to ensure mowing operations will not cause damage. In general, the law does not punish those who act reasonably; however, reasonableness depends on what you know or should know and the foreseeable harms that exist. Exercising additional care to avoid foreseeable risks can save your political subdivision from liability in the event your mowing operations cause damage.



DON'T GET CAUGHT IN A PHISHING SCAM

Phishing emails have recently circulated in which employees appear to request a change to their direct deposit or banking account information. So, how can your entity determine which requests are legitimate and which are not?

Here are some steps your entity's employees can take to help reduce the chance they get caught in a phishing scam:

1. Verify the sender's email address, specifically its domain. The NDIRF's domain is bolded here: **First.Last@ndirf.com**. If the sender's domain doesn't match the domain used in their previous emails, it may be a sign the email is a phishing scam.
2. Be wary of emails that pressure you to act quickly. Scientific tests have shown that time pressure
3. Review the greeting and tone of the email to determine if it's consistent with the sender's previous emails. Scammers "often target a broad set of victims at one time, [so] they often use generic greetings like 'Dear Customer,' or they may even skip the greeting altogether²". Their emails may also contain "unnatural phrasing²" among other errors.
4. Don't click on links or download attachments unless you know the email is legitimate. Links and attachments are tools scammers often use to install malware "that will infect your PC³".

To help your entity's employees outsmart phishing scams, here are some actions it can include in its email, computer, and/or technology policy:

1. Report suspicious emails to its IT, security, or other designated department.
2. Verify an employee's request or safety of links or attachments by directly calling the employee or talking with them in-person.
3. Complete the NDIRF's LocalGovU Computer Security Basics course, available free through your entity's NDIRF membership.

Contact NDIRF Director of Member Services Corey Olson at (701) 751-9107 or Corey.Olson@ndirf.com if your entity wants further information about LocalGovU, our online training platform offered free to NDIRF members.

¹Butavicius, M, Taib, R, & Han, S. December 2022. Why people keep falling for phishing scams: The effects of time pressure and deception cues on the detection of phishing emails. Retrieved 9 September 2024 from <https://www.sciencedirect.com/science/article/abs/pii/S0167404822003297>.

²Rafter, D., 30 July 2024. 10 real phishing email examples. Retrieved 9 Sept. 2024 from <https://us.norton.com/blog/online-scams/phishing-email-examples>.

³Moon, B. 14 January 2016. Don't Click On Strange Links: 6 Tips To Avoid Phishing Attacks. Retrieved 9 September 2024 from <https://www.forbes.com/sites/bradmoon/2016/01/14/how-to-avoid-becoming-a-victim-of-phishing/>.



King's Walk Golf Course in Grand Forks (N.D.). Photo Credit: Grand Forks Park District.

MEMBER FEATURE: GRAND FORKS PARK DISTRICT

BY JOANNA DRENNEN, MASCM
NDIRF MARKETING AND COMMUNICATIONS MANAGER

Whether in the heart of summer or middle of winter, people who live in the Grand Forks community have access to a wide range of recreational activities to help keep their minds and bodies strong.

Their access to parks, facilities, and programs didn't happen by accident. It happened due to thoughtful planning and meticulous design by the Grand Forks Park District (District), a process that started in 1905 and continues to this day.

MEET GEORGE HELLYER, GRAND FORKS PARK DISTRICT EXECUTIVE DIRECTOR

Before he joined the Grand Forks Park District (District), George Hellyer punched numbers for organizations and businesses as a public and private accountant. The jobs put to use his Bachelor of Accountancy degree from the University of North Dakota, his Certified Public Accountant (CPA) license, and enabled him to gain experience that would prepare him for an unexpected opportunity.

"I wasn't looking for a new job when I ran across an opportunity to come to the Grand Forks Park District," Hellyer said, referring to its opening for a Superintendent of Finance.

"My thoughts were, I'm doing accounting, but it'd be a lot more fun to do accounting for golf courses and Daddy-Daughter Dances and those types of things," he said with a laugh.

The Superintendent of Finance role was largely created to oversee the financing and budgeting of Choice Health & Fitness, a 162,000 square-foot fitness facility. *More on this facility in a little bit.* Hellyer started in this role in 2010, holding the position for 11 years before his promotion in 2021 to Executive Director.

The Executive Director opening was created following former Executive Director Bill Palmiscno's retirement. Palmiscno served 47 years with the District, including eight as Executive Director.

"The former Executive Director helped me gain a wider range of experiences and exposures to different things that prepared me for the executive director position," Hellyer



George Hellyer

said, reflecting on the mentorship that led him to throw his name into the hat of Executive Director candidates.

Now in his third year at the helm, Hellyer says he enjoys the challenges working in local government can bring, noting the balance the District has to strike between keeping taxes low while also improving facilities, maintaining reasonable user fees, and offering free services and events.

"It's a unique aspect that's very interesting to me – walking that line and trying to be aware of both sides," he said.

Hellyer also likes the size of the District, which has 65 full-time and approximately 600 part-time employees.

"In some ways, it's a large organization, but in comparison to some cities and school districts, and other large entities, we're smaller," he said.

"It's that nice family atmosphere at work," he continued. "We're small enough to know everybody yet large enough to get some big projects done and make a meaningful impact with the improvements we're able to make, facilities we're able to maintain, and programs we're able to run."

GRAND FORKS PARK DISTRICT + THE NDIRF

The Grand Forks Park District gets its liability, auto, and public assets coverage through the NDIRF, its member-owned local government risk pool. Its impressive loss history

inspired the NDIRF to reach out to the District and ask Hellyer about what they do to keep losses low.

"The Grand Forks Park District serves a large community and employs a lot of people, which makes their low loss ratio so impressive," said NDIRF CEO Keith Pic. "It's clear the District's administration has struck an effective balance between serving the community's recreational wants and needs while prioritizing risk management and safety."

Through its NDIRF membership, the District has participated in Certified Playground Safety Inspector (CPSI) courses, defensive driving courses (DDC), and the HR Collaborative.

"Whenever we've reached out to your team, it's always been a positive response back," Hellyer said, referring to the District's interactions with NDIRF employees. "It's been a good relationship, and you've always been a good resource."

Hellyer shared the District's employees have attended NDIRF-sponsored CPSI courses hosted by the North Dakota Recreation and Park Association for as long he can remember and that they have enjoyed the option of completing DDCs online. The District's employees complete DDCs every three years.

"It's easier for them to do because they can do it when it's convenient for them from their computer," he said.

One of the District's additions to improve driver safety is installing a

decal in each of its fleet vehicles that reads, "Phone Down. Buckle Up."

Hellyer and the District's Director of Finance & Administration Jeff Lancaster are also HR Collaborative members and attend the program's online and in-person events. The HR Collaborative is an NDIRF program that provides human resource management training and educational resources for North Dakota local governments, including the Human Resource Reference Guide for Local Government and the HR Collaborative Consultant.

"I've gone to the HR Collaborative's events every year since I've been with the District," Hellyer said. "We [Hellyer and Lancaster] always come back with things we can implement in our personnel manual."

The District's goal is to perform an annual review of its personnel manual, considering material distributed by the HR Collaborative, additional training sessions employees attend, and questions brought forward by employees.

ABOUT THE DISTRICT

The District's tagline, "Enhancing lives since 1905," celebrates its formation and ties into its mission of providing "the best parks, programs, facilities, forestry services and other services possible to promote a healthy and enjoyable lifestyle for all citizens of Grand Forks" (accessed 27 Aug. 2024 from www.gfparks.org).

Fulfilling this mission for a community that boasts a population



Sertoma Park - Ali's Boundless Playground (LEFT), Youth Baseball Program. Photo Credit: Grand Forks Park District.

of nearly 60,000 (according to the 2020 U.S. Census) is no small task, but the District's employees have demonstrated how forging partnerships, thinking creatively, and prioritizing safety ensure Grand Forks residents experience the District's mission.

"How we get to that point [fulfilling its mission] is not a straightforward process," Hellyer said, explaining the District has a strong manager group that works within their departments to prioritize annual projects and/or programs, develop budgets, and finalize the plan with their respective division director.

Park Board Commissioners are then presented the plans by Hellyer and the District's directors, ensuring they understand the District's priorities and have the opportunity to provide input and feedback.

Hellyer shared the District selects projects and programs that fill gaps within the community which may mean some programs are offered year-after-year and others may be new and different, offering an exciting new

perspective for people to celebrate and engage with their community.

One of the District's longstanding recurring annual programs is its Just for Fun Day Camp, a summer recreation program for 6- to 10-year-old kids that's hosted at eight different parks across Grand Forks. The program's supervisors lead daily games, arts and crafts, and host special field trips and events to keep kids active and engaged throughout the summer. This past year, the camp hosted 425 kids.

In June, the District hosts Hooked on Fishing at Ryan Park in partnership with the North Dakota Game and Fish Department and Scheels. At this one-day event, families and kids can rent fishing poles and cast a line. Adults simply exchange their ID/driver's license to rent a pole and retrieve it upon returning their pole. Volunteers drop by to grill and serve hot dogs and offer other items to eat, a welcome meal after those fishing have reeled in, and released, their day's catches.

"Not many lakes in Grand Forks, but we have a small lake that gets stocked

by the North Dakota Game and Fish Department," Hellyer said, explaining how the District hosts the event.

Hellyer said its Family Fun Night, which is held in late July each year, is one of the District's most popular events. Described as the "ultimate neighborhood block party," the event features a parade, family games, inflatable games, free popcorn and lemonade, and a Movie in the Park.

Family Fun Night has provided inspiration for some of the District's new events, like its Barbie Party that was held this past August. Its Barbie-branded marketing was too pink – and too culturally relevant – to miss, and the event featured a themed dance party, photo booth, contests, and a showing of The Barbie Movie.

To internally promote its Barbie Party, Hellyer shared one of the District's recreation managers really got into the role.

"She walked around our office each day with a different color wig on," he shared with a laugh.

The District's ability to be creative and have fun while bringing value to its community also inspired its next new big event: Parktoberfest, happening September 30. This event celebrates the incoming fall season and encourages community members to put on their best flannel and enjoy a day at University Park. The event will feature food trucks, bounce houses, hayrides, music, games, s'mores, pumpkin painting, and a special showing at sundown of the movie Beetlejuice. The event is offered free to attendees, and charges are assessed for select vendor and concession items.

But the fun doesn't stop when the temperature drops.

Leaning into the holiday season, the District hosts an annual Santa Village at Lincoln Golf Course Clubhouse that features, by Hellyer's estimate, 40-50 differently themed and decorated Christmas trees.

"I don't even know how many trees they decorate, but it's insane," he said, adding that past year's tree themes include UND hockey, UND, Barbie, and Snickers. "I mean, it's anything and everything under the rainbow. She's very, very creative," he added, referring to Recreation & Special Events Manager Lynne Roche who leads the tree decorating charge.

Admission to Santa Village is free, and the District offers a spot for villagers to donate money for youth scholarships and non-perishable food items for the local food shelf. On a few select nights, the village even hosts

Santa and offers sleigh rides or magic shows and passes out take-home kids' holiday art kits.

"Of course, hot cocoa and cookies," Hellyer added as he listed the items that make the experience fun and memorable.

CHOICE HEALTH & FITNESS

As mentioned on page 6, one of Hellyer's primary responsibilities in 2010 when he first joined the District was to oversee the financing and budgeting of Choice Health & Fitness, a 162,000 square-foot fitness facility.

A citizens-led steering committee called the IMAGINE Campaign brought forward in 2007 the idea to build a new community recreation facility and renovate the existing Family YMCA. Hellyer shared the previous facility lacked the space and amenities to offer activities community members requested.

The campaign quickly gained momentum, receiving its first major contributions from the Crary and Sproule families who donated a combined 44 acres of land and Choice Financial that committed \$2.75 million for naming rights.

Donations from private citizens and area businesses continued to pour in over the years, helping to maintain the campaign's momentum. It culminated in a \$6.5 million commitment from Altru Health System. The health system's donation secured its naming rights for the Family YMCA, which is now the Altru Family YMCA, and for naming rights of Altru Wellness

Village, a park that surrounds Choice Health & Fitness.

Hellyer explained the YMCA's building was also in need of upgrades and renovations, and Altru Family YMCA partnered with the District to offer a shared membership agreement. This agreement allows Choice Health & Fitness members access to the Altru Family YMCA and vice versa.

"The community really got behind the building of a new facility," Hellyer said, adding by offering the shared agreement, it also got a renovated YMCA. "The shared agreement really allowed our steering committee to join forces with the YMCA and other sponsors to fundraise and engage with the community."

Constructing a facility like Choice Health & Fitness was the District's now-retired Executive Director John Staley's goal. Hellyer acknowledged the facility was primarily paid for by offering naming rights, lease agreements, and securing donations and grants; however, some property tax and other revenue sources were also leveraged.

Completed in September 2012, the facility offers state-of-the-art weightlifting and cardio equipment, group exercise/cycling studio space, two basketball courts, six tennis courts, three racquetball courts, a three-lane lap pool, two water slides, a zero-depth entry pool with spray toys, a lazy river, and The Deli, a café that offers fresh smoothies, beverages, and food. The facilities amenities enable the District to offer a variety

of services, including hundreds of fitness classes, personal training and nutrition support, youth sports and art activities, and SilverSneakers programming.

CONNECTING WITH THE COMMUNITY

To share news and information with Grand Forks community members, the District adjusts its communication strategy based on its target audience.

For example, all community members receive the District's Recreation Guide, a booklet that contains information about its ongoing programs, services, activities, etc. The District's summer guide is mailed to all to all Grand Forks and air force base households. For its fall/winter guide, it sends a postcard to all households, providing instructions for residents to view the guide on its website.

The District also reaches Grand Forks community members each week by sharing information about upcoming events on a local radio station and posting engaging content on its social media. The types of content include pictures, graphics, and videos accompanied by clever text.

The District takes a more targeted approach when it communicates with groups of people who have registered or purchased memberships for specific programs or facilities, including Choice Health & Fitness, Kings Walk Golf Course, and Lincoln Golf Course. Hellyer shared for these groups, the District creates content specific to their program or membership and directly distributes it

to them via email or its website. Additional distribution channels may also be used, if needed.

Hellyer refers to the clubs or programs that reserve the District's parks, or indoor or outdoor facilities, as partners.

Partners fulfill an important role for the District by providing their feedback about its facilities, amenities, scheduling, and overall operations.

Their perspective also helps guide the District's decision to pursue information about possible facility improvements or new construction to meet the community's growing population and recreational demands.

Hellyer, Park Operations Manager Steve Hell, and Facilities Manager Wes Colborn manage the District's partner relationships, with Hell largely



Choice Health & Fitness (TOP), Family Fun Night is held each year at University Park, forestry department employees assist local students' tree planting (BOTTOM). Photo Credit: Grand Forks Park District.

managing communication with service clubs and the general public and Colborn managing facility rental and user agreements with athletic clubs and the Grand Forks School District (School District).

“Communication, communication, communication,” Hellyer said. “We just try to always keep it going so these groups know what is going on and aren’t surprised when something comes up.”

In working with its partners, the District’s goal is to ensure its offerings, whether a facility or service, support its community’s recreational activity. This goal is especially important when it partners with the School District. Hellyer shared the District and School District are often sharing resources, helping to stretch financial resources to achieve the best possible outcome for the community – especially its students.

“We keep a seat for them [School District] at the table when we’re discussing building or renovating facilities,” Hellyer said. “We want to be sure they are involved in our discussions and that we get their input and advice.”

AWARDS

In 2016, the District earned the North Dakota Recreation and Park Association’s Golden Egg Award for its ICON Sports Center. The center is a 91,500 square-foot youth hockey arena that features two rinks, 10 team locker rooms, a community room for special events, ample stadium-style seating and a viewing deck at each rink, and additional amenities.

“Choice Health & Fitness was our maiden voyage on the fundraising front,” Hellyer said. “ICON was 2.0.”

Hellyer explained that similar to the District’s experience in fundraising for

Choice Health & Fitness, ICON Sports Center’s steering committee led the fundraising charge and offered naming sponsorship opportunities for the facility as well

as features throughout the facility. These features included each ice rink, locker room, shooting room, concessions, and common areas.

“This strategy has helped us spread the budget as far as we can with as little tax impact as possible,” Hellyer said, explaining that property tax helped but was proud to share the center was made possible largely through fundraising.

LET’S TALK SAFETY

The District’s Safety Committee is a nine-person committee that meets monthly to review incident reports and employee accidents and hold discussions about how to prevent them in the future. The committee is also responsible for periodically reviewing and updating as needed the District’s safety policies.

For Hellyer, the regular, recurring meeting time reinforces the importance of safety.

“We don’t say, ‘We don’t have time for safety this month,’” he said. “If I’m taking the time to go to meetings and to talk about safety, then hopefully,



ICON Sports Center. Photo Credit: Grand Forks Park District.

other employees feel like, ‘Yeah, this is an important thing, and maybe we should be involved as well.’

The committee is comprised of one employee from each department who serves a two-year term, ensuring all employees have the opportunity to serve on the committee and share their department’s experience regarding safety and risk mitigation.

Some positions on the Safety Committee are referred to as management positions and aren’t term-based. For example, Hellyer serves as the committee’s Safety Manager, Director of Finance & Administration Jeff Lancaster serves as Risk Management Coordinator, Accounting Clerk Annette Shane serves as Safety Coordinator, and Project Administrator Jenelle Swenberger serves as Safe Lift Coordinator.

“I really like our Safety Committee,” Hellyer said. “It’s [safety] a tough topic, and it’s tough to get buy-in, but we’ve had success.”

“I like that we have management and full-time staff from other departments

Continued on p. 12

involved so everyone has a say in it [safety review and policies],” he continued. “It’s also been a way for me and for others to connect with employees from different departments.”

In addition to connecting with employees from different departments, the changing location of the committee’s meetings helps employees grow familiar with the District’s different parks, facilities, and programs.

Hellyer shared that during each meeting, the Safety Committee reviews the hosting park or facility’s emergency action plan, which details employees’ response should a critical incident or severe weather event (fire, tornado, etc.) occur, AED location, and fire extinguisher location. The member who represents the site’s department also provides information to the committee about the park or facility, including current and upcoming events, and renovation plans or updates.

“We always try to be intentional regarding safety,” Hellyer said, acknowledging that while the topic may be dry, the District welcomes employee suggestions about how to keep its information and delivery fresh. Currently, the District is in the throes of producing safety videos starring employees who deliver humorous lines to keep viewers engaged. The committee also knows a meal helps and will invite all employees to attend safety meetings at which lunch is served.

“We’re always talking about the upcoming safety meeting or encouraging managers to bring their employees,” Hellyer said, further explaining how they purposefully approach safety and safety training within the District.

Within its safety conversations, the District also ensures employees understand how to report an issue or accident. Because a representative from each department serves on the District’s safety committee, the odds are good employees know someone they’d feel comfortable reporting an issue to. If not, they can use a survey which is delivered anonymously to the Safety Committee.

“We try to provide different avenues and different mechanisms for employees so they feel safe to report things,” Hellyer said. “We want employees to report things and know there isn’t going to be an issue because of their report.”

SAFETY COMMUNICATION

The District’s employees are introduced to its safety policies during its new employee onboarding process. These policies are available on the District’s website, making them easy to update and easy for employees to access. If safety policy updates are made, an article about the updated policy is included in the District’s internal News of the Week newsletter that is emailed to all employees.

The District also keeps in touch with employees by hosting up to four all-employee meetings per year, during which a trending safety topic is often

discussed. Trending topics include recurring accident and incident report themes reviewed by the Safety Committee as well as training desired by management team members.

Most recently, for its June 2024 all-employee meeting, Grand Forks County Sheriff Andrew Schneider discussed active shooter events and responses as well as other related topics.

Throughout the year, the District’s employees are given the opportunity to participate in a survey, which includes a safe lifting component provided by North Dakota’s Workforce Safety and Insurance (WSI), allowing management to gauge employee engagement and collect feedback regarding improved safety for employees and the public. The District also offers Defensive Driving Courses (DDCs) that full-time employees must complete every three years and AED/CPR training they must complete every two years.

The District is one of the few that oversees a forestry department. Hellyer shared this department maintains a regular training schedule as well as review of its own set of policies and procedures.

EXCITING THINGS AHEAD

“There’s always something going on,” Hellyer said. “There’s always a project,” he continued, responding to a question about what future District events, programs, projects, etc. excite him the most.

Hellyer then listed off recently finished

projects that have enhanced athletic experiences for spectators and participants, including constructing a new grandstand at its baseball field, converting tennis courts into pickleball courts, and beginning the process of updating one new playground each year to enhance its features and improve accessibility for all users.

“There are a number of smaller projects as well,” Hellyer said. “We are always balancing existing facility maintenance while building new things.”

Right now, two projects that occupy much of Hellyer’s time include a new indoor sports and aquatics complex

and a 10-acre park south of Grand Forks.

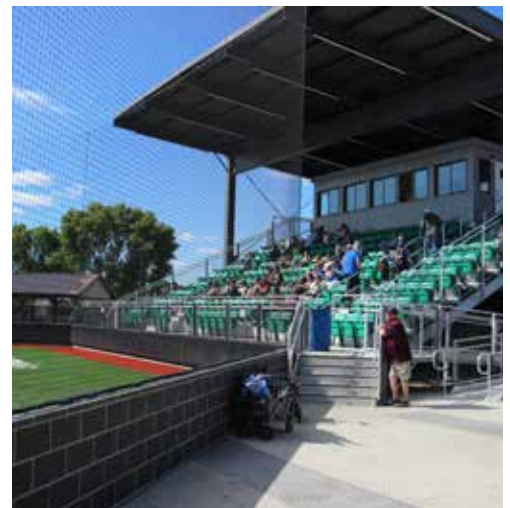
The City of Grand Forks (City) has coordinated with the District for the indoor sports and aquatic complex which is currently in design phase. The City will own the complex and the District will operate the complex. The complex, which is slated for a spring 2027 opening, will feature a 120-yard turf field, eight pickleball courts, 50-meter pool, four-lane instructional pool, community rooms, and much more.

“It’s a fun thing for us to be a small part of,” Hellyer said.

The 10-acre park is a new venture-type for the District in which it’s working with a developer to design a park to serve the future neighborhood. Hellyer shared the District formed a naming rights agreement with the developer, so the park will be called Crary Park.

Congratulations to George Hellyer and all of the District’s employees on safely providing recreational and social opportunities that enhance the lives of people in their community! The District’s parks, facilities, programs, and events enable community members to explore their community and love where they live.

Movie in the Park event (TOP LEFT). District employees get together for a picture to celebrate recreation and park month. The photo was shared on the District’s social media. (TOP RIGHT). Kraft Memorial Field and (BOTTOM LEFT) and Kraft Memorial Field Grandstand (BOTTOM RIGHT). Photo Credit: Grand Forks Park District.



IT'S ALL YOUR FAULT...OR IS IT?

PUBLIC ENTITY DOCUMENTATION SUPPORTS "NO NOTICE" CLAIMS

BY JOHN ROY, SENIOR RISK CONTROL FIELD REP. FOR TOKIO MARINE HCC-PUBLIC RISK GROUP
PUBLISHED IN PRIMA PUBLIC RISK MAY/JUNE 2022

Slips, trips, falls, and vehicle accidents on municipal property are common insurance claims. The many causes for these incidents include potholes, raised sidewalks, and damaged, obscured or missing traffic signs.

While specific laws and immunities for governmental entities vary by state, a common thread throughout jurisdictions regarding liability for infrastructure defects is "notice and an opportunity to cure." This means that to prevail on a claim based on the defective condition of municipal property, a plaintiff must show that the entity had notice of the condition and sufficient time to fix the issue, but failed to do so.

The laws on what constitutes notice can also vary by jurisdiction, but the question is always the same – did the entity know (or should it have known) about the problem? Are there known problem areas that are not being inspected or maintained or not often enough?

DOCUMENTATION CRITICAL TO CLAIM DEFENSE

When it comes to "should have known," courts often employ a reasonable care standard which is the degree of caution that an ordinarily prudent person – or entity in this case – would employ in a like or similar circumstance. This is often a jury question, which means going to trial, resulting in resources being

redirected from the entity's day-to-day operations and the expense of legal representation.

In the early stages of litigation, defendants will be expected to respond to interrogatories answered under oath and produce documents—including emails—related to any similar incidents or complaints about the area in question. Answering "there are no similar incidents or complaints" is only credible if there is a system of tracking incidents and complaints that can be produced to show that there is nothing related to the plaintiff's complaint.

Interrogatories often include requests such as, "Please state each and every time in the six months preceding the incident an employee was within a six-block radius of the accident site." If the entity has no tracking system in place, even if the area in question is checked regularly, it will be a challenge proving it had either no notice or insufficient time to correct the defect. However, if the entity has a system of logging incidents or complaints, they would be able to attest to the fact that employees routinely check the area in question and an absence of an entry indicates no notice was provided because all complaints are logged and addressed.

It is also likely the entity would receive a request for any documents regarding the policies and procedures of any system or practice of inspection and

routine maintenance. An answer of "none" to this request is almost certain to lead to liability as the public expects the entity to have a plan. Not having a plan in place would be considered unreasonable in just about any circumstance.

Responding to these requests, particularly those regarding previous incidents and complaints, could be extremely time consuming if it requires combing through boxes of time records and work logs. This task would be costly as staff would have to be diverted from their routine work, and it would certainly be expensive if defense counsel were to examine entity records. Proactively devising a system of record keeping that allows for efficient response to these types of requests is time well spent and will certainly save public funds.

Consider a claim that a street was in disrepair and caused an accident. How difficult would it be for the entity to determine when maintenance was last performed at or near the site?

If the entity's defense is that it did not know about the situation, how would it prove that without documentation? Stating that no one remembers getting a call is not a defense posture. A person could claim that she reported it to the entity, creating a "he said/she said" scenario that would likely result in the claim being settled and possibly invite similar actions.



Training municipal employees to look for issues and report them is a good practice. However, relying on that practice as the sole source of information about potential liability issues will likely not meet the reasonable standard of care and is not a reliable defense against claims.

IMPLEMENT A MULTILAYERED SYSTEM

A multi-layered system for reporting and logging potential liabilities and documenting the steps taken to investigate and correct issues provides critical information that can support the defense of a claim. The ability to show various methods of reporting and produce record keeping that proves there was no indication of a problem is far more convincing than simply stating there was no notice of it.

Consider implementing a system that includes multiple methods for reporting issues and captures the data needed to establish notice:

- Perform routine inspections with checklists for municipal employee observation and procedures for reporting damage and deficiencies.
- Log all incoming calls and generate work orders for inspection of reported issues.
- Include a link on the entity's website for reporting issues which,

like calls, are logged and initiate inspection.

- Document all inspections and all maintenance and repair work to municipal property, including start and completion dates.
- Store all municipal records as required by state law.

The practice of logging all calls and website submissions, including the date and time received, can strengthen a "no notice" defense of a claim. If someone claims to have reported an issue but the logs show no such entry, a claim denial is more credible and defensible.

If someone is injured at a park on a damaged piece of play equipment or by tripping on a defect on a walking path, the entity is not providing a strong defense against a claim by simply stating that the park turf is mowed at least once a week and employees did not see any issues. However, providing documentation that the park was mowed at least once a week and each time employees followed an inspection checklist to document the conditions of the play equipment, walking paths, trees, ball fields, etc., significantly strengthens the defense.

IF IT ISN'T WRITTEN DOWN, IT DIDN'T HAPPEN

This may all seem routine and mundane, and it is.

It is the routine and mundane that is necessary in establishing there was no notice provided. It is the lack of information in records routinely kept that leads to the conclusion that notice didn't happen, proving the

adage, "if it isn't written down, it didn't happen."

An effective system of documentation is one that logs and categorizes when notice was received and when and what action was taken. A software program that does this, such as Novo Solutions, ESRI and PubWorks, can be a valuable investment for entities.

Well-documented logs can also establish a defense of lack of notice. A spreadsheet that details what areas were inspected and when shows a commitment to being proactive about safety issues. There are sample forms and logs online that entities can customize for their needs. The PRIMA listserv and PRIMAtalk can also be resources for how other organizations have handled the issue.

An additional benefit of implementing a multi-layered system of reporting and logging potential liabilities is that it instills a culture of risk management within the organization. Promoting a culture of risk management that permeates the entire organization leads to fewer claims, injuries, and higher overall job satisfaction.

In defending a claim, it is difficult for defense counsel to "go to bat" for their clients when their clients haven't given them a bat. The strongest defense is solid documentation. Entities should work with their insurance agent, risk control representative and legal representation to design a multi-layered documentation system and then consistently execute the system, supporting a strong defense of no notice under the reasonable care standard.



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WELCOME, CODY!

We're excited to share Cody Arendt recently joined our team as an Outside Claims Adjuster. In this role, Cody is responsible for processing and resolving claims, conducting on-site investigations, and writing property and auto repair estimates.

Cody brings nearly nine years of insurance industry experience to the NDIRF, including customer service, claims adjusting, and claims management. He has a bachelor's degree from the University of Wisconsin-Stevens Point.



Cody Arendt

UPCOMING EVENTS

NDLC ANNUAL CONFERENCE
September 18-20 \ Bismarck
NDLC.org

NDACO ANNUAL CONFERENCE
October 20-22 \ Bismarck
NDACO.org

NDSBA ANNUAL CONFERENCE
October 23-25 \ Bismarck
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NDIRF BOARD MEETING
December 5 \ Bismarck
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