

MANDAN REMEDIATION TRUST (MRT)
May 5, 2009 Minutes

Meeting: 188th Official Meeting
Date: May 5, 2009
Location: Mandan City Hall, 205 2nd Ave. NW
Time: 10:10 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. Discussed MRT's April 7, 2009 minutes which have been reviewed and commented on. No further questions.

Motion. Glatt moved and second by Schwindt to approve the April 7, 2009 MRT minutes. All ayes. Motion carried.

Recovered Fuel Payment. Neubauer received two checks from Chief Construction. One was dated April 1, 2009 and the other dated April 21, 2009 each in the amount of \$100 for 250 gallons each. They were mailed to Mertz and she in turn sent those to the Bank of North Dakota for deposit.

Bank Statement. The bank statement has not been received for April 2009. The balance is approximately \$9.5 million. CD rates as of today: 30 day CDs are .7 percent; 60 days are .75; 90 days are .8; 180 days are 1 percent and 365 days are at 1.25 percent. Two years ago it was at 3 percent and 4 percent. The difference between 180 days and 365 days is very minimal. Neubauer suggested putting a large amount into 180 days because rates will probably go up. Glatt suggested putting in \$9 million. Schwindt indicated it will cost about \$200,000 to do those slant wells and our annual O&M is about \$.5 million. He asked if they should put \$300,000 into a 60-day CD. Neubauer indicated the MRT will do a six-month CD or 180 days of \$9 million and a \$300,000 CD at 60 days.

Motion. Schwindt moved and second by Glatt to put \$9 million into a 180-day CD at 1 percent and \$300,000 into a 60-day CD at .75 percent. All ayes. Motion carried.

Pay request 172. Disbursement 172 for \$1,622.26 for city of Mandan's wastewater treatment plant for February and March.

Motion. Schwindt moved and second by Glatt to approve the billing for the Mandan wastewater treatment plant dated March 31, 2009 for \$1,622.26. All ayes. Motion carried.

Pay Request 173. Disbursement 173 for \$25,265.74 for city of Mandan's first quarter utilities for the remediation buildings.

Motion. Schwindt moved and second by Glatt to pay the city of Mandan \$25,265.74 for the first quarter utility billings for the remediation buildings. All ayes. Motion carried.

National Association of Local Government Environmental Professionals (NALGEP) - Brownfields' conference at the Morton-Mandan Law Enforcement Center on May 19, 2009. If you want more information on that, Neubauer will provide. Farley Wolf is the contact. They will be doing a Brownfield session here. They wanted to do one that is onsite of a cleanup. Not necessarily a Brownfield action but something where there has been contamination. Curt Erickson of the Health Department will be speaking on how the state program works and reimbursement through the state program. Neubauer is presenting in the morning on here is where the city of Mandan was in 1985 through settlement. LBG is coming up to do – here's the remediation side of it. They speak at 2:00 p.m. or 3:00 p.m. then with a tour of the remediation site of facilities to follow. Neubauer asked Kenyon if he would be interested in speaking. They will be paying travel costs so it is not an expense of the MRT.

Department Grants. Is there anything that the city or the developers might be eligible for under the current grants that the Department is getting? Radig indicated it would have to be through the city. It has to be city owned or political subdivision owned property. Individual developers couldn't access that money, if we (city) retain title to it and lease it? Radig added, the city could apply to have certain remediation activities performed and then when it was completed, it can be resold.

If a private developer is going to develop the property at the Furniture First lot or the Ratz lot, could they apply for funding for that passive venting under the parking garage? A private developer cannot, Radig said.

What is eligible? Radig understands it is cleanup and remediation activities done prior to the sale or to make a piece of property able to be commercially used again. What happens if you have a potential non existent PRP? This is relating to the property of the former McDonald's site on east Main. This site we know that BN does not want to defuel it, but there is part of the Mandan Equipment site that we would like to encourage them to sell. The city does not own that property. The city would have to acquire the property. Glatt indicated once you acquire it, you would need to have the assessment work done. There is contamination in the area. Radig will check on what is eligible. They also have to go through the review process on each project with EPA.

South Side Construction. July 7, 2007 is the tentative start date to start work on the south side. Those plans are still up in the air. We are going to rebid the connection work.

Recovery. Recovery totals from LBG were not received for April.

Contract. LBG sent the liability relief language for the contract up last week and Schwindt sent a response saying not sure we need a couple of paragraphs in there – some wording that they had. He responded back saying it is not obvious to lay people.

Schwindt asked if there was any discussion with the Health Department and Office of Attorney General staff about the contract. Glatt's word from the Department folks was they don't have any issues with MRT contracting directly with Braun Intertec. It is not the Health Department contracting. It is the MRT that is contracting and that is the distinction. The MRT contracts with LBG. They don't have an issue going with Braun but the MRT would have to go through the bidding process. Neubauer indicated the project will have to go through the public bidding process. When Schwindt talked to Braun at the last meeting, he said, "He would have preferred to do the work now because it allowed him to get his equipment going sooner, but he can make any schedule work. I have access to different drilling equipment so it is just a matter of scheduling it in." Schwindt thinks starting the project after the Fourth of July is more of an issue of coordinating between the drilling contractor and connecting contractor and how they can fit them together.

Liability Relief Language. Schwindt suggested having the Attorney General's office review the liability relief language to see what concerns the state might have. He did not get a response from Tim Kenyon when he asked if LBG would forego any markup on it. He didn't respond to that part of it. They are basically asking the state of North Dakota to assume liability for anything that happens. Glatt didn't think that would go. The state wouldn't accept that responsibility. The MRT would be liable. Schwindt noted that all the documents they have been signing the contract said between the Health Department and LBG. The MRT hasn't been contracting. They have been signing off on the contract(s) as the financing agency but the primary work is between the Health Department and LBG. Glatt indicated that is partially true. They haven't asked the MRT to indemnify them. That is the big change. They [Braun] agree to move ahead and work but they have their own insurance. This will be a big change.

Schwindt indicated to Glatt when he talks to the Office of Attorney General if the MRT wants to cover any expenses the state might incur because of that then that should be explained as well. Schwindt sent that information onto Malcolm Brown, city attorney, based on our conversation about the city possibly contracting. His response was, "Well, it's between the state." He didn't get much help. Glatt indicated safeguards

need to be included in the contract. Neubauer indicated LBG is not comfortable taking on the liability of having wells being drilled on a slant vs. vertical. Schwindt said. "I don't have much of a concern that the wells are not going to work."

SVE System. Schwindt asked. Do we need to continue to hook up a SVE system to those wells because we are supposed to have a 70-foot radius of influence on the existing wells? We are 80 feet or 90 feet between the wells on the north and the south side. Glatt indicated they hook them up but they may not need to necessarily operate them. At some time in the future, I think they will put a vacuum on there too. The extra cost to do it when it is opened up is minimal noted Radig. Schwindt indicated some time in the future, they could operate without a drop tube on MPE mode.

Is there any direction the MRT needs to provide to LBG? Radig indicated just answer their question about the indemnification and our decision whether we want to directly contract or not.

Bidding Process. Neubauer indicated we would have to prepare a bid document and then advertise for 28 to 30 days. Then the first part of June, by the time you get a selection and a contract signed it will be the end of July. And then we don't know the contractor availability. If we go that route vs. LBG it could be October. Schwindt indicated the biggest issue is the liability relief. If the attorneys for the state say, no, we can't do it, then what do we do? If the state can't agree to what is being offered, just contact Kenyon and say, we need to resolve this. Radig asked if LBG could get a rider policy to cover this situation over and above their normal policy that says won't cover this. Neubauer indicated no, it would be cheaper to put in vertical wells.

Discussed language in a potential contract with Braun Intertec. LBG says sub contractor does not provide that protection and they are the next one in line. Consequential damages: If you hit the gas line and if the store has to shut down and lose business for three days or whatever. Was sole sourcing discussed on drilling? Glatt did not discuss that. Schwindt noted everyone was using different technologies. The LBG has gone through a solicitation process and the other technologies, i.e., rotonomic was unacceptable because of the vibration and the closeness to the utilities so that one was eliminated as a technology. The one using the drilling muds provides less than satisfactory well, as far as I am concerned. I don't like drilling mud being put into the formation when we are trying to cleanup, so, therefore, we used hollow stem auger as the technology of choice. Glatt doesn't agree with that. Where we get into a bind is we are saying that is the only contractor that can do hollow stem auger. If we had said only hollow stem auger, would we have gotten somebody else? If we go out for bids now saying specifically hollow stem auger because that is the only one that will work.

Glatt indicated if we go that direction, can we ask LBG to provide those bid documents. They are our documents Schwindt indicated so we should be able to use them. Then what I would like to say in there is hollow stem auger Glatt said. We would want liability protection. Schwindt added, it is an option, but more expensive. When he talked to Braun there was some concern about rebidding the project because everybody else has their numbers. Glatt noted they have the experience. I think we are pretty limited to contractors that use hollow stem auger. A case could be made that it is a specialized type of work. We know there is a limited market out there and we would contact 2 to 4 hollow stem auger operations. It will shorten the process up by a couple of weeks. Define as a specialized type of work. He will get an answer from the Attorney General's office.

Time Line. If we get this out by the last week of May or the 19th or a worse case scenario would be June 22. The MRT meets on July 7. It takes a week or two to get the contract signed. Start date may be in August. A concern is to get the work done before weather conditions prevent completion. Suggested putting a completion date of September 15 or 30, 2009 in the contract.

Discussed whether it would be simpler to go through the city bid process. Neubauer didn't know if there would be an advantage. It would have to go before the City Commission and they would have to approve the award.

Glatt will set up a meeting with Arvy Smith to discuss the contract and will call Maggie Olson of the Attorney General's office today.

LEC. Glatt asked about the LEC/MRT billings. Neubauer doesn't think the county has asked for any money. When LBG came up for meetings, they billed the MRT. Radig indicated the MRT will get credit for some of those items. There were specific items that should have been charged off to the county instead of the MRT.

City. Are there additional funds coming from the city? Schwindt has not met with Greg Welch yet.

Damages. Discussed damages to the remote manifold by the Starion bank. During snow removal someone must have broken one panel so Schwindt told Rusty Krikava that he would take care of it. They could focus on operating the system. He special ordered one sheet and that will be coming.

Development. Are there any potential developers pursuing development? Neubauer may have an electronic version of the as builts from LBG. Also, the city has an extra set of as builts.

Parking. Ellen Huber recalls that the MRT was not in favor of putting in below ground parking on the Furniture First lot. Schwindt doesn't know why we would have said that other than you have all that piping running through there. As far as remediation and impact to the building it shouldn't be any different from the Ratz lot. If we could allow sub grade parking on the Ratz lot, there shouldn't be any difference on the Furniture First lot. The buried lines/connections are at 13 feet to 14 feet. That is part of the concern. Then you also have all the buried lines from inter connecting the wells. We talked about underground parking on Hedahls and the Berger lots. Don't remember anything said about the Furniture First lot. They thought it was slab on grade. Huber thought we had said no.

Wells Fargo. Schwindt looked at Wells Fargo regarding having to move their remote manifold. He doesn't know if they had to remove the remote but you would have to accommodate all those pipes. Neubauer thinks that is off the table now. That was under consideration when the parking study folks were here saying that half a block would be their location for a parking structure. At the present we talked to Wells Fargo and asked them. You need to tell us if you are interested in selling or moving because the conversation they had with the parking study folks was yeah, we would be willing to relocate or move. That's what the parking study folks are hanging their hat on but if that is not a reality I don't want that to be in the report. They came back and said they were not interested in moving.

City Commission. Are there any issues, concerns or comments with the City Commission? Glatt asked. Neubauer thinks so.

LBG. Discussed when LBG is scheduled to come up. Schwindt recalled the MRT would let them know if they wanted them to attend in June if there was any slant well drilling being done. We will need to contact them that they don't need to come in June. They will be up in May.

Bank Balance. Glatt asked if the [city] is clear on MRT's bank balance. Neubauer indicated it has been made clear to them. There are other elected officials in the community and former elected officials that seem to have other plans for the MRT balance. He has been getting questions such as: "When can you free up some of that money?" He told them it was not on the table now, don't plan on it. We are still a few years away to answer any of those questions.

Brady Martz. Neubauer received another billing from Brady Martz. The MRT has paid. [See pay request 165.] The billing is for the SEP side.

Motion. Glatt moved and second by Schwindt to adjourn the meeting at 11:00 a.m. All ayes. Motion carried.