

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

**Thursday, September 22, 2016
8:30 a.m.**

1. Chairperson Beth Gotthelf welcomed everyone and convened the meeting at 8:30 a.m.

Members Present: Chairperson Beth Gotthelf
Paul Robertson, Jr.
Robert Runco
Dani Torcolacci

Member Absent: Wendy Zabriskie

Also Present: Scott Kreitzer, J.B. Donaldson, Contractor
Mike Kulka, Principal, PM Environmental, Inc.
Elizabeth Masserang, PM Environmental, Inc.
Adam Patton, PM Environmental, Inc.

Brett Stuntz, AKT Peerless Environmental Services, City
Brownfield Consultant

Administration: Jana Ecker, Community Development Director
Mark Gerber, Finance Director
Jeffrey Haynes, Beier Howlett, City Attorney
Carole Salutes, Recording Secretary
Joseph Valentine, City Manager

It was noted that Mr. Dan Cassidy from SME was not able to attend to address Item 4 on the Agenda, Reimbursement Request for Brownfield Plan approved for 34901 - 34953 Woodward Ave. He has asked to be placed on the next agenda.

2. Approval of February 18, 2016 Minutes

**Motion by Mr. Robertson
Seconded by Ms. Torcolacci to approve the March 10, 2016 minutes as presented.**

Voice

Vote: Yeas, 4

Nays, 0
Absent, 1 (Zabriskie)

Motion carried, 4-0.

3. Brownfield Plan Application for 856 N. Old Woodward Ave., The Pearl

Ms. Ecker recalled in July 2016, the owner of the above-captioned property submitted a draft Brownfield Plan ("the Plan") to the City in anticipation of the proposed for the site. The property owner has obtained Preliminary and Final Site Plan Approval for construction of a new mixed use, four-story development with retail on the first floor and three floors of residential on top of that. They also had to do a Community Impact Study to address environmental, traffic, and safety concerns.

Ms. Elizabeth Masserang outlined some of the environmental concerns. PM Environmental has been working with the development team over the past year trying to put together what the cost differential is that is directly associated with the contamination. With that the property does qualify for a Brownfield. The payback period is approximately fourteen years and includes the request for school tax capture from the MDEQ based on a post development taxable value of \$5 million based on comparable properties in the area.

Mr. Adam Patton advised the eligible activities concern due care activities to document that the site qualifies for Redevelopment funds. They include excavation of some soils; transport and disposal of contaminated material; and installing a vapor barrier underneath the occupied portions of the building, as well as along the north wall that fronts the slope. In addition, funding is requested for chemical resistant gaskets and oversight by environmental professionals along with the preparation of post construction documentation.

Moving over to the soils, there is a line item for excavation of 6,705 tons as well as transport and disposal of 20,095 tons of total contaminated material that includes 13,390 tons of standard contaminated non-hazardous type soils and 6,705 tons of hazardous soils.

Mr. Haynes noted the two offsite contamination sources: Douglas Cleaners and the Amoco Station. There is a possibility that the State will refuse the school tax portion because it benefits a liable party. Ms. Masserang explained the DEQ viewed it within the realm of the hazardous soil excavation being eligible for the capture of school taxes. Mr. Haynes said it would be prudent to get something in writing from the DEQ to that effect. If the school taxes are not approved, then the City would have to pick up the difference. Ms. Masserang explained when they initially submitted the Plan they included a scenario of school capture and also a scenario for a local only Brownfield

Plan, which would be the projection if for any reason school taxes are not captured. It would be projected out accordingly and double the payback time to 28 years.

Mr. Patton noted the site conditions and the contaminant concentrations associated with fill are significant from a volume and from a redevelopment standpoint. The volume of soil that needs to be removed relates to the non-hazardous component. However, from a dollar value the hazardous component of the costs is more significant than non-hazardous.

Chairperson Gotthelf thought this looks like a promising site that will generate the taxes for the City; although they are asking for \$3 million. The question is who should be paying for clean-up costs. Should it be the City to encourage the redevelopment, or should it be the liable party, or should it be some blend of the two. If it is a blend, what should that blend look like. The Authority must consider how much the City is exposed to, versus the applicant.

Mr. Robertson did not believe the purchase price of \$800 thousand is reflective of the true market value. It is probably worth \$2.5 million. Additionally, how will there be a \$5 million taxable value when the project is completed. They will spend a minimum of \$15 million to construct the building. None of the numbers make sense as to why the City would put up \$3 million on this property.

Mr. Scott Kreitzer answered that the proposed foundation system will cost well over \$2 million. That cost was associated with the sale of the property and offsets the \$800 thousand. They are asking for the bare minimum as far as the excavation portion. He agreed there must be something wrong with the \$5 million number for taxable value. It should be a lot more.

Mr. Kulka noted this Plan does not contain any cost to take this to closure. It is only to implement due care and get the follow-up construction sampling showing the project is safe for residential purposes. If the taxable value turns out to be more than \$5 million it will cut down the payback period.

Chairperson Gotthelf inquired what conversations the applicant has had with Douglas with respect to their responsibility in paying for some of this cost. Ms. Masserang indicated discussion went nowhere. Ms. Ecker added that the owner of the drycleaners came to a Planning Board public hearing and he said there was no contamination coming from the drycleaners.

Ms. Masserang said she found out the DEQ has records of Notice of Violations by Douglas relative to on-site procedures back in the early 2000s but no record of enforcement or clean-up activities on their part.

Mr. Haynes thought it would be prudent for the Authority to have an estimate of costs that ought to be borne by a liable party. Chairperson Gotthelf asked PM Environmental

to have a conversation with Douglas and show them the evidence of the borings and perk from their site going into the river. Further, note this should be a high priority with DEQ and find out if they have insurance.

It was discussed that if the owners, environmental consultants, and the City pushed together, coming from different angles, collectively they might turn up the heat on Douglas.

Mr. Robertson announced this seems like a outrageous number for a not very hazardous site. Mr. Kulka responded the issue is where to take soil that is not that contaminated and it is very expensive. If the project goes forward and actual costs come down, then the payback period comes down. It is the Authority's mission to use the Brownfield to effectively redevelop the site.

Mr. Valentine said the chairperson presented a nice summation of the issues before the Authority. He added one other issue based on prior discussions of the Authority relative to the timeline of the TIF Table. There is a 14 year projection and potentially a 28 year projection based on changes that could occur, and if valuations exceed what is in the proposal then the timetable is shortened. Whether the 14 year term is too long is something the group may want to consider.

Mr. Haynes noted there could be some contingencies built into the approval that say if the school tax is turned down by the DEQ the project is denied. Or, there could be a contingency that says if the school tax is disapproved by the DEQ that portion is dropped from the proposal and it will be funded at whatever the local share is at 14 years.

Once the Brownfield Plan is approved by the City Commission then the developer takes the work plan to DEQ and asks whether they will allow school taxes to be used. Then they say yes or no. If there is a liable party, it bars DEQ from approving the plan. Therefore, a contingency that says either the whole thing is disapproved if DEQ does not approve school taxes; or there is a portion that is just lopped off of the approval, is a prudent way to go.

The group explored the question of whether or not the perk is getting to the river. The boring closest to the river does not have tetrachloroethenes ("PCEs").

Mr. Kreitzer indicated ground water near the river is fairly discontinuous. There wasn't a lot of ground water over there to sample. Mr. Haynes said if the river is not contaminated there is no contamination of public properties. Mr. Kreitzer observed the soils should not result in an unacceptable discharge to the Rouge. Chairperson Gotthelf noted what would get DEQ's attention is whether the contamination is getting to the Rouge.

In response to the chairperson, Mr. Patton said the cost for the disposal of non-hazardous soil, 13,390 tons, is \$153,985 and it is \$1.5 million for the hazardous soil. They don't want to take out any more soil than they have to, and if they have to they need to physically dispose of it in accordance with all applicable laws. They still have to front the money.

Answering Mr. Haynes, Mr. Patton noted even though contaminants don't exceed criteria in the soil in place, they are listing them as hazardous waste for purposes of transport and disposal. He went on to explain that PCE from a drycleaning release is a spent solvent and on that basis there is no choice in the matter of how it is disposed because it is classified as a listed hazardous material.

Chairperson Gotthelf summed up the question for the Authority:

- approve the application as it is;
- approve it with contingencies:
 - . Only approve the City part if DEQ does not approve the school part;
 - . If DEQ won't approve the school part, the City will pick it up or a portion of it;
 - . The City will pick up a portion after the applicant demonstrates they cannot get it from Douglas;
- gather more facts and bring it back.

Mr. Haynes added that another contingency the board would like to see is whether there would be a deduction for the cost of closure by Douglas.

Mr. Kulka indicated they hope to start construction in December. They need to come up with a Plan to finally make the project happen as it is a significant portion of the cost of construction.

Mr. Robertson asked the applicant to look again at the cost of excavation, extra transportation. Ms. Masserang said the costs are based on an actual bid they got. Mr. Runco agreed the cost is close. Mr. Robertson wanted to know where the hazardous soil will go and what it will cost. Mr. Kulka said it will go to Belleville and their prices have recently gone up 40%.

The chairperson suggested the Authority could reconvene next week rather than voting now in order to allow further thought after access to additional information. Mr. Kulka emphasized they need this approval in order to continue to move forward. Chairperson Gottlieb said the Authority has its obligation to the City to make sure they do their due diligence and to ensure the applicant has talked to DEQ and to Douglas.

For purposes of coming back, Mr. Haynes thought it would be prudent for the applicant to develop a cost of closure as-is, solely relative to the subject parcel. Chairperson Gottlieb felt the mass of contamination from earlier operations is still there and that is what is migrating and causing other problems.

Motion by Mr. Robertson

Seconded by Mr. Runco to table the Brownfield Plan Application for 856 N. Old Woodward Ave. to Tuesday, September 27 at 8 a.m.

Voice

**Vote: Yeas, Robertson, Runco, Gottlieb, Torcolacci
Nays, 0
Absent, 1 (Zabriskie)**

Motion carried, 4-0.

In general, the group was not comfortable with the length of time for payback to occur. Mr. Haynes assured the Authority has discretion to do a lot of things such as shrinking the years or offering less money. He stated his intention to draft a new Resolution with the contingency that if the DEQ does not approve school taxes, the City will not pick it up.

Mr. Patton was requested to forward the pages of the Phase 1 Environmental that talk about the history in order to see who owned the parcel prior to Douglas. If it was another party that is out of business then there is a liable party that is not viable and that would be a reason to pick up the costs.

Mr. Haynes observed the soil borings show no other VOCs besides PCE. Ms. Ecker noted the DEQ has been monitoring wells at the south end of the gas station property for a long time. Mr. Runco thought it would be nice to know if there is no one else out there to go after. Mr. Haynes said the Authority can hold back funds pending an investigation by the applicant.

4. Request for reimbursement on Brownfield Plan approved for 34901 - 34953 Woodward Ave.

Postponed to September 27 Brownfield meeting.

Mr. Brett Stuntz alerted the group that this Authority has not always been okay with exceeding certain line item estimates even though the developer is under the cap. There are a couple of line items that exceed the estimated costs. He agreed to submit a new AKT letter for the meeting on September 27 that explains everything more thoroughly. Also, Mr. Runco wanted to see the actual landfill numbers.

5. Project Updates

- There has been no further action on the Peabody site but there is a Brownfield Plan pending.

6. Open to the public for items not on the Agenda (no public comments)

7. Adjournment

No further business being evident, the board passed a motion to adjourn at 10:20 a.m.

Respectfully submitted,

Carole Salutes
Recording Secretary

APPROVED