



151 Martin
Birmingham, MI 48009
248.530.1800

BIRMINGHAM BROWNFIELD REDEVELOPMENT AUTHORITY AGENDA
Wednesday, June 19, 2019 at 8:30 a.m.
Birmingham City Hall (151 Martin Street)

City Commission Room

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1. Call to Order
 2. Approval of minutes of September 5, 2018 and June 14, 2019 meetings.
 3. 2400 E. Lincoln – Brownfield Reimbursement
 4. Open to the public for items not on the Agenda
 5. Adjournment

Approved minutes of the meeting are available in the Community Development Office or online at www.bhamgov.org.

Notice: Due to Building Security, public entrance during non-business hours is through the Police Department—Pierce St. Entrance only. Individuals with disabilities requiring assistance to enter the building should request aid via the intercom system at the parking lot entrance gate on Henrietta St.

Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).

**Brownfield Redevelopment Authority
MINUTES
City Commission Room of the Municipal Building
151 Martin Street, Birmingham, Michigan**

**Wednesday, September 5, 2018
8:30 a.m.**

1. Vice-Chairman Robert Runco convened the meeting at 8:31 a.m.

Members Present: Vice Chairman Robert Runco
Harry Awdey
Dani Torcolacci
Wendy Zabriskie

Member Absent: Chairperson Beth Gotthelf

Administration: Jana Ecker, Community Development Director
Mark Gerber, Finance Director
Jeffrey Haynes, Beier Howlett, City Attorney
Carole Salutes, Recording Secretary
Brett Stuntz, AKT Peerless, City Brownfield Consultant

2. Approval of June 22, 2018 Minutes

Motion by Mr. Awdey

Seconded by Ms. Zabriskie to approve the June 22, 2018 minutes as presented.

Voice

**Vote: Yeas, 4
Nays, 0
Abstain: 0
Absent, 1 (Gotthelf)**

Motion carried, 4-0.

3. Request to add 215 Peabody to the approved Brownfield Plan for 34965 Woodward Ave.

Ms. Ecker advised that the developer of 34965 Woodward Ave. (the former Peabody's restaurant) and 215 Peabody (the former Frame Shop), is seeking approval by the City to amend the Brownfield Plan for 34965 Woodward Ave. to include the property at 215 Peabody. Both parcels are now under the same ownership, and the developer is in the

process of combining the parcels to allow construction of the proposed five-story building on both parcels. Oakland County has advised that they will not combine the parcels until the Brownfield Plan is amended to include both properties.

The City Attorney has reviewed the request, and is recommending approval by the City of the requested amendment to the Brownfield Plan for 34965 Woodward Ave. to include 215 Peabody under the approved Brownfield Plan.

The Reimbursement Agreement would stay as-is - the only change is to the Brownfield Plan itself. Nothing is changed with regard to the amount the developer is asking or the amount that would be paid back; but it may speed up the payback process because more assessed value is being added.

Motion by Ms. Torcolacci

Seconded by Ms. Zabriskie to recommend that the City Commission approve the developer's request to amend the Brownfield Plan for 34965 Woodward Ave. to include the property known as 215 Peabody.

Voice

Vote: Yeas, 4

Nays, 0

Recused, 0

Absent, 1 (Gotthelf)

Motion carried, 4-0.

4. Project Updates - 2400 E. Lincoln

Mr. Haynes recalled at the last meeting the Brownfield Board approved filing a motion in bankruptcy court seeking to re-open the case, and the City Commission agreed. The bankruptcy judge heard the motion last week and decided not to re-open the case.

Two days after the City filed to re-open the case in bankruptcy court, 2400 E. Lincoln and its two members of the LLC filed an action in Oakland County Circuit Court for a declaratory judgment seeking to have the Reimbursement Agreement declared valid. That complaint has been answered with several affirmative defenses, including lack of standing. However, the bankruptcy judge felt that the City had a remedy in Circuit Court on the standing question and she also suggested that had she re-opened the bankruptcy case she probably would have held on the merits that 2400 E. Lincoln had standing to bring the claim under the Reimbursement Agreement.

So it appeared that even if she had re-opened the case and filed a motion and brief to test the standing of 2400 E. Lincoln, the bankruptcy judge probably would have ruled that the bankrupt debtor had standing.

Therefore, on recommendation of bankruptcy counsel the City will not appeal that ruling of the bankruptcy judge.

Mr. Haynes noted that he and Mr. Arthur Siegal, attorney for 2400 E. Lincoln, have been discussing the 2400 E. Lincoln Reimbursement Agreement for the last several months. The Reimbursement Agreement requires 2400 E. Lincoln to keep the property insured against property damage and personal injury and liability during the life of the Agreement which is for 30 years. There are no documents that they could find that provide evidence of insurance to the City from when the Brownfield Plan started in 2005.

One of the ways the Reimbursement Agreement can be terminated is by the developer not insuring the property. In order to terminate the contract, the City has to send a Notice of Termination and they have 28 days to cure the default. If they don't cure the default the contract is terminated on the 29th day.

Therefore, Mr. Haynes has drafted a resolution by this board authorizing the chair or acting chair to sign a Notice of Termination. He will then send it to 2400 E. Lincoln under the contract.

Mr. Arthur Siegal, attorney for the prior developer of 2400 E. Lincoln, spoke. His client basically did all of the Brownfield cleanup work ten years ago. With the economic downturn back in 2008, the property was turned back to the lender and the development was not completed. The site was then conveyed to a new developer who has since developed it. His client had spent somewhat in excess of \$1 million cleaning up the property so that it could be redeveloped. Therefore, his client feels that it would be fair for him to be reimbursed at least to the extent that funds are available. It is virtually certain that he will not be fully reimbursed given the time that has passed.

Mr. Siegal added he finds it troubling that the Authority and its counsel are going out of their way to try to deny his client reimbursement for funds that were spent in good faith to improve the environmental condition of the property as a precursor to development. He went on to state that it is starting to feel like the Brownfield Authority and the City are looking for loopholes for reasons not to make the reimbursement that his client really is entitled to.

Mr. Siegal asked for the opportunity to review the Agreement and the motion and to speak with counsel to see if they can come up with a resolution. He requested the Authority defer the motion until their next meeting. He added that the issue of insurance was only recently discovered by Mr. Haynes and it was never raised with them. He suspects that his client, given they no longer own the property, probably does not have the appropriate insurance. Further, he suspects that the current owner has the insurance and they may be able to reach some accommodation with that current owner to satisfy the obligation.

Vice-Chairman Runco read into the record the proposed Resolution Authorizing Notice of Termination for 2400 E. Lincoln:

WHEREAS, the Reimbursement Agreement for 2400 E. Lincoln describes conditions of termination of the agreement and notice of termination, and

WHEREAS, it appears that 2400 E. Lincoln is in default under the Reimbursement Agreement for failure to provide commercial general liability insurance for claims for personal injury, death, or property damage, occurring upon, in, or about the property that is the subject of the Reimbursement Agreement,

NOW, THEREFORE, be it resolved that:

1. The Brownfield Redevelopment Authority authorizes its chair or acting chair to send 2400 E. Lincoln a notice of termination of the Reimbursement Agreement.

Ayes: _____

Nays: _____

Abstain: _____

Dated: _____

**Motion by Ms. Zabriskie
Seconded by Ms. Torcolacci to authorize the sending of the notice of termination.**

Voice

Vote: Yeas, 4

Nays, 0

Recused, 0

Absent, 1 (Gotthelf)

Motion carried, 4-0.

5. Open to the public for items not on the Agenda (no public available)

6. Adjournment

No further business being evident, the board passed a motion to adjourn at 8:55 a.m.

Respectfully submitted,

Carole Salutes
Recording Secretary

DRAFT

**Brownfield Redevelopment Authority
MINUTES
City Commission Room
Municipal Building 151 Martin Street, Birmingham, Michigan**

**Friday, June 14, 2019
2:00 p.m.**

1. Chairwoman Beth Gotthelf convened the meeting at 2:02 p.m.

Members Present: Chairwoman Beth Gotthelf
Vice Chairman Robert Runco
Harry Awdey
Dani Torcolacci (arrived 2:10 p.m.)

Member Absent: Wendy Zabriskie

Administration: Tiffany Gunter, Assistant City Manager
Mark Gerber, Finance Director
Brooks Cowan, City Planner
Jeffrey Haynes, Beier Howlett, City Attorney
Laura Eichenhorn, Transcriptionist

2. Approval of September 5, 2018 Minutes

Motion by Mr. Runco

Seconded by Mr. Awdey to approve the September 5, 2018 minutes as presented.

Motion Carried, 2-0.

ROLL CALL VOTE

Yeas: Runco, Awdey

Nays: None

Absent: Torcolacci, Zabriskie

Abstain: Gotthelf

3. Resolution To Meet In Closed Session Pursuant To Sections 8(H) And 8(E) Of The Open Meetings Act

Motion by Mr. Runco

Seconded by Mr. Awdey to meet in closed session to discuss an attorney/client privilege communication in accordance with Section 8(e) of the Open Meetings Act, MCL 15.268(e), to consult with the Brownfield Authority's attorney regarding trial or settlement strategy in connection with 2400 Lincoln, LLC v City of Birmingham, Case No. 2018-167484-CB.

(A roll call vote is required and the vote must be approved by a 2/3 majority of the

authority. The authority will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)

Motion Carried, 4-0.

ROLL CALL VOTE

Yeas: Runco, Awdey, Torcolacci, Gotthelf

Nays: None

Absent: Zabriskie

5. Open to the Public for Items not on the Agenda

There was no public in attendance.

6. Adjournment

Chairwoman Gotthelf announced no action is anticipated following the closed session and adjourned the meeting to closed session at 2:12 p.m.

Chairwoman Gotthelf reconvened the regular meeting at 4:04 p.m. and, there being no further business, the board passed a motion to adjourn at 4:04 p.m.

Respectfully submitted,

Laura Eichenhorn
Transcriptionist