

ENVIRONMENTAL OVERSIGHT COMMITTEE
Tuesday, November 2, 2006
(9:00 AM)

Present: Ravi Yalamanchi, City Council
Derek Delacourt, Deputy Director, Planning & Development Department
Paul Davis, City Engineer, Department of Engineering Services
Roger Moore, Professional Surveyor, Department of Engineering Services

Absent: Jim Rosen, City Council President
Jim Duistermars, City Council

Also Present: Tom Wackerman, ASTI

Discussion Regarding Brownfields (in general)
(Presented by Tom Wackerman, ASTI)

Cleanup

What does this mean in the State of Michigan? (each State is different)

- Protect human health and the environment

State of Michigan is in the forefront

- Wayne County is the most stringent

How “clean” is “clean”? (there is no easy answer)

- nuisance, noise, odor
- look at potential for exposure
- level of acceptable exposure
 - how long
 - what is a person wearing
 - where is it contained
 - various algorithms
 - weight factors
 - for instance, in an office setting
 - inside building
 - wearing clothes
 - there from 8 to 5
 - compared to 90-year at home, working in garden
 - age is a factor
 - time spent outdoors
 - gardening in the soil
 - affect will be different in different situations

- concentration and duration of exposure
- what is the use of the property
- chemicals
 - will it get on skin
 - will it be ingested
 - will it get in the lungs

DEQ has look-up tables (can be found on DEQ's website)

- tables only manage hazardous substances
- continue to be updated (as new information is developed/received)

USEPA site specific site analysis

There is more arsenic in natural soil than State levels permit

Cleanup

- groundwater
- air
- ambient air
 - dust
- touch (direct contact)
 - protect against

Pathways, chemicals, vectors

Complete Site Assessment

- very expensive

Levels of cleanup (varying degrees of each)

- residential
- commercial
- industrial

Should City adopt same philosophy as MDEQ?

- All 50 States differ, but are close, except for California

Engineered controls

- such as 6-inches of concrete on top
 - becomes a barrier
- limited closure

Administrative controls

- contaminated groundwater
 - proposed development may not use groundwater
- institutional controls

PCB's don't volatilize

- won't travel through concrete

Benign - will go through concrete

- have to vent
 - vent to air

City of Ann Arbor

- requires all cleanup to residential level

PRP - Potential Responsible Party

State of Michigan has a long list of sites to clean up

Many Cities - MDEQ is paid to manage the brownfield process

- if MDEQ says OK - it's OK

How "clean" is "clean"

- City has to define
- what is the acceptable solution

City can "do nothing" with suspected and/or known sites

- can conduct analysis
 - who pays

If cleanup levels too restrictive, properties will be left in their contaminated state

If a developer is willing to do something, site may be in better shape than left alone

Does City want to create an Inventory of sites?

City needs to conduct financial review

- taxes at the end of the process

EPA offers Site Assessment Grants

- Due 12/8/06 for Year 2007
- Sites with a better chance of receiving a grant
 - Landfills
 - Leaking underground storage

EPA

- will pay to assess sites
 - do investigation
 - location
 - problems
 - impediments to development

What is City's ability to identify and assess sites

- If property not owned by the City
- Just conduct assessments of all gas stations and other known sites

No such thing as a "brownfield market"

- brownfield is a "condition" of the site

City could establish a list of sites

EPA's definitions are very broad

- Michigan's are very narrow

Rochester Hills is not a "core" community

City could create a map

- City can rank the sites
 - will this weigh on redevelopment potential

City has to determine:

- Why it would want an inventory
- What will the data do
 - won't spur development
- What lands would be selected
- Is setting one standard reasonable
 - probably no more reasonable than having one zoning standard
- Policies could work in conflict with development

Site assessment might be done through Oakland County

- becomes public information

City should develop a policy

- seek balance and be proactive regarding
 - taxes
 - finances
 - cleanup

Proactive for the City, developers and the Community

City needs to decide if Brownfield Redevelopment Authority will be

- an environmental steward
- an economic developer
- or be passive
 - let other boards and city policies monitor

What is the City and the Community interested in?

EPA study re population living near Superfund Sites

- what was their major complaint
 - answer: truck traffic

BANANA - build absolutely nothing anywhere near anyone

City Council needs to consider policy

- driven by redevelopment
- driven by environmental stewardship

A proactive community benefits both business and the community

- 3-step process
 - Due Diligence
 - Eligibility Review
 - Site Development

Develop policies

- how want it to be done
- know what City wants
 - consider Zoning laws
- lay out
 - everyone knows what City wants
- Brownfields have to be improved
 - i.e. can't just be paved over

Improvement (what is interpretation of "improvement")

- remove 3,000 tons
- remove 15,000 tons
- remove 30,000 tons
 - if require extra clean up
 - where will money come from to pay for this
 - City can provide "gap" with local taxes only
- how far is "too far"
- State will only pay to acceptable risk
- Developer gets TIF first
 - City gets TIF at back end
- Will residential clean up be any safer to human health?
 - what does this accomplish
 - is this the best use of funds
- As costs escalate, effectiveness decreases
 - may never reach the required clean up level
- Will never get land back to "pristine"
 - impossible to reach complete clean up

Develop overall guidelines

- economic development
- environmental stewardship
- building design
- ground water controls
- off-site improvements
 - proximity of site

The longer a site waits, becomes more expensive to clean up

Off-site improvements

- responsible party
- who is impacted

Brownfield Act is an economic incentive act

- not an environmental clean up act

Flexible overlay uses for brownfield sites

- could accomplish what City wants
- shows City is willing to work with developer

Set different clean up levels for different sites

Consider TIF issue

- willingness to reimburse based on requirements for clean up
 - will City cover those extra costs

If cleanup standard is 10% of residential

- is the City applying different standards in different circumstances

If require different clean up standards for one area than for another area

- could be challenged
 - can City defend it's requirements
- leaves City open to lawsuit from areas not requiring higher standards
 - claim City not protecting that area as well

If City goes beyond Act 201

- will need to establish one rule
- will need to establish legal requirement for City's requirements

If residential level cleanup is required for landfill sites

- will site just sit
 - won't be cleaned up

Both Act 201 and Act 381 are closely tied to zoning

If City sets high cleanup standards

- how will the City attract development
 - will need incentives
- TIF, grants, local taxes

Determine:

- best and highest use of property
- best environmental stewardship
- best economic incentives
- benefit for future generations

Standards: Residential
Commercial
Industrial
and Limited Residential
Limited Commercial
Limited Industrial

Cannot clean up property to “pristine” or “pre-industrial”

- some level will remain in all situations

DEQ Standards can change

- based on additional information

Limited closure concept

- barrier
- administrative controls

If don't allow limited closure

- impact on environmental cleanup
- impact on economic incentives

If don't allow engineered or administrative controls

- developers won't like
 - will pay now
 - need TIF program

City will need to develop a “straw” document that can be amended/updated as DEQ standards change

City needs to set standards for the Brownfield Redevelopment Authority and City Council

- nothing currently written
 - would this be for individual sites or all sites in City

Grants for site assessment

- City needs to be proactive

Current City Policy

- work with developer and comply with Act 381 and Act 201
 - need to understand both Act 201 and Act 381
- based on complexity of site
 - developers will use Acts to their advantage
- have policy maximizing environmental standards and economics
 - currently City not being pushed by developers
 - can sometimes “appear” as if this is happening

City is currently not in the business of borrowing monies for cleanup

- developer’s responsibility

Initial investigation

- determines if site qualifies as a facility
 - can ask for more information
- Does City want to dictate acceptable level of investigation
 - use of grants or City funds

Does City want to do site assessment?

- currently this is the developer’s job

To what extent does the City want to manage the process

- what is the City’s current process
- does City want to do more
 - written policy
 - educate to what City is already doing

City Policy could:

1. Require compliance with Act 201 and Act 381 and all requirements and regulations of Federal and State environmental laws.
2. Reserve right to limit required residential/commercial/industrial standards without engineered and administrative controls.

Preserve open space – is this a matter of

- environmental stewardship
- economic development
 - which is the driving issue

Let developers know what the City wants

- be proactive and write it down

Why not something better?

- answer is – it's not easy
- no two sites are alike

If “x” is the benchmark

- how does the City take it to the next level
- how does the City get better than DEQ standards
- how does the City not lose the ability to ask for more
- can the City define each site
- need discretionary controls

Ban the word “better”

Define what the City wants to accomplish

- “raise the bar” (rather than “better”)
- is this an unfulfillable objective – what is really better
- articulate standards

What is right for the site, and good for the Community?