City of Birmingham
A Walkable Community

MEMORANDUM

Community Development Department

DATE: **December 9, 2014**

TO: **Joseph A. Valentine, City Manager**

FROM: **Jana L. Ecker, Planning Director**

SUBJECT: **Brownfield Revolving Loan Fund**

On September 10, 2014, the Birmingham Brownfield Redevelopment Authority ("BBRA") met to review a proposed brownfield plan for 400 S. Old Woodward. The Authority voted unanimously to approve the Brownfield Plan (which the City Commission has recently approved). During the review of this plan, the BBRA discussed the possibility of the City participating in the Local Site Remediation Revolving Fund ("LSRRF"). See attached minutes. There was some question that this would be a policy change because it diverts tax revenues from the City's operating funds and this is ultimately a decision of the City Commission.

At the City Commission meeting on October 27, 2014 when the Brownfield Plan for 400 S. Old Woodward was considered and approved, it was requested that the LSRRF issue be brought back at another time to be discussed as it was removed from the plan. See attached minutes.

The State Brownfield Redevelopment Statute (Public Act 381 of 1996, as amended) allows the City to approve a Brownfield Plan in order to help finance the cleanup of a specific contaminated site through the use of Tax Increment Financing (as was done for 400 S. Old Woodward), and it also allows cities to establish a Local Site Remediation Revolving Fund ("LSRRF") that can capture additional tax increment to be used for the environmental cleanup of other contaminated sites within the City of Birmingham. Please see attached excerpt of the State Brownfield Redevelopment Statute.

The excess taxes captured can then be placed into an LSRRF to be used by the City to conduct eligible environmental response activities on other eligible brownfield properties. However, the capture of excess school taxes is prohibited for deposit into the LSRRF. Essentially, the City taxes that could be captured to fund an LSRRF would be diverted from the City's general operating funds into the LSRRF which can only be used for environmental response activity. Without implementing the LSRRF the City still has the ability to fund environmental response activities should it ever need to do so. The State also provides grant and loan opportunities for these projects.

Jeff Haynes, Environmental Counsel for the City, will be present at the City Commission meeting on December 15, 2014 to answer any questions regarding the LSRRF and other funding mechanisms.

Following this discussion should the City Commission wish to change from the current policy on utilizing a LSRRF, we will share your comments with the BBRA.

3. Resolution approving Brownfield Plan and associated Reimbursement Agreement pertaining to the Brownfield Plan for 400 S. Old Woodward Ave. (former Green's Art Supply) and requesting the city clerk to forward the Brownfield Plan and Reimbursement Agreement to the Birmingham City Commission for their review and consideration.

Ms. Ecker spoke about the concept of the development. This will be the demolition of an existing building and the construction of a three-story, mixed-use building. The first floor will be retail; second floor residential; and the third floor stepped back for residential.

Ms. Jamieson advised that the property intended for redevelopment is located at the SW corner of Daines St. and N. Old Woodward Ave. in Downtown. The property is considered eligible property based on its status as a facility and its eligible activities. Mr. Kulka then explained that the locations of contamination are mainly the parking lot in front and a little in the center portion of the building. Also, there is an underground tank in the rear of the building. Ms. Jamieson went on to note it is anticipated that private investment for this project will total approximately $12.6 million. The reimbursable expenses of the plan total $284,425, with a 15% potential contingency of $42,664, resulting in an approximate total cost of $327,089. Additionally, a 3% interest on unreimbursed eligible expenses is anticipated at an approximate cost of $41,092. The expenses are not to exceed $368,181.

The current taxable value of the property is around $500,000 and is expected to increase to $2.5 million following redevelopment. During the duration of the plan, taxes will continue to be generated. It is estimated that it will take approximately eight years to reimburse eligible expenses which includes interest.

Mr. Jonna stated they intend to bring ten luxury residences to the market and hope to begin work the first week of October. Ms. Masserang from PM Environmental went through the eligible activities and budgeted costs that are to be financed solely by the developer and reimbursed with Tax Increment Financing revenues:

- Baseline Environmental Site Assessment Activities, $13,460;
- Due Care Activities - characterization and removal of contaminated soils, $32,375;
- Additional Response Activities - associated with the tank removal, $175,000;
- Asbestos Activities - associated with pre-demolition of the existing building, $18,490;
- Demolition - demolition of the existing building and site demolition w/backfill, $39,900;
- Preparation of Brownfield Plan, $5,200;
- A 15% contingency to address unanticipated conditions, $42,664.

Chairperson Gotthelf warned that in the past this committee has been very cautious to not allow costs that would have normally been incurred anyway, irrespective of the contamination. Ms. Masserang passed around a sheet that showed the cost difference between brownfield costs and greenfield costs should the soil not have been contaminated.

Mr. Robertson noted this site is residential slab on grade so the developer cannot mark it high end residential with a bunch of residual PCs in the ground. It is not practical given the magnitude of the development. It was determined that even though there is no basement it would not be feasible to just cap the top and be done.

In response to Chairperson Gotthelf, Ms. Masserang said the cost difference assuming the Phase 1 came out clean would be about $35,000. Mr. Kulka said his approach is that if he was on a greenfield he wouldn't have to demo the building or abate asbestos in the first place. Mr. Haynes noted to his recollection this group has never allowed for the cost of a demo on any project.

Chairperson Gotthelf questioned whether the purchase price reflected some of the environmental concerns. Mr. Jonna confirmed the price did not reflect the fact there was an underground storage tank that would have to be removed. Mr. Kulka noted that half of the Baseline Environmental Assessment Phase 2 cost was covered by Oakland County so they are only asking to recover the half that the developer incurred.

Mr. Haynes reminded the authority about what they have done in the past for contingency and interest. They are included but if the contingencies do not occur they are not spent. This group in the past has not approved a dollar amount; rather they have approved categories of expenses. In this proposal, the same logic could be applied to the contents of the underground storage tank, which is not known yet. Therefore the authority could approve the expense, subject to verification.

Mr. Haynes went on to ask why school taxes are not being included. Ms. Masserang replied that because there is such an increase in taxable value the reimbursement period is less than ten years and not worth the time. Mr. Robertson recalled school taxes were included in this authority's other Brownfield plans.

Ms. Masserang noted the Birmingham Brownfield Redevelopment Authority has not established a Local Site Remediation Revolving Fund ("LSRRF") to date. The LSRRF would consist of all tax increment revenues authorized to be captured and deposited in the LSRRF. However, in the event the authority chooses to establish a LSRRF, that option has been included in the plan as an option to capture. It sets up a Brownfield Redevelopment Fund for the City of Birmingham. If the authority anticipates future developments coming online that may have significant contamination there are separate funds within the authority to allocate to those projects within

the City of Birmingham proper. Ms. Jamieson advised once the developer is reimbursed for all of their eligible activities, then the authority has the ability to capture the balance of the local tax revenues.

Mr. Valentine did not think it necessary at this time for the City to capture those tax increment funds.

Mr. Robertson summarized that if this add-on were approved, in six or seven years Mr. Jonna would be paid back with interest and then in the next four years the fund would be accumulated. If this is not attached to a project, there is no way of getting it. So, it seemed to him it may be prudent to approve it, but that doesn't mean they have to take the tax funds.

It was determined further discussion may be warranted on that subject before a formal decision is made. Mr. Haynes suggested the resolution could contingently approve the local site fund subject to review after the Brownfield Authority has had a chance to review it and recommend to the City Commission. That way it is in the plan but might be taken out of the plan. That takes advantage of all the opportunity.

Chairperson Gotthelf thought another meeting would be in order, just to focus on that subject. A survey of how some other communities have used LSRRF funds to help with some of their more challenging sites will be needed. It is a great benefit and it works very well in a lot of communities.

Moving to the next topic, the chairperson wanted to be sure they remediate only to the level necessary. Mr. Kulka replied it goes without saying that their objectives are aligned. Discussion determined the authority would take out $35,900 in demolition costs and pay backfill expenses of $4,000.

Mr. Haynes said if the authority approves the plan with the activities that are approved, then the work on the Reimbursement Agreement will be simple and not take that long. He suggested that the authority have 60 rather than 30 days to review the work. It was determined the Vice-chair Robert Runco will present to the City Commission.

Mr. Robertson suggested they pass a resolution without including a LSRRF but make a note to the City Commission they will review at their next meeting the policy and the options of whether to put together their own revolving fund.

After discussion about the LSRRF, Mr. Haynes advised they could pass a resolution that would include it as a contingency that is subject to later Commission approval. The Brownfield Authority will look at it and give ultimate recommendations for the Commission to decide.

Motion by Mr. Runco
Seconded by Mr. Robertson that the Brownfield Redevelopment Authority approves the Brownfield Plan for 400 S. Old Woodward Ave. for the amount disclosed less $35,900 with the caveat that the LSRRF is included subject to later City Commission approval and the Reimbursement Agreement is changed as amended tonight:

Whereas, the City of Birmingham has created a Brownfield Redevelopment Authority and appointed members to serve on the Authority, and

Whereas, the Brownfield Redevelopment Authority is charged with the review of Brownfield Plans for Brownfield projects in the City of Birmingham, and

Whereas, the owner/developer of 400 S. Old Woodward Ave. intends to develop a mixed-use development at 400 S. Old Woodward Ave., and has determined that it may engage in eligible activities as defined under the Brownfield Redevelopment Finance Act, and

Whereas, PM Environmental has prepared a Brownfield Plan for the environmental cleanup of the site at 400 S. Old Woodward Ave, and

Whereas, the Brownfield Redevelopment Authority has reviewed the Brownfield Plan and approved of the contents of the plan.

Vote: Yeas, Runco, Robertson, Zabriskie, Gotthelf
Nays, 0
Absent, 0

Motion carried, 4-0.

10-248-14 PUBLIC HEARING TO CONSIDER A BROWNFIELD PLAN 400 SOUTH OLD WOODWARD

Mayor Moore opened the Public Hearing to consider a Brownfield Plan at 400 S. Old Woodward at 8:14 PM.

City Planner Ecker presented the proposal to construct a three story building which would include retail on the first floor and residential on the second and third floors. She noted that there would be parking on site. She explained the contamination on the site and noted that the applicant is proposing to clean up the site under the Brownfield plan and is requesting the City's assistance with a tax increment financing plan which would allow them to take their future tax liability and repay themselves for the environmental clean-up on the site.

Ms. Ecker explained that that the Brownfield Redevelopment Authority removed request for reimbursement for demolition costs from the plan.

In response to a question from Commissioner Hoff, Jeff Haynes, City Attorney with Beier Howlett, explained that the Local Site Remediation Revolvement Fund allows communities to capture taxable increment from Brownfield sites, in addition to the amount paid back to the developer, to set aside those funds into a separate fund that the community could use for other sites. He noted that the current City policy is that the City does not set aside any money for this separate revolving fund.

The Mayor closed the Public Hearing at 8:25 PM.

MOTION: Motion by Sherman, seconded by McDaniel:

To approve the Brownfield Plan for 400 S. Old Woodward, Birmingham, MI as amended:

WHEREAS, the Birmingham Brownfield Redevelopment Authority (the "Authority"), pursuant to Section 13 of Act 381 of 1996, as amended (the "Act"), prepared and recommended for approval by this Commission a brownfield plan ("the Plan") for 400 S. Old Woodward; and,

WHEREAS, the City of Birmingham, at least ten days before the meeting of this Commission at which this resolution is considered, provided notice to and informed all taxing jurisdictions (the "Taxing Jurisdictions") which are affected by the Plan of the fiscal and economic implications of the Plan, and provided the Taxing Jurisdictions a reasonable opportunity to express their views and recommendations regarding the Plan.

NOW, THEREFORE, BE IT RESOLVED THAT

1. The Plan constitutes a public purpose under the Act.
2. The Plan meets all of the requirements for a brownfield plan set forth in Section 13 of the Act.
3. The proposed method of financing the costs of the eligible activities, as described in the Plan, is feasible and the Authority has the ability to arrange the financing.
4. The costs of the eligible activities proposed in the Plan are reasonable and necessary to carry out the purposes of the Act, except that the local site remediation revolving fund component is not included.
5. The amount of captured taxable value estimated to result from the adoption of the Plan is reasonable.
6. The Plan is approved.
7. The reimbursement agreement pertaining to the Plan is approved.

VOTE: Yeas, 6
Nays, None
Absent, 1 (Rinschler)

BROWNFIELD REDEVELOPMENT FINANCING ACT (EXCERPT)
Public Act 381 of 1996

125.2658 Local site remediation revolving fund.

Sec. 8. (1) An authority may establish a local site remediation revolving fund. A local site remediation revolving fund shall consist of money available under section 13(5) and may also consist of money appropriated or otherwise made available from public or private sources.

(2) The local site remediation revolving fund may be used only to pay the costs of eligible activities on eligible property that is located within the municipality.

(3) An authority or a municipality on behalf of an authority may incur an obligation for the purpose of funding a local site remediation revolving fund.

History: 1996, Act 381, Eff. Sept. 16, 1996; Am. 2000, Act 145, Imd. Eff. June 6, 2000; Am. 2012, Act 502, Imd. Eff. Dec. 28, 2012.