

MANDAN REMEDIATION TRUST (MRT)
November 9, 2010

Meeting: 207th Official Meeting
Date: November 9, 2010
Location: Mandan City Hall, 205 2nd Ave. NW
Time: 10:05 A.M.

The MRT meeting was called to order by Jim Neubauer. Fritz Schwindt and Dave Glatt were present. Scott Radig and Marilyn Mertz, Department of Health; Morton County Commissioners Andy Zachmeier, Jim Boehm, Dick Tokach, Mark Bitz, and Bruce Strinden; City Attorney Malcolm Brown; Sheriff Dave Shipman; Auditor Paul Trauger.

Minutes. October 5, 2010 minutes have been reviewed; revisions have been made.

Motion. Schwindt moved to approve the minutes from the October 5, 2010 MRT minutes. Second by Neubauer. All ayes. Motion carried.

Morton County Commissioners. The MRT did receive their breakdown of costs associated with repairs to the Law Enforcement Center Monday, October 8, 2010. We have a total cost of \$367,652.84. Neubauer didn't know who was going to speak for the county to determine the rationale of how you split the costs up.

Mark Bitz indicated at the November 3, 2009 meeting a year before we were requesting funding for diesel release at the Law Enforcement Center and through those discussions it was determined that we should present a request that incorporated all the diesel related items of the work done in the basement of the LEC. That's the sheet you have with the cost figures on totaling \$367,652.84. Morton County is requesting from the trust \$346,258.14 as to be determined to be diesel related items. Auditor Trauger has a file with all the detailed billings. Our request comes based on the description of the scope of the work that the trust was set up to cover. We feel these items fall within those guidelines.

Do you recall what the initial request for funds was back in November a year ago? Schwindt asked.

Bitz responded. I think it is \$197,000. There was a breakout. The total was \$197,051. I don't have the exact breakout.

Schwindt added that was the total project, but it seems like the request from you guys was less than that. Bitz indicated it was the \$197,000 and at that point we started to talk about breaking out items that may or may not have been related to diesel and some of the things that we had missed we were suggested to go back and get prices for carpeting, epoxy and floor covering. This is the result of that.

Neubauer asked. So the total project originally was roughly about \$200,000?

Bitz indicated back in '05 when LBG went through the LEC they presented several different options for addressing the issues for the LEC. Those prices ranged anywhere from \$108,000 on the low end to \$361,000 on the high end.

2009 Original Cost Minus the Carpet. Neubauer noted he was looking at the November 2009 request. Bitz agreed \$197,000 was the original cost. Neubauer stated you are basically asking for the MRT to pay for just about everything if I recall correctly. Bitz continued. In November we did not include the carpeting, floor coverings and epoxy covering.

Schwindt asked. That initial request wasn't the entire project because it didn't include the carpet. They agreed.

Bitz added and at that time we weren't requesting any funding for that.

Mold Issues. Neubauer understood there were some mold issues in the building that was related to water damage coming from the roof.

Bitz indicated on your sheet if you look at the fifth item down, we did replace sheet rock for a total cost of \$10,000; another \$2,300, another \$5,700 and there was some testing. We also did some outside landscaping to alleviate the problem of surface water running down the side of the building. Those costs are not included in this request here.

Neubauer stated my understanding's also correct that when concrete was being removed from areas in the basement there were places with minimal contamination of diesel product.

Bitz indicated the extent of one chunk of concrete as opposed to another I don't know.

Neubauer stated it was my impression that when the contractors were cutting concrete out to install the groundwater system, much of that concrete was not contaminated or stained by diesel fuel.

Bitz asked. The concrete work was done down the hallways, right, and the locker rooms? Others agreed.

Trauger added and we went into the weight room there was more taken out.

Neubauer – So if you have 100 percent of the concrete removal do you have a guess on what was not contaminated and what was contaminated as far as percentage? Was it 50 percent contaminated or 50 percent not?

Trauger indicated we might have to rely on LBG to determine that because they were determining what was being taken out or not.

Schwindt noted there wasn't any concrete removed strictly because it was contaminated. The only concrete that was removed was to facilitate the installation of the pipe.

Trauger noted that in the weight room there was a lot removed because of contamination. They took extra.

Schwindt indicated they extended some of the piping but I don't think they removed concrete strictly because it was contaminated. At least that was my understanding.

Trauger noted that's what they said. R3 removed some contaminated stuff in there--water--than they needed to. They did extend it.

Neubauer indicated would it be correct in the assumption that by asking the trust to pay for 100 percent of the cost that is not related to surface water whether it be the water coming from the roof or water coming from any of the outside that the entire groundwater control system you are asking the MRT to fund?

Trauger stated we are not including that in the total figures. That's left off basically.

Neubauer clarified the groundwater control system; the surface water the county is going to pay for that. Trauger agreed. Are you going to request that the city of Mandan pick up part of that cost of \$21,000 that is left over?

Trauger indicated it hasn't been discussed. According to the LEC agreement there is a 50:50 split on that. We haven't discussed that yet. The contributions from three entities: the county, the jail and the city should have enough money to pay for that.

Glatt indicated one of the questions I had when we initially got into this was the MRT was on board for paying that portion of the dewatering system that would be above and beyond what a normal dewatering system would be because previously there were groundwater issues with that basement. With high water levels and not being able to deal with that with the inappropriate drain tile system. Did we have any cost what just a dewatering system would be?

Bid in 1992. Trauger remembers one bid way back in '92 I think for an outside system. It had to do with wells. I don't recall offhand what it was.

Dewatering System. Glatt recalls. I know there were water issues in the past. The question was the county would probably have to do some kind of dewatering

system at some point. I also understand there is some diesel fuel costs associated with a project like that. It would have been a little bit different if we would have had a base cost of the dewatering system and what was the incremental cost above that dewatering system to deal with the diesel? I don't know if we can break those numbers down.

Strinden commented. Just based on where we saw the moisture coming in down there and the fact that it is probably a lot easier to remediate clean water than it is water that is contaminated by diesel fuel. So I think it is safe to say that you probably at the most might have installed several sumps in there to alleviate the groundwater system but would never had gone to the extent we had to go to in order to put the system in and with the capability of being able to separate fuel from the water. I know the comment that has been made in this situation was about groundwater, but I think the reality is Mandan and the entire remediation area is that the reason the fuel went where it went is because it was picked up by water in the aquifer and moved around. Once the groundwater rose it is going to bring that diesel fuel with it regardless of where it is at the LEC or another government or private building.

Health and Welfare Issues. I think the reality here is from a taxpayer dollar standpoint. We probably as a county commission would not have done anything as extensive as what is being done here because I think the water is a lot easier to deal with than water that has been contaminated by fuel. I think that of course brings in some health and welfare issues where our law and enforcement people are concerned which probably wouldn't have been near so serious if it had only been water but the reality is we ended up with diesel there. I think to do nothing would have caused us some more serious problems down the road because it is my belief that water tables are cyclical and I think that water table would have come up again. We just don't know when it came up. Had we done nothing we would have been right back in that same serious situation as far as the health issues within that building. So I think as far as the county commission was concerned, we looked at two considerations: No. 1 was the health and welfare of our law enforcement people and that is maybe the most critical factor. No. 2 I think we looked at it from a standpoint of proper stewardship of taxpayer dollars when it comes to a piece of infrastructure and for us to simply walk away from 10,000 square feet in that building which essentially we did for the last 15 years without using much at all. I don't think that was good stewardship of the taxpayer dollars. And I think the action that had been taken now working with LBG and working with the remediation efforts what LBG came up with was really a piece of genius in my view and I think we have gained back 10,000 square feet. Had we not done that, we probably would have been looking for more serious problems down the road with diesel once again but in addition to that we probably would be looking to having to add on to the LEC much sooner than what would have normally taken place.

Glatt indicated he didn't disagree. The diesel was an issue. For years we talked about it and what to do about it and also, we talked for years that there is a drain tile system that was put in there but for whatever reason wasn't put in a proper location where it would benefit the basement. That was always a question that we had the water

issue and the diesel... No argument from me that the diesel made it worse than it probably would have been.

Any Settlement between the County and BNSF? Neubauer asked. First question: Has there been any settlement between the county and the BNSF over the years or has a proposed settlement been reviewed by the county commissioners? I seem to recall there was one document out there that was.

Trauger indicated first when it was under construction we had approximately \$150,000 extra costs in construction. BNSF gave us a check for \$75,000 half of it roughly at that time although they wanted a complete release of all liability. At that time the commissioners didn't rewrite the contract in the commission room. Mr. Hill who represented BNSF at that time was ready to take copies to...because he let the commissioners do it. The second time when the water came up as far as cleaning, we had a cost of about \$28,000 for cleaning the basement up. At that time they wanted to be completely released from anything on there. The commissioners again did refuse to sign a blanket waiver at that time so we did not get the money at that time.

Neubauer asked. So you had to pay the \$75,000 originally without the release? Trauger agreed.

Release from further costs. Neubauer continued. So the building was under construction and then there was another \$28,000 cost. The bill was sent to BN, but they didn't pay. Trauger agreed. Is the county commission interested or would they entertain a release from the city of Mandan and also the MRT should some agreement be reached on a dollar figure on these repairs to say this is the last time the trust or the city is going to pay toward any additional cost that may come up

Bitz indicated that is something we never discussed. Is that kind of standard how you handled?

Neubauer indicated with other parties if there have been issues we have gotten it as part of the deal if they would continue to operate. I think we did that on the Berube Apartments for their system. They were responsible for operating the system if we pay to install the venting system that is put in over there.

Bitz asked. If that is your standard operating procedure did anybody refuse to do that? Neubauer responded, no.

Fitterer Consulting. Schwindt indicated there are several new items on this list that weren't on previous lists. You have some more finalized costs. What type of work was the Fitterer consulting?

Trauger indicated it was basically if we should put down carpet. We met with both the city police department and sheriff's office choosing what carpet they wanted.

Consultant. Schwindt asked. Do you have to hire a consultant to determine which areas you want to carpet?

Trauger explained I guess it is a little odd. He wanted to do all the labor, the type of carpet, what kind of carpet to put in there and stuff like that.

Cleaning. What was the cleaning, Schwindt asked?

Trauger indicated it was the removal of all the concrete, sanding the floor, putting the epoxy down, it got up into the light fixtures and everything else. They had to have a crew come in and clean the dust out of there. Cleaning was to hire professional cleaners.

Sheet Rock. Schwindt added. Was any of that related to the sheet rocking repairs as well?

Trauger said no. Basically, cleaning out the concrete and once they had the concrete back in place, they put the epoxy down and had to sand the floor. It created a lot of dust. Both places had taken concrete out and also sanded the floor from the epoxy.

Badlands Testing. What is Badlands Testing about?

Trauger responded that it was for the mold. They may have to come in again. That was the first mold test to check for any mold that might be present.

Epoxy. They placed epoxy on the entire basement floor correct, Schwindt asked? Actually, they put a base coat down and then a top coat, Trauger said.

Strinden added that epoxy is a whole vapor barrier. That's important.

Glatt stated. You consulted with LBG on that. Strinden said yes. LBG recommended it.

Schwindt added but it did cover the entire floor. Yeah, Trauger responded.

Invoice Copies Requested. Just on a side note Neubauer asked for copies of all the invoices since our auditors will give us a bad time if we don't have that.

I'm struggling a little bit why the trust should be responsible for paying the entire amount, Schwindt said. Glatt mentioned it earlier, discussions with you in the past have been we would be willing to pay costs directly related to a portion of installing a groundwater management system, but you needed to make sure you take care of the groundwater aspects. Certainly, you proceeded along those lines, but now we are being asked to pay the entire amount. I am struggling with that to try to justify that

putting the dewatering system in and everything is our responsibility to pay for. I am trying to understand the justification and the rationale for that.

Strinden stated it really needs to be pointed out once again if this were a water issue we wouldn't be sitting here.

So you are saying that if the water table comes up you would not have put in a dewatering system to protect the integrity of the LEC Neubauer reiterated.

Strinden stated if this was simply a water issue the county commission would not have taken action to put in a removal system of this type.

Glatt indicated I know we have had issues in other basements where water and mold have made it unusable. The health impacts are basically the same.

Strinden understands that. We would not have gone to this extent had the diesel fuel not been there.

What extent would you have gone to just for water, Neubauer asked?

Strinden indicated more than likely just for water we would have installed several sumps which are substantially cheaper than putting in fuel and water separation systems.

Boehm: Mr. Chairman I have a question. What was the reason the LEC was shut down? Was it water?

Glatt answered. It was the diesel, but right now we could eliminate the diesel and if we did nothing about the water issues, we would have that basement I would venture a guess would not be habitable due to the water and the mold. There are two issues. I am not arguing the fact. The diesel is there. We are trying to get our arms around it. The MRT is to pay for diesel related impacts and that's what we are trying to do. ...

Strinden stated I think the reality of it as far as groundwater went, with the agreement that we have between Mandan and Morton County with the LEC operating agreement. If we would have gone in there--and didn't we put in a sump or two in there Paul?

Trauger noted there is a sump in the back to the north end of the building.

Strinden indicated so they expanded that. So I would suspect at some point we would have put in an additional sump to take care of the groundwater and it's more of a matter when it came up again.

Cost Breakout. Glatt asked. Is there a way to breakout what that cost would be?

Schwindt indicated back when the bids were taken in before the county awarded the contracts, LBG was up here and they had broken out the costs associated with the diesel aspects of the project at that time. They had suggested that approximately \$33,000 out of the total of \$138,380 was diesel related. It didn't include the carpet or epoxy. It was strictly the bid for the dewatering system. That was their suggestion back then.

If the bid was \$138,000 that was awarded to R3, I am assuming the R3 dollar amount of \$171,000 included change orders approved by the county Neubauer added.

Drain Tile. Bitz indicated originally the underwater drain tile was going to run down the hallways. They also extended out to the center.

Change Order. Trauger noted they had new rebar, extra rebar. We had \$30,000 for a change order for the weight room.

Neubauer asked. Is \$30,718 similar to what you have?

2005 Documents. Strinden indicated we do have a 2005 set of documents from LBG regarding the basement and that included concrete flooring and sump work and a vapor barrier and some modifications to the air system down there. Their estimated cost at that time in 2005 had a range from \$320,800 to \$361,600.

Costs. Neubauer understands that is an estimate of 2005. What we are sitting here looking at today is the last time back in November it was potentially \$130,000-\$140,000 R3's bid plus a \$30,000 change order would get us up to \$170,000 and the total cost being roughly \$200,000 and today we are sitting at \$367,000. There has been communication as to come back and let us know what's going on. There has been no agreement on the MRT on what is going to be funded but yet the county continued on with the project. I am not saying that was a mistake. I'm just saying all of a sudden we are sitting here with another \$170,000-\$150,000 that is being asked for with the assumption on the county's part that the MRT is going to fund it. I'm assuming that is what the assumption was going on.

Strinden indicated I am not sure it was an assumption.

What word would you use, Neubauer asked?

Trust Agreement. Strinden said maybe I would use hope. If you look at the Trust Agreement on § 4311 it talks about environmental protection to the Morton County Law Enforcement Center. It is specifically addressed in here.

And no one is disagreeing with that, Neubauer said. I am sure you can appreciate if you had a project going on in the county and someone came to you back in November and said it is going to cost two hundred grand and then they come back 11 months later and say it is \$350,000. There are going to be some questions asked.

Strinden stated I do understand that. I appreciate that. My recollection is—this may not even be correct—the last time we met was that let's wait until we get all the numbers in before you bring it back to us. Is that correct or incorrect?

Neubauer recalls I think we asked for some estimates on flooring and things like that. The next thing we know the work is being done. I guess in my opinion, several times we had called and asked what is the status? Where are you at? Like I said when you go from \$200,000 to \$350,000 it is a pretty substantial bump.

Bitz indicated in our original request in November there was nothing in there for floor coverings and we were instructed by the trust to include those in the cost. So they go from \$200,000 to \$346,000; \$93,000 of that is just for the flooring, which we were not requesting.

Schwindt indicated from my perspective I was interested in seeing the total project costs rather than just a portion of it. I don't think there was a commitment on anybody's part that the trust would pay for all of those costs. It seems like part of the discussion at that point in time was just replacing the flooring that was disturbed going down the hallways. That was part of the discussion as well.

Bitz noted to address that the bid from R3 was to remove the diesel impregnated concrete. They estimated that to be about 25 cubic yards. Do you have the billing that indicates how much?

Trauger responded. I think so.

Schwindt indicated I think that was the description of the item that was in the bid document. I think when R3 went in and actually started to remove the concrete that Neubauer was referring to earlier, they found the concrete wasn't really impregnated with diesel at all. There was very little contamination in the concrete.

Bitz stated we would have to talk to LBG about that because they were the ones that designed the fix and the scope. Their bid was left to take care of the impregnated concrete is how they described it.

Schwindt responded exactly I think they were assuming there was impregnated concrete--concrete impregnated with diesel, but actually when we got into it, it simply wasn't as contaminated as they had envisioned.

Bitz asked. To what degree do you want to discuss the contamination? Is it 10 or 50? I think that is immaterial at this point. Five percent of contaminated concrete is going to smell.

Schwindt indicated I don't disagree, we are where we are, but I'm still trying to determine of the \$33,000 that LBG had proposed back then the entire amount of concrete disposal was included as a diesel-related cost. So that is half of the \$33,000 that you are proposing to be covered. The majority of the costs were the dewatering system.

Neubauer indicated that is why I think a little bit of the struggle on our part is we have got \$33,000 that seems to be diesel-related from LBG versus the \$138,000 total of the original bid, whatever it is—20 percent—30 percent. Schwindt noted it was 17 percent. So if we even use that percentage and apply it towards the total cost we are significantly less than the \$367,000 of the total project, Neubauer added. Even if we say 30 percent of the \$367,000 that is still a lot less. So there is a pretty wide discrepancy from what we knew back in November to what we know now.

Bitz asked. So which item on this request that we submitted what are you specifically referring to--the fuel separating system.

Schwindt agreed that is one. You have the two engineering items as well. The engineering and the construction oversight both of those they were proposing pro rata as well. But the fuel separating system, it is now a fuel separating system rather than a dewatering system as referred to in some previous documents but those should be prorated. The epoxy we could argue whether that should be prorated or not, but the carpet. How old was that carpet in there? 20 years old? 25 years old?

Sheriff Shipman indicated it had been replaced once--actually, twice. The last time I think it was the mid-90s.

Schwindt noted 15 years or something like that at least. What is the useful life of carpet? Is that our responsibility to replace old carpeting?

Bitz stated that is what you instructed us to do.

Schwindt indicated that is not what we instructed you to do.

Zachmeier added I believe the mayor was in for that too. He said the carpeting needs to be included. Besides that anybody that walked down there when I first got elected the diesel fumes were causing the carpet to peel off the floor. There is no fraud here. This is kind of the impression I'm getting is that you feel that the county went into this and said let's do as much as we can and stick it all to the MRT.

Neubauer - That's not the impression.

Zachmeier stated that's the impression I'm getting.

Zachmeier stated the bottom line is that this is what was recommended by the same engineering firm that the MRT has been using. These are the bills.

Neubauer indicated I guess where I personally have an issue right now is that looking back to the November meeting, we are talking \$33,000 of the \$138,000 is diesel related. That is from LBG based on their breakdown of things. OK, so that is significantly less than where we are today.

Zachmeier noted and he isn't here to comment on that. I wouldn't have an answer to that either.

Neubauer responded. That's why we are asking the questions. If you were told something cost a 100 bucks back in November and you are responsible for paying \$33 on that \$100 and now you come 11 months later and you find out that you are being asked to pay for the full \$100 that's where I have the questions. Should the MRT be responsible for the entire amount that's being requested? No one is accusing anyone of fraud. No one is accusing anyone of anything. We are simply asking questions. We just received this document yesterday.

Zachmeier added. Which I think Mr. Strinden and Mr. Bitz have answered to the best of our ability. This is what LBG has recommended. This is what we did and we did the best we could do.

Neubauer stated their recommendation is that \$346,000 of the \$367,000 is diesel related.

Zachmeier stated all they said was this needs to be done to fix the problem.

Zachmeier stated. Gentlemen, if there is something that I missed at any point when LBG came and said we recommend this or recommend that. Did they say this part is groundwater? This part is diesel fuel? They said this is what you need to do to fix it and to fix it right. I don't remember any breakout of what is water related or diesel fuel related. Does anybody remember any of that type of discussion at any of our meetings?

Bitz indicated in our November meeting and I will read a little paragraph from the minutes. I believe this was Jim talking. "We have talked about the trust picking up a portion of the cost. Do we have a number on what would be diesel related? Kenyon responded we went through the bid and it looks like about \$33,000 of that \$138,000 has to be done because there is diesel. Is stuff not depending on the diesel that is really the groundwater control system." So according to that, the groundwater control system you weren't going to consider that.

Schwindt responded. That was our basic assumption, yes.

Bitz stated. We could not have had a problem if the groundwater had not been contaminated. The whole city was a piece of contaminated aquifer that contaminated the soil and in this case contaminated the concrete. I don't think we are making a request that is unreasonable and falls within the guidelines of what the trust was set up to do. We are not including everything. We are taking out what we thought was not diesel related, which was the sheet rock and the landscaping. That is a small amount, but it was not included in the request.

Glatt indicated I don't know where we go with this. Clearly I do think there was a groundwater problem and this is something we addressed at county meetings 10 years ago.

I understand, Bitz said.

Glatt stated I understand that but it points to the problem that there was a groundwater problem and still is. So in my mind, I clearly believe the MRT has to participate in this to a reasonable or significant degree. I don't know how we get to that number. I just don't know what that is. It may be helpful for us to sit down and take a look at these [invoices]. Ultimately we can sit down and say we definitely see our responsibility, this is kind of gray for us. We may have to sit down and talk about it.

Neubauer indicated I believe the MRT will be funding a portion of this project. Now, it is just a matter of what portion of that we fund. Is part of it related to diesel fuel? Absolutely. Would there have been an issue if it had been strictly groundwater? I think there would have been. From the groundwater and surface water above. The question is what responsibility does the MRT have for paying for a groundwater control if it was strictly groundwater. What part of the MRT should be paying for that?

Glatt stated we must be able to justify any cost participation in our process and to our auditors at the end of the day whatever that cost may be.

Bitz added just to reinforce our position as to why we are asking for this amount. Under the declaration of the Mandan Remediation Trust section 3.4 says: "The downtown plume shall be in the contiguous hydrocarbon contamination in the aquifer and in the soils as located partially underground and partially in the central businesses of downtown Mandan." So the definition of the plume was contamination in the aquifer, which was the whole thing. I don't know how you can separate a water problem and a diesel problem with a whole aquifer as described here being contaminated as far as what portion was paid for. § 4310 says that installation of vapor barriers and other protection devices (which drain tile and dewatering system would fall under that category) for buildings as needed to carry out the remediation activities and for environmental protection. Specifically § 4311 says: "Environmental protection for the Morton County Law Enforcement Center." § 4315 says, "Other similar activities that cross the remediation of the downtown plume and protection of the environment and human health for the contamination of the downtown plume to mitigate the impacts

caused by contamination.” So this is pretty comprehensive and I think what we have done falls relative to the guidelines. That’s why we can justify what we have requested.

Glatt – I appreciate that.

Boehm: Mr. Chairman, I would like to make one comment. When we went into this—this building has been sitting idle for how many years? It was because of the diesel fuel smell. We still don’t know what caused it. The county’s perspective was to get this building usable for both entities for the city and for the county. Now, at that point when we started this process, we didn’t figure out we are going to stick it to you guys to do the remediation and the taxpayer. We wanted to fix it so it is usable. As we went along some things cost more than originally estimated and you guys all know that. When you start something, costs change. There are different costs involved. So our initial idea was fix it. Not knowing who is going to pay for it whether it is the county, the city or the remediation trust fund, but eventually the taxpayer is going to pay for it one way or another. Well, then somebody said it will cost a whole lot more than this for the square feet that we’ve got. So we didn’t go into this thing where they expect you to pay for all of it. We didn’t know at that point who is going to pay for what. We just want to fix it. That’s the bottom line. It was nothing else.

I appreciate it Glatt noted. I will tell you this MRT board has scrutinized every payment that’s come through here from a contractor. So you are not going through anything different than anybody else has had to go through requesting every dollar and because of that we have to be good stewards of the MRT funding.

To move this forward, Neubauer stated, there are two things that we need. We obviously need copies of all the bills and payments from the contractors because our auditors will require that. Number two I think we all realize that the MRT is going to fund part of this. What part right now I don’t know what that right answer is, but I would suggest—today Fritz said any agreement that the MRT reaches would also be accompanied along with an agreement between the trust and the owner of the building if the MRT agrees to fund this portion but this is the “fix” that has been agreed to by the county. It has been installed by the county. It has been paid for by the county right now. If the MRT pays \$346,000, that’s the end. There will be a hold harmless claim against the MRT. There will be a hold harmless claim against the city of Mandan that we are not going to come back five years from now or two years from now and ask for additional funds because of something that was done. It was operated correctly or whatever.

Are the projects winding down or are there a lot left, Bitz asked?

Construction wise? Schwindt indicted they don’t envision anymore right now.

Hopefully, abandonment at some point when it’s all cleaned up, Glatt explained.

Site Closure Strategy Plan. The first step happened last February when we had the public hearing at the fire station on the Site Closure Strategy Plan, Neubauer explained. We can actually start seeing the end of the tunnel here. That was Step 1 and I think Dave's shop has on their calendar to finish that up by the end of 2010—approve that site closure strategy plan. That is like another step in closing this whole thing out but I think the system will continue to be here and operate for several more years.

Glatt noted we have seen some good things from the system. We have seen development grow downtown. I think that has allowed the city to move forward so that is all good stuff. We want to do right.

Neubauer suggested maybe Malcolm Brown and Mr. Kopyy could draft something that would be acceptable to both parties. Trauger gets copies of the invoices to us. The trust will pour over those. We can come up to an agreement or solution there. If you have any questions contact Trauger.

Schwindt commented. I kind of struggle with just get everything on the table. When Trauger met with us this summer sometime he presented a proposal where the entire cost of this project was not our responsibility. At that time the estimate was \$400,000 and you guys were requesting \$200,000. We have the final bills in and now your participation has disappeared, I guess. That's where I am struggling. Why all of a sudden the MRT is responsible for everything. I'm struggling with that.

Strinden indicated I don't recall that the commission ever had a discussion regarding what portion we were expecting the MRT to recover. I would like to number one compliment the Remediation Trust for the work with Mandan and also, LBG isn't here, but there has really been an exceptional job here and we can really see the results of that come forward. As far as we are concerned at the county end, it is our building, but we share the building with the city of Mandan. I guess, regardless, of what the city, the trust, we on the county side and ultimately the city side whatever the trust does not cover it will be covered by the taxpayers. We feel that based on information that we have access to, which is documentation that would be appropriate for the trust to cover that full amount that we're requesting. What we are just asking for is your consideration and hopefully we will come up with a figure.

Schwindt would agree with your previous statements as well. I think proceeding and fixing up the basement of the Law Enforcement Center that was a good decision on the part of the county. I think that was long overdue. I do appreciate you guys finally addressing that particular issue.

Neubauer asked. Is that going on the same page that we were? We will get copies from Trauger and Allen Kopyy and Malcom Brown and cobble something together.

Bitz – Not expecting any answer today.

Neubauer - LeAnn Eckroth (*The Bismarck Tribune* reporter) called me yesterday and asked when are you going to write a check? I said, I do not know.

Schwindt added. As soon as Trauger can get all those invoices over to give us a chance to look at stuff. We only have one more meeting before the end of the year.

MRT Audit for 2009. Do we need a motion to accept the audited financial statement from the audit report for 2009 from the MRT? Schwindt agreed.

Motion. Glatt moved to approve the audited financial statements for the years December 31, 2008 and 2009 for the MRT as presented by Brady Martz. Second by Schwindt. Neubauer clarified that the MRT is audited and has been since it began every year. The financial statements always look back one year and move to the next so the financial statements are 2008 and 2009 but both are audited on a yearly basis. All ayes. Motion carried.

Bank of North Dakota. We have the BND statements for September and October. The September balance in the trust as of September 30, 2010 was \$8,649,882.12.

Motion. Glatt moved to accept the bank statement through September 30, 2010. Second by Schwindt. All ayes. Motion carried.

Neubauer indicated he has the BND statement for the period ending October 31, 2010. Total assets in the trust are now \$8,630,386.89. Of that we had a \$1 million treasury bill that is due on April 7, 2011 and we have a \$7 million treasury bill that is due September 21, 2011. The \$1 million is paying about .15 percent and the \$7 million is at .19 percent. I know in October 6, 2010 when the Bank of North Dakota called me they said those rates that we have currently would be about half if we waited for another day to do that. It is ridiculously low, but cash in the account is \$630,386.89. We do have reserve. The \$1 million is due on April 7, 2011. We do have \$8 million in T bills and \$630,000 in cash. We do not have a choice where we park the money.

Motion. Glatt moved to accept the MRT bank statement balance as of October 31, 2010. Second by Schwindt. All ayes. Motion carried.

Netting/Screening. Neubauer received a call when we had the 60-mile-hour winds. Jason Vander Linden talked about the netting and the screening over at the treatment building. It was ripped, but I think they cobbled it back together or stitched it back together several times. I asked him to get us a number of the cost to replace it. He hasn't come back. It is just a screening of a 10,000 gallon tank. It doesn't look any different than from the last five years so I think they have done a good job of stitching.

Color Change. Schwindt noted that the Architectural Review Committee had requested we change the color when we do replace it. Neubauer gave Vander Linden a

color sample and he told him to go to Dakota Fence to get another estimate done. He hasn't come back yet.

Site Strategy Plan. No comments were received Glatt said.

Neubauer noted we are kind of looking at that at the end of the year. Glatt, think we can get it done? Radig noted it is just a matter of doing the final review and if we have any changes we would like to make.

Collins and Main. The rights to the corner of Collins and Main, which has been the western edge of the Hopfauf's project we can probably get at that. The question we are asking now is if we put out another Request for Proposals what do we want to say about the wells that are in there?

I did get maps in preparation of the state and cities address last week.

Glatt indicated I looked in that corner and didn't see much there so if we can verify that I don't see any problem with having the wells on the perimeter of the plume.

Nothing is going to happen there until the spring, Neubauer noted. When the monitoring events occur and there is no contamination there then I think we can safely say. When the developer looks at it and says, what am I going to do with the wells that are there? Pull them out, cap them out?

Radig noted the water table is going up slightly because of the wet summers we have had so that does tend to mask some of the free product it may not be quite as good as it may appear. But it is definitely improving.

Glatt added. If we have the wells on the perimeter of the footprint and they follow the covenants of the institutional controls.

Radig agreed we can probably live with it.

Schwindt noted if I recall the free product plume maps there has not been any free product within the footprint of the building there. Certainly there is still some around the perimeter. I guess I would just like to take a closer look at those product maps and make sure of that and also go back and look at LBG's report that they presented us about a year and a half ago just to re-verify. What I recall on that they were saying that there weren't any wells that needed to be retained within the property area.

Neubauer noted that is just to give you a heads up. I'm assuming we will get the property back soon and do another Request for Proposals and that conversation we will have to have on how to write that request. Ellen and I talked yesterday about it. I said I don't know that we can say for certainty what will happen, but I think some discussion we need to have on how certain we can make it for someone who is looking at that property.

Schwindt asked. Malcolm do you have any thoughts on the whole county thing?

Brown responded. Like I said you have LBG's estimate. That's what I would use. They needed that dewatering system. Like Glatt said if they wouldn't have done anything that basement would become unusable anyway. So just go for it and make them an offer. They can't say no. They are going to take whatever you give them. I understand that the city and the county have obligation—the city has for the rest, but that is beside the point.

Brown added. What LBG has given you or might give you more that's your justification right there.

City of Mandan. For August 2010 through September 2010 for city of Mandan wastewater charges for \$1,391.19. Radig noted we got another one at the end of October because we are a week later than normal so we actually got caught up now. There should be another one for \$798.62.

Motion. Glatt moved to approve payment for city of Mandan wastewater charges covering August 2010 through September 2010 for \$1,391.19. Second by Schwindt. All ayes. Motion carried.

City of Mandan. Wastewater charges for the period of September and October 2010 for \$798.62.

Motion. Schwindt moved to approve payment for city of Mandan wastewater charges covering September 2010 through October 2010 for \$798.62. Second by Glatt. All ayes. Motion carried.

City of Mandan. City of Mandan's request for the third quarter utilities billing for \$19,356.82. Radig noted it also includes coverage for tornado and fire insurance on some of the buildings, but it is less than \$1,000.

Motion. Move approval for payment to the city of Mandan for third quarter expenses including utilities and insurance for a total of \$19,356.82; second by Schwindt. All ayes. Motion carried.

LBG. Received LBG's request for invoice dated October 21, 2010 for a total amount of \$19,496.70. Radig has reviewed and indicated it is all within the project budgeted amounts. Schwindt noted we are still accumulating some costs for that well repair. When we get the next payment request from them can you ask them whether all costs have been included so we can finally settle up with Community Contractors. If costs aren't available now, ask when they anticipate all the costs being included.

Motion. Glatt moved to approve the pay request from LBG dated October 21, 2010 in the amount of \$19,496.70 with the caveat to determine if all the costs related to

the pipe being hit on the Furniture First lot be documented; second by Schwindt. All ayes. Motion carried.

Aon Insurance. Was there any further contact with that insurance broker? Radig indicated they sent some documents to Maggie Olson and myself, which described their services and projects that they do. Glatt asked if he could send it around.

Legislation. Radig asked. Question about changing the law as far as a time limit on liability. Are we going to address that? Is the Department going to?

Glatt indicated under state law—under liability relief. Let's you and I sit down.

Radig asked. What is the deadline for having agency bills in?

Glatt – Let's you and Maggie and I sit down.

Schwindt – What are you looking at 5 years? 10 years? Radig noted if I recall correctly they were saying their policies are usually 5 years.

Neubauer asked. Is there a standard? Radig didn't know.

Schwindt – Do other states have a similar statute? Glatt noted there are some. Radig noted Lyle Witham and Brown put that law together. Don't know specifically where they came up with that. Glatt will meet this week or next.

Other. Schwindt has not talked to Rusty Krikava to get an update on how things are operating. Haven't heard anything otherwise either.

Next Meeting. December 7, 2010 at 10 A.M.

Discussion of Costs. Schwindt discussed LEC costs. Oversight is a shared cost. Glatt wants to see the breakout but there isn't any. Start at \$130,000. What Trauger presented this summer was \$200,000 and that was a bunch of shared costs. He was going to almost 60 percent that's where those numbers came from. Schwindt kind of took his numbers and worked it up to the dewatering system and the epoxy. Our share would have been 34 percent rather than 60 percent that he was talking about. I came up with \$162,000 at that point in time.

Glatt asked. Should each of us go though it on our own and get back to discuss it? What is the best way to do this?

Neubauer stated I don't think what rational we come with it isn't going to matter, but for our purposes I think we need to do it and here is the basis for paying "x" amount of dollars towards the total cost of this project. If I put my city hat on I know if the MRT were to fund \$200,000 of the \$360,000 they are going to come back to the city. I'm not

sure how they do that because my recollection of that operative agreement those costs had to be expenditures above \$5,000 and had to be approved by the city commission for prior approval. At the end of the day I have to be able to justify.

Glatt indicated if you go back on the records and we had these discussions because they had the water problem in the basement. I'm not so sure at this point in time that the headaches and those types of things might have been related to the mold. You get the same type of symptoms.

Schwindt will provide a copy of LBG's handwritten document so you know which items LBG was proposing.

Glatt I wanted to make a point. They shouldn't feel slighted or singled out. We have treated contractors-consultants with the same—everybody gets the same treatment.

Neubauer stated I am disappointed in the method that they chose to operate and come back totally after the fact and saying this is what you owe.

Glatt noted hindsight is they never said why don't you guys come over and we will present it to you.

Neubauer indicated and how many times did you go over and talk to Trauger last summer.

Glatt noted there would have been no surprises at the end; maybe change the status. Even after they bring back the flooring estimates and then we will see. We didn't say bring back whatever you want to do and we will pay for it. It's a process that is more of an irritant.

Schwindt added. Just like some of those change orders. We had that discussion. Didn't think that was going on in the middle of the building for the way they were constructed for one thing and even just going there to begin with was going to be worthwhile but that decision was made and gone before we could even have any input.

Motion to Adjourn. Schwindt moved to adjourn at 11:39 a.m.; second by Glatt. All ayes. Motion carried.