CITY OF ROCHESTER HILLS
REGULAR BROWNFIELD REDEVELOPMENT AUTHORITY MEETING
Thursday, February 21, 2008

MINUTES of a **ROCHESTER HILLS BROWNFIELD REVELOPMENT AUTHORITY REGULAR MEETING**, held at the Rochester Hills Municipal Offices, 1000 Rochester Hills Drive, Rochester Hills, Oakland County, Michigan.

1. **CALL TO ORDER**

The meeting was called to order by Chairperson Stevenson at 7:00 PM.

2. ROLL CALL

Present: Chairperson Tom Stevenson; Members George Karas, Stephen McGarry, Stephanie Morita, Thomas Turnbull, Michael Webber

Absent: Member Suzanne White *(Arrive 7:17 PM)* **QUORUM PRESENT**

Also Present: Derek Delacourt, Deputy Director, Planning & Development Department
John Staran, City Attorney
Jim Anderson, STS Consultants
Judy A. Bialk, Recording Secretary

3. DETERMINATION OF A QUORUM

Chairperson Stevenson stated a quorum was present.

4. MINUTES OF APPROVAL
4A. Regular Meeting of January 17, 2008:

Chairperson Stevenson asked for any comments or changes regarding the January 17, 2008 Regular Meeting Minutes. Upon hearing none, he called for a motion.

MOTION by Webber, seconded by McGarry, that the Minutes of the January 17, 2008 Regular Brownfield Redevelopment Authority Meeting be approved as presented.

Ayes: All
Nays: None
Absent: White **MOTION CARRIED**

Approved as presented at the _____, 2008 Regular BRA Meeting

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5. ANNOUNCEMENTS/COMMUNICATIONS

Chairperson Stevenson called for any announcements or communications.

Ms. Morita reminded the Authority that a Brownfield Symposium was being held May 5-7, 2008 at the Cobo Center in Detroit and stated she hoped the members could attend.

Chairperson Stevenson noted the Authority had received a copy of the 2008 Year End Report from the Planning & Development Department. He called for any other announcements or communications. No other announcements or communications were provided.

6. PUBLIC COMMENT (Non-Agenda Items)

Chairperson Stevenson called for any public comments regarding non-Agenda related items. No public comments were received.

7. UNFINISHED BUSINESS

7A. Update regarding NE Corner Hamlin/Adams Development (City File #03-013)

Chairperson Stevenson reminded those in audience that speaker cards were provided at the back of the auditorium, and if anyone wished to speak on this item, they should complete a card and turn it in to the recording secretary.

Chairperson Stevenson invited the developer to take a seat at the presenter table and asked them to introduce themselves by providing their name and address.

Neil Silver, Attorney for the developer was present, and introduced Paul Henderson, Developer, and Tony Anthony, AKT Peerless, Environmental Consultant. Mr. Silver stated that Mr. Anthony would provide an update on the investigation on the site and proposed remedy.

Mr. Anthony stated that the last time they were before the Authority, the Authority had approved an investigation to refine the remedy for the site, and noted that investigation included several borings and monitoring wells. He explained they set out to look at the areas of concern and to define the extent of those areas, i.e., how much material would have to be removed from the areas they had identified.

Mr. Anthony stated one of the strategies used while they were on the site was test pits. He explained in some areas where test pits identified fill material and buried drums, they excavated additional test pits around those areas in order to define how much material had to be removed. He referred to a map of the site, and explained there were light blue circles that identified areas of concern, and areas that through test pits, soil borings and monitoring wells, they were able to refine the extent of removal.

Mr. Anthony pointed out the section of the site identified as Area A where they did test pits and

moved regularly outward from the original location where they had previously found contaminants, so they could define the area.

Mr. Anthony pointed out Area B, which contained a grid of several sample locations that were between the fenced-in area where the drums with paint waste were buried and the adjacent residential neighborhood. He explained earlier investigations had found PCBs in the surface soil. Because, at that time there were only a few points where PCBs were detected, they were concerned that the PCBs had migrated from the area within in the fenced area where the highest concentrations were, and were moving towards the residential neighborhood. Part of their investigation was to look at that in a fine grid and to determine whether that was happening, or whether there was some protection of the residents. Through the grid they were able to show that the PCB concentration at the surface was safe and below any residential contact. There were PCB detections, but at a concentration that was below the residential criteria. He stated they did not see any consistent concentration gradient. He explained the normal expectation was to see the highest concentration at the source, and then progressively lower concentrations as they moved away from the source. He stated they did not see that, which further told them they did not have what they had feared, i.e., the migration of PCBs from the landfill area (the fenced area) to the residential neighborhood, which was good news.

Mr. Anthony pointed out another area they had looked at, described as Area C. As they excavated their test pits in that area, they found a great deal of debris intermingled with contaminated soil. He stated they saw things like metal debris and broken glass, noting that type of material is very common for old landfills. He explained that in old landfills, the organic material will begin to intermix with the soil, but things like glass and metal that do not break down and intermix with the soil, remain. When those areas are dug out, what is seen are things such as old bottles and remnants of metals. He stated in that area, as well as highly contaminated soil, was the inter-mixed debris.

Mr. Anthony pointed out Area D, and stated that during an earlier investigation involving test pits, they encountered a drum. At that point they were concerned that if they found a drum outside of the fenced-in area, that perhaps the drum burial area was much larger. One reason they did numerous test pits and borings was to confirm whether there were additional areas where drums were buried, or if that was just an anomalous area outside the fenced area. He stated that the test pits circled the area and they did not find any additional drums, which allowed them to define the extent and limit the area.

Mr. Anthony stated the additional testing told them they did not have any widespread drums buried out there. He indicated that in working closely with the City and City's consultant, the question came up about what if there was another anomalous area found during construction, which sometimes happened on brownfield sites. He stated the 381 Work Plan included a section called "unforeseen conditions" which was to account for if they found another anomalous area. He noted what they felt comfortable about was that there had been a considerable amount of test pits on the site and borings that told them where the majority of the landfill was located.

Mr. Anthony pointed out Area E, which also had highest PCB contamination. He stated that

because the PCB contamination was high, that was the area that would be encapsulated. He explained the area outside was removal.

Mr. Anthony referred to the overall map, which identified the areas of removal action and stated it could be seen that the vast majority of the area that was covered with fill material would be removed. He again pointed out the limited area that would be encapsulated. He explained the encapsulation would consist of a two-foot wide clay wall, which would extend two feet into natural material, extending upward to the surface, and then the fill material would be encapsulated with a clay cap and an FML material. He stated the FML material was similar to a very thick garbage bag that was welded together and then keyed in all sides of the landfill itself.

Mr. Anthony stated that during the construction phase; the removal action; constructing the walls, and constructing the cover, Community safety was of utmost concern. They will incorporate a rigorous air-monitoring plan, which would involve initially at the worksite, screening for volatiles. Immediately at the zone where they were doing excavation, they would be monitoring for volatiles. That way, they would contain it immediately. At the perimeter of the property they would have dust emission monitoring. He explained that was real-time monitoring, and the monitors were also equipped with a visual alarm. If the allowable air/dust emissions were exceeded for a one minute period, the alarm would go off. When the alarm went off, all operations at the site stop. He stated the alarm would continue to monitor, and no work would resume until a ten-minute continuous time where dust was suppressed occurred. He stated even before the work was resumed, they would look at whether additional dust suppression was required. The additional dust suppression might mean misting in order to help keep the dust down.

Mr. Anthony stated they had worked closely with the City in providing more detail on the construction of the wall, for instance going through geo-technical testing on the clay ensuring its integrity; shoring or trench boxes to ensure the safety of the workers on site, and also the integrity of the wall. Testing and welding of the plastic cap are also an integral part of the cover.

(Arrive Member White: 7:17 PM)

Mr. Anthony stated the other part of the investigation they looked at was their concern about methane. He explained they were concerned about methane coming from across the street. They also conducted their own methane investigation on the property, and found that no methane had been coming across Hamlin Road. He stated in speaking with the Michigan Department of Environmental Quality (DEQ), the DEQ had looked at the landfill site across the road and the methane produced there, and the DEQ believed the methane was being intercepted by the utility trenches on the other side of Hamlin Road.

Mr. Anthony stated they did have methane detections within the fenced area. He explained they had two detections, and noted that area not only contained the high concentrations of PCBs, but also volatile organics. He commented that volatile organics were a common chemical found with paint wastes. He stated that volatile organics could contribute to methane production as they decay. Because of that, the two buildings proposed for within 500 feet of that area would have a presumptive remedy. He explained that remedy included a vapor

barrier beneath the building, which would be put there "just in case" or as another layer of protection to redirect any potential vapors, both VOC vapors or methane, that might come from the encapsulated area. It was just another protective layer. Any other building on the site would be greater than 500 feet away from the encapsulated area, which currently fit DEQ guidance for these types of sites.

Mr. Anthony explained another issue they looked at was truck traffic. They wanted to minimize truck traffic that could possibly disturb the residents. He pointed out the interchange with M-59 on the map, which would bring the trucks up to Hamlin Road, and stated the trucks would access the site off Hamlin Road. He stated if there was more than one truck, which was likely while hauling material, all trucks would be staged on site and not in the roads disrupting traffic. After loading, they would set up a turn-around path to exit onto Hamlin Road and proceed back to M-59.

Mr. Anthony stated that one other part that was important in this remedy, which consisted of a removal action and encapsulation of the high PCBs, was to control storm water. He stated in a traditional setup that was not dealing with contaminants, where it was not a brownfield site, the storm water would be above ground retention ponds. On this site, they wanted to prevent infiltration into the groundwater. He explained by preventing infiltration, it further strengthened the stability of the encapsulation system. He stated they proposed to install a belowground storm water system in one of the areas of the removal action that did not allow infiltration. That capacity would come out and leave the site. He pointed out one small area of above ground, which would be designed as a sediment trap for what is called first flush. He explained with the smaller pond there would be an FML liner that would restrict and prevent infiltration.

Mr. Anthony summarized the remedy as removal action for the majority of the area of contamination; encapsulation of the high PCB concentrations, and then control of infiltration.

Mr. Silver added that they wanted to thank Mr. Delacourt and Mr. Anderson for their input in helping them design the remedies. He thought the remedies would meet safety requirements and the terms of the Consent Judgment, and were protective of both the residents and the site. He stated they were available for any questions.

Chairperson Stevenson stated he would take public comment at this time.

Ed Baron, 3310 Greenspring, stated he was a former City Council member and Planning Commissioner. He referred to the barrier between the gases and the air as a piece of cloth. He commented the developer had something to sell and wanted to see if the City would buy it. He stated they had learned that although their intentions were honorable, they were not experts in environmental issues and did not have the credentials. He was glad the developer used help to define it. He stated he, Brenda Savage and Bill Windschief had called the EPA when that site was opened up and construction stopped. He remembered the tragedy that happened in Ms. White's neighborhood due to methane gas. He thought it was a matter of health and safety and should be addressed in a manner that protected the residents.

Brenda Savage, Post Office Box 82487, Rochester, MI 48308, stated she was the Chairman of the Rochester Hills No New Taxes. She asked for continued investigation as to the level of safety for the development. She requested that any information regarding the last participation between City Staff and the EPA to know what standards they were assessing and what their answer was in regard to the development. She asked if the EPA planned further investigation as the development progressed. She stated the concerns were the same – safety and health issues, and beyond that to tax issues.

Bill Windschief, 2872 River Trail, stated he was relatively familiar with the site as he lived nearby, and had been investigating the site for a long time, ever since the development activities were proposed. He was pleased they were finding out more about the site with each exploration that the developer did. He thought that made everyone feel more comfortable they were proceeding in the right direction. It was his intent to make sure they got the right type of development on the site, and working with the developer and contractor to ensure they had good safety practices for the residents and the nearby park and the river. He recalled reading that very high levels of PCBs were reported in various documents, some of which were extremely high levels in Area E. He recalled they were 6,000 ppm, and recalled the threshold for an acceptable level was 50 ppm, and expressed concern about that. He stated later reports indicated lower levels, and thought some things could vary on the site. He asked what the EPA said about the site based on the high levels of PCBs. He believed it was a good idea for the EPA to review the work plan and the remediation plan and the public health and safety issues.

Mr. Windschief referred to the eastern boundary, and asked if the PCB level stopped at the boundary, since no one knew how the landfill had been filled. He thought it was important to know that to see what impact the development would have on the adjacent property to the east. He referred to Mr. Anderson's February 14th Memorandum to the City, which contained 18 or 19 questions about the 381 Work Plan, and asked if those questions had been answered and there was a level of confidence that the Work Plan, the public safety plan and the due care plan that would accompany the Work Plan satisfied all those questions. He stated as a resident he wanted to know what the EPA said about the site.

Lynn Loebs, 2845 Portage Trail, stated she was also an officer of the Clinton River Valley Homeowners Association, which was the property just to the north of the site. She wanted to address the air/dust monitoring equipment planned for use on the site. She stated there were a lot of technical levels for the air monitoring, but there was no definition on the dust levels. She asked whether the dust level would be set so that it would put an inch thick of dust on her dining room table every day, or she would not see any dust. She wanted to understand what level was acceptable, and would like to encourage the developer to develop a very consistent level of communication with the homeowners in the area, before, during and after, so they would know what was done, what was expected to be found, what was found, and any changes made in the plan on an on-going basis. She referred to the storm water retention, which was indicated close to the backyards of the adjacent homes. She commented they were a family neighborhood with young children who would have access to that area. She would like to see it moved to a more visible, public area away from the homes, or if some remedy could be found to make it inaccessible that would be conducive with the visibility and the aesthetics of their neighborhood.

Chairperson Stevenson called for any other public comments. Upon hearing none, he stated that concluded the public comments, and asked if the developer wanted to respond to some of the questions asked by the residents.

Mr. Silver stated he would like to respond to some of the procedural questions. He indicated the approach to the cleanup plan was dictated by virtue of a Consent Judgment that was entered into on April 4, 2006. On September 28, 2006, the initial Brownfield Plan was approved by the Brownfield Authority outlining where every hole ought to be and everything that ought to be looked at. He noted they included certain extra protections that were not necessarily part of a 381 Work Plan for investigations, which was the initial baseline test for air monitoring. He stated they submitted the first 381 Work Plan on October 9, 2007, and it has taken them working with the City for several months to today's date to be able to present the revised 381 Work Plan. He believed they had a technically complete 381 Work Plan. He clarified the 381 Work Plan was not just to meet technical DEQ requirements, but it needed to meet the City's requirements as required through negotiation, such as encapsulation rather than placing a cap or parking lot over the PCB area.

Mr. Silver stated the Consent Judgment also guided the City's action with respect to the 381 Work Plan. He explained the Consent Judgment stated if they had an administratively complete 318 Work Plan, the City was to approve it. He understood there were other outstanding issues and questions with respect to what would actually happen. He stated they tried to resolve truck routes, and they would comply with every Code and Ordinance, and noted they had an obligation to comply with everything. He stated they would also comply with any reasonable request made of them at the time.

Mr. Silver stated that although there were non-381 Work Plan issues that may still remain, he urged the Authority to approve the Work Plan so they could find out if the DEQ would be board with the Plan as well. He reminded the Authority that the Consent Judgment said that if the DEQ does not approve the activities that are included in the 381 Work Plan, then they did not need to be done. That is why they worked very closely together and had communicated with the DEQ and tried to come up with a 381 Work Plan with the maximum amount of protections they could have, that the DEQ would approve and allow for reimbursement.

Mr. Silver said the issues that remained were not so much the work to be done, but how the work was to be done. He thought the professionals that reviewed the Work Plan were all in agreement that the work to be done meets the spirit and intent of the Consent Judgment, and is safe for the residents of the Community.

Mr. Silver referred to the EPA, and stated they knew the issue would come up. He indicated there had been a joint telephone conversation between City Staff, himself and the developer. He indicated they spoke to a Mrs. Greensley with the EPA, and she was provided with the data. He stated Mrs. Greensley acknowledged unquestionably that the EPA did not have jurisdiction over pre-1978 landfills; however, she did state that if there was an eminent health issue associated with the site, they could step back in, but the burden would be on the EPA, not the developer, to show that the risk was there. He indicated they had sent a letter of explanation and all the data to the EPA and were waiting for a response. However, it was more of a

procedural order in their mind, which he had discussed with the City Attorney. Mr. Silver stated that without getting approval from the DEQ and from the Authority as to how they were going to approach the site, they could not really show the EPA how they would minimize risk on the site because they needed the agreement of the DEQ to sign off on the remedy they were proposing. He stated it was a matter of "what came first, the chicken or the egg" situation. He requested that even if there were concerns with the EPA, the Authority approve the 381 Work Plan so it could go to the DEQ for their review, and then they could forward that on to the EPA, and the EPA can sign off on whether they wish to have jurisdiction. He guessed the EPA would deny having jurisdiction. He explained in 1986 they came out to the site and did their own investigation, and then gave the site back to the State of Michigan. He noted the State of Michigan did the initial removal at the site back in 2001, all the subsequent investigations from 1986 until the present, until the developer took over. He commented the previous owner took over and did some, and all were done by the State.

Mr. Silver stated it was their strong guess that the EPA would say it was being regulated by the State of Michigan and defer to the State of Michigan and say they do not have jurisdiction over the site. He indicated as soon as they received that, they would provide it to the City. He noted they would like to know that the remedy is fine as part of the EPA's review, and he thought they had agreed the remedy was.

Mr. Webber referred to Mr. Silver's comment that they had sent a letter and materials to the EPA, and asked what date that was sent. Mr. Silver stated it was sent over a month and a half ago. Mr. Webber asked whether the letter was dated in January. Mr. Silver indicated it was an email with attachments sent in early December. He explained there had been several telephone calls and emails exchanged, and finally a conversation was held with Mrs. Greensley on February 11, 2008 via conference call. He stated it was clear from the conversation that Mrs. Greensley had not had an opportunity to really review the material in detail, and she had stated she would not have time to review and would have to give it to someone else to review as there were only two people in their department.

Mr. Webber asked if the EPA had given them a time frame. Mr. Silver responded she would not review it, but would give it to somebody. He stated he had made contact with someone in the EPA's Brownfield Redevelopment side, who was copied on the data, and he would try to usher a quicker answer through that individual. He stated that the remedy was part of that review, and until the Authority approved the remedy, they could tell the EPA that the site would be safe when they were done.

Mr. Webber stated he was trying to establish a time frame, so the Authority would know when things were delivered to which bodies and when. Mr. Silver hoped to get an email confirming their lack of jurisdiction soon.

Mr. Silver reiterated the 381 Work Plan before the Authority was a technically complete document, and addressed the issues and concerns in the Consent Judgment. He stated the EPA's consent pursuant to the Consent Judgment was not really required until they asked for Building Permits or final Site Plan Approval. He indicated the Consent Judgment contemplated that order as well. He hoped that answered the more general questions about the timing.

He indicated the more technical questions could be addressed by either Mr. Anthony or by the City's consultant.

Mr. Delacourt commented that the Brownfield Authority saw the original 381 Work Plan quite some time ago, and thanked the applicant for giving the presentation about what had taken place as part of their investigation and what they propose for remediation.

Mr. Delacourt stated Staff and the City's consultant, Jim Anderson, STS, had been involved in the review of Phase II proposed remediation. He indicated they agreed that all the components required by Act 381 are in the document; however, Mr. Anderson still had some issues and questions to be addressed in relation to the document itself. He explained that subsequent to the Authority's packets being sent out last Friday, the applicant had provided even more revised information and continued to revise the plan as recently as yesterday. He noted some of the issues were being addressed; however, until Staff had a chance to review the changes and Mr. Anderson had a chance to formally put it in writing, he was not recommending it was technically complete.

Mr. Delacourt stated they wanted to know what the answers to the issues were before submitting the Plan to the DEQ, or before recommending that the Authority accept it and submit it to the DEQ. Until those items were reviewed and addressed, he was not saying it was technically complete, rather they agreed all the components were there.

Mr. Delacourt referred to the matter of the EPA involvement, and noted Mr. Silver was correct in his "chicken/egg" analogy. However, he did not agree which came first. He explained that he had not, nor had the question been asked during any conference call he was party to, asked the EPA to approve the 381 Work Plan. He believed the Consent Judgment did contemplate approval of the Work Plan prior to a Site Plan Approval, which is not where the project stood. He stated he did want the EPA to provide a formal answer as far as jurisdiction, before a formal remedy is submitted to the DEQ. He did not agree the EPA needed the proposed remediation plan to be accepted and submitted to the DEQ by the Brownfield Authority, in order to review the site as part of their risk analysis. He was comfortable with the Work Plan being submitted to the EPA if they requested a copy.

Mr. Delacourt stated that as part of the February 11, 2008 conference call, the EPA had requested additional information, which was sent earlier today. He thought the proposed remediation plan could be sent to the EPA for review if that was part of what they needed to make a decision regarding jurisdiction.

Mr. Delacourt stated the only thing Staff was recommending was that than answer be provided prior to acceptance and submittal. Staff did not feel it was appropriate to submit it formally to the DEQ until it was decided if they had jurisdiction or not.

Mr. Delacourt stated another issue that had an impact on whether Staff felt the Plan was ready to be accepted and submitted was the storm water maintenance. He explained storm water maintenance and the developer's proposed remedy for their storm water, including the sediment dropout pond and the subsurface vaults, were being included as an eligible

activity in the Plan. Although Staff felt there was an argument to be made that a portion of those costs should be eligible, Staff had not seen a formal plan for how the storm water maintenance would work, and would like additional clarification on that matter. He stated part of Staff's recommendation to withhold action at this time was because Staff felt these were reasonable questions, especially the EPA jurisdiction, to be answered prior to formal submittal to the DEQ. He noted draft copies of the Plan had been submitted to the DEQ, keeping the DEQ up to date on the information. He stated Staff had offered independently to submit any information the EPA requested or needed to make their evaluation on jurisdiction, but disagreed with Mr. Silver's interpretation of the order.

Mr. Silver reiterated his position, and explained he was hesitant to submit something to the EPA for their review and approval that had not been approved by the DEQ. He questioned what would happen if the DEQ did not approve the plan and would not pay the costs. He thought that wasted time and energy dealing with the EPA on something that would never happen. That is why he believed it was not until the Site Plan Approval that the EPA's consent was required if they did have jurisdiction. He stated they needed to know the City was on board and that the DEQ was willing to pay for that remedy before they could formally tell a Federal body that was the remedy that would be done. He indicated the order had to be the approval of the DEQ because it did not have to be done pursuant to the Consent Judgment unless it's approved by the DEQ. He noted the City's approval was required before the Plan could be submitted to the DEQ. He commented that he and the City Attorney had discussed this issue at length.

Mr. Staran stated as far as the procedural question went, it was ultimately a question for the Brownfield Authority to determine based on what their comfort level was with the Plan in front of them and the questions they have. He explained the Consent Judgment was very clear about some things, and less clear about others. One thing it was clear on was that the principal inducement to the City to enter into the Consent Judgment was to solve a health problem by getting the site cleaned up and remediated to the extent reasonably and economically feasible, and to protect the residents. He stated that was a paramount concern, and nothing in the Consent Judgment waivered from that.

Mr. Staran stated there was a structure put in place through the Consent Judgment, but it was not intended to bypass or circumvent any State or Federal Statutory procedures, but was quite the opposite. It was included because the City did not feel comfortable, nor did they feel it was lawful at the time the litigation and settlement discussions were going on, to use the Consent Judgment to bypass or attempt to alter through local negotiations what the normal processes were for the environmental remediation and the Brownfield Plan approvals.

Mr. Staran clarified the procedures and time lines put in the Consent Judgment had to be construed and interpreted in the context of the statutory procedures. He stated the EPA involvement and how it affected the Plan was important. He noted EPA involvement and input was mentioned in several different places in the Consent Judgment. He commented that documents did not always read as clearly as one would like them to read two years later, trying to answer a specific question. He agreed it was an interpretation issue, and the Authority had heard Mr. Silver's view as to what the order should be, which was a reasonable interpretation. He stated he could not tell the Authority that the Consent Judgment said it

was different, but it was not that black and white. He thought the EPA involvement was deemed very important and was more than just a technical requirement. He stated if the EPA did assert jurisdiction and required certain things, the EPA could radically alter what needed to be done. He noted in the alternative, if Mr. Silver was correct, the EPA could determine it was not their jurisdiction and would defer to the DEQ to be the final authority along with the City as to what should be done.

Mr. Staran told the Authority the matter was susceptible to more than one reasonable interpretation, and he would not tell the Authority that the Consent Judgment requires the Authority to approve the submitted Plan at this meeting, although that was an option. He noted another option the Authority had was to accept the Plan and approve it for submission to the DEQ subject to EPA approval, if the EPA determines that is required. He also pointed out another option, as being recommended by Staff, would be to await that determination from the EPA before the Authority made their determination whether to accept the Plan.

Mr. Staran noted that Mr. Silver was correct in his statement about submitting a Plan to the EPA that the EPA agreed to, but that the DEQ denied. He supposed the reverse was also true, such as the Authority accepting the Plan, the DEQ approving the Plan, and the EPA deciding they did have jurisdiction and wanted the work done differently.

Mr. Silver thought it was also an issue of timing because there was a statutory timeline for the DEQ to respond to submission of a 381 Work Plan, which was 45 days. Once the Plan is in the hands of the DEQ, there was a 45-day window before a response would be received. He commented they wanted the site cleaned up as much as the City did, and would like to start the clock running on those government agencies as quickly as possible so they could begin the remediation as quickly as possible.

Mr. Silver stated that if the Authority accepted his compromise and accepted the Plan subject to the EPA determination, one of the clocks could start running, while the other clock was already started, and hopefully get to an end and remediate this season. He noted if they lost the season, it would sit another year and still be a health hazard at the site.

Mr. Anzek reminded the Authority that several questions had been raised by the audience that had yet to be addressed. He noted there had been discussion about the last contact with the EPA and the joint conference call on February 11, 2008; and the question about what the EPA said about the site. He noted the question about the eastern boundary of the site, and whether the 18 or 19 questions in Mr. Anderson's Memorandum had been addressed. He also noted the question about the definition of the dust level and what could be used. He suggested those questions be answered prior to any further discussion.

Mr. Delacourt referred to the hard line edge of the property along the eastern boundary, which was the extent of what the developer investigated. He stated the City had already requested cost proposals for the City to consider doing its own testing across the property line and what would be involved if remediation was necessary. He indicated that Oakland County had been contacted about the potential for grants and that process was being looked into. He indicated there was a concern about how the remediation work proposed by the developer would be

done, because it was right on the City's property line and there was some concern about how a trench would be dug. He stated the City was curious from an engineering standpoint about how that would work. He noted that technically that was not a section of the 381 Work Plan, but was information necessary in order to make an evaluation as to whether the Plan was acceptable for the City to submit. He reminded the Authority the 381 Work Plan was the Authority's Plan, and the Authority submitted it to the State; and in fact, the State would not accept a Plan from a developer but it had to come from a Brownfield Authority. He explained that question was being looked into and was an outstanding question that would have to be addressed as the matter progressed. He indicated the applicant had only proposed remediation to cut right on the edge of the property, which was all the applicant was obligated to do. The City was curious about how that would be graded back to put in the trench wall, which was a detail that until the Plan was approved, would require a series of bid documents from engineers as to how that would be approved. He agreed the applicant needed some level of assurance the Plan would be acceptable to the City and the DEQ before going into that detail.

Mr. Anderson referred to Mr. Windschief's questions regarding the level of PCBs, and stated Mr. Windschief was correct that some of the historic documentation from other consultants in the past reflected those numbers. He stated his firm had split samples from the most recent investigation with the applicant's consultant, and the highest level found was a bit over a 1,000, or about 1,300. He explained there was a lot of variability in this site due to soil chemistry and due to the fact the area had been turned upside down. He stated there were drums there and the site had been backfilled over the years, and then all pulled out again when the DEQ did their work back in 1999 and 2000. The soil had been mixed up and turned over, and he was not at all surprised a nice contour line could not be drawn from one place to the next. He stated that was part of how the proposed remedy would handle the situation, which was to box in all in and cover it up and contain it.

Mr. Anderson stated he did not agree with Mr. Silver's interpretation of the 1986 EPA letter that the EPA handed the site back to the State; otherwise there would not have been two other consultants under the auspices of the EPA that were there in about 1988 and 1990. He indicated he was not confident in the outcome of the discussions with the EPA, and he did know if the EPA wanted to have jurisdiction or not. He clarified the matter just needed to be done the right way, and if the EPA backed off and said it was in the hands of the DEQ, that was the way it would be. If the EPA asserted jurisdiction because they felt there was a risk presented by the property, then that was how it would go.

Mr. Delacourt stated he had some questions related to the EPA jurisdiction. He indicated it was part of his concern that the DEQ had an obligated time frame to approve or deny the Plan if submitted; however, the EPA did not have a time frame. He questioned if the DEQ approved the Plan, and the EPA took several months because of backlog to make a determination because they were not bound by any time frame, whether the DEQ would want the EPA's answer first to make a determination of whether to approve school tax. Part of his concern was also that there might be a situation where they had an approved DEQ Work Plan, which allowed them to move forward with the remediation, prior to the EPA making a determination or reviewing the project.

Mr. Silver stated they would stipulate they would not touch one iota of soil on the site until the EPA made its determination.

Mr. Delacourt stated his other question was that the Consent Judgment said that prior to Site Plan Approval, the EPA would approve the 381 Plan. He did not know how that would work if the EPA did not claim jurisdiction, and noted that City Council also had to approve it. He was still trying to get an understanding of what would happen, if the DEQ approved the Plan and the work started, and then the EPA and City Council denied the Plan. He noted Staff had no control over when site plans were submitted. He felt there was some confusion over the time frame. He commented they were not asking that the EPA approve the 381 Plan prior to submittal to the DEQ, rather just render an answer as to whether they had jurisdiction over the site or not.

Mr. Silver stated the applicant would certainly entertain and be bound by and willing to commit that if the DEQ rules before the EPA, they would not start any site construction work until the EPA chimed in. Mr. Staran thought that could be addressed.

Chairperson Stevenson noted the question about the dust control had not been addressed. Mr. Anderson stated when the 381 Work Plan was submitted to the State, the project manager in charge of it will actually hand the Plan to the Air Quality Division, which is what was done when the baseline air sampling was done. The Air Quality Division will review it for competency and either agree or disagree with the proposal, or may ask for modifications. He noted it was a pretty comprehensive plan that the AKT subcontractor had put together, and did not believe the levels had been defined yet, but would come through both the Oakland County Department of Public Health and the DEQ.

Mr. Anthony stated the levels presented in the Plan were the typical levels that the DEQ uses for residential property. He stated the technical number was 550 micrograms per meter cubed, which essentially meant that at the property boundary there would not be visible emissions. He referred to the photograph on the auditorium wall of a golfer in a sand trap, and stated if the golfer could sustain that level for a minute, that would shut down the site.

Mr. Anthony further explained that one minute of the exceedance shut down the site and required a ten-minute period of being below the threshold before work on the site was allowed to begin again.

Mr. Anderson stated that from a practical standpoint, the applicant would not want to be starting and stopping and would take measures to avoid that. He referred to Mr. Windschief's question about whether they were satisfied with the Plan based on Mr. Anderson's February 14, 2008 Memorandum and the points set out, and stated his response would be a qualified yes. He explained the applicant had made significant strides in the past two weeks coming to the table with assurances of information forthcoming that were not required to be installed in the 381 Work Plan. He noted the applicant had added paragraphs and sections that were not required by any means as a good faith effort that information was forthcoming. He stated that typically they would not ask for that information to be produced at this point in time, such as the engineering design or the dust control plan, which were all eligible expenses that consultants can be

reimbursed for in the next phase when the project starts. He thought they had done a good job recently in making strides to address his questions.

Mr. McGarry referred to the EPA matter, and asked if the EPA decided it had jurisdiction, what potentially could change from a technical perspective. He mentioned in the past and with respect to the site across the street, he and others had met with Mr. Matthews from the DEQ. One of things he knew about this particular site was that it was only one of a handful of sites that were this complicated, and this site was not an average run-of-the-mill brownfield that was easy for the DEQ to process and put through. He looked at the proximity of the adjacent homes, and in looking at other examples of other remediations of very high PCB sites, potentially where PCBs could be mixed with other debris and may actually have an opportunity for more movement than they would typically have, and asked if other remediations were used as a basis for the plan the applicant was proposing for encapsulation.

Mr. Anthony agreed this site was not a typical brownfield site, and all the technical precautions included in the Plan were reflective of that. He stated his firm had worked on a site similar to this located in Bay City, Michigan, which was also a PCB cleanup and was an industrial site nested right in the middle of residential. He stated the subject site had a far greater level of safety and scrutiny than the Bay City site had, which had similar levels of PCBs.

Mr. Anthony stated that the technical aspects of the encapsulation were far more rigorous than the encapsulation approved for the Bay City site. The air monitoring is to a much higher level than that implemented in Bay City, and noted the cap was the same way. To give an idea of how high the PCBs were at that site, he noted it was an old factory for transformers, and in World War II they were experimenting with PCB oil in transformers and experimenting with whether they could bury the transformers in the ground so they would be protective of bombing raids. Thus, they ended up with a lot of deep, high concentrations of PCBs.

Mr. Anthony stated the subject did reflect the concern of the residents and the response of the City, the developer and the State in putting in as high of technical standards for safety, both with air monitoring and construction of encapsulation, as any site in the State. It did reflect the complications present and the Community concern.

Mr. Anderson noted part of the question was whether there were other examples. He stated there were examples that the EPA had been involved in, although not something he had specifically been involved in. He knew the University of Michigan built a PCB contained landfill at Willow Run Airport; Ford Motor Company had done it at their Dundee site, and there are other examples where it had been done. He noted those were much more industrial and isolated sites, and did not have a river a couple 1,000 feet away; homes a couple hundred feet away, a park and a wetland, or a trail where pedestrians walk all day long. He commented those were some of the things that kept them very concerned about how things would happen, and thus his long list of questions for the applicant.

Mr. Anderson stated the question had been asked about what the EPA might require as far as additions or changes. He noted that was a difficult topic. He stated if the Toxic Substance Control Act (TSCA) Rules applied completely, they would go into a TSCA

Remedial Investigation, which was a very burdensome, difficult remedial investigation to undertake. What happened after that was dependant on that phase. Where they find the PCBs and at what levels, but was a very tight grid of sampling, and the protocols are very stringent. He stated that was the first thing he would see that would change, but so far they have not gone in that direction. What the EPA has asked for is information from the applicant to help the government evaluate the risk that may be posed by the site. While Mr. Silver was correct in that Mrs. Greensley started out the discussion by saying typically for pre-1978 deposition issue, they would recuse themselves from that, speaking on the terms of the EPA. In cases where it was obvious or it can be determined there is a risk to the surrounding population and what practitioners would call "sensitive receptors", they can insert themselves back in to the process. That was the stage this project was at currently. Information has gone to the EPA and he did not know how they would view it as much was historic, and they may ask the DEQ for information, and may interview the DEQ.

Mr. Anderson was not necessarily convinced yet whether or not the DEQ will review and comment on the Plan without input from the EPA. He stated he had some hypothetical discussions with them about that, but they had not put forth a definitive answer.

Mr. Silver pointed out the DEQ would not have the Plan until the Brownfield Authority accepted the plan and submitted it to them.

Mr. McGarry referred to the sensitive receptors such as the river and the adjacent houses, and asked if there were examples of areas where the EPA made a determination that they insert themselves, so the Authority could look at examples of their criteria to give them a sense of whether the EPA might be likely to be involved. Mr. Anderson responded not that he was aware of. He explained he had not run across them in this fashion before, noting his involvement had been all post-1978 deposition issues. Because of that, TSCA did apply and they asked for certain things to happen because they had jurisdiction. In this particular case, because it's a brownfield site and in the long run the best thing is to have the site cleaned up in the right fashion, it was difficult to figure out where it would go.

Mr. Anthony stated the site in Bay City was the closest example of a site similar to the subject site that he had been involved with. He noted the Bay City site also had a rails to trail that went right over the cap. In that case, they submitted the work plan to the DEQ and then the DEQ contacted the EPA and the EPA waived their jurisdiction on the site. That was also a pre-1978 release.

Mr. McGarry stated the packet included a groundwater elevation map and he noticed in looking from the west side of the site to the east side of the site, that the groundwater elevation, based on the topographical map, declined around 20 feet. That suggests there is a relatively high level of water movement within the property or within the ground, and asked what had been done in the investigation and in the Plan, and in comparison to the Bay City site, to be comfortable and very confident that nothing in the encapsulated area is actually going to migrate to the river, based on the water level and proximity.

Mr. Anthony stated the Bay City site was a bit different in the aspect of technically they needed to assess the potential for migration to a surface water body. In that case they had both combined storm sewer and storm drains because Bay City is an old city and was still separating out their CSO's, which then discharged directly to the Saginaw River. He stated for those who were familiar with Bay City and the Saginaw River, they were very sensitive about PCBs being deposited there. They went through quite a bit of investigation to determine if there was any groundwater contact with the storm water and if there was migration through any of the utilities that discharged into the Saginaw River. He stated that did end up entailing the cleanup of sediments in the utilities there, where that was the pathway. He explained they have also done that analysis on the subject site, i.e., what is the risk of PCBs migrating through groundwater to a surface water body.

Mr. Anthony noted that, in fact, some of the information they just forwarded to the EPA was that in 1990 was the first real round of groundwater monitoring where they looked at PCBs, and PCBs were not detected in groundwater. Then the next episode came in 1994 and again there were no PCBs in groundwater. In 2000, they collected two events of groundwater samples, put in new wells, resampled those, noting some of the wells were in the fenced area where the PCB concentrations are the highest. Again, no PCBs in the groundwater. Part of the reason why is that PCBs are a very large, organic molecule. He used the analogy, if you get oil on your hands and it sticks and is hard to wash off, PCB is a large molecule and it sticks onto sediment, and sticks on to the soil grains. Those become fixed and grains are less likely to migrate, which is partly why they are seeing the PCBs are immobile.

Mr. Anthony stated their solution or remedy went further. He indicated that what contributed to migration of contaminants from soil grains, and what contributed to the potential of leaching, was infiltration. Rainwater comes down, collects on the ground, infiltrates through the soil, infiltrates through the contaminated material, and tries to leach that material off to carry it to groundwater. He explained the absorption bond with PCBs appeared to be very strong here and they had not seen over many years that the PCBs were migrating to water. But to go even further, is the encapsulation in clay. A low permeable material with a cover – not only a clay cover, but with an FML. He explained FML is the acronym for the type of material that the plastic sheet is made from. He stated it was not cloth, but was a very thick plastic material, which also controlled infiltration and prevents the contact of water with the contaminated material. He noted they have been taking steps to address the migration pathway.

Mr. Anderson stated that in order to provide some visualization, flexible membrane liner (FML) is not as thick as an old 33 rpm record, but was pretty close. It was not rigid, but was flexible, and their proposal is to seam weld it together. He stated this was a material that the EPA required, not recommends but requires, for landfill construction. He indicated it was a liner material and a cap material. In this particular case, because it was not practical to dig down to the depth and line underneath, they are lining on top and surrounding with the clay material – two feet of compacted clay on the four walls, the top, the flexible liner, and then either concrete or asphalt in that area on top – which is the proposal at this point.

Ms. Morita asked how the matter was noticed. She stated the Agenda she received indicated the Authority was here to receive an update, but did not mention approving the

Plan. She asked if the Authority could approve the Plan the way it was noticed. She was not sure the neighbors in the adjacent subdivision had been put on notice that the Plan was up for approval.

Mr. Staran stated there was nothing that prevented the Authority from taking action at this meeting, although he thought it was anticipated that the Authority would not for all the reasons discussed, such as the EPA issue. Rather the Authority would hear the update, ask questions, discuss it and not take any action to move the Plan forward. He was not aware there was a concern or an issue that people did not understand or were not notified, and stated if that was a concern of the Authority, it was an important concern.

Ms. Morita stated she sat on the Authority and she did not understand that. Mr. Staran stated that City Council and the City had promised the neighbors that it would be a public process and they would be made aware of what was going on. He agreed it was not listed as an action item, but there were some actions the Authority could take, which had been discussed earlier in the meeting.

Ms. Morita stated Mr. Silver made the statement that under the Consent Judgment the Authority is required to approve an administratively complete plan. She stated she read the Consent Judgment and asked where that language could be found.

Mr. Staran stated he had addressed that earlier, but believed the language Mr. Silver referred to was on Page 27 of the Consent Judgment, Paragraph (i), which he proceeded to read for the benefit of the Authority as follows:

> "Plaintiff shall submit an amended 381 Work Plan consistent with the requirements of this Consent Judgment to the MDEQ and will submit the same to the City. Any amendment to the Brownfield Redevelopment Plan will incorporate additional costs as needed to meet the terms and intent of this Consent Judgment. The City will approve the Brownfield Plans if they comply with all the requirements of this Consent Judgment. The 381 Work Plans must be accepted by the City, which acceptance will not be delayed or unreasonably withheld, and approved by the MDEQ prior to Plaintiff's receiving Site Plan Approval."

Mr. Staran stated that was the only paragraph that spoke to the approval process itself in the Consent Judgment.

Ms. Morita asked if it was Mr. Staran's belief that the matter was noticed for action. Mr. Staran stated it was not noticed for action, but was noticed as an update.

Ms. Morita asked if it would be appropriate for the Authority to take action at this meeting. Mr. Staran stated if there was a concern that residents had misunderstood the notice, he would agree it would be inappropriate to take action.

Ms. Morita stated in terms of compliance with the Consent Judgment, one of the issues was the location of any above ground water retention. She asked if the way the Plan

was presented with an undefined area of above ground water retention is in compliance with the Consent Judgment.

Mr. Staran stated it could be, but it was premature to answer that question because there was a lot of engineering and other things that had to take place that had not even started yet. As far as the storm water drainage system, it was his understanding there had been some preliminary talks but they had not gotten in to the detail of that. He stated there was a provision in the Consent Judgment that addressed that precise question. He referred to Page 11 of the Consent Judgment, the last paragraph that discusses the 100-foot buffer area on the north side of the site that extends the whole site from Adams Road to the eastern boundary. He stated the Consent Judgment provides that the Plaintiff may use the 100-foot buffer area for any under ground storm water detention/retention facilities providing it does not interfere with the required landscaping. He noted the Consent Judgment said:

> "If any above ground detention/retention is necessary in the 100-foot buffer area, Plaintiffs will locate such detention/retention as far east on the property as practically possible so as to keep the detention/retention area away from the residential homes to the north. In no event shall above ground detention/retention be permitted directly abutting any of the existing residential home."

Mr. Staran stated that in an earlier version of the conceptual site plan, there was a rather large above ground retention facility that was to be located adjacent to the easternmost homes. He stated that was something that was found to be objectionable by the City based primarily on the neighbors' comments, and it was something that they went back to the negotiation table to work through that. He stated that was where the concept for primarily an under ground drainage system which would also have the environmental benefits as well, and to try to eliminate the above ground detention/retention either altogether or to minimize it. Through some preliminary review of the concept site plan, the City Engineers did look at it and did think there may still be some need for an above ground facility, simply because the drainage had to be put somewhere. It was thought if they had to have it, it should be located as far to the east and away from the homes, which is how the language came to be in the Consent Judgment. He noted Mr. Anthony had pointed out it would serve basically as a sedimentation basin function. He reminded the Authority that at this time it was very preliminary and had not been engineered to the point where anything was certain about it.

Ms. Morita stated she understood that, but from what she understand, if the applicant's Work Plan is in compliance with the Consent Judgment, the Authority was required to approve the Work Plan. She stated her question was the Work Plan was now providing for above ground water retention, when they had no specifics on where it is, and there were all the qualifiers as to where it could be located, if they knew whether or not the Plan was in compliance.

Mr. Delacourt stated Staff learned last Friday about the split between under ground and above ground, and had not reviewed the plan regarding that. He stated Staff had talked to the applicant about submitting an engineering plan to see what it was and also because it was identified in the Plan as an eligible activity, but when the packet was sent to the Authority, Staff was under the assumption it was a full underground system.

Ms. Morita stated that the Authority would not be required to approve the Plan because they did not know whether or not it was in compliance with the Consent Judgment.

Mr. Delacourt stated the Authority could handle that through a condition. Mr. Staran agreed the Authority could handle it through a condition. He noted that Mr. Delacourt and Mr. Anderson had both stated there had been a lot of information going back and forth, including some revisions and input that was received as recently as yesterday, and Staff had not carefully reviewed that information yet. He noted they had seen it, they knew what it was, and it appears to be an attempt to address questions that had come up, but it has not been fully analyzed. He commented the drainage was at a very early stage and had not been reviewed by the City Engineers yet.

Ms. Morita stated that basically the Authority did not have enough information. Mr. Delacourt referred to the prior discussion about the sections of the 381 all being included in the Work Plan, but Staff still had more questions about how the items would be accomplished and other issues they feel are reasonable to review prior to submittal to the DEQ.

Mr. Staran stated that the precise layout of the storm system would probably not be determined until Site Plan Approval, and even after that through the construction plan review and approval. He noted that was more of a final step rather than a first step.

Ms. Morita asked if expenditures for the system were included in the Plan. Mr. Delacourt stated that was concern of Staff because of the costs associated with some of the underground portion, and he believed the liner with the above ground portion, are included in the Plan as eligible activities.

Ms. Morita clarified the Authority was expected to approve a plan for the water retention system, noting the Plan included giving the applicants funds to build it, but they did not know what it would look like, where it would be located, and did not have any specifics. She asked if the applicant could give the Authority some specifics about where it would be and what it would look like.

Mr. Henderson stated Mr. Staran was exactly accurate. He explained that storm water came after site plan because there were pipes in the ground, and there were variations of where the buildings would go, but the engineers do calculate based on the square footage and the area that would be drained, they would know how many cubic yards of water would run off the property. By that calculation, they can identify what the cost will be to build above ground or below ground with a bottom to the storm detention, a vault system or an open system. He explained this was designed for a bottom, enclosed vault system, and the open area they planned to comply with the Consent Judgment to put it as far east as possible where it does not address the homes. They felt they were compliant with that. He referred to the part that may become an above ground area, and noted Mr. Anderson had suggested to him earlier today that he had information that may allow that to go below ground at a lesser cost. He noted that was not a detention, but was merely a sediment basin to grab free particles so they did not go into the river system or in to any other

runoff areas. It was not a large pond, but was a very small area that was merely called a sediment basin.

Ms. Morita asked if the applicant could provide a dimension of what they considered to be a very small area. Mr. Henderson stated he was not qualified to state that. He explained that with respect to the under ground storm water detention, he had seen sizes of different vault systems, such as cubic feet, but noted those were placed underneath the parking areas and were adjustable. He explained they could not design the system prior to Site Plan Approval as it was not a process that was done. He stated all the Authority could see were the attributable costs for the amount of storm water they would maintain.

Mr. Silver agreed that to do otherwise would be presume Site Plan Approval for the location of something, which they did not have.

Ms. Morita asked Mr. Anthony if in his experience he had an idea of how big the detention/retention pond would be. Mr. Anthony responded that the storm water detention system had been designed by another civil engineer that was part of their team, PEA (Professional Engineering Associates, Inc.), and they would be the appropriate firm to answer the question. He noted they had seen some conceptual drawings for the plan, but it would not be appropriate for him to answer.

Ms. Morita asked if the applicant came back next month and the Authority was faced with having to approve the Plan, if it would be possible to provide more details.

Mr. Silver stated that if it was going to be the pleasure of the Authority to adjourn the meeting without action, he would request a special meeting at the earliest possible convenience. He noted they needed to move the project forward.

Ms. Morita stated she would like an answer to her question. Mr. Silver noted Ms. Morita had included the phrase “come back in a month” in her question, and he was not necessarily allowed to commit to a month.

Ms. Morita asked if the next time the applicant came back before the Authority, they could provide more detail.

Mr. Henderson stated it was premature because it was an engineering design after the site plan was done. He noted if the Authority wanted approximates that would be flexible just to satisfy a picture, such as is it a quarter-acre or it is 25’ x 25’, they could accomplish that request, but it would not be the final solution. He indicated they did intend on honoring the Consent Judgment and locating it, if it is required, in the area stipulated in the Consent Judgment. Because of that, he did not understand why it was a pertinent issue.

Ms. Morita stated she knew the neighbors in the adjacent neighborhood and she knew they were very concerned about the water retention system, as it was one of the biggest issues. She expected them to have a lot of questions and she was trying to help the project move along. She stated she wanted the project to succeed, and she wanted her neighbors to get

the answers they would be asking. She did not want them to walk out of the meeting frustrated because they felt the applicant had information they were not sharing. She stated if it was just an approximation of where it was located, and how big it would be, that would be better than giving them nothing at all. She commented they had to live next to it and would be the neighbors to the property for a long time. In this case, she thought a little bit of information about what they were planning would go a long way toward showing good faith.

Mr. Henderson thought they had shown a lot of good faith. Ms. Morita stated she thought they had too. Mr. Henderson stated they had met with the neighbors two and a half years ago before Ms. Morita moved to the neighborhood.

Ms. Morita stated the Plan mentioned that they were expecting odors to come from Area E during excavation, and asked what type of odors were expected.

Mr. Anthony stated the odors may range from a smell similar to a rotten egg smell, which was typical of decaying organic matter and was most common with excavating old landfills.

Ms. Morita asked if they were dangerous. Mr. Anthony stated the rotten egg smell was sulfur which human noses had an acute sensitivity to and can sense that at a concentration that is well below any dangerous level. He responded "the odors – no", but noted they had all sorts of monitoring put in place, both with the dust/air monitoring, and then directly at the point of excavation or point of release where they would be screening for VOCs. He explained that just because a chemical had an odor did not necessarily mean it was a hazard or not a hazard. He stated the other methods they were using for screening and monitoring air did look at what types of materials are causing those odors, or what types of materials are being released. He commented that odors were really characterized more as a nuisance than a health hazard.

Ms. Morita asked if they were expecting any of the odors to be a health hazard. Mr. Anthony responded he would not expect the odors to be a health hazard, but they will be able to take precautions for odors if they do have odors. He explained they were also trying to minimize any disturbance or inconvenience to the residents that are nearby. He further explained that the odors they would see as a nuisance, but would also take precautions to control those.

Ms. Morita asked if the was a possibility there could be fumes that could not be smelled that could be dangerous. Mr. Anthony explained that was the reason they had the other types of air monitoring out there. For instance, just in screening VOCs, there may be volatile organics that cannot be smelled, but can be picked up through the air monitoring.

Ms. Morita stated there had been discussions at prior meetings about emergency response coordination, and asked if that had been worked on with the City. Mr. Anthony stated that emergency response is always standard practice with any health and safety plan, and health and safety plans are standard for these types of projects.

Ms. Morita asked if the applicant had been working with a plan with the City. Mr. Delacourt stated that the applicant had provided maps as part of the 318 Work Plan to the City to provide the Fire Department an idea of what area they would be working in at what

time, and what the Fire Department could expect to come across if they were called to the site. He explained that was done as part of the previous 381 Work Plan and have continued to do so, which was outside of what they would normally be required to do.

Ms. Morita stated she understand the applicant was not planning to do anything in Area B. The applicant responded that was correct. Ms. Morita asked if Area B would be left as it is. Mr. Anthony stated that from an environmental standpoint, it would remain as is. Due to the development, there would be grading and landscaping. Mr. Anderson stated that from an environmental standpoint, they would not have any cleanup activity in Area B, however, from a construction standpoint, there would be grading and new landscaping.

Ms. Morita asked if the developer would be working with the residents adjacent to Area B to work out when the landscaping would be done after the cleanup. Mr. Henderson responded yes.

Ms. Morita stated she had noticed that methane was being emitted from Area E, and asked Mr. Anderson if it was correct that nothing traveled downhill or uphill or if it was indeterminate. Mr. Anderson stated that methane tended to defy logic and gravity at different times, noting it was affected by atmospheric pressure, water and a variety of other structures that would confound the imagination. He noted it did not follow any particular set pattern.

Ms. Morita asked how far methane could travel and still be dangerous. Mr. Anderson stated it depended on the original concentration of the source. At times it can be degraded very easily by microbes in the soil and may never get very far. It can be intercepted by utility structures, roadbeds, things like that that would divert it from ever coming into play.

Ms. Morita asked if there was anything in the Work Plan that would divert the methane from going to the homes to the north. Mr. Anderson responded, yes, the encapsulation system itself.

Ms. Morita asked if the encapsulation system was sufficient, why there would be monitoring at two buildings. Mr. Anderson stated they were not monitoring, they were installing what was called a “presumptive remedy” that just in case anything were to happen, if there was methane ever generated in the subsurface from that general geographic area, or perhaps to the south, if it found a pathway through, those buildings would be protected.

Mr. Anthony added that it was consistent with the DEQ guidelines as those were the buildings within 500 feet. He explained that methane came from the degradation or organic material, and a lot of organic material is deposited in landfills. He stated in looking at the area they were removing, and the tremendous amount of mass of potential methane generating material that will be gone, and that a methane survey was conducted across the site, and there were only two hits of methane in the fenced area, the site is very localized and the material that can generate methane will be removed, and where it is not, it will be encapsulated. He pointed out there were a great many steps of safety that are put in place.

Mr. Karas referred to Page 25 of the Consent Judgment, Section D, and asked if the applicant could provide some evidence of their contact with the DEQ. Mr. Silver stated they had met with the DEQ and they approved the initial 381 Work Plan for the investigation of

the methane, and they had been provided with all the results. He explained that was taken care of in the initial investigation. He stated the DEQ had told them exactly where and what they wanted to test for.

Mr. Karas asked if the City had a copy of the DEQ letter with their instructions. Mr. Silver stated there was additional money built into the 381 Work Plan for more methane investigations, if the DEQ thought it was necessary based on the initial rounds, and the DEQ told them not to spend it.

Mr. Anderson stated that was his understanding as well. Historically, that was exactly how things happened. He explained that the DEQ typically did not issue any type of formal communication letter saying the applicant did not have to finish the task, they handle that administratively. He stated it would be atypical for the City to expect some formal communication from the State on that matter. He noted they had signified that no additional investigation was necessary at this time with respect to methane. He stated that was communicated verbally to the applicant, and they had followed up with him as well.

Mr. McGarry referred to the detention and the storm water, and commented it was mentioned about the opportunity for children to be playing near it as a potential issue. He agreed many of the residents were concerned about that. He did not feel the Authority should take any action at this meeting because they needed to be sure the residents had an opportunity to comment.

Mr. McGarry referred to the discussion about the detention bin, and asked in terms of a fully underground system versus a partial underground with a retention bin, if there were significant technical hurdles that relate to specific kinds of sites, or whether it was specifically a cost issue, or what determined the decision criteria.

Mr. Anthony responded that in looking at the site as if it were clean, they would go with everything above ground. One of the reasons they moved to take the bulk of the storage below ground was because of the concerns of the citizens. With respect to the technical aspects of building a below ground system, typically they build below ground systems which are large vaults that also can infiltrate. This one is a little bit more complicated in that it prevents infiltration, and has to be able to hold the volume of water calculated needed for the site, and yet not allow it to infiltrate, which requires more storage capacity. He commented that this site, being a brownfield site, does require more twists to it. Putting the system below ground was in response to citizen concern of their being a storm water retention system. He noted the bulk of the volume of storage is storm water storage.

Mr. McGarry asked, in terms of removal of the sedimentation, if there was a way to do that underground as well, cost effectively, so that there would be an entirely underground system. Mr. Henderson stated Mr. Anderson had pointed out earlier in the evening that he knew of a system that would enclose that last portion of the storm system called the sediment basin, which he felt would be less expensive than what they had proposed. He stated they would look at that and see if they could put the entire system as an enclosed system.

Mr. McGarry thought that would be good because of the potential for children to be playing in the area.

Mr. Silver addressed the Chair, and noted for the record that they did not ask for an informational meeting, but had asked for a meeting that would take action, so they could move forward with the DEQ.

Chairperson Stevenson stated that was not presented to the Authority, but rather this meeting was an update. He noted that particularly in view of the situation with the EPA, he did not think the Authority could take action at this meeting.

Mr. Delacourt stated the applicant did indicate they would like to have the opportunity to have the Authority take action; however, he was not aware that titling a matter as an update would prevent the Authority from taking action. He noted he had never run into that situation before, or that it would prevent action being taken. He stated Staff understood the request from the applicant, even though it was Staff's recommendation that until some of the issues were addressed and additional information provided, the Authority withhold action. The wording on the Agenda was not intended to prevent the Authority, if it so desired, from taking action, either conditionally or accepting and submitting the plan to the DEQ. He reminded the Authority it was not an approval situation.

Chairperson Stevenson stated that based on his understanding of the discussion even if Staff had said this was an action item, the Authority would not be in a position to vote on it.

Mr. Morita pointed out that if everyone's schedule allowed and the notices could be sent out, she would be here on a Saturday morning to discuss the matter again to get the applicant an approval, if that was what the Authority wanted. She stated it was not her intent to delay this matter, but the applicant should understand there were a lot of people concerned about this, and they need to be on notice the Authority would approve the Plan. She did not want to have a firestorm that could be avoided if the matter can wait a few days or a week, which is why she brought it up.

Mr. Henderson stated they would be glad to entertain a special meeting if it could be set.

Ms. Morita stated if it worked with everyone's schedule, she did not have a problem with it. She wanted the applicant to be clear it was not her intent to unduly delay the project. She wanted it to go forward, but wanted it to go forward properly.

Mr. Henderson stated that sometimes the boards they appear in front of do not realize that not only city staff, city consultants, the applicant and their consultants had worked on something for fourteen months to bring before the board, so they were ready for a decision by the time they appeared before the board, and did everything they could to lay out the groundwork for a decision. Hopefully, Staff has informed the Authority along the process so that they could make an educated decision at the meeting or at the next special meeting. He stated they were already at the point where they were wondering why it has taken this long, although Staff has been wonderful and the consultants have been wonderful, they had worked overtime to get everything asked for in a timely fashion.

Mr. McGarry stated that Staff had commented on the applicant's willingness to work with them and provide information, and commented that the Authority had received their packet information on the Friday before the meeting and also had to work hard reviewing the material.

Mr. Turnbull referred to the area of encapsulation and noted Staff had indicated they had requested assistance in identifying the nature and extent of contamination on the adjacent City site. He asked how long the City was willing to wait for that information, and what the City was prepared to do to identify the nature and extent of contamination on the property line so that a possible remedy could go forth that would encapsulate the entire area.

Mr. Delacourt stated the City was looking in to that matter, and had investigated the possibility of perhaps including portions of the City property in the plan, but it did not appear that was feasible. He explained the next step was to go to the County regarding potential assessment grants or loans to perform some testing and possibly combining of those funds with the subject project, although the County appeared to be hesitant to provide any grants or loans for a parcel that is not associated with an increase in development because that was what those grant and loan monies were set aside for. He stated STS had provided a phased cost estimate for different levels of investigation. If none of the those options are available for the City Council to consider going forward, it was Staff's hope that a way could be found to incorporate the two processes together and coordinate them with some cost saving measures. Until that is determined, Staff agrees with the applicant's proposal.

Mr. Turnbull asked how long the City was willing to wait, and if all resources are not available, if the City was prepared to undertake that matter. He thought there would only be half a remedy if there is encapsulation on one side of the property line, and with respect to the residents to the north, they only had half an encapsulation. He noted it was not the applicant's responsibility, but it was no less of a problem for the residents to the north.

Mr. Delacourt agreed, and stated the City's Environmental Oversight and Cleanup Technical Review Committee (EOC) was reviewing options regarding the City property. Pending some determination on how it worked out or if it could be incorporated, a recommendation would be taken to City Council on how to proceed.

Mr. McGarry asked, if there was no determination regarding the City's property, and the Authority approved the work plan and the project moved on, and the EPA did whatever they were going to do, and the trenches were being dug to encapsulate the applicant's site, and while digging down ten feet, it could be seen that the City's side looked just as bad as the applicant's site, what would happen. He asked if it would just be a matter of the clay being put in on the applicant's side and the job being considered complete.

Mr. Silver stated that would be all the applicant could do. He explained a way to incorporate the City's property into the Brownfield Plan and allow the capture of additional tax dollars had been reviewed, but that could not be done. From the applicant's standpoint, they could not cross the property line.

Mr. McGarry stated he recognized that, but as a resident of the City that lived close to the site, he would think it was a stupid plan. He felt an outside observer would wonder what the City and the developer were doing.

Mr. Anzek stated the City had looked at the matter for some time, and there were a couple indicators there may not be any contaminants there. He noted there was a severe grade elevation, an increase in height, and a tree line with trees estimated to be 60 to 70 years of age. He agreed the initial investigation had to be done to verify that, which was the first order of business, to find out if there were contaminants on the adjacent property. He did not want to worry about the cost of the investigation not being done before the applicant began digging.

Mr. Delacourt stated that if the City had not done some form of an investigation by that point, and it cannot be incorporated in the applicant's 381 Work Plan, then the City would be out there doing some form of investigation in very short order.

Mr. Delacourt referred to the part of the question about the trenching work being done, and if barrels were spotted across the property line, whether it would just be filled. He guessed that would not happen. At that point the City would be aware there was a rather serious issue, and the City would take whatever measures were necessary to resolve that situation immediately. He know from his involvement with the Authority, the EOC Committee and City Council, that they would not allow that type of problem to be buried and put away. He guessed it would never get that far without the City having some idea whether any type of contamination, either barrels, pushed soil, or turned over soil, had crossed over the City's property line. He noted proposals had been put in place to do that exact testing.

Chairperson Stevenson called for any additional discussion or questions from the Authority. Upon hearing none, he asked if the Authority wanted to make a motion to postpone the matter or establish another meeting, or make a motion to accept the Plan subject to conditions.

Ms. Morita stated she would make a motion to request that Staff coordinate with the Authority and the applicant to schedule a meeting date prior to one month from this meeting so the issue could be addressed earlier than next month.

Chairperson Stevenson called for a second to the proposed motion. Mr. Turnbull stated he would second the proposed motion on the floor.

Mr. Staran suggested that if there were things that were to be accomplished, or information that the Authority wanted to be presented before the meeting, it should be included in the motion. He noted that would avoid the Authority holding another meeting without all the parties being on the same page.

Chairperson Stevenson asked the Authority to list the items or information they would like to have prior to the next meeting.

Mr. McGarry stated that in looking in the letters provided by Mr. Anderson from STS regarding the Plan there were two pages of open issues, and although some had been

discussed and cleared up, some additional follow-up about what items remained open would be useful.

Ms. Morita asked for any information the applicant could provide regarding the above ground water retention system, so the residents would have an idea of what the applicant was considering.

Mr. Staran suggested the retention information also include the applicant's investigation of the possibility of going below ground with the retention system.

Mr. Silver wanted the Authority to understand that if the retention system was above ground, they could not actually tell the Authority where it would be located on a map because they did not have the authority to locate it. Mr. Staran stated the Authority was just looking for an approximation if that could be done. Ms. Morita stated it would help keep imaginations from running wild about the size of the system or where it would be located.

Mr. Silver explained it had to be located on the portion of the property that has no home adjacent to it because that was the lowest portion of the property. Therefore, it had to be in the northeastern-most portion of the property because of the topography. He stated they would provide that information.

Mr. Karas stated he would like to see some additional information about the encapsulation, and a revised map that clearly defined Areas A through F, as the locations currently shown were on several different maps.

Mr. Anthony stated that there were details in the Work Plan about the encapsulation regarding its permeability and geotechnical testing before installation of no more than two lifts with arbitrary compaction.

Mr. Webber requested information about the EPA issue, noting it was something that had been discussed and the Authority would like to know about. Mr. Silver assured the Authority that the minute he heard from the EPA, the City would know. He again reiterated the applicant was requesting a vote on the Plan at the next meeting, regardless of whether the EPA had responded. He indicated he would put as much pressure on the EPA as he could to get an answer before the next meeting.

Mr. Anzek wanted to assure the Board that the next meeting notice would have the appropriate language on it for a consideration of action. He stated it would be sent per City policy to everyone who had attended a meeting, spoke at a meeting, or expressed an interest in being notified.

Ms. Morita requested that notice be provided to the thirteen adjacent homeowners who resided on Portage Trail because she did not believe they had been notified about the meeting.

Mr. Anzek stated if those residents had spoken at previous meetings, they would be included on

the master mailing list for the project. He commented that it was difficult for the City to determine which subdivisions should be noticed in their entirety.

Mr. McGarry thought there were many residents in the Clinton River Valley Subdivision that were interested in this project. He commented that knowing the general prevailing winds were to the northeast, he would not have a problem having the Heritage Oaks Subdivision noticed. He indicated he would notify his subdivision.

Mr. Delacourt stated the City has always noticed in conformance with the requirements for a project. He explained there was no foot or distance notice requirement for the subject project. He stated for Staff to independently make up notice requirements that do not exist became very dangerous for the City. He noted the City did it's best to get the word out and meetings noticed, and by policy noticed everyone who spoke at a previous meeting. He indicated that for Staff to make indiscriminate determinations when a notice distance is not required by either an Act or a policy was avoided and that Staff noticed based on the requirements of a 300-foot mailing as required by the Act, or based on the City policy of anyone who spoke at a prior meeting or indicated they would like to be noticed. He commented that if Staff decided on the fly whether street by street, or subdivision by subdivision, a notice should be sent, would result in the next street over questioning why they were not noticed.

Chairperson Stevenson noted it was public information that the Authority met on the third Thursday of each month, and notice was provided for any special meetings.

Mr. Anzek asked Mr. McGarry to provide him with the name of the president of the homeowner's association for his subdivision, so a notice could be sent to that person. Mr. McGarry responded he was the president of that association. Mr. Anzek advised Mr. McGarry the City could provide him with additional copies of the notice for distribution in his subdivision.

Chairperson Stevenson called for any further discussion on the motion on the floor. He reminded the Authority that the motion had been made by Ms. Morita, seconded by Mr. Turnbull, to reschedule this Agenda Item for a special meeting with a request for additional information to be provided. Upon hearing no further discussion, he called for a voice vote.

> **MOTION** by Morita, seconded by Turnbull, in the matter of File No. 03-013, the NE Corner Hamlin/Adams Project, that the Rochester Hills Brownfield Redevelopment Authority requests that this matter be ***POSTPONED*** and also requests that Staff coordinate with the Authority members and the applicant to select a meeting date prior to one month from now to address this matter again.
>
> FURTHER, the Authority requests that the following information be provided prior to the meeting being scheduled:
>
> 1. Additional follow-up regarding the issues outlined in the review letter from Jim Anderson, STS, dated February 14, 2008, identifying whether the items listed have or have not been addressed.

2. Information on the applicant's plan regarding the above ground water retention system to allow the residents to understand what is being considered.

3. Information regarding the applicant's investigation about the possibility of installing below ground retention on the site, with an approximate location.

4. A revised map clearly defining the areas described in the 318 Work Plan as Areas A, B, C, D, E and F.

5. A determination of whether the Environmental Protection Agency (EPA) will consider potential jurisdiction regarding the remediation of the site.

Ayes: All
Nays: None
Absent: None **MOTION CARRIED**

Chairperson Stevenson noted for the record that the motion had carried unanimously.

8. ANY OTHER BUSINESS

Chairperson Stevenson called for any other business. No other business was presented.

9. ADJOURNMENT

Chairperson Stevenson stated that the next regular meeting of the Authority was scheduled for Thursday, March 20, 2008. He then called for a motion to adjourn.

Upon a **MOTION** made by Webber, seconded by White, Chairperson Stevenson declared the Regular Meeting adjourned at 9:13 PM.

_____ _____

Tom Stevenson, Chairperson
City of Rochester Hills
Brownfield Redevelopment Authority

Judy A. Bialk, Recording Secretary