

ENVIRONMENTAL OVERSIGHT COMMITTEE
Thursday, February 1, 2007
(9:00 AM)

Present: Jim Rosen, City Council
Ravi Yalamanchi, City Council
Derek Delacourt, Deputy Director, Planning & Development Department
Roger Moore, Professional Surveyor, Department of Engineering Services
Ed Anzek, Director, Planning & Development Department

Absent: Jim Duistermars, City Council

General Discussion

(with Representatives from the Michigan Department of Environmental Quality)

Present from the MDEQ: Ben Matthews, Remediation and Redevelopment
Darlene VanDale, Act 381 Brownfield TIF Coordinator

Discussion Topics: How clean is clean?
What DEQ looks at in a Brownfield or 381 Work Plan

Mr. Matthews is with the Remediation and Redevelopment Division.

- Handles ground and groundwater
 - Land and water management
- Brownfields
 - factories, contaminated sites, landfills
- works with private parties, liable parties to investigate or cleanup

Ms. VanDale is with the Remediation and Redevelopment Division

- Brownfield Act 381 Work Plan
 - reviews work plan for administrative compliance

DEQ is only involved in work plans when State taxes are involved

- if only local taxes are being sought, DEQ would not be involved

The BRA and CC can decide if only local taxes will be used

If state taxes are included in Plan, then school taxes are normally also included

DEQ reviews eligible activities and proposed activities

- specifically if school taxes used
 - review level of contamination and the numbers
- base value of the property; proposed development; eligible activities, and how TIF to reimburse

- BRA Plans can run up to 30 years
 - if did not include school tax, reimbursement will take longer

There could be a small project, the developer does not want to deal with the MDEQ

- City may see request for local taxes only

Rochester Hills is not a core community

An addition on an industrial building

- may only clean up the soil before addition
- clean up may only cost \$30,000.00
 - project may not go through DEQ

Corner of Rochester Road and Tienken Road

- site of a former obsolete industrial building

Project could seek only SBT reimbursement

- would have to have an approved brownfield plan
- would go to the MEDC

Question arose “who watches”

- review is based on site being a facility

MEDC may ask for DEQ to review

Developer may contact the DEQ

Development could be completed without environmental oversight

- unless seeking TIF or other credits
 - not required to submit environmental information

SBT credits – 10% for eligible investigation costs

- demo, site preparation, construction and other activities that are not environmentally related

SBT could cease at the end of the year

- it is not known if there will be a replacement tax

Purchaser buys property

- Conducts BEA as protection from liability
 - Almost automatic if property is demonstrated to be contaminated
- If think contaminated, Phase I

Oversight of property

Search of records and visual

- historical use
 - tanks

- what was the property used for
 - may be contamination

There are standards

- ASTM Standards
- Phase I and Phase II Industrial Standards

Under Phase II, if property is contaminated

- submit BEA to DEQ
 - exempt for anything on the property (“get out of jail free” card)

Makes them eligible for State incentives (SBT or TIF)

In Rochester Hills – TIF only available for environmental

- City is not a core community
- Core communities have more incentives

Level of investigation should be commensurate with proposed use

Part 201 requires a Due Care Plan available for inspection by DEQ

Can take place prior to approval by City for redevelopment

BEA can be submitted to DEQ for review

- DEQ will acknowledge receipt of the BEA, but may not review it
- \$750.00 to review and approve or deny

Disclosure provides liability protection

If contaminated site, DEQ will send letter

- will try to find responsible party

Infrastructure can provide an open corridor and allow something to flow through

Purpose of BEA is to establish level of contamination at the time of transfer to exempt the new owner from the contamination

Previous law – whoever touched the property, became liable

- stifled development
- Example – flower shop in old gas station
 - flower shop became liable, even though use did not contribute

Under BEA

- DEQ will not ask new purchaser to do additional work beyond own due care obligations
- may have to do address contamination; might require some remediation

With respect to flower shop in a former gas station

- If vapors coming through the floor, or tanks are leaking
 - would impact the current use and would have to fix
- If costs to fix are high enough, may ask for TIF

Example: Gas station on top of hill overlooking the Clinton River

- new purchaser
 - not aware tanks remained
 - waste oil is in the tanks
 - plume of oil is travelling downhill to the river
- How would this situation be handled?

- DEQ
- if purchased property, tanks belong to new purchaser
 - new purchaser is responsible for them
 - based on property use – should investigate

50-year old tanks leak (not enough information on the newer tanks at this time)

Tanks are usually 150' from the building

DEQ has a tank program, which is a very complicated program

- National level – involves both EPA and DEQ
- inspect tanks at installation
- require registration
- was a remove and replace program – deadline in 1993
(Leaking Underground Storage Tanks)

Typically, gas stations now have

- double walled tanks
- double lined pipes
(these are examples of engineering controls)

Using gas station example:

If gas station redeveloped and tanks not found at that time

- any release could be making its way to the river
 - may show up at the river or in a well

Development might obligate the clean-up, if something is leaving the site

- affect indoor air or if there were vapors

No one watches for contamination

- watch for clean up

Example: Oil spill

- Who is responsible?
 - who owned the property at the time the spill occurred
 - could be multiple owners

If have questions about a site, can call DEQ and ask if it is in the system

What if a site, such as a gas station, is redeveloped through the same owner?

- Fuel and distribution process – need EPA or DEQ certification

Site inspection – problem with tanks

- DEQ will “red tag” – tanks cannot be filled
- If tanker comes in and sees red tag – prevents filling

Is new property owner required to keep contamination from leaving the site?

- not necessarily – can’t exacerbate, can’t make worse
- not required to identify and make better

City can step in – try to stop by asking for extra levels

- City could ask for additional response activities in Due Care Plan

City establishes a policy

- standards higher than DEQ requires
 - can City pay for it
- if City requires those levels, will City pay for it with local tax capture

DEQ levels - environmental improvement
- reduce public health threat

DEQ will look at how much it costs and level of environmental improvement

- have discussions with DEQ up front to see if they will approve
- has to be in the brownfield plan
 - if want school taxes to reimburse, has to be in 381 work plan

381 work plan decides exactly what is paid and the associated costs

- DEQ, if included for school tax recapture, reviews:
 - reasonableness of cost
 - DEQ best able to determine
 - have the experience

Most cities do not have any way to evaluate and verify costs

- Rochester Hills has ASTI (outside consultant)

City would like to establish a policy on brownfields

- are there restrictions on what local government can and cannot do?
 - should not conflict with State
 - not contrary to Part 201

Establish policy

- in the planning process

- want to see BEA

Local requirements would not have anything to do with Act 381 or Part 201

City of Ann Arbor

- requires clean up to DEQ generic residential clean up
- DEQ will not allow reimbursement for commercial projects to clean up to residential
- Developers could be going somewhere else to avoid that requirement
(would have to ask City of Ann Arbor how this is working)

Sites in the City would have to be identified

- Question: If City requires BEA, and developer is not interested in the brownfield process
- what right does the City have to require remediation
 - City wants improvement
- Could stifle redevelopment

In the future, if the value of the land is high enough, will make landfills more valuable

- if go to the lowest common denominator, could devalue other properties in the area

If problems are solved, property would have more value

Property costs in the City are high; probably won't get cheaper

- how does the City deal with these sites in the future

The City wants to do better

- for the neighbors
- for the developers
- for the Community

If there is a liable party, the DEQ may pursue

How much tax dollars does the City want to spend to clean up sites

Existing development vs. new development

- New has more value
- New will get return on investment
 - a nice retail development will do better

How does the City want to see these sites developed

- Can it be dug up and hauled away
 - cheapest method
- If site contains hazardous materials
 - has to go to a hazardous landfill
- Costs for "in the ground" cleanup
 - requires engineering oversight

General restrictive criteria

- very conservative
- not necessarily for ordinary use
 - residential contact numbers
 - residential indoor air

Clean-up

- could have modest cleanup costs
- could have significant cleanup costs
- usually cheaper to dig and dump

Encapsulated is a limited closure

- there is some barrier to allow property above to be used

Slurry wall – close in place

Administrative closure – could require O&M (operation and maintenance)

- engineering controls – stays in place
- monitor wells – to be sampled
 - most cost effective if too much to excavate

Does “cleaned in place” involve a chemical process?

- soil could be vacuumed out with pipes
 - could not do with lead
- dig or put barrier on top

Dry cleaning plant

- could have to be cleaned up

PCB's don't move

- bacteriological – have to monitor
- new technology involving iron currently being used to clean up

City has an opportunity to become proactive in the process of deciding and implementing policies and procedures or preparing an Ordinance

- always, if contaminated require developer to clean up
- require submittal of a brownfield plan
 - brownfield plan provides for the financing
- require a remediation plan

Is the City willing to put TIF revenues towards clean up

- Issues with other taxing agencies?

If there is remediation

- City wants to have a brownfield plan and

- clean up to a specified level of clean up

City would require:

- brownfield plan
- baseline environmental assessment
- due care plan
- predetermined level of clean up

If City's due care requirements are higher than the DEQ's requirements

- is the City willing to pay for it
- Developers may simply decide not to deal with the City

Could be easy on some sites

Could become very complicated re level of clean up

- if City using difference set of numbers than the DEQ

Require developers to do additional clean up through DEQ requirements

- DEQ standards are land use based
- would City go beyond level of usage

Could be different for each situation

- depends on location

Formal policy

- not stifle development

Establish City's standards early on

- better for the Community and the environment
(could walk a fine line)

Have an existing problem – already bad

- what level do you have to get to in order to be better for the environment and the community

Would like to avoid the bare minimum being done

- developer buys property cheap
- spends \$5 to \$10 Million
 - meets standards
- will there be a problem later
 - will the City be left with the problem later

Where is that level?

Developer will improve what already exists; situation could get worse if left alone

Would like to discuss with City of Ann Arbor

- how they structured their requirements
- were they worried about developers going somewhere else

In today's market, developer might complain

- will still make money if they construct a quality project

“but for” – without tax incentives, project won't go forward

- there will be some environmental improvement

Simple BEA required

- would City/Developer have to get the State involved

City has outside consultant, ASTI

- ASTI can review plans
 - check all the issues
 - what are the issues
 - what are the costs

If the City has a policy and standards,

- would be same as the City developing the Steep Slope Ordinance

Example: When organic foods were introduced

- it was said no one would buy them
- look at organic food market today

Like the idea of requiring certain standards

- if a BEA prepared, can get a due care plan
 - due care might be optional

If City standards are higher, requiring more than DEQ requires

- DEQ possibly will not be in favor
- City can't expect DEQ to support

DEQ Standards – protection of human health and the environment

- different is contaminants are leaving the property

Statute allows using TIF

There is a stigma to some sites

- want area to be secure
- want to watch what is going downhill
- affects more than property – affects the greater area

Believe City should have standards and a policy

- if site is going to be developed

- there may be a better solution than a higher level
- will the City lose the flexibility to bargain
- policy would have to articulate criteria
 - policy should be flexible
 - an Ordinance would not be flexible

Rochester Hills already “goes way off the charts”

If a project is a local only project

- DEQ does not know about the project
(if a controversial project, might hear about it)

If not seeking State school tax

- DEQ does not review the plan
- work would be done on site
 - Does DEQ watch or inspect? - “no”

The DEQ accepts the developer’s consultant’s plan on face value

Many times a developer will want the DEQ’s involvement

- to show they did a good job of the clean up
- will receive better loan/interest rate from bank

The City of Ferndale has some “local only” plans

- functioning obsolete and blighted
- Ferndale is a core community
- Ferndale does not have the same resources as Rochester Hills

Can the City require the work to be done?

Can the City require a BEA?

- Like Phase I and Phase II
- if property sold, and City requires this
 - does this become an unfunded mandate?

Cannot require DEQ to go to private property

Cannot require to submit something

If there is a significant issue, call DEQ hotline

Once City has knowledge of a significant environmental issue,

- have an obligation under the law to see something
 - could require the DEQ to get involved

Developers would not be inclined to submit a work plan and a due care plan to the DEQ

- creates a gap
 - City needs a policy to address those gaps

If City develops a policy, could become a model for other municipalities

Do not want developers to become fairly crafty and figure out a way to avoid the policy

- fly in under the radar
- would not be good for the Community

Could be an innocent developer

- might not have a reason to know about the site and its former uses

Light Industrial – would have to meet DEQ industrial clean up levels

- would City require a level of clean up above those standards

SE Corner of Rochester and Tienken

- went for SBT
- environmental did not come up before Planning Commission
- went through the BRA and CC processes
- BEA was required
- developer was not interested in the brownfield program

Papa Joe site

- could have been an old industrial (micro tool) building on the site

Industrial parks were part of the reason BRA's were established

- encourage and offer incentives for clean up and rebuild

City policy could require a BEA

City policy should address infrastructure improvements

- include due care plan
 - do not want to create a pathway to move contaminants
 - corrosion of infrastructure could occur
 - City workers need to be aware of what is on the site

If City does develop a policy

- would like DEQ to review it
- would need an environmental attorney to review
- contact should be made with Ann Arbor

DEQ discussed instances of condominium projects involving both residential and commercial

- in this situation, property will eventually be owned by Condominium Association
 - will Condominium Association be made aware of the due care requirements
 - Association could become liable for O&M
 - could become a huge expense to those condo owners
 - potential purchasers may not be aware at time of purchase

Next Meeting:

- discuss next steps toward a City policy and guidelines
- have a discussion with Ann Arbor
 - Ann Arbor does not have a BRA, uses the County's BRA

Next Meeting: Thursday, March 8, 2007 at 9:00 AM