

MANDAN REMEDIATION TRUST (MRT)
January 5, 2010 Minutes

Meeting: 197th Official Meeting
Date: January 5, 2010
Location: Mandan City Hall, 205 2nd Ave. NW
Time: 10:00 A.M.

The MRT meeting was called to order by Jim Neubauer. Fritz Schwindt and Dave Glatt were present. Also, present were Scott Radig and Marilyn Mertz, State Department of Health.

Minutes. The December 1, 2009 MRT minutes will be sent out for review and will be discussed at the February meeting.

City of Mandan. Neubauer received the billing from the city of Mandan, which are basically utilities. Radig will review.

Bank Statement. The MRT acknowledged the November 30, 2009 bank statement from the Bank of North Dakota. We should also be receiving the December bank statement. The balance in the MRT account at the end of November 30 was \$9,024,985.13.

Schwindt Invoice. Pay Request (PR) 196 for \$7,950 for August through December 2009 for 79.5 hours spent on the coordination of activities on the slant wells and also the documentation of well piping and coordination of construction on the new building going up on the former Furniture First site now named Mandan Place. They are working on the second floor.

Motion. Glatt moved to approve PR 196 in the amount of \$7,950 for services of Schwindt for a time period from August through December 31, 2009. Neubauer seconded. All ayes. Motion carried.

City Contractors. This is a revised request from City Contractors. The MRT questioned the billing a few months ago for The Medicine Shoppe tar removal. The estimate we had for services included tuck pointing of the building. They did not tuck point. All they did was remove the tar. So the revised amount is \$6,600. The e-mail that came with that from Kevin Ritterman says Bob at The Medicine Shoppe may want to have tuck pointing done. What happens then? He wants to make sure the trust will pay for the work that is done in the spring.

Schwindt indicated they should at least make an argument for the tuck pointing. They should present some information why it is our responsibility to pay for it. According to what the contractor said when we talked about it in November or December a lot of times when you do removals, sometimes you have to put the tuck

pointing back in just to repair the damage because it gets down into the grout. Apparently, that wasn't the case this time around. Glatt noted there has to be a structural need for it. Schwindt agreed.

The initial cost for all the work was \$12,000 something. A letter has not been received from him simply because Neubauer didn't want to send out a revised letter until the MRT decided what direction to go. Glatt suggested the letter could state here is the \$6,600. We are aware that the original bid has the tuck pointing in there. If you want that you have to make your case to the MRT. Neubauer added. It has to be a structural reason. At the present time, it does not appear that tuck pointing was needed because it would have been done at the time of the tar removal. We are not aware that it needs to be done, Glatt noted. I think we can pay this and explain that the original bid had the tuck pointing in there. We are not aware that needed to be done, but if you feel differently notify us within 30 days.

Glatt indicated with this payment we are done. If you feel there is further work you can notify us within 30 days.

Neubauer suggested. With this letter enclosed is \$6,600 representing final payment. At this time we are not aware of any structural needs for the tuck pointing that was needed to be done. However, you have until May 1, 2010 if there is an additional request to be made. If nothing comes in prior to that date, then we will consider this matter closed and will not entertain any further requests.

Schwindt suggested letting it be open a little longer until you get into the open weather where people can get out and look around and look at the building.

Neubauer will draft an e-mail to Kevin Ritterman telling him of that.

Motion. Glatt moved approval of this payment in the amount of \$6,600 to remove tar from the north wall of the existing Medicine Shoppe building to represent payment for that work done to Kevin Ritterman outlining that we would consider \$6,600 as final payment at this time. However, we are not aware that there has to be additional tuck pointing done. We would consider such a request with justification for that until May 1, 2010. If we receive nothing prior to that date, we will consider the matter closed. Second by Schwindt. All ayes. Motion carried.

LBG. PR 194 from LBG, Invoice No. 2912121 in the amount of \$15,449 through December 14, 2009. Radig has reviewed. Costs are definitely going down. It is all within the approved budgeted amounts for each task. He recommended approval. No outstanding credits at this time.

Motion. Schwindt moved and Glatt seconded to approve PR 194 in the amount of \$15,449 to LBG for services through December 14, 2009. All ayes. Motion carried.

City of Mandan. PR 195 to the city of Mandan in the amount of \$1,298.28 for wastewater recovery. Radig noted the amounts are holding steady. It looks OK and he recommended approval.

Motion. Schwindt moved and Glatt seconded to pay the city of Mandan \$1,298.28 for wastewater charges. No further discussion. All ayes. Motion carried.

Neubauer provided a copy of the management letter and audited financial statements for 2007 and 2008 for the trusts. Similar footnotes and statements in the past years regarding internal controls with the understanding it is not financially feasible to have outside staff preparing our financial items, and also the statement, "Let's get this done sooner."

Neubauer discussed the audits with Mindy Piatz at Brady Martz and asked her if it would be beneficial to start the 2009 today in January since they have got 99 percent of the stuff already for 2009. She thought that would be a good idea and would fit into her schedule. He will contact Piatz saying prepare your letter and we will sign it and move forward rather than waiting till September. Glatt agreed the MRT should move forward.

Investment. Neubauer didn't think interest rates were paying much better than one percent on money that we have in the account. He suggested contacting Rod Storhaug at the Bank of North Dakota if we want to put some money away for three months. We may get a half or a quarter of percent better than what we are getting on what we currently have. Trustees agreed. Neubauer suggested \$1 million in the check writing account and the rest in a 3-month, 30- or 60-day CD. Glatt suggested \$750,000 leaving \$250,000 for the LEC discussion.

Law Enforcement Center. Neubauer has not heard any word from Paul Trauger or the county commissioners. Schwindt and Neubauer have been over to the LEC on two separate occasions. The work progress is really slow. They were supposed to be done at the end of January. Schwindt indicated they may have extended the time because they had trouble getting the contract signed and bonding. Neubauer asked. They are aware that they need to get us the cost for floor coverings and things like that. Schwindt has talked to Trauger, but has not received anything.

Glatt indicated there is no action on our part until we see how they bid it out. Schwindt asked what they found down there. He said apparently there are two layers of plastic and the bentonite is between those two layers of plastic. That's what showed up at the sump on the north side. Then there are 6-inches of sand underneath the lower level of plastic and then you got down to the native materials. You would think that in the previous borings it would come up as a plastic, Glatt responded. It was not noted before.

Schwindt indicated there was an odor when you got down into the heavier clays below the sand. There was a diesel odor in it on the north side. Not real strong. There

wasn't anything I could smell in the bentonite. They have vented it very well. They were knocking out concrete but other than the sump area they didn't do any excavating into the soil. They covered it all over when they left for the holidays. They didn't come back during that time.

Certificate of Insurance. Received COI from LBG again in amounts of \$1 million, \$3 million, and \$10 million. Neubauer acknowledged that it has been received.

Site Strategy Plan Meeting. Glatt noted they are working on the Site Strategy Plan. A draft document provided will be for discussion only and not for posting on the city's Web page. The goal is to have it be available two weeks before the meeting.

Radig indicated LBG's Site Strategy Plan was done about 4 years ago. That had not been finalized yet because we were not at that point yet. We have had discussions over the past few months on different questions and different directions. The discussion began after we shut down the MPE north of First Street. He went through what the project goals were and how they would be addressed through remediation strategy and went into the other items that needed to be accomplished for final closure for the project. He came up with different questions that might come up with options and different ways to go and came up with some recommendations on a few of these things. Glatt suggested e-mail comments. Radig discussed follow-up monitoring to verify that it is clean. The way I understood it LBG was recommending that as soon as the bio venting was done there would be no more monitoring. I don't know if I necessarily agree with that especially if we are doing a phased approach where we might finish the bio venting say on First Street a considerable amount of time before we finish down on Main Street. Most other projects that the Health Department works with are usually a two-year period of follow-up monitoring – maybe monitor twice a year just to verify that conditions haven't changed and rebounded. LBG may not want to do that. They may not want to find something if the problem shows up again.

Neubauer asked. If we end the bio venting on January 1, if I am reading this right, monitor for two consecutive quarters. Radig indicated that is one recommendation. That was LBG's recommendation that they monitor for two quarters as long as the water table is at 1,629. I would feel more comfortable if we followed the protocol or the procedures that we have used on other sites and that EPA follows those sort of things which is usually a period of post remediation monitoring. Schwindt tends to agree. It seems we need to do some additional monitoring after we close everything down more than just two quarters. Glatt would like to go through a couple of recharge events just to see how that all changes. If it does or doesn't. You have a better chance of seeing some fluctuation of the water table in a two-year period vs. a quarter. I think we would look at if there are any soil borings that are done to see what the soil profile is showing and how it relates to contamination. If they are showing it is very little on those soil profiles from the borings, we would take that into consideration. Schwindt asked. Should we do some? Radig indicated that is part of the plan either during or after to confirm the bio venting stage we could do either some soil borings or soil probes, collect

samples and see what is down there and compare to the conditions that were there five years ago.

Reactivation of the System. Schwindt asked if there was anything that says when we are completely done. Radig indicated if we do a two-year follow-up monitoring where we haven't seen a rebound in free product and no indications of vapor buildup that would impact buildings.

Release of Funds. Schwindt asked about release of funds. Glatt noted as long as we have liability for the downtown area we are going to want something in the escrow account. You would want to have some funds to draw on to address an issue if there are vapors in a building. I do think as time goes on there will be a comfort level as our risk becomes less and less there may be a chance. At least on an initial basis, may be 10 or 15 year basis there will be a certain amount of money in there that will cover the state's liability. Schwindt responded. I think we should have some of that spelled out in here too. Radig included that in the document. Glatt confirmed that is a huge issue for us and for the city. Some other comments: When you are done, then we have some money to do other things. We hope there is money available but through our risk management people we are saying we can't let all that go.

Neubauer indicated would an insurance product be one of those options where you go in and say we need to insure this site for the next 15 years. We sign off. Here is \$150,000 and that is your escrow. Radig indicated the law, N.D.C.C. ch. 23-20.3 does allow for that scenario.

Site Closure. Neubauer indicated potentially when you talk about a 2-year time period then say OK you're done. We are just going to monitor for a couple of years. Radig indicated when you say monitor for a certain period then you say we think you're done now we can decommission the system, plug wells and take out buildings. And that's a different question then how long you have to keep escrow beyond that amount.

Neubauer commented. You go through a 2-year period and the water table remains at 1,630. In 2 years there has been no significant event and you say that's sign off. Mother Nature was good to us but all of a sudden next year the water table is up to 1,650. We have an issue.

Glatt indicated. Ideally, everything else aside from a scientific standpoint we would like to see the water table come up to a historic high and see what happens. We also know that historic high may not happen in our lifetime. At some point you have to say, you know based on the soil borings on what's happened prior. We have done all this stuff and our monitoring data shows us that it appears stable.

Neubauer noted. Provided there is a fluctuation within this parameter during those two years. We might be able to say we are done, but if there isn't that fluctuation that minimum may go up to a 3-year period to see if that fluctuation occurs. Just make sure that you get that in there.

Glatt agreed you can do that and that may also tie into the escrow. We have done it two years and we are 80 percent sure your escrow fund may be higher. If you are 99 percent there is not going to be a problem. So that may tie into long-term risk and more uncertainty. We may hear we want everything clean to zero. Well, that's not possible. What we can do is clean it enough to where the public health risk is very minimal and that's where we will go.

Meeting Agenda. Glatt would like LBG to talk for 15 minutes or so saying this is what we did, this is what we have done over the last couple of years and this is where we are at. Show some maps. Now, we are in a position to start talking about endpoints. The Health Department talks about 15 minutes or so on the site strategies and some of the major issues we are looking for input on such as how long to monitor, what should be a realistic endpoint, what is the escrow and try to get input in that respect. So it will be: Here it is; this is where we are heading. Are we on the right track? Glatt sees it that the Health Department will make a decision saying this is what we think should happen. We will be turning to the MRT to say well does that seem appropriate to the MRT folks? This would be closure specific to Mandan. Glatt noted at some point "no further action." We are done. We have looked at the monitoring data. That is consistent. What is not consistent is that every site is unique. It is geology, hydrology, contaminant, etc. You can't necessarily say you did it over here in 90 days. Neubauer added. The process is there but the endpoints are going to be different. Glatt indicated it is protection of public health and making sure it is not migrating outward.

Radig indicated he threw out some ideas, made some recommendations, more or less a starting point for discussion. Comments should be sent to me by next Friday, January 15.

Schwindt asked if a notice could be sent to interested parties prior to the meeting. Glatt noted that is what our intent is to get it out. Radig would like to get the document into a final draft before the meeting and post it on the Web page, have copies here for the public if they want them. Glatt suggested mailing out to the city, individually, the county, business associations, Custer Health and put something in the paper. Radig will also send an e-mail to LBG for review. Schwindt suggested doing a press release with reference to the Web sites.

Neubauer indicated *The Mandan News* deadline is 3 o'clock on January 25, 2010 to get something in the paper by January 29. A blurb could be put in the paper that there will be a public meeting at the Fire Station to discuss closure strategy for the Mandan Remediation Project. The site closure strategy will be available to the general public on this date on this Web site. Copies will be available at the city's office and it is posted on the Health Department's Web site. The notice could be published January 22 and 29, 2010. The city could do a press release through our e-mail to the folks we have.

Glatt asked for people that should be notified.

Meetings. MRT meeting is on Tuesday, February 2, 2010 at 1:30 p.m. On Wednesday, February 3, 2010, the Site Strategy Plan public meeting will be at the Mandan Fire Station at 7:00 p.m. LBG will attend both meetings.

Neubauer indicated his office will do a press release.

East McDonald's Area. Neubauer asked about the former McDonald's area. Radig indicated they did the site investigation this past summer. We had one of our guys out there. Radig stopped one time. They moved the drill rig right on the property line and yes, there was contamination. They moved it 10 feet over but didn't find anything. One of the places they had scheduled to drill the resident had been notified by the court owner except he took off leaving his truck and his boat parked in the driveway. They couldn't get the little mobile rig back there without tearing down fences so they missed the one backyard to drill in.

Glatt asked. Is the concentration increasing along the property line? Radig indicated in the one well the free-product thickness was increasing. If you get 15 feet past that well and there wasn't anything there. Radig has not received the final report.

Neubauer asked if there was any better delineation on the north side going from the old McDonald's east to the former Mandan Supply area. Radig indicated they have not done anything more. Neubauer asked because those buildings are for sale. As of yesterday (January 4, 2010) communication back from Brian Sweeney saying, our environmental people are telling me that there is no way we can sell any part of that property. Neubauer indicated we said well, you have three, four or five acres there, why don't you put a property line further to the east and take all your stuff you think is contaminated to the west and then sell. Prime parcel it off. So far they have had no luck in doing that. My last communication back to him on Monday was it is unfortunate that you are doing that. Are there any other avenues for us to pursue to getting you to loosen up property.

No one has approached us on the liability. Radig indicated the Consent Agreement as long as the contamination is on their (BN's) property they don't have to clean it up. If they sell it, it is no longer their property then they have to clean it up. Schwindt asked. The Consent Agreement doesn't apply to the east fueling area, does it? Radig thinks it applies to their entire rail yard. Neubauer noted if it is contained in the known locations as of the day the Consent Agreement was approved, but if it starts moving or if it's no longer under their control as rail yard property then the deal is off. Then they have to clean it up. Neubauer indicated they tried to say take two acres and keep that. Let's move the three acres so we can get it back into production. The buildings are owned by someone else. The lease rate is very high and no one wants to go in there and put up a \$1 million building on leased land and they can cancel my lease within 30 days until we tear the building down. It's not a good business position for anybody to make.

Radig doesn't think they are interested. We are waiting for the report from RETEC.

As Builts. Schwindt indicated we have a lot of documentation on where the lines are cut off and where they are at in the Furniture First lot. We never did do anything to update our map on Library Square where we made a lot of system modifications. I've talked to Dave Auch and Jeff Wright with the city. They would like to see some kind of update done. I think we should do that just to keep the records accurate going forward. It is a matter of should we try to do that and hire Ulteig again to update the stuff. I'm not impressed with the accuracy of the current as builts at all. But I would assume they have all the data over there so if you try to hire somebody else, then they have to start from square one. Should we try to have the city do it? Not sure they have the capability or even the time to do something like that. Something we probably should try to get done this winter or we could wait until the Collins project moves forward because we will have to have some updates done too.

Neubauer noted it hasn't been a huge pressing issue. Before that knowledge is gone, with the new building going up and where everything went. What involves updating the as builts? Is it getting the auto cad file from Ulteig and having our folks update? We can do that while it is still fresh in our minds. Neubauer suggested Schwindt talk to Dave Auch and Ken Kytta and maybe they can get the auto cad file. Schwindt will check with Steve Windish too and see what restrictions they might have. We might have to go through LBG because they are subs, but we can at least find out. Maybe LBG can do the auto cad and LBG gives it to us.

Gene Kringstad told Schwindt that Rusty Krikava did come in and put the drop tubes in the wells on the Furniture First lot and turned the system back on sometime in December. I don't know if it is still operating but there was 18 inches of free product in a couple of the wells next to the theater building there.

MRT Meeting. February 2, 2010 at 1:30 p.m.

Site Strategy Plan Meeting. On Wednesday, February 3, 2010, the Site Strategy Plan meeting will be at the Mandan Fire Station at 7:00 p.m. This meeting is for public input to the SSP.

Radig will send an e-mail to LBG with all the information and forward the draft SSP to them for comments and questions. Comments from trustees are requested by January 15.

Motion to Adjourn. Glatt moved and second by Schwindt to adjourn the meeting at 11:18 a.m. All ayes. Motion carried.