

NDSU MINARD HALL UPDATE

PROJECT STATUS UPDATE – MINARD HALL

COST RECOVERY/LITIGATION STATUS AS OF DECEMBER 11, 2013:

- Two additional defendants have been added to the lawsuit against JLG Architects, Heyer Engineering and Northern Technologies, Inc. The new parties are Meinecke-Johnson (the project's general contractor) and Earth Developers (the project's excavating contractor). The new claims are based upon, among other things, defective means and methods allegedly used in the construction of the excavation.
- Written discovery is voluminous and took longer than anticipated, especially with the addition of two new defendants. Five depositions were taken in November, 2013 and additional depositions will be conducted. The trial in the lawsuit against the JLG and others is scheduled to commence on March 3, 2015. The Court has not yet set a trial date in the lawsuit against the State Fire and Tornado Fund.
- General Counsel Budget Section testimony next page

PROJECT STATUS AS OF DECEMBER 11, 2013:

- The Minard Hall project is substantially complete and as of the fall 2013 academic term is in full operation. Remaining punch list items are being reviewed and finalized. We continue to work with contractors on project closeout documents and remaining/outstanding payment requests; continued document review before final pay applications are approved.
- Collapse related costs continue to be incurred as a result of three items:
 1. Ongoing Legal fees;
 2. Contractors have requested additional costs be covered due to project delays;
 3. Replacement of furniture lost due to the collapse.

FINANCIAL STATUS REPORT AS OF OCTOBER 31, 2013:

	Authorization	Project Expenditures	Commitments		Project Total with Commitments	Remaining Authorization
			Construction Orders Approved/Potential	Change Including Other-Induding Contigencies		
Phase I,II,III	\$ 18,000,000	\$16,989,678	\$ 106,026	\$ 904,296	\$ 18,000,000	\$ -
Collapse	4,874,300	4,030,516	221,666	622,118	4,874,300	-
Total	\$ 22,874,300	\$21,020,194	\$ 327,692	\$ 1,526,414	\$ 22,874,300	\$ -

PROJECT STATUS AS OF SEPTEMBER 24, 2013 SBHE MEETING:

- The Minard Hall project is substantially complete and is in full operation for the Fall 2013 academic term with remaining punch list items being reviewed and completed.
- The collapsed related costs continue to be realized as a result of three items:
 4. Legal fees continue to be incurred.
 5. Contractors have asked for delay related expenses that are being reviewed.
 6. Replacement of furniture lost due to the collapse.

FINANCIAL STATUS REPORT AS OF AUGUST 31, 2013:

	Authorization	Project Expenditures	COMMITMENTS		Remaining Authorization	
			Construction Change Orders Approved/Potential	Other – Including Contingencies		
Phase I, II, III	\$18,000,000	\$16,939,294	\$131,361	\$929,345	\$18,000,000	-
Collapse	4,874,300	4,006,485	244,020	623,795	4,874,300	-
Total	\$22,874,300	\$20,945,779	\$375,381	\$1,553,140	\$22,874,300	-

COST RECOVERY/LITIGATION STATUS AS OF SEPTEMBER 24, 2013:

- Two additional defendants have been added to the second lawsuit. They are Meinecke-Johnson, the project's general contractor, and Earth Developers, the project's excavating contractor. The new claims are based upon, among other things, defective means and methods allegedly used in the construction of the excavation.
- Written discovery is voluminous and has taken longer than anticipated, especially with the addition of two new defendants, but it is estimated that it will soon be complete and depositions will then begin. It is unknown when the trials will occur, but they would be at least one year away.

NDSU IS REQUESTING THAT THE SBHE CONSIDER AND PASS THE FOLLOWING MOTIONS AS OF SEPTEMBER 24, 2013:

First Motion: To amend the following underlined part of a motion previously approved by the SBHE on November 17, 2011, which currently reads:

Authorize NDSU to proceed with completion of the Minard Hall at an estimated cost of \$22,874,300 to be funded with \$17,500,000 million in state general fund appropriation, \$500,000 gift funds, and \$4,874,300 from a 2011-13 deficiency appropriation.

with the following underlined language:

Authorize NDSU to proceed with completion of the Minard Hall at an estimated cost of \$22,874,300 to be funded with \$17,500,000 million in state general fund appropriation, \$500,000 gift funds, and \$4,874,300 from a future deficiency appropriation.

Second Motion: To amend the following underlined part of a motion previously approved by the SBHE on November 17, 2011, which currently reads:

Authorize NDSU to carry a deficit fund balance on the Minard Hall project as a temporary funding source after the original \$18,000,000 of appropriated authority has been expended, until a state general fund deficiency appropriation for NDSU is authorized during the 2013 legislative session.

with the following underlined language:

Authorize NDSU to carry a deficit fund balance on the Minard Hall project as a temporary funding source after the original \$18,000,000 of appropriated authority has been expended, until a state general fund deficiency appropriation for NDSU is authorized during the 2015 or later legislative session.

MOTIONS PASSED AT SEPTEMBER 24, 2013 SBHE MEETING

MINARD HALL COLLAPSE COST RECOVERY/LITIGATION STATUS AS OF DECEMBER 31, 2012:

- NDSU retained the services of attorney Daniel Hull with the law firm of Anderson, Bottrell, Sanden & Thompson in Fargo to represent the University in its recovery efforts.
- Through Mr. Hull's efforts, NDSU has commenced two different lawsuits pertaining to the Minard collapse. Both lawsuits are venued in the State District Court in Fargo (East Central Judicial District).
- In the first litigation, NDSU brought suit against the North Dakota State Fire and Tornado Fund which provides property insurance to NDSU. After the collapse, the Fund denied that there was coverage for the collapse. As a result, NDSU commenced a declaratory judgment action against the Fund. NDSU is requesting a judgment that the Fund's insurance policy covers damages sustained by NDSU as a result of the collapse.
- In the second lawsuit, the plaintiff is the State of North Dakota, by and through NDSU and the North Dakota State Board of Higher Education. The defendants are JLG, Heyer Engineering and NTI, which are the architectural firm, the structural engineering firm and the geotechnical engineering firm involved in the Minard Hall project. The lawsuit alleges, among other things, that the defendants:
 - (1) failed to obtain, require or recommend sufficient soil testing and evaluation to properly design a deep basement and the associated excavation adjacent to the north end of Minard Hall;
 - (2) provided a defective design for the excavation adjacent to the north end of Minard Hall; and
 - (3) failed to determine that the excavation was defective prior to the collapse and take steps to prevent the collapse.
- In accordance with the construction contract, claims also have been initiated against the project's general contractor, Meinecke-Johnson. The claims are based upon, among other things, defective means and methods allegedly used in the construction of the excavation.
- Written discovery is voluminous and has taken longer than anticipated, but it is estimated that it will soon be complete and depositions will then begin. It is unknown when the trials will occur, but they would be at least one year away.

FINANCIAL STATUS REPORT AS OF DECEMBER 31, 2012:

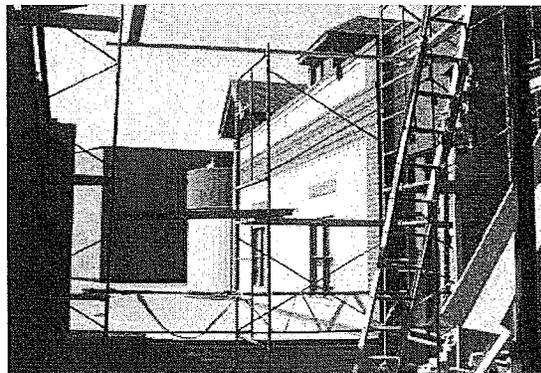
COMMITMENTS	Project		Construction	Other –	Total	Remaining
	Authorization	Expenditures	Change Orders	Including		
			Approved/Potential	Contingencies		Authorization
Phase I, II, III	\$18,000,000	\$14,899,879	\$2,462,018	\$638,103	\$18,000,000	-
Collapse	4,874,300	2,880,503	588,124	1,405,673	4,874,300	-
Total	\$22,874,300	\$17,780,382	\$3,050,142	2,043,776	\$22,874,300	-

AUGUST 31, 2012: 1901 (SOUTH) BUILDING SECTION RENOVATION:

Estimated completion date: Mid-to-late spring 2013

- Asbestos abatement process (referenced in this summary) began the first of September and was completed the first week of November 2011.
- Project scope was complex with demolishing much of the interior, building new structural framing system to support attic office space and new roof, creating more efficient space
- Structural voids and lack of structural integrity discovered once framing of bearing walls was exposed; resulted in additional design time, pricing time, material costs, wall

- reframing, and project completion time
- Poor masonry bearing wall conditions were uncovered:
 - > Masonry wall at NW portion of 4th floor found to be in poor condition; required complete removal down to third floor level; testing currently under way to verify compressive strength and physical characteristics of remaining masonry to ensure ability to support new roof loads; could delay completion of 1901 section, but impact won't be known until final test results are received
 - > Poor 4th floor bearing wall between 1901 and 1918 sections (masonry intermixed with wood) required removal and rebuilding/infilling of the wall
 - > Openings cut through bearing masonry walls had no or very inadequate lintels requiring new masonry infill or installation of new lintels to carry load above opening
- Issues required numerous job site trips by structural engineer and architect to re-engineer/redesign modifications to existing structural system
- Renovation work on section estimated to be completed mid-to-late spring 2013, depending on testing results stated previously



1901 (south) building section: mortar issues in the brick masonry

1918 (CENTER) BUILDING SECTION RENOVATION:

Estimated completion date: December 2012

- Work progressing on schedule for December 2012 completion date; however, some systems and components are tied to 1901 section, so full utilization may not be realized until 1901 area is completed

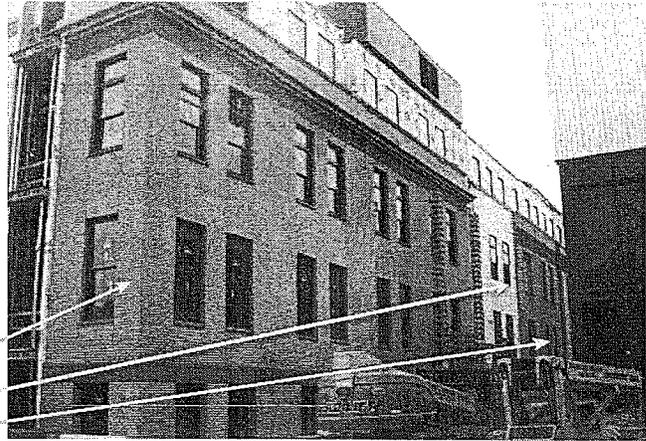


NORTH ADDITION:

Estimated Completion Date: December 2012

- Footings and foundation walls were completed in October 2011
- Steel frame installations also began at that time
- Sheet rocking is progressing, windows are installed, brick exterior is approximately 30% completed, and most infrastructure items are installed
- Substantial completion of the project is expected in December 2012

North Addition
Rebuilt Collapsed Area
1929 Section



1929 (NORTH) BUILDING AND COLLAPSED AREA RENOVATION:

Estimated completion date: December 2012

- Portion of the 1929 section was completed in 2011 and occupied for fall 2011; remaining portion and also collapsed area following north addition schedule, being completed at same time



1929 (north) building section: classroom currently in use; renovated in 2011.

FINANCIAL STATUS REPORT AS OF AUGUST 31, 2012:

COMMITMENTS

	Authorization	Project Expenditures	Construction Change Orders Approved/Potential	Other – Including Contingencies	Total	Remaining Authorization
Phase I, II, III	\$18,000,000	\$13,266,150	\$1,674,331	\$3,059,519	\$18,000,000	-
Collapse	4,874,300	2,629,280	1,150,461	1,094,559	4,874,300	-
Total	\$22,874,300	\$15,895,430	\$3,050,142	\$4,154,078	\$22,874,300	-

COST RECOVERY / LITIGATION STATUS:

NDSU is actively seeking to recover its damages, expenses and costs resulting from the collapse of Minard Hall. Two civil lawsuits have been commenced. Both lawsuits are venued in the State District Court in Fargo (East Central

Judicial District). A forensic study has occurred involving all of the parties. Discovery, including the production of voluminous documents, is ongoing.

In the first litigation, NDSU brought suit against the ND State Fire and Tornado Fund which provides property insurance to NDSU. After the collapse of Minard Hall, the fund denied there was coverage for the collapse. As a result, NDSU commenced a declaratory judgment action against the fund. NDSU is requesting a judgment that the fund's insurance policy covers damages sustained by NDSU as a result of the collapse.

In the second lawsuit, the plaintiff is the State of North Dakota, by and through NDSU and SBHE. The defendants are JLG, Heyer Engineering and 3 NTI, which are the architectural firm, the structural engineering firm, and the geotechnical engineering firm involved in the Minard Hall project. In this lawsuit, the State of North Dakota is seeking to recover damages sustained as a result

of the collapse of Minard Hall and as a result of the redesign of the north addition to Minard Hall. The lawsuit alleges, among other things, that the defendants: (1) failed to obtain, require or recommend sufficient soil testing and evaluation to properly design a deep basement and the associated excavation adjacent to the north end of Minard Hall, (2) provided a defective design for the excavation adjacent to the north end of Minard Hall, and (3) failed to determine that the excavation was defective prior to the collapse and take steps to prevent the collapse.

It is estimated that written discovery will be completed within approximately two months. Depositions will then begin. At this point, it is unknown when the trials will occur, but they would be at least one year away.

DECEMBER 13, 2011:

NDSU presented a request to the Budget Section for approval to increase the project authorization of the Minard Hall project by \$4,874,300 from \$18,000,000 to \$22,874,300 under Section 48-01.2-25, and to authorize under Section 15-10-12.3 the additional funding from insurance proceeds, legal settlements, and other available funds. The following motion carried on a roll call vote:

- To approve the NDSU request to increase the project authorization of the Minard Hall project by \$4,874,300 from \$18,000,000 to \$22,874,300 under Section 48-01.2-25, and to authorize under Section 15-10-12.3 the additional funding from insurance proceeds, legal settlements, and other available funds.

NOVEMBER 17, 2011: *(motions passed at the November 17, 2011, SBHE meeting)*

NDSU presented a brief update on the Minard Hall construction to the SBHE. The following motions were approved by the SBHE:

1. To proceed with completion of the Minard Hall at an estimated cost of \$22,874,300 to be funded with \$17,500,000 million in state general fund appropriation, \$500,000 gift funds, and \$4,874,300 future 2011-13 deficiency appropriation.
2. To seek Budget Section approval for increased spending authorization for Minard Hall from \$18,000,000 to \$22,874,300, an increase of \$4,874,300, with the intent that up to this amount (less any recovered from insurance or legal action) be ultimately funded by a state general fund deficiency appropriation per NDCC 48-01.2-25.
3. To carry a deficit fund balance on the Minard Hall project as a temporary funding source after the original \$18,000,000 of appropriated authority has been expended, until a state general fund deficiency appropriation for NDSU is authorized during the 2013 legislative session.
4. To take any necessary action, including litigation, to seek recovery of damages,

expenses, and costs resulting from the collapse of Minard Hall, with any recovery being used to offset the ongoing costs of the Minard Hall project or, if the project is complete at the time of any recovery, to

reimburse the State of North Dakota for the costs of the project to the extent that recovery dollars are available, following consultation with the chancellor.

NOVEMBER 9, 2011:

The Budget, Audit and Finance Committee held an executive session regarding Minard Hall and was satisfied with the progress of litigation.

SEPTEMBER 30, 2011: OVERVIEW AND PROJECT STATUS SUMMARY PRESENTED TO SBHE

Minard Hall is the largest academic facility located in the historical district on NDSU's campus.

The following departments have classrooms and offices in Minard Hall: Psychology, mathematics, communication, English, modern languages, history, philosophy, religion, sociology, anthropology, emergency management, English as a second language.

Minard Hall was built in three sections: 1901-south, 1918-center, 1929-north. Academic departments located in the 1929-north section were relocated to other areas across campus due to the collapse. However, academic departments located in the 1901-south section have remained during the renovation/construction process.

The \$18,000,000 Minard Hall authorized renovation and addition project scope consists of roof and window replacements, utility and infrastructure (steam, water, and sewer) work and relocation, asbestos abatement, interior redesign/remodeling, new space allocation, new west and north additions, and architect/engineering fees. Additionally, the project includes replacement of the HVAC system, general construction, and electrical work to complete the project. As of December 27, 2009, the project scope also includes the collapsed north wall repair.

Authorized funding for the project is \$18,000,000: \$17,500,000 general funds and

\$500,000 special/local funds.

Project scope includes the following square footage:

- Renovation of existing sections – 72,141
- Additions west and north – 30,755
- Collapse – 6,965 of existing section north wall

Consultants and contractors on the project:

- Consultants
 - > JLG (architect – lead of project)
 - > NTI (geotechnical)
 - > Martin Mech (mechanical)
 - > Heyer (structural)
 - > Land elements (landscape)
 - > MBN (electrical)
- Contractors
 - > Grants Mechanical (mech)
 - > Meinecke-Johnson (gen)
 - > Bergstrom Elec (elec)
 - > Veit (shoring)
 - > Earth developers (sub)

Minard Hall experienced an unprecedented partial collapse of the north wall in the early morning hours of December 27, 2009. The building had been partially occupied during construction activities for the renovation; however, the building was unoccupied at the time of the collapse due to the Christmas holiday break. All construction was halted so that project activities could focus on preventing any further collapse, settling or additional failure to the building.

Utility connections, temporary heat, air handling and electricity was re-established; a security company was hired to prevent unauthorized access to unsafe areas and to prevent theft; and a moving company was hired to help relocate faculty, offices and classrooms from Minard to other areas on campus because NDSU was not staffed to handle this activity.

During the same time period, the decision was made not to salvage the collapsed area building materials because of safety concerns. Demolition of this area could not take place unless shoring systems were designed and installed to prevent any further collapse. Access to faculty offices and classroom space in the collapsed area also needed to be addressed while the remainder of the building was evaluated for safety concerns. The challenge continued as the north end of the building became contaminated with asbestos material requiring specialized cleaning and removal.

Further testing and evaluations, demolition of the collapsed area, stabilization of the building, and shoring of the roofs and flooring were continued during the next four to five months. Construction activities continued on the main project, and the west addition progressed slowly because many of the resources were being focused on the collapsed area. While this work was occurring, plans were being developed to determine the cause of the collapse. All parties (contractors and sub-contractors) were given the opportunity to participate in the proposed forensic study. This allowed all parties an opportunity to review the same data and make field observations. All parties participating in the proposed forensic study hired experts to determine the testing needed to determine the footing failure.

In order for the review to occur, the collapsed portion of the building, excluding the footings and foundation, needed to be removed. During this removal, asbestos contaminated soils were discovered below the original building area that was collapsed. This area needed to be properly contained and removed before the last floor section could be removed.

Initial forensic testing was completed during July 12-15, 2010. Once completed, the second and final portion of the testing was to excavate the footing area and remove the failed material. All parties agreed an action plan should be developed to ensure soil conditions could handle excavating down to the footing level to expose the soils. Parties did not agree upon a plan until October 2010, and November 8 was set for the start of the deep excavation. No work could continue on the north addition or the collapsed area until this forensic testing was completed.

The original renovation project continued during this time. Temporary air conditioning was installed in classrooms during the summer of 2010 as the building was occupied while the renovation work was under way. Some soil data became available in October 2010, and concerns surfaced about a footing system for the collapsed area, along with concerns regarding the soil conditions at the north addition site. The project architect presented multiple recommendations for proceeding with the north addition and replacement of the collapsed area. Concerns surfaced at this time about continuing with a basement plan for the addition, so budget pricing was solicited on available options for proceeding. At this point, NDSU had a recommendation regarding how to move forward with the project, but needed guidance and approval from the SBHE.

At the December 16, 2010, SBHE meeting, NDSU was given approval for the following five items:

1. To expand the original scope of the project and timeline to include a redesign of the collapsed portion of building
2. To redesign the Minard Hall north addition to relocate the mechanical space, which will need to be relocated from a planned basement space, which is no longer feasible due to soil conditions
3. To allow collapse-related expenses to be funded from general funds currently available for the project
4. To administratively combine the three building phases into one project for

- management purposes
5. To authorize NDSU to seek appropriate legislative authorization and funding to complete the project in the most appropriate manner.

After obtaining the SBHE approval, the architects and consultants were directed to proceed with redesigning the north addition, removing the basement mechanical room and relocating that equipment to a 5th floor or penthouse. A revised design was completed for the north addition in mid-February 2011. The plan was approved and proposal requests were sent out to the contractors for pricing. At the same time, proposals were modified slightly for the collapsed area in order to tie in all connections and utilities to the revised plan. Proper documentation and supporting information for the pricing were received and approved change orders were created in April and May of 2011. Priorities at this time were to remove the loose sand fill in the basement area and to fill it in with a compacted engineered fill. Once this was completed, the collapsed structure and north addition footings could be started. Locations logistics for the building occupants have been an ongoing consideration and concern. (To date, permanent locations are not available.)

Therefore, the impetus was to complete the west addition and part of the 1918 and the 1929 construction zones so space would be available for the fall 2011 academic semester. Temporary life/safety systems, air conditioning and heating would need to be installed due to the 5th floor mechanical equipment not being installed until sometime in 2012. Due to a tight project timeline and because of space limitations, a moving company was hired to relocate the departments and to store any materials that were not necessary during the next 12 months. This task was completed in August 2011.

With the 1901 building and the remaining 1918 building now vacated, the next milestone was to remove the remaining known asbestos in these areas. This process began the first of September and will not be completed until the first week of November 2011. The work is being done by floor so that the other contractors can follow behind and complete the needed demolition. The north addition footings and foundation walls were completed in October 2011 and steel frame installations are currently under way. Substantial completion of the project is expected December 2012.

FINANCIAL STATUS REPORT AS OF SEPTEMBER 30, 2011:

	Biennium	Local Match	State General Funds	
Legislative/appropriation authorization				
Phase I and II	2007-09	\$500,000	\$4,500,000	\$5,000,000
Phase III	2009-11		\$13,000,000	\$13,000,000
		Total legislative authorization		\$18,000,000
Expenditures as of 9/30/2011				(\$12,507,864)
		Remaining legislative authorization		\$5,492,136
Outstanding construction commitments and contingencies as of 9/30/2011				
Construction Commitments				\$8,753,819
Contingencies:				
Construction				\$1,112,617
Legal				\$500,000
Total outstanding commitments and contingencies				\$10,366,436
Increased amount of Legislative spending authorization requested by NDSU due to collapse				\$4,874,300

	Construction	Collapse	Total
Expenditures	\$10,609,197	\$1,898,667	\$12,507,864
Commitments	\$7,048,186	\$1,705,633	\$8,753,819
Contingencies:			
Construction	\$342,617	\$770,000	\$1,112,617
Legal	-	\$500,000	\$500,000
	<u>\$18,000,000</u>	<u>\$4,874,300</u>	<u>\$22,874,300</u>

2011-13 HB1003, SECTION 8.

NORTH DAKOTA STATE UNIVERSITY – MINARD HALL – BUDGET SECTION:

North Dakota State University may use unspent funding from the \$5,000,000 appropriation received during the biennium beginning July 1, 2007, and ending June 30, 2009, and unspent funding from the \$13,000,000 appropriation, received during the biennium beginning July 1, 2009, and ending June 30, 2011, for the Minard hall project, for the biennium beginning July 1, 2011, and ending June 30, 2013. North Dakota State University shall report to the budget section regarding the status of the Minard Hall project and may request increased spending authorization from the budget section for the project.

NDSU IS REQUESTING THAT THE SBHE PASS THE FOLLOWING MOTIONS:

(Motions passed at the November 17, 2011, SBHE meeting)

1. Authorize NDSU to proceed with completion of the Minard Hall at an estimated cost of \$22,874,300 to be funded with \$17,500,000 million in state general fund appropriation, \$500,000 gift funds, and \$4,874,300 future 2011-13 deficiency appropriation.
2. Grant NDSU authority to seek Budget Section approval for increased spending authorization for Minard Hall from \$18,000,000 to \$22,874,300, an increase of \$4,874,300, with the intent that up to this amount (less any recovered from insurance or legal action) be ultimately funded by a state general fund deficiency appropriation per NDCC 48-01.2-25.
3. Authorize NDSU to carry a deficit fund balance on the Minard Hall project as a temporary funding source after the original \$18,000,000 of appropriated authority has been expended, until a state general fund deficiency appropriation for NDSU is authorized during the 2013 legislative session.
4. Authorize NDSU to take any necessary action, including litigation, to seek recovery of damages, expenses, and costs resulting from the collapse of Minard Hall, with any recovery being used to offset the ongoing costs of the Minard Hall project or, if the project is complete at the time of any recovery, to reimburse the State of North Dakota for the costs of the project to the extent that recovery dollars are available, following consultation with the chancellor.