



**City of Rochester Hills  
AGENDA SUMMARY  
NON-FINANCIAL ITEMS**

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**Legislative File No: 2007-0435**

**TO:** Mayor and City Council Members  
**FROM:** Ed Anzek, Director, Planning and Development Department  
**DATE:** 03-28-08  
**SUBJECT:** Hamlin/Adams Project City File #03-013

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**REQUEST:**

The applicant is requesting approval of the second 381 Work Plan for the site. The applicant is also requesting approval of a Reimbursement Agreement for the project.

**BACKGROUND:**

The following information attempts to summarize the applicant's current request(s). This project has a long history with the City and there is a tremendous amount of information and documents associated with it. The materials attached to this summary contain more detailed information related to these specific requests and the entire project.

**381 Work Plan**

This is the second Plan submittal and details the anticipated remediation for the project. The City agreed to review the remediation in separate 381 Work Plans. The first Plan that was submitted and approved by the DEQ, it detailed the additional investigation that took place over the course of last year.

The current Plan proposes a combination of removal of contaminated soil and material from the entire site and the encapsulation of some contaminated soil on site (please refer to the STS memo's dated February 14, 2008 and March 28, 2008 for a full summary of the proposed remediation).

The City's Brownfield Authority moved to submit the plan to the DEQ subject to conditions. One of the conditions requires the review of the plan by Council prior to its submittal. The Consent Judgment requires the plan to be approved by the City Council prior to the site plan being approved. The Consent does indicate that the remediation and associated cost be reasonable and agreeable to both the applicant and the City.

To this point, no site plan has been submitted for the site. Staff and the Authority recommended that it was reasonable for the applicant to at least review the proposed remediation with City Council at this time. However, the applicant is requesting, and Staff agrees, that Council approve the plan now. To wait until the site plan stage and potentially after the DEQ has already taken action does not seem efficient.

The plan and the proposed remediation appear to be consistent with the guidelines established in the Consent and in Act 381. There are additional issues identified in the Consent that have had an impact on the review of the plan (please refer to the attached staff report dated March 13, 2008 for a full review of the issues). The plan proposes eligible activities in an amount of approximately 3.2 million dollars. The

total amount approved by the Brownfield Plan is approximately 4.6 million dollars. It appears that the activities identified in this 381 Plan are consistent with the Brownfield Plan as approved.

The most significant issue remaining is the possible involvement of the Environmental Protection Agency (EPA) in the project. The potential for EPA involvement was noted and discussed as far back as the facilitation meetings for the Consent. The concern is the levels of PCB's within the fenced area exceed the Toxic Substance Control Act (TSCA). Those levels may require the applicant to meet a different level or type of remediation. The applicant has indicated that they feel that the site is not under EPA jurisdiction and that TSCA will not apply. Staff is still waiting for the EPA to make that determination. The applicant and the City have both submitted information to the EPA and are awaiting a final determination.

The Consent requires that the EPA approve the plan prior to a site plan being approved. However, as with the City Council review of the Plan, it is Staff's opinion that the EPA should make a determination regarding jurisdiction of the site before any work can be conducted. Submitting the plan to the DEQ starts a statutory review time of 45 days. The DEQ only reviews for requirements related to Act 381 for the capture of school tax. If the DEQ approves the submitted plan, it is Staff and the Authority's concern that the applicant may be able to begin conducting work prior to resolution of the EPA issue.

Staff has requested that the applicant indicate in writing they will not conduct any work on the site prior to a satisfactory resolution of the EPA issue. If provided, and reviewed by the City Attorney, Staff has no concern with submitting the plan to the DEQ.

### **Reimbursement Agreement**

The applicant has requested review and approval of a proposed reimbursement agreement. The approved Brownfield Plan is conditioned on a reimbursement agreement being entered into between the applicant and the City. At the time of the BRA Plan approval, there were still several outstanding issues the applicant requested be dealt with through the reimbursement agreement. The applicant has provided a draft copy of the agreement. However, the document does not address how the applicant is proposing to handle the remaining issues. The applicant should make the following changes to the document, for review by Staff and the City Attorney, prior to the City entering into the agreement:

- Revised tax tables need to be included representing the change in TIF amount and identifying an estimated date for complete reimbursement. One of the conditions was the incorporation of a cap (number of years) on TIF reimbursement based on the applicant's estimates for full capture. The Consent identifies payback timeframes and limitations that need to be met, the revised tax tables and the proposed agreement should address those issues.
- Any reference to the capture of interest should be removed from the document. The Brownfield Plan did not include interest as an eligible activity. Staff did receive an email requesting the consideration of interest. Staff has made several requests as to how the applicant proposes to include interest without an amendment to the Brownfield Plan but has not received a response. The Authority and Council may, if they desire, reconsider interest as an eligible expense. However, Staff would recommend the Brownfield Plan and tax tables be revised to indicate such.
- The Consent allows City Council to obligate less than the full 100% of the eligible mills levied against the site as part of the TIF reimbursement. It allows the City to capture down to 75% of the total available TIF for the site. It is not mentioned in the reimbursement agreement, but Staff assumes the applicant is proposing 100% percent capture. Attached are tables prepared by the Assessing Department (Memo dated 11-09-06) estimating the change in TIF depending on what percentage of TIF is captured. This determination needs to be made by the Council and the applicant and the document revised to reflect that decision.

- There is the possibility of the City capturing an administrative amount from the TIF. The maximum of that amount used to be \$75,000 per year. Recent changes to Act 381 have the potential to increase that amount. Staff is still researching the changes but would recommend the City capture as much as allowed without violating the payback provisions.

The above determinations could impact the proposed agreement and the requirements of the Consent, including payback timeframes. The document should be revised to identify those determinations.

The document should be revised to indicate that the agreement is between the applicant and the City Council. Currently the draft indicates the Brownfield Authority as party to the agreement. The applicant is requesting that City Council approve the agreement.

The City Attorney is also reviewing the document and will offer opinion under separate cover.

At this time Staff would recommend that the issues identified above be discussed and a revised agreement be submitted for review.

**RECOMMENDATION:**

Staff recommends approval of the Act 381 Work Plan subject to conditions

Staff recommends that the Reimbursement Agreement be revised and resubmitted

**RESOLUTION**

**NEXT AGENDA ITEM**

**RETURN TO AGENDA**

APPROVALS:	SIGNATURE	DATE
Department Review		
Department Director		
Mayor		
City Council Liaison		