

UNFINISHED BUSINESS

2021-0276 Request for approval of a Brownfield Plan for City File No. 21-007 for the remediation of property for a proposed retail development on 2.2 acres located at the northeast corner of Rochester and Avon Rds., zoned B-2 General Business and B-5 Automotive Service Business with an FB-3 Flexible Business Overlay, Parcel Nos. 15-14-351-011, -012, and -068, Rochester Avon Partners, LLC, Applicant

(Reference: Memos, prepared by Sara Roediger, dated November 18, 2021, Thomas Wackerman dated November 4, 2021, and PM Environmental dated September 17, 2021, Brownfield Plan (revised November 2, 2021), 975 S. Rochester Rd. Proforma V5, IRR, Asbestos Report, BEA, and Phase 1 and II ESAs had been placed on file and by reference became part of the record thereof).

Present for the applicant were Doraid Markus, Rochester Avon Partners, LLC, 251 E. Merrill Street, Birmingham, MI 48009 and Ryan Higuchi, and Michael Kulka, PM Environmental, 4080 W. 11 Mile Rd., Berkley, MI 48072.

Chairperson Justin introduced the request for the Brownfield Plan for City File 21-007. He asked Mr. Wackerman if he had any comments to add.

Mr. Wackerman replied that all of his comments and recommendations were contained within his November 4, 2021 memo. Mr. Wackerman explained that he did not believe that the BRA has ever seen a local only brownfield plan, and there are some issues associated with that, both within the policy and in general regarding what the Board may want to do.

Ms. Roediger said that her updated memo has been provided, and noted the applicant has a presentation, especially for Ms. Morlan who was not on the BRA at the first meeting, to introduce her to the project.

Mr. Kulka explained that he would go over the plans in layperson's terms. He referred to the plans and said that it will be a nice looking product with the same developer who completed the Auburn Rd. & Rochester Rd. development, which turned out to be a very nice development. They may get some of the same tenants for this property. They are going to demolish the 1,400 sq. ft. gas station and 5,400 sq. ft. Comerica Bank branch building. The property is three parcels of land totaling 2.19 acres, and they are proposing to remove 1,500 tons of contaminated soil that would be funded under the Michigan Underground Storage Tank Authority (MUSTFA) and then an additional 1,600 tons would be removed using the Brownfield Tax Increment financing, assuming that the plan will be approved today. They will be constructing a two story 26,500 sq. ft. building with first floor retail and restaurant tenants with second floor office and medical users. He explained that there's another development that this developer completed at Maple Rd. and Orchard Lake Rd. that is pretty similar to this, with retail on the first floor and occupants including Fidelity and a dentist on the second floor, which turned out to be a nice mixed use. Mr. Kulka explained that there will be 134 parking spaces, and the landscape improvements will take a pretty tired looking corner and make it look a lot

prettier, and clean it up.

Mr. Kulka explained that MUSTFA is a state funded, state run insurance program to cover pollution liability for releases at underground storage tanks sites. The EPA requires operators to have a \$1,000,000 policy in case they have a catastrophic release, then there will be a means to clean it up. Small mom and pop operators may not have the financial wherewithal so this was put into place years ago. Michigan's fund was bankrupt for about 20 years after being established in the early 1990s. Mr. Kulka said that the program is very well run now and is well funded to help cover a lot of cleanup costs. It covers up to a million dollars with a \$2,000 deductible, which has already been met in this case. He said that everything they've done to date has been covered by the fund and they have a plan in place following their protocol for bidding to get the other 1,500 tons of soil approved. There's a good chance that while they're onsite, if it still looks like it's pretty contaminated and they want to remove more soils and it won't meet the cleanup objectives, this isn't a perfect science, they can call the administrator and ask for onsite approval based on what they're seeing "boots on the ground". Mr. Kulka noted that they've done this on other excavations, sometimes there is an additional 500-1,000 tons warranted. Obviously if the plan gets approved for the full funding or not, they are still going to push as much on the fund as will be allowed for the cleanup.

Mr. Kulka referred to a map on the screen showing the delineation of contaminated soils on the property. He pointed out the soils that they are planning on removing, and referred to a green area on the map where the screening levels for liquid non aqueous phase liquids, which is a criteria that it's assumed that if you have that you have free product, or pure gasoline. So the fund will cover up to that level, but then the outer limits for the nonresidential vapor criteria, they won't cover and they also won't issue a final closure with a deed restriction on the property using a vapor barrier. So it's an odd thing they are working through obtaining funding so they can actually obtain closure. Mr. Kulka said they are trying to use the Brownfield TIF plan to also take care of the vapor issue so they can finally get closure and it's not an open leaking underground storage tank for another ten years or more. He referred to the areas of soil to be removed on the map, and noted they're estimating the MUSTFA cost to be \$402,000. He said that typically, on a case-by-case basis, they can get a local only to cover more than just the prorata share. They're trying to make the argument that the state, although it's not paying the school tax portion with EGLE approval, EGLE is still approving all of the work that's being conducted. It's a highly regulated program and the amount of money that they are getting covered is far in excess of the state school tax if they were to pursue that.

Mr. Kulka referred to a slide with a breakdown of all of the different costs, and noted that it's pretty self-explanatory. He said that the presentation outlines all of the eligible activities which Mr. Wackerman has already reviewed, they are eligible activities under the Act. He said that it ends up being a 19 year plan, 15 years to complete reimbursement. The local Brownfield authority would capture \$183,000 if this is approved, which would be very beneficial because that could be used to fund future cleanups or maybe landfills that the City is trying to get

redeveloped. He referred on the slide to the IRR's, 5.13, the debt service coverage ratio, and the breakout of the numbers in different scenarios. Mr. Kulka said that it's up to the BRA if they review requests on a case-by-case basis, and if they approve the full amount so that the applicant can get this site redeveloped, keep the cost minimal, and satisfy a lot of the needs of the tenants, who also don't like the soil vapor issue. He said many of the tenants require a vapor barrier, which they are also asking for as a reimbursable expense.

Chairperson Justin asked for any questions from the board members.

Mr. Turnbull asked if they would be putting a deed restriction on the property.

Mr. Kulka replied that they are not putting a deed restriction on the property, so that they can still get closure, and noted EGLE has to agree to it for whatever the final intended closure is, if it's residential.

Chairperson Justin said that the real question before this group is if they want to approve the plan, and second which part of the plan do they want to approve for reimbursement. There are three choices, and one of the concerns that has been raised is that the request for funding is only for local capture, it wouldn't go through the State, or using state tax dollars for part of the funding for this, only local tax dollars. So that's the question, he said that he thinks that most of the BRA are in favor of going ahead with the program. He noted that as he understands it, having read the reports, it meets all of the BRA's requirements by the policy, and so the question is what level of funding should the BRA be approving. If they approve the full \$508,000 that means that all of the payment will be from local tax revenue. If they approve one of the smaller amounts it will only be using local tax dollars. Basically the local tax dollars go to support local activities here, and there are some exceptions, the zoo and some others are not included at all. Chairperson Justin said that the state's taxes are the dollars for schools and school support. So those are the choices, and he asked if anyone had any thoughts or would like to make a motion to approve it under Plan A, B, or C.

Mr. Wackerman asked to make a clarification that the only request is for local tax capture. The City's policy indicates that the City will only cover the proportional share of total taxes, unless there is a compelling interest to do otherwise. He said that is not typical. Typically, it's the proportional share of captured taxes, and he noted that math is in his memo. He explained that when you talk about the lesser amount, that needs to be discussed, whether you are going to be following the letter of the policy or whether you are going to follow what most communities do, because it would be more money. Mr. Wackerman concluded that it's really a question of covering the full amount, or covering some proportional share of those two options.

Chairperson Justin asked Mr. Wackerman to explain which option would be the roughly \$238,000 and which would be the \$219,000.

Mr. Wackerman replied that the \$219,000 is if it's based on the proportional

share of total taxes, and the \$238,000 would be the amount if it's based on the share of capturable taxes, which is the typical way that a community would do it. Mr. Wackerman remarked that he's not sure why the policy was written the other way.

Chairperson Justin asked if there were any questions about if they are following the policy whether it would be the \$238,000 or \$219,000, unless they find a compelling reason to approve the full amount. He asked the applicants for what the compelling reason would be.

Mr. Kulka replied that a compelling reason is that if they don't get the full amount they may not dig all of the soil out because it would be too cost prohibitive, and then they may end up with a deed restriction and the property may never get closure because EGLE doesn't have a mechanism to do so under their current structure. So even if they did nothing they could remove less soil, they already have a Baseline Environmental Assessment, they could just do a vapor barrier, and life would be good. All of the soil would remain. So it's a matter if you want to support cleaning up an old gas station that otherwise is not going to get cleaned up to its full nonresidential closure status. Mr. Kulka commented that it would be another open LUST site, it's not uncommon to have LUST sites that are still open from the 1990's because no one had enough money, or their operator went out of business, or whatever reason. He said that is a pretty good compelling case if the goal of the municipality is to help clean up contaminated sites that otherwise wouldn't get cleaned up. He said that even though the liable party has the funding to meet all of the obligations, it will probably just get a final assessment report, until they figure out if they're going to make it a little bit more achievable to get closure, it would just remain an open LUST site. Mr. Kulka said that if they do this scope of work they would probably just do another 4-6 quarters of groundwater monitoring and then could probably get closure.

Chairperson Justin asked for any further questions or comments. He said that they want to approve a plan, it's a question of the funding.

Mr. Kulka added that when they worked on the other site on Auburn Rd., they found some orphan tanks. That development occurred and the MUSTFA act was reinstated right at the end of December 2014. That development was occurring before that and there was no fund, so in that instance, the same developer did not receive any MUSTFA funding and did not receive any brownfield funding. He said that he didn't know if the City can take that as being another compelling interest. He confirmed with Mr. Markus that clean up added another \$600-\$700,000 to that project. He said that the City got all of the full taxes for that building once it was occupied.

Chairperson Justin asked for a motion, and noted he would like to get a plan approved, it just depends on at what dollar level.

MOTION by Turnbull, seconded by Nachtman in the matter of City File No. 21-007, the Brownfield Redevelopment Authority recommends that City Council approves the Brownfield Plan dated November 2, 2021 for the Rochester/Avon Retail Development, Parcel Nos. 15-14-351-011, -012, and -068 with the

following findings and subject to the following conditions:

Findings

- 1. The submitted plan meets the requirements for a Brownfield Plan under State Act 381 and the City of Rochester Hills.*
- 2. The subject parcels qualify as a "facility" under the terms of Act 381.*
- 3. The submitted plan qualifies for the use of tax increment financing based on the policies and goals of the Brownfield Redevelopment Authority.*
- 4. If implemented, the amount, pay-back period and use of tax increment financing is reasonable for the eligible activities proposed.*

Conditions:

1. 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.*

2. The RHBRA has determined that the reimbursement of eligible costs will be for the full cost of the eligible activities as requested by the Draft plan for a total of \$508,553.

Chairperson Justin asked for any discussion. Ms. Morlan asked whether the motion was for the full amount instead of doing the local amount. She asked whether the applicant could apply for State money, and asked if she was understanding that correctly.

Mr. Kulka responded that they could apply for EGLE approval, which is the portion of the State school taxes, so the City would still be getting the school tax dollars. The City would just be funding the payback for longer because those taxes aren't being captured, and the plan is to pay it back shorter with more money, if that makes any sense. It is the swap-out for the MUSTFA funds paying way more than what those school taxes would have been.

Chairperson Justin clarified that the payout would go from 7-8 years under the lesser amount to 15 years to fully fund the roughly \$508,000 with the recapture money.

Mr. Kulka commented that starting with \$402,000, the difference of the local 2/3

of \$508,000, it would be \$230-240,000 of a state maximum, where here you're getting \$204,000. That could go up a little bit depending upon if we have to do more quarters of sampling, that would be fully funded by the State fund, which is generated by a State fuel tax. He said it's like robbing Peter to pay Paul if you want to show how the State is paying their share, they are paying a larger share.

Mr. Wackerman clarified that the reason communities limit local only to proportional share is because as he thought Mr. Kulka was alluding to, that's the amount they would have paid if the applicant had sought school tax capture. So they say it's the applicant's choice, the City would normally pay \$238,000, the State would pay the balance, so if the applicant doesn't want to apply for the funds from the State that's fine, the City is only going to pay \$238,000. He said that Mr. Kulka made a good point, that the State is kicking in \$400,000 on this, and so whether that changes the argument, the idea was local municipalities don't want to kick in the total amount if the State is not participating. In this case, the State is participating.

Mr. Kulka said that he concurs, and said that once they get their final approval, for this operator which will be at the end of December, and they will demo and do the cleanup in the early first quarter of 2022. If they went for state school taxes, they wouldn't even be able to start the process until the City approves the local plan, which could add another 120 days. He said that in the development world when you are carrying that kind of real estate, it's vacant, the numbers are tough to make it work. He said that plus the tenants, if you want good tenants, want to know if you are going to be vertical and occupied and selling coffee or doughnuts or whatever by a certain date. Mr. Kulka said that if they don't meet that date there are liquidated damages, the timing just doesn't work in concert very well with the development world.

Chairperson Justin asked for any other questions. He reviewed the motion on the floor to approve the plan presented and to go with the funding up to \$508,000, the amount stated in the request, which will go over 15 years.

Ms. Morlan asked Ms. Roediger for her thoughts on the motion.

Ms. Roediger said that as Mr. Wackerman had indicated, the policy indicates that the local share only should be captured. Because the applicant chose to not go after the state taxes, she does not think that the City of Rochester Hills should pay more. The fact that they're getting MUSTFA funding helps the applicant as they are getting \$400,000 from the State. So if the BRA stuck with the policy and approved the \$200,000 amount they would still be getting more than if they received the local and State without MUSTFA. The applicants are getting incentives from both the State and the City. She noted that she would be a little nervous about going outside the policy to do the full amount, unless it was found that those compelling interests were very unique and would not be easily replicated across other future brownfields.

Chairperson Justin asked for any additional questions. He said that he would observe that the sooner the project get going the sooner the funds will be received and it will even itself out. He said that the City would be getting rid of a

dilapidated old piece of property that's been there since before Rochester Hills became a city, and it's a traffic hazard, and a number of other things so that it would be in the interest of the community to get this project started. He said the dollar amount in his mind is substantial, but at the same time the payback gets going a lot quicker when you move the taxable value of that property from what it is now to what it will be once completed. He said that the City is not going to be getting less dollars over the time period, because if the project did not move forward the future taxes would not be collected, and he said that one of the concerns that he always has is how likely is the project to be successful. He said that this applicant, if you remember the southwest corner of Auburn Rd. and Rochester Rd., there was a gas station and a bunch of old buildings, and a dealership that was abandoned, and from what he can see Mr. Markus has done a nice job of making it happen and completing the project. He said the risk of the current project going south is less likely based upon this prior history and experience. He said that he makes these comments generally just from being in the community a long time, and he also noted that depending on how fast the electric car business occurs, the City if going to have extra gas stations around that they might like to see go away. This project would be getting rid of one of those now. For what it's worth, those are just some other observations about the overall growth in the community. He asked if anyone had any further comments or thoughts to share.

Ms. Morlan asked for a clarification for the vote, if they are voting both for the proposal and for the full amount? Chairperson Justin replied that the motion was for the \$508,000 funding amount. He said that a yes vote would be to support the plan and for that amount. He said that the plan requires money, and they are given three choices, with recommendations and different calculations depending on where we are in the policy, and whether or not they feel there are compelling reasons to go beyond the policy and give the entire amount of dollars that are being requested.

Ms. Morlan said so the vote is to go ahead with the program, and to approve the full \$500,000.

Chairperson Justin replied that is what the motion is on the floor at this point.

Mr. Kulka said that this is the way it really affects what their plan would be, if you only went with the lower amount, he referred to the slide for the lime green shape would be the cleanup area. He said that if they get the full amount they would be able to clean up all of the areas that exceed the vapor criteria, so there would be no other vapor concerns, and you would have a clean site.

Chairperson Justin called for a roll call vote.

*Aye 3 - Turnbull, Justin and Nachtman
Nay 1 - Morlan
Excused 2 - Braun III, Sera and Stanley*

Chairperson Justin stated for the record that the motion had passed.

Chairperson Justin noted that the next stop for the applicant is City Council.

Ms. Roediger noted that staff will coordinate with the applicant to bring the plan to Council in December.

Chairperson Justin asked for any further discussion. He asked if there is a budget of what the City expects to use the funds for.

Ms. Roediger said that for the revolving loan fund there are not such plans at this point. She said that when the fund was established, it was planned to be there for future sites if they came to the BRA, it could be there for any future concerns for the Legacy site, or for long term care and maintenance for that project, the City has options at this point.

Mr. Kulka added that Troy did that a long time ago, and their fund has grown to be quite a nice nest egg to keep funding for contaminated properties, they may have close to \$400,000 in their fund right now.

Chairperson Justin said at the next BRA meeting it would be fun to learn more about those funds, who the City gives money to, and why there are two funds, why one fund has two reserves.

Ms. Roediger commented that she will be sure to have Joe Snyder attend the next meeting. She said another thing she was going to follow up on was the discussion about having some more in-depth training for brownfields, they are going to work with Mr. Wackerman for such training in the New Year with the new Council person, whether it will be Ms. Morlan or another City Council member. Ms. Roediger also introduced Jennifer MacDonald, the new recording secretary, replacing Maureen Gentry. With a few new faces she thought it would be good to through and discuss the purpose of the BRA, and also the purpose of the policy. As Mr. Wackerman mentioned there are some things that were written that could use updating. She said that will be discussed after the New Year.

A motion was made by Turnbull, seconded by Nachtman, that this matter be Recommended for Approval to the City Council Regular Meeting,. The motion carried by the following vote:

Aye 3 - Turnbull, Justin and Nachtman

Nay 1 - Morlan

Excused 3 - Sera, Stanley and Braun III

Resolved, in the matter of City File No. 21-007, the Brownfield Redevelopment Authority recommends that City Council approves the Brownfield Plan dated November 2, 2021 for the Rochester/Avon Retail Development, Parcel Nos. 15-14-351-011, -012, and -068 with the following findings and subject to the following conditions:

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 - c. Eligible expenses reimbursed under MUSTA will not be reimbursed under the Plan.
2. The RHBRA has determined that the reimbursement of eligible costs will be for the full cost of the eligible activities as requested by the Draft plan for a total of \$508,553.

DISCUSSION

None.

ANY OTHER BUSINESS

None.

NEXT MEETING DATE

January 20, 2022

ADJOURNMENT

There being no further business it was moved by Nachtman, seconded by Turnbull, to adjourn the meeting at 7:45 p.m.

*Robert Justin, Chairperson
Rochester Hills
Brownfield Redevelopment Authority*