

MEMO

ASTI Environmental

Date: November 4, 2021

To: Sara Roediger, City of Rochester Hills
Pam Valentik, City of Rochester Hills
City of Rochester Hills Brownfield Redevelopment Authority

From: Tom Wackerman

Subject: Review of the Brownfield Plan and Associated Documents for Redevelopment of 945 and 975 South Rochester Road, Rochester Hills, Michigan (ASTI files No. 11482-10)

As requested, this memo is a review of the following documents. These documents were submitted to ASTI Environmental (ASTI) for review on November 4, 2021.

1. *Brownfield Plan, Rochester/Avalon Retail Development Located at 945 and 975 Rochester Road, Rochester Hills, Michigan*, dated November 2, 2021 (the Plan).
2. IRR calculations using MEDC spreadsheet in file named *975 S. Rochester Proforma v5* and dated November 4, 2021 (IRR Worksheet)

The following documents were previously submitted. Because updates were not provided, this review assumes that these previous submittals are intended to be part of this Plan submittal.

1. *Brownfield Program Application for the City of Rochester Hills* (the Application) in file dated June 22, 2021.
2. Cover Letter dated September 17, 2021 to City of Rochester Hills Brownfield Redevelopment Authority, From Ryan Higuchi, PM Environmental and titled *Additional Information Request for the Rochester/Avon Retail Development Brownfield Plan* (the Plan Cover Letter).

Three previous drafts of the Plan, dated June 11th, July 6th, and September 17th, was also reviewed by ASTI and comments were provided to the applicant (refer to previous memos). Please note that the July 6th draft plan was presented and discussed at the July 15, 2021 Rochester Hills Brownfield Redevelopment Authority (RHBRA) meeting. All requested changes from the review of the previous drafts and the July 15th meeting have been made in the November 2nd Plan.

Background

The Plan includes three parcels (the Property) located on the northeast corner of South Rochester Road and E Avon Road (Parcel ID Numbers 70-15-14-351-012, 70-15-14-351-011 and 70-15-14-351-068). Two of the parcels (945 and 975 South Rochester Road) are developed with a gas station and office building, and the third parcel (no street address) is undeveloped (the Vacant Parcel). The proposed redevelopment of the Property will be retail and office.



10448 Citation Drive, #100
P.O. Box 2160
Brighton, Michigan 48116
Phone: 810.225.2800 Fax: 810.225.3800

The total estimated investment is \$10 million. Total job creation is estimated at 70 new permanent full time jobs and 100 temporary construction jobs. The listed initial taxable value is \$617,020, based on the 2021 actual taxable value. The future taxable value is estimated at \$2,216,954, as provided by the City of Rochester Hills Assessor's Office.

The Plan will start capture in 2023 and will require an estimated 15 years for reimbursement to the Developer. The Plan is requesting **total reimbursement to the Developer of \$508,553** (based on total eligible activity costs of \$446,175, and a contingency of \$62,378). Capture will be for real property and all personal property incremental taxes. **Capture will be from local taxes only.**

The Plan indicates that funding from the Michigan Underground Storage Tank Authority (MUSTA) will also be requested to remove contaminated soil (estimated at 1,500 tons) and groundwater related to a confirmed release (reported in 2019) from an underground storage tank at 975 South Rochester Road. The costs for those soil and groundwater removal activities are not being requested in the Plan as reimbursable expenses and therefore are not eligible under this Plan.

As required by the *City of Rochester Hills Brownfield Incentives Policy* dated February 2014 (the Policy), the Plan includes capture for RHBRA administrative fees each year at 5% of the annual capture for a total of \$36,414, and contributions to the local revolving loan fund each year at 3% of the annual capture plus additional capture in the last four years of the Plan, for a total of \$183,318.

Basis for Eligibility

Based on the following, the Project is eligible.

Eligible Applicant: The applicant is Rochester Avon Partners, LLC (the Developer). A Phase I ESA was published for the Developer on September 10, 2019, and included 945 and 975 South Rochester Road. A separate Phase I ESA was published for the Developer on September 25, 2020 for the Vacant Parcel. A Baseline Environmental Assessment was completed for the Developer for 975 South Rochester Road on September 10, 2019. Therefore, the Developer is an eligible applicant.

Eligible Property: The parcel at 975 South Rochester Road is a "Property" as defined by Part 213 of Act 451 and therefore is an eligible property. The remaining two parcels are adjacent and contiguous to 975 South Rochester Road and the development of those two parcels is estimated to increase the captured taxable value of 975 South Rochester Road¹. Therefore, both of the adjacent parcels are also eligible properties.

Eligible Activities: The Plan is limited to capture for eligible activities applicable in a non-core community.

Required Items

Except as noted below, all items required by Section 13(2) of Act 381 (MCL 125.2663) are included in the Plan. Except as noted below, the Plan includes all of the materials required by the Policy.

The following materials were not provided:

¹ Both conditions are required by Section 2(p)(ii) of Act 381 (MCL 125.2652(p)(ii))

- The Policy and Act 381 require a separate tax capture table for each parcel, but this is rarely provided because allocation of future taxable value by parcel is often impossible. A combined tax capture table was provided with the Plan.
- The Plan does not include a list of contractors and subcontracts as required by the Policy because these have not yet been selected.

Key Assumptions

1. The Plan indicates an annual appreciation of 1.0% in taxable value. Changes in this assumption will result in a longer or shorter reimbursement period.
2. Tax capture will include personal property, but the tax capture table (Table 2 in the Plan) does not include an assumption for personal property tax capture. Inclusion of personal property tax capture may result in a shorter reimbursement period.

Review of the Plan

The Plan is requesting **reimbursement for eligible costs of \$508,553**, as indicated in Table 1 of the Plan. **This Plan is for the capture of local taxes only**, not including non-capturable mils, and requests reimbursement for the full cost of the following eligible activities:

- environmental assessment (Pre-Approved Activities),
- vapor barrier design and installation,
- utility corridor gaskets and barriers,
- underground storage tank removal not funded by MUSTA,
- transportation and disposal of contaminated soil (above Part 213 Non-Residential Risk-Based Screening Level (RBSL) criteria) related to utility trenching, building construction, and non-building pavement activities (estimated at 1,116 tons),
- transportation and disposal of contaminated soils (exceeding RBSL) required to meet Due Care Obligations and not funded by MUSTA,
- treatment and disposal of contaminated groundwater (exceeding RBSL) removed during de-watering for site development activities,
- pre-demolition asbestos abatement,
- building and site demolition,
- Brownfield Plan preparation and implementation, and
- associated oversight and project management by an environmental professional.

Because this Plan is for local capture only, a 381 Work Plan will not be submitted to EGLE. In addition, since a 381 Work Plan will not be reviewed by EGLE, EGLE review will be limited to activities under the anticipated MUSTA funding. Therefore, any additional detail required by the RHBRA for review and approval of eligible activities to be conducted under the Plan should be requested as part of the approval of this Plan.

Review of the RHBRA Policy

The Policy indicates that “local tax capture for eligible activities will be limited to the proportional share that captured local tax mils have to the total property taxes, even in cases where state tax capture is not approved”. However, the Policy also indicates that the “City will consider each application on a case-by-case basis” and any exception to the proportional local tax capture “will be those cases where there is a compelling local interest”.



10448 Citation Drive, #100
 P.O. Box 2160
 Brighton, Michigan 48116
 Phone: 810.225.2800 Fax: 810.225.3800

Assuming that reimbursement is limited to proportional local tax capture of total taxes as stated in the Policy, the amount for reimbursement would be reduced to \$219,046 and would require an estimated 7 years of capture as summarized below (also refer to Attachment C of the Plan Cover Letter).

	Total Mills	49.1330
	Local Mills Captured	<u>21.1628</u>
	Local Captured as Percent of Total Mills	43.07%
	Total Eligible Costs	<u>\$ 508,553</u>
	Eligible Costs Based on Present of Total Mills	\$ 219,046

Please note that while the Policy indicates that the local only capture will be limited to the “the proportional share that captured local tax mills have to the total property taxes” it is more common to limit local only capture to the proportional share that captured local tax mills have to the total capturable property taxes. This is because the objective of limiting local capture to the proportional share is typically to limit the dollar amount of the local capture to the same amount that would occur if school tax capture had been included. Please note that it is anticipated that the state will be contributing to the project through the MUSTA program. Assuming that reimbursement is limited to proportional local tax capture of capturable taxes, the amount for reimbursement would be \$238,302 and would require an estimated 8 years of capture as summarized below (also refer to Attachment C of the Plan Cover Letter).

	Total Capturable Mills	45.1628
	Local Mills Captured	<u>21.1628</u>
	Local Captured as Percent of Total Mills	46.86%
	Total Eligible Costs	<u>\$ 508,553</u>
	Eligible Costs Based on Present of Total Mills	\$ 238,302

According to the Policy, the Developer must execute a Reimbursement Agreement within 180 days of Plan approval by City Council, eligible activities must start within eighteen months of Plan approval, and construction must be completed within three years of the estimated completion date provided in the Plan. None of these provisions are included in the Plan, and therefore, they should be included in the Reimbursement Agreement.

The Policy indicates that the Plan will establish the reimbursement period as the number of years required for reimbursement in the Plan, and that reimbursement will be provided only during the reimbursement period. In this case that would be 15 years for full reimbursement, or 8 years based on the proportional share of captured taxes. Therefore, based on the Policy, reimbursement under this Plan would be limited to the approved number of years in the Plan, regardless of the amount of actual reimbursement provided during that period. This provision is not included in the Plan, and therefore, should be included in the Reimbursement Agreement.

Review of Financial Information

The IRR Worksheet indicates that the IRR from reimbursement of all eligible costs is 5.13% (including incentives). This is based on assumed rents of \$32,50/SF with \$7.50/SF CAM, a 5% vacancy rate and 2% annual increase in rents. Keeping these assumptions, the same, if the IRR analysis was based on the reimbursement for the proportional share of captured taxes only, the IRR would be 4.51%. A similar analysis based on the proportional share of all taxes would result in an IRR of 4.45%.



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Although the RHBRA has not set a threshold IRR, the provided summary suggests that incentives are required for this project.

Recommendations

Based on this review the Plan is administratively complete and ready for consideration by the RHBRA. The following are recommendations for the RHBRA to consider during review of the Plan.

1. Assuming no compelling local interest, ASTI recommends that the reimbursement of eligible costs be limited to the proportional share of the capturable taxes. ASTI recommends this modification to the current Policy that would result in reimbursement of \$238,302 as described above. Based on the tables provided in the Plan, this would require 8 years for reimbursement to the Developer.
2. Execute a Reimbursement Agreement within 180 days of Plan approval by City Council, and as described in the Policy, include the following performance requirements: eligible activities must start within eighteen months of Plan approval, and construction must be completed within three years of the estimated completion date provided in the Plan. In addition, include the following in the Reimbursement Agreement.
 - a. The amount of reimbursement is a not-to-exceed amount;
 - b. If capture is for the total amount requested, and as described in the Policy, also include a 15 year limit for the reimbursement period, or if capture is limited to the proportional share of local taxes, or limited for any other reason, include a limit based on the calculated number of years for the reimbursement period; and
 - c. Eligible expenses reimbursed under MUSTA will not be reimbursed under the Plan.

Please contact me if you have any questions, or need additional information.