

MANDAN REMEDIATION TRUST (MRT)
October 6, 2009 Minutes

Meeting: 194th Official Meeting
Date: October 6, 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 Ellen Huber, city of Mandan; Marilyn Mertz, State Department of Health; Gene Kringstad, Community Contractors (Grand Forks); Scott Radig was absent.

Minutes. Discussed September 1, 2009 MRT minutes. Revisions have been made.

Motion. Glatt moved and Schwindt seconded to approve the September 1, 2009 minutes. All ayes. Motion carried.

City of Mandan. Billing statement from the city of Mandan for the quarter ending September 30, 2009 for roughly \$31,000. The statement will be given to Radig for review; 99.9 percent are MDU utility services to the remediation building.

City of Mandan Pay Request (PR). PR 184 for wastewater charges to the city of Mandan in the amount of \$1,245.28, statement dated August 31, 2009 for July and August wastewater charges.

Motion. Schwindt moved and Glatt seconded to approve PR 184 in the amount of \$1,245.28 to city of Mandan for wastewater charges. All ayes. Motion carried.

Brady Martz Billings. Clarification of billings for Brady Martz for tax returns and audit fees. Neubauer indicated there was some confusion what we were getting billed for. We made a payment to Brady Martz on the audit in February 2009. We had a bill of \$4,825. We made a payment of \$3,425 out of the MRT leaving a balance of \$1,470, which I wasn't sure what it was for. Brady Martz kept billing the MRT for the SEP portion of the audit. The SEP had a meeting by telephone conference Friday morning on October 2 to approve payment of \$2,130 for Brady Martz, which would cover \$660 for tax return prep fees and \$1,470 in audit fees. This should bring everything up to date with Brady Martz with the exception of the latest billing from them for the tax return prep fee for 2008, which was just filed on September 15, 2009 of \$400 for the MRT portion. For the SEP portion we just signed the check. It is included in these numbers.

Motion. Glatt moved and second by Schwindt to pay \$400 to Brady Martz for 2008 tax preparation fee. All ayes. Motion carried.

There were several finance charges on both the MRT and SEP. There was

\$300-\$400 of finance charges on the SEP. When Schwindt talked to them they indicated they would be willing to consider waiving those. Schwindt asked them and they did subtract the charges. Future billings: Audit fees are basically 70 percent MRT and 30 percent SEP. All audit fees have been paid. They will start on 2008 after they receive the SEP payment that is being mailed today.

The Medicine Shop Repairs/Letter. Neubauer drafted a letter to go to Kevin Ritterman regarding the north exterior wall at The Medicine Shop. Community Contractors have submitted a bill for that of \$12,100. We had indicated that we would fund that at the July 7, 2009 meeting provided that they in essence sign off as that will be the work completed to their satisfaction. It is no different than what we have done with the theater.

LBG Pay Request. PR 185 statement dated September 15, 2009 to LBG in the amount of \$52,362.33. Radig indicated in an e-mail that costs were under budget. Discussed. Schwindt asked why Ric Stoor was charging as much time as he did. He would have been up here during the time that R³ was onsite connecting the well. My understanding was that he was going to be doing primarily O&M activities but he ended up charging his time to the oversight. He has a lot of time in there for 37 hours for something. Stoor comes up and does a lot of computer system and how it relates to O&M. I thought that was why he was coming up. That's why I was surprised he charged it off to field oversight. In supplies we have \$12.18 for water and Gatorade for field work. I didn't realize we had to pay for water and Gatorade for field work. Glatt agreed, we don't. That would come under per diem.

Motion. Schwindt moved and Glatt seconded to approve LBG PR 185 for \$52,362.33. Schwindt would also like to bring to their attention that he doesn't think it is appropriate to pay for water and Gatorade for field work. Glatt agreed. Also, Neubauer questioned the transaction because it would take time to classify the billing. All ayes. Motion carried.

Well Billings. Schwindt asked if the city has received any billings from Don's Electric or the Dakota Ready Mix for the work related to the wells. We had the electricians come in and move that conduit, pull the wires and redo it for the street lights and traffic signals. Then we also had the city contractor do the concrete work.

Community Contractors, Inc. Discussion of well movement and compaction issues. Well 1042 is located in the southeast corner. Schwindt indicated there was only one reading back in November 2008 where there was a tenth of a foot of free product in this one. Otherwise, there has not been any record of anything showing up there. Community Contractors and the developer are concerned about costs for modifying the system and to re-compact the soils, etc. This was one that we talked about moving out to the sidewalk, but should we eliminate it? Glatt asked, what coverage do we get? Schwindt indicated we do get some coverage from the slant well we just put in. It does leave us a gap because we are eliminating two and moving one further north. Historically, there hasn't been much. I'm sure there is soil contamination. That was the

end or corner of the building at Furniture First where they complained most about odors. I think we are talking about \$3,000 to put a well back in plus then we have to reconnect it. The piping will have to be moved some.

Well 1048 will be moved out to the sidewalk. Well 1045 will stay.

Glatt asked. What is the coverage between 1047 and 1048? Are we still going to end up with a gap in there? Schwindt indicated it could be moved further to the east.

Manifold piping is in the sidewalk right now so that's all going to be exposed and probably removed. Schwindt asked. It wouldn't be too much extra work to go another 10 to 15 feet to the east, right? Kringstad indicated no. The only thing that might have a little influence on location are the stoops we put in. Schwindt indicated we could move the well 5 feet. Glatt is reluctant to move 1047. We might be able to shift 1048 a little. I would like to have coverage for this corner of the building. Schwindt indicated we can look at spacing 1047 and 1048 to see an appropriate place for placing them. Glatt noted that 1042 could be taken out and 1048 could be moved further east.

Kringstad interjected. We are planning on putting perforated pipe down on the perimeter of the building with the vent stack on it.

Schwindt received a call yesterday afternoon from Craig Tweten, Community Contractors, and he was concerned about the additional cost of the bid he received from Braun. It was about \$36,000 to put in the six wells including the two slant wells. He was concerned about that cost. Schwindt responded. The reason that it got that high was the indication we had gotten was that they didn't want these two wells inside the building. So when we talked about that he said, "Well, let's go ahead and plan to put them back inside the building." Now we are looking at \$3,000 a well rather than \$11,000 or \$12,000 a well for the slant wells. He made that decision yesterday but we have to work out the details on how to get this one in the stairwell with that footing pad that they have there and how much clearance. I don't know which way the stairs are going to go but we need clearance above the well to put our pipe in and out and adjust it.

Kringstad received the foundation plans late last night. I think we can probably come up with a placement. This building has a central corridor. The structural pad they have for holding up the steel column is 14 foot wide. That is going to have a little influence on where we place this well.

Schwindt indicated with 1047 being placed in the sidewalk, that will move this circle further south and then we have 1043. There is a little bit of wiggle room so we can move this one a little bit one way or another.

Kringstad indicated we will be looking at pipes now versus where we are actually placing all those pads for the piers. I will get those laid out so you can see proximities and we can try to pick a spot without hitting anything.

Glatt indicated there is some flexibility in the location of the wells. The main issue for me is that we still have some remediation.

Neubauer indicated the estimate was \$36,000 for six wells including two slant wells. So if we change those two slant wells to be vertical, it could save close to \$20,000, Schwindt says. The cost variation is because they can put in three vertical wells in a day versus one slant well in a day. A slant well when I looked at the layout we are going underneath the footing at pretty much the same angles we had from the south side. Now we are looking at a 50 foot length of drilling vs. 25 foot so it comes down to the amount of time it takes to drill versus a vertical well.

Neubauer asked. We weren't looking at going through the footing to get to the spot.

Kringstad indicated no, we are going to go underneath the footing or through the foundation.

Neubauer asked. So we are still looking at six wells total or are we changing that now too?

Schwindt indicated if we eliminate 1042 then we are down to five wells. Glatt added, and move 1048.

Neubauer summarized: Five vertical wells at three grand a piece. The drilling costs will be about \$15,000 and then the connections.

Huber asked. You don't have the cost for the connections. Schwindt indicated that Lyle Morast, owner of Do-Mor never really gave us a cost on the connections.

Roger Schmid from Water Supply came over on Saturday and plugged the wells that are impacted, Schwindt indicated. These guys are exposing all the pipe in this area so we can properly label which pipe goes to which well. They are going to cut them off and cap them. And we will relay the pipes back down after they get all the excavation and re-compaction done. What we can do if we are eliminating 1042 is eliminate all these pipe up to where we replace 1050 in between the two buildings. So we eliminate a lot of piping under that sidewalk which will make it easier for them.

Neubauer indicated it appears we have a plan for relocation on the site. Kringstad is comfortable with the plan. As far as my discussion with Schwindt, we are OK with everything there provided you guys are. Once we can do a little more layout we can figure a precise location on these. Once we have everything backfilled and solid ground for the drill team to come back they will know where those are to be drilled before we start erecting the building. Same with the wells that are going to be located out in the sidewalk area. They can be drilled before we get all the backfilling up that way it is easy to lay pipe back in there. Trying to cut the cost here. Do-Mor is doing the

excavation for us. We are going to do this a little bit slower than we normally do it just because we are doing it a little bit out of sequence to accommodate the remediation.

One of the issues will be: How do we get a drill rig down in here? We are going to have an access ramp some place. Kringstad indicated we just ramp up over the foundation and we will be able to drive in.

Schwindt indicated to replace these two wells on the sidewalk, we will have to have some kind of support for the drill rig. When we met with Braun that day, he would prefer to go right down the sidewalk. That way he is not out in traffic. You have the parking lane there and you have one driving lane. Maybe that would be sufficient. Neubauer thought it would take two days to complete the work.

When Schwindt was talking with Craig Tweten yesterday, he was wondering why the remediation wasn't paying for this. He was under the understanding that was why the trust was here to do that. I said no. The reason the trust is here is to clean the stuff up. The impression I got, but not sure this is accurate is if we can get the cost down somewhere in the \$15,000 to \$20,000 range they could probably handle that.

Huber reiterated and you do still have reconnect costs that you don't have yet, correct?

Schwindt indicated that's correct.

Discussed reconnection costs for Library Square I or II. Those costs may have been less than \$2,000. The MRT did not have the reconnection costs. It was more capping the lines off. There were some abandonment costs. Roger Schmid did abandon the wells. We have those costs as well.

Glatt said, "It is my opinion that the MRT is there for remediation...we will still need some wells."

Neubauer questioned. Are we being charged by Braun and everyone else for giving such short notice?

Schwindt recalled when Thein Well Company was here vertical wells were right around that \$2,000 range. The charge now is slightly under \$3,000. I think it is reasonable. Craig Tweten asked about having Midwest do it. Schwindt didn't have any objection to that but doesn't know if they are licensed or capable of doing something like that. He is willing to try to find some other people that might be interested if you want to do that.

Neubauer called Kevin Ritterman of Dakota Commercial. He was not available.

Glatt asked. Were there some issues with the soil compaction?

Kringstad responded. I was told when the soil borings were done on the site they found inadequate compaction and when they were looking at the soil boring reports if I understood what they were telling me they were saying that it was kind of inconclusive because there was a certain number of compaction tests done at different elevations. They couldn't certify the entire lot.

Glatt asked. Was that a function of not having enough tests or was that a function of not compacting right?

Kringstad indicated it could be both or one or the other. And not having someone there and witnessing what the practice was for the placement and compaction of soil nobody could certify it.

Glatt asked. What was under the original contract? Huber indicated it appears this is related to the demo of the original building not putting the pipeline in place. There were two sets of soil tests. The deepest test was at 6 feet. I think one at 6 feet, 5 feet and maybe two at 4 feet and a couple at the surface. Nothing went from 6 feet to the depth of the foundation if I understand from the soil borings.

Neubauer thought the demo contract was for the site to be filled with engineered fill. Huber added or suitable construction for a building but it didn't say a one-story building, two-story building, four-story building. It appears to be one of the problems because we didn't have more specifics.

Kringstad indicated the removal of the old building was taken down to a 10 foot level next to the Mysteria Theater. They didn't start their compaction until the 6 foot level. You have 4 feet that are undetermined. Huber noted I think there was only one test at 6 feet and one at 5 feet. Kringstad indicated there was only that one spot where you could actually put a footing that would be certifiable. Not knowing what the compaction actually was at other points, we had no way to verify whether or not soil conditions were going to hold the weight that would be placed on it.

Neubauer asked. From an engineering standpoint, why would Midwest not have gone deeper? I don't know why they wouldn't if they knew that the hole coming out was 10 or 11 feet deep. It doesn't make sense for me to have Midwest come in and give tests at 6 feet, 5 feet, 4 feet.

Huber indicated it was Midwest Testing that did the soil borings for this project so it is the very same firm coming back on their earlier work.

Kringstad noted. There is a little bit of a contradiction there. In their defense — if the city's directive was to backfill that lot and have it drillable and all this was placed back on the contractors that we have going on that lot. If they did not call in Midwest Testing until they had it back up to a 6 foot elevation. Midwest Testing is not liable for it because they came in when they were told to.

Neubauer asked. Is compaction at 6 feet buildable on? Midwest is hired to certify that site is buildable on, but they didn't come in and do the proper testing.

Kringstad indicated I understand what you are saying. It was your place to do that. The contractor didn't bring them in until they were half way done. If it is not written on their paperwork that they did not request it and dug that down so they could do a random sample at a 10 foot or 9 foot elevation. ...This could go a number of different directions.

Glatt asked. Is this an MRT issue?

Huber has not heard back from Malcolm Brown, city attorney, since she provided him the soil test the second time.

Schwindt indicated wasn't there a recent boring showing poor compaction at the 10 foot level on the one boring. Kringstad believes it did in the southwest corner. Schwindt continued. It seems somebody didn't do the job that was part of the contract with the city to recompact even though it may not have been tested. When they test it now it shows that it is not compacted adequately. I think that is one of the bigger reasons why you have to go back in and do it. You did have one test boring that failed.

Kringstad indicated every time you have a failure we have to have one that passed.

Schwindt understood there was a problem at the 10 foot level. Don't know if that passed or only failed here. Glatt asked. Did the contractor certify that it passed? Then he is using soil borings from 6 feet. Huber noted our building inspector accepted it. He accepted what was provided from Midwest Testing and the contractor. Glatt indicated we are hearing we cannot put a building on here. The contract was between the city and Wiese. The city did the contract and oversight on that. From MRT's perspective, we paid for work. The MRT is not being asked to pay. Neubauer indicated it's been brought up by Ken Mervin that it will cost \$30,000. Huber didn't get a number. Kringstad indicated nobody has an estimate. Huber thought Ritterman's question was more of a general nature as to if the city had any recourse on its contract or who would be responsible.

Neubauer indicated the issue is between the city, Wiese and Midwest Testing. The developer is saying you guys told me it was buildable. Now if I have to pull everything out and re-compact everything am I going to have to eat that cost even though you sold me the lot as is?

Neubauer contacted Ken Ritterman on his cell phone. Neubauer discussed. We have a plan for well movement, well relocation on your lot. I think the next conversation we have is who pays for what. I drafted an e-mail to Huber and she sent that to you regarding what the MRT has done in the past. We have paid to plug abandoned wells and it has been the developer that has paid for the relocation if there was such and

reconnection. Right now the initial estimate is about \$36,000 to relocate/fix wells. By not doing the slant wells on the north side of the proposed building we would bring that cost down to maybe \$15,000 roughly. Is that consistent with what you are thinking? Ritterman said, yes, I am hearing the same thing. Neubauer indicated we don't have a cost yet on reconnecting the wells. I think Do-Mor has been asked by Schwindt to provide a number on that. Our experience in other places is that has not been a significant amount of money. Schwindt indicated Morast was somewhat reluctant to provide any kind of estimate. He is willing to do it on a Time and Materials basis. Kringstad indicated Morast was suppose to submit some prices into Craig Tweton and Korey Elde in our office on what the labor charges would be. Craig Tweton will probably give you some better numbers.

Ritterman asked. You're thinking this is our cost then. Neubauer responded. That is how we have operated in the past. The MRT's job or role in this is to clean up the site. Our past practice and reasoning has been we will continue to operate wells on and in the property to make sure the site is clean and is buildable on. But it is the developer's responsibility if there is a relocation of the well. Ritterman indicated alright that's fine. Did you get any feedback from the soil guy whether or not he did his job appropriately? Neubauer indicated we just had a conversation about that and that is really a three-way argument or discussion between the city, Wiese & Sons who did the building demolition/excavation compaction and Midwest Testing. The MRT in essence reimbursed the city for those costs but the MRT isn't included in this dispute. We are waiting for Malcolm Brown to get back to us on the contracts that were issued with Wiese & Sons and Midwest Testing. I think there is going to be finger pointing between Midwest looking at Wiese & Sons saying you never called us in until you were at the 6 foot level of compacting and that is when we tested and it met [conditions]. But nobody called us in when you were down at 10 or 11 feet to test. Our attorney is looking at that as we speak.

Ritterman indicated they should have been taking steps. I don't think there would have been an issue if they were testing every foot like they were supposed to be.

Neubauer noted we were pretty surprised when the test came back that it wasn't meeting because on all of the properties that were acquired and refilled, engineer fill goes back in and compaction so they are ready to build on. We are working through that one and will touch base with Brown today and see where he is at. We are going to try and do everything to reduce the cost on the relocation of wells and we will work with you on that. Like I said if we have to cut the cost by \$20,000 already by doing vertical wells and not slant wells I think we are making headway there. Ritterman did not have any questions. He will contact Gene Kringstad or Craig Tweton.

Agreement. Neubauer has an agreement relating to the wall on the north side of The Medicine Shop. When we agreed to reimburse for costs for the cleaning and the tuck pointing Ritterman did not know if the tuck pointing had been done. Do you know that Gene? Kringstad indicated there was no tuck pointing done on that building. Neubauer will scan a letter to Ritterman from the trust that the work has been completed

in accordance to what we agreed to and no further claims will be made against the city or the MRT on that wall. Once that is signed and returned to us we will cut you a check for the \$12,100.

Schwindt asked. Is the tuck pointing going to be done or needed? Kringstad indicated I don't think it is needed at this point, Kevin. The only thing we had the masons come in and do was repair the too thin brick when we cut in the window on that elevation. Ritterman agreed it is probably OK. Kringstad indicated everything is work solid and didn't appear to be flaking apart. Schwindt said. "It seems like then we shouldn't be reimbursing you for \$12,100 for tuck pointing that wasn't done." Ritterman added, I don't think tuck pointing was included. Schwindt said. Yes, it was. Neubauer indicated I think our motion on July 7, 2009 was for tar removal and tuck pointing. I would have to get the original estimate. I thought the estimate for cost of twelve grand was for tuck pointing too but we can take a look at that. If there is something different — in the original estimate of \$12,100 there was \$5,000 for tuck pointing mortar joints. The cleaning with dry ice was only \$3,000 of the \$12,000. Confirm that then. If they didn't do it, then they shouldn't need it then. Call ended.

Kringstad indicated tuck pointing is new to me. I will give that question to my project manager.

Neubauer indicated the other estimate we had from T W & Sons Construction was shot blasting, tar, and tuck point the joints with mortar. Kringstad indicated that the way that is worded I would assume they were talking about tuck pointing on that north elevation unless they were thinking that once they got all the tar off that the mortar underneath would need to be replaced. But at this point, none of that mortar has been replaced. The only thing we have replaced or tuck pointed back in were the openings we cut in for the new windows. Once in a while when we get into an old building like that we want to be careful to preface that sometimes the tar the way it is impregnated into that mortar makes it just brittle. He expressed his appreciation relating to the discussion of the placement of the wells.

LEC. Neubauer expected Ken Kytta at today's meeting. He will be here for Thursday's county commission meeting. Whatever bid they choose to accept would be from an MRT standpoint, we are interested in paying for if there are costs resulting from the contamination if they need to take precautions on ventilation, on removal of soils, and disposal. We would take a look at those costs. He thought the bid documents were to separate those numbers. I have the bid documents here but have not seen any of the other stuff.

The bids range from \$120,000 to \$240,000.

The county may want some indication from the MRT how much they are willing to pay for before the county accepts the bid.

Huber indicated the one thing is to make sure that Kevin Ritterman is clear that

those two wells are back in the footprint of the building. She will follow up on that.

Pipe. We have extra pipe for reuse. Chief Construction may have pipe that could be utilized. Schwindt is trying to get a number of fusible caps that Do-Mor needs to order, the number of transition fittings between HDPE and PVC, the number of 90s and 45s, etc. that they will need to put the stuff in so we can order it. The pipe may not be in stock but it is not a big timeline to get here.

LBG. Schwindt has been talking to Kytta about whether they need well 1042.

Next Meeting. November 3, 2009 at 10 a.m.

Motion to Adjourn. Schwindt moved and Glatt seconded to adjourn at 11:15 a.m.