

Local

Addison v. City, Police Chief: Defense files appeal on ruling

BY KERRY McQUISTEN
News@TheBakerCountyPress.com

On Thursday, July 6, Baker City Police Chief Wyn Lohner initiated a new step in a now very lengthy legal process, which began in October of 2015 by reporter Brian Addison against the City of Baker City, Lohner, and up to 10 unnamed "Doe" officers from the Baker City Police Department.

Lohner's attorney, Robert Franz Jr., filed an appeal to the United States Court of Appeals for the Ninth Circuit regarding the denial of qualified immunity from being sued in the Order that resulted from a June 21 summary judgment hearing. The filing fee of \$505 was paid.

As reported last week, that hearing was held in Portland in U.S. District Court with Michael H. Simon, District Judge, presiding in an attempt by plaintiff and defendants to eliminate part or all of the other side's case.

Addison's suit was filed in U.S. District Court, Pendleton Division. His claims go back to an opinion piece critical of police, which he penned for *The Record-Courier* in 2008.

He claims that this article triggered a years-long effort by Lohner and his officers to retaliate against

him in the community, culminating in employment termination and lack of ability to work for various employers.

Lohner has consistently denied the allegations.

On June 29, Judge Simon ruled on the summary judgment hearing.

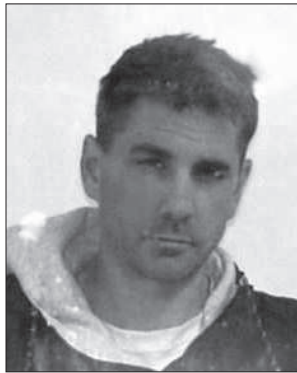
The defendants' motion for summary judgment was granted in part and denied in part, and as a result, Addison's federal claims that allege violations of procedural and substantive due process were tossed.

However, the bulk of Addison's claims, including economic interference, defamation of character, and retaliation remain in the suit per the Order.

Lohner remains a defendant only in his professional capacity as an employee of the City, according to the judge, not in his personal capacity, also per the Order.

Addison's motion for partial summary judgment was fully granted in that several of the defendants' defenses will not be allowed in trial. Many additional defenses still remain; however, the defense of qualified immunity was not among them.

Franz argued that Lohner is protected under the doctrine of qualified immunity, the purpose of which is balancing "the need to hold public officials accountable



Submitted Photo.

Reporter Brian Addison.

when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably."

The defense argues that in performing his duties reasonably, Lohner should be immune from the suit. Judge Simon disagreed, thus the defense's appeal.

Addison seeks an unspecified amount for "economic/compensatory and noneconomic/ special damages, including: loss of income and past and future impairment of earning capacity; injury to reputation, economically verifiable and otherwise; expenses related to having to relocate out of Baker City for fear of further retaliation; and emotional distress."

He is also seeking "reasonable attorneys fees" and "punitive damages" to be determined at trial.



Kerry McQuisten / The Baker County Press

Baker City Police Chief Wyn Lohner.

Barring early negotiations, a settlement, or the suit being dropped, the suit would have continued to trial in the first half of 2018—had the appeal not been filed.

According to the United States Court of Appeals for the Ninth Circuit, with the filing of Lohner's appeal, any prospect of a trial would now be bumped to a more distant future.

For a civil appeal, it could take approximately 12-20 months from the notice of appeal date (July 6) for an oral argument to even occur. If briefing isn't delayed, the process moves faster at approximately 9-12 months from completion of briefing.

After the oral argument, the Appeals Court has no set timeframe in which it must deliver its answer, but three months to one year later is typical.

Burn ban enacted

Due to the current dry conditions and high temperatures expected to continue throughout the extended forecast, all burning within the city limits of Baker City was hereby banned effective last Friday, July 7, at noon.

The burn ban will remain in effect until reevaluated later in the fall when the area has received enough moisture for fuel recovery.

The use of barbecues is still allowed, but all open burning or use of burn barrels is closed.

The Baker City Fire Department urges all residents to be extra vigilant with any type of ignition sources as temperatures are forecast to remain high with very low humidity into the extended forecast.

Fire on Cedar Street

On July 4th at 10:46 p.m., Baker City Fire dispatched to a fire at 4000 Cedar, and arrived to find a vegetation fire in the arborvitae outside Meadowbrook. Residents were temporarily evacuated. There were no injuries, but approximately \$5,000 in damage was done to property.

Units extinguished the fire, checked for possible extension of the structure near the scorched and melted plastic siding.

Crews also noted possible damage to a power transformer.

OTEC assisted and determined no damage to components within the enclosure.

Expended fireworks were discovered in the area of the fire.

Investigation of the fireworks transferred to Baker Police Department.

Another fire on Chestnut Street

At 12:21 p.m. on July 6, 2017, the Baker City Fire Department was dispatched to a report of home on fire at 1990 Chestnut Street.

Units arrived and found an exterior fire at the rear of the structure that had extended up into the attic space of the home.

The fire was brought under control in approximately 25 minutes.

Crews were assisted by personnel from the Baker Rural Fire Protection District. Crews spent the next hour and half extinguishing hotspots within the attic space and wall of the structure.

The fire was determined to have started from smoking materials left in a planter at the rear of the home that ignited patio furniture and extended up the rear wall into the attic.

The property was valued at \$150,000, with \$25,000 lost to the fire. \$20,000 in contents out of the \$50,000 worth on contents inside were lost. Three adults, an infant and some pets were displaced.

Motorcycle Rally

CONTINUED FROM PAGE 1

1:44 a.m. – Officers found a male subject passed out behind the wheel of his pickup in the 2100 block of Resort. Officers and Baker City Fire Department personnel woke the male up and called a taxi to bring him to a residence.

9:08 a.m. – Officers responded to a disturbance on Resort and Broadway. No arrests made

10:55 p.m. – Disturbance (male v. female)

Officer responded to the Baker Towers on a reported disturbance after the two involved returned home from the VFW. Upon investigation, it did not rise to mandatory arrest criteria and parties were separated.

July 8, 2017 – 13 traffic stop with 6 citations issued, 7 warnings issued

July 8, 2017 – 1 motor vehicle crash 1 citation issued July 9, 2017

12:09 a.m. – Reported DUII motorcycle rider leaving the VFW. Officers were unable to locate the vehicle when they arrived.

12:12 a.m. – Sergeant Chastain assisted the Oregon State Police on a DUII crash involving injuries on I84 near milepost 301. Two persons transported to the hospital for evaluation and one arrested for DUII and possibly assault. Not related to the Rally.

12:25 a.m. – Officers assisted a highly intoxicated male from Resort and Washington to his hotel room at the Bridge Street Inn.

12:40 a.m. - Officers assisted a highly intoxicated male from Church and 1st Street to his residence in town.

12:43 a.m. – Officers contacted an irate individual behind Lefty's Tap House. Male subject was upset the bar was closed and was beating on a can causing a noise disturbance. No arrest made.

2:50 a.m. – Driving Under the Influence of Intoxicants Mr. Fnu Farham DOB: 03/15/1991 (314 Hillcrest Place, was arrested for DUII and three counts of Recklessly Endangering another Person after he left the Maverik parking lot at a high rate of speed. Farham was transported to the Baker County Jail where he rendered an adequate breath sample with a BAC of 0.15%. Farham reported he drank his alcoholic beverages while at the Sunset Lounge.

July 9, 2017 – 4 traffic stops, 1 citation, 3 warnings

Bodies found in motels

CONTINUED FROM PAGE 1

"All of his stuff was in that room," said Lohner who quickly realized this was no ordinary simple death investigation.

Staff at the Oregon Trail Motel told Lohner the man had been living at the motel for some time and according to Lohner had a lot of personal property.

Most of that personal property turned out to be paperwork from throughout his lifetime.

Chief Wyn Lohner said, "As we investigate, we try to find who the person is and through the course of the death investigation we remove items that appear to have any value for safe keeping or might aid us in our investigation.

"We also needed to know who was the next of kin that we can contact to let know that this person is deceased.

"That is why we seized a lot of what was there and brought it back to go through it and try to confirm the ID and for safe keeping so that we don't leave something of value in the room, just to protect it for the family."

Among items found was a 1962 Baker High School Diploma belonging to the deceased who was eventually identified as John MacKinnon, 73.

Also among papers found in the room were bank statements listing a brother, but after contacting MacKinnon's sister-in-law it was found that MacKinnon's brother had passed away the year before.

Detective Lohner also

found evidence of an affiliation with the Elks but after checking with the local chapter no recent activity was found.

Once Detective Lohner was able to confirm who the man was, he began digging even deeper into the mystery of just who John MacKinnon was.

A divorcee with no children and few friends, Detective Lohner began uncovering interesting facts about the deceased.

He uncovered military letters of commendation. After graduating in 1962, MacKinnon served his country in the Navy during the Vietnam war.

Those letters of commendation were from Asian commanders commending MacKinnon for attacks in which he'd been part.

Upon further investigation, Detective Lohner discovered after retiring from the military where he had held the ranks of Captain and briefly as a Major, MacKinnon returned state-side and joined the Clark County, Nevada Coroner's Office.

Detective Lohner found identification showing MacKinnon had worked as both a coroner's assistant and a special investigator.

In 1980 when the MGM Grand Hotel and Casino caught fire in Las Vegas, killing 85 people and destroying much of the building, MacKinnon was part of the team that worked the grisly scene.

Detective Lohner was able to speak with MacKinnon's ex-wife who cited substance abuse and anguish caused by the MGM Grand tragedy as the

reason for their divorce.

Detective Lohner said, "He saw a lot of stuff that people don't need to be seeing."

Sometime later, MacKinnon was hurt on the job suffering a severe neck injury.

Several surgeries followed and MacKinnon eventually retired on a disability.

Detective Lohner stated, "After he divorced and retired he kinda went on the road as a recluse."

Chief Lohner added that there were two contacts found with the Baker City Police Department.

He said, "One on July 20, 2017, that still showed a Las Vegas address for a traffic stop and the next contact was when he was reported deceased in June.

"It is assumed that MacKinnon had been back in Baker City for several years primarily staying at the Oregon Trail Motel."

He continued, "What struck a chord with all of us is, you know, police officers see a lot of the same things, but the cumulative stress in his life had taken a toll and to look at here's a Baker High graduate that went off had a very successful military career, went from there into a very successful professional career.

"Then that stress of having to investigate all those deaths in that fire, kind of pushed him over the top.

"He'd given so much to the nation in service and so much to his communities working in the Coroner's office.

"Sad to ultimately end up deceased in a motel room in the City that he gradu-

ated from.

"It's tragic, in my opinion. By all indications MacKinnon lived an exemplary life with his service to his Country and community in Nevada.

"He represented his alma mater very well throughout his life. Then to die a lonely death like that—it's just tragic."

No autopsy was performed, Detective and Chief Lohner explained that rarely are autopsies performed especially if there are no signs of foul play and indicators as to the cause of death are present.

There were no signs of foul play in MacKinnon's death.

"You can pretty much tell," Detective Lohner said.

Chief Lohner stated, "He had a lot of disabilities from the injury he'd sustained.

"He was also an alcoholic from what we were able to determine so between the alcoholism and the physical injuries—his body just stopped."

According to Chief Lohner the case is still unresolved because there were no clear heirs to anything that was his.

Family members are having to file through the Court and try to establish a right as an heir to any possessions.

A second death was reported in a Baker City motel on July 2.

A woman with a history of depression, as well as other medical and mental health issues committed suicide at the El Dorado Motel on Campbell Street.