



# Rochester Hills Minutes

1000 Rochester Hills Dr.  
Rochester Hills, MI 48309  
(248) 656-4600  
Home Page:  
[www.rochesterhills.org](http://www.rochesterhills.org)

## Brownfield Redevelopment Authority

Chairperson Thomas Stevenson, Vice Chairperson Suzanne White  
Members: Stephen McGarry, George Karas, Stephanie Morita,  
Thomas Turnbull, Michael Webber

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Thursday, March 13, 2008

7:30 PM

1000 Rochester Hills Drive

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**MINUTES** of a **ROCHESTER HILLS BROWNFIELD REVELOPMENT AUTHORITY SPECIAL 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 7:30 PM.

### 2. ROLL CALL

**Present** 5 - **Suzanne White, George Karas, Thomas Stevenson, Thomas Turnbull and Stephanie Morita**

**Absent** 2 - **Stephen McGarry and Michael Webber**

Also Present: Ed Anzek, Director, Planning & Development Department  
Kurt Dawson, City Assessor/City Treasurer  
Derek Delacourt, Deputy Director, Planning & Development Department  
John Staran, City Attorney  
Jim Anderson, STS Consultants  
Judy A. Bialk, Recording Secretary

Chairperson Stevenson noted for the record that Mr. McGarry had left prior notice he was unable to attend this meeting and was excused.

### 3. DETERMINATION OF A QUOURM

Chairperson Stevenson stated a quorum was present.

### 4. APPROVAL OF MINUTES

Chairperson Stevenson asked for any comments or changes regarding the February 21, 2008 Regular Meeting Minutes. Upon hearing none, he called for a motion.

#### 4A. 2008-0102 Regular Meeting of February 21, 2008

**Approved as Presented**

**Aye** 5 - **White, Karas, Stevenson, Turnbull and Morita**

**Absent** 2 - **McGarry and Webber**

**RESOLVED** that the Minutes of the February 21, 2008 Regular Brownfield Redevelopment Authority Meeting be approved as presented.

## **5. ANNOUNCEMENTS/COMMUNICATIONS**

Chairperson Stevenson called for any announcements or communications. None 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.

*(Arrive Michael Webber 7:35 PM)*

**Present** 6 - **Suzanne White, George Karas, Thomas Stevenson, Thomas Turnbull, Michael Webber and Stephanie Morita**

**Absent** 1 - **Stephen McGarry**

## **7. UNFINISHED BUSINESS**

### **7A. 2007-0435 NE Corner Hamlin/Adams (City File #03-013) - **Consideration of Second 381 Work Plan****

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. He reminded the Board and the audience that all questions should be directed to the Chair.

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

Neil Silver, Attorney for the developer, Hamlin Adams LLC, was present, and introduced Tony Anthony, AKT Peerless, Environmental Consultant, and Dave Hunter, Professional Engineering Associates (PEA), Engineer for the project.

Chairperson Stevenson stated the applicant had provided a very broad description of the property and the project at the February 21, 2008 meeting, and noted he did not feel it was necessary for the applicant to go through that information again.

Chairperson Stevenson stated he would take comments from the public at this time.

**Ed Baron, 3310 Greenspring Lane**, stated he was the environmental chairman for the Quail Ridge Subdivision, which is located near the proposed project. He stated he would like to focus on the process. He indicated he had reviewed the information available on the City's website, and felt that every five years the developer got a new environmental consultant; dug wells to monitor; puts out the air equipment; comes back with a report; which costs \$25,000.00, and says he found something new. He indicated that in reviewing the Minutes, four times they found more items. He also wanted to point out the Clinton River is only four feet deep in that area. He commented they were going to put a nice plastic wrap on top, similar to what people put in their gardens to keep the weeds from growing, and then put two feet of clay - which was the protection. He understood the developer's concern if the EPA was going to be involved because it was a higher standard. He stated he would like to think that not only the City, but also the developer, would want to do what is best for the residents, and to show good faith. He appreciated at the last meeting that everyone expressed his or her thoughts. He thanked everyone for his or her efforts and hoped it would be a good outcome for everyone.

Chairperson Stevenson referred to the speaker cards that had been turned in and called on **Brenda Savage, 1765 Northumberland**, who was not present in the audience.

**Scot Beaton, 655 Bolinger Street**, stated he was a homeowner and taxpayer in the City, and a former president of the Rochester Hills City Council. He stated that the data presented by the City's consultant indicates that the EPA jurisdiction is needed on this brownfield. He stated that the higher EPA standards would increase the measure of safety to the residents considering the high PCB contaminant of this site. He stated he had been contacting the EPA toxic landfill office in Region 5 in Chicago to express his health concerns. He hoped the City, the County and the State Government, as well as the brownfield applicant, would be comfortable in supporting an EPA involvement for a higher standard for the recommendation process so that this can be a "win-win" situation for the development of this brownfield project for everyone. He provided a typed copy of his comments and requested they be included in the permanent record of the project.

**Deanna Hilbert, 3234 Quail Ridge Circle**, stated she had been attending the Environmental Oversight Committee meetings for about a year, and learned a lot about the site and the contamination, and wanted to be sure some things were on the record. She stated this was not the definitive information on PCBs, but some things she had learned concerned her. She stated they had been told that PCBs tend to be stable and did not move too easily, but she had learned they could move with large amounts of water. They also can move with solvent, and they also become easily airborne and fly around the world. She stated they had found PCBs in places where PCBs should not be. She stated she had learned that the subject property ran

downhill towards the Clinton River, and there were two aquifers that ran down, and historically the water moved through the property quite quickly. She stated she knew the levels of the PCBs were very high and were still high, although they were somewhat lower, but no one knew why, whether the PCBs had moved with the water or if it was just a testing method. She wanted to know everything was being done to protect our environment, our river, our park, our residents and our community with this plan. She stated she had met with the MDEQ on a couple of occasions and discussed the work plan, and she had been told that once the plan was submitted, it was the City's and the Community's responsibility because the City approved it. She had some questions about the retention basin, noting the discussion about "above" and "below", and stated she did not understand exactly how it worked and would like some more information. She asked if the "below" water retention had to be emptied or maintained, and if so, who did that, how often, whether it needed to be replaced in twenty years, or was something that would be forgotten in twenty years. She stated she had learned from the REI property that there was maintenance in perpetuity, and she wanted to know if maintenance on this property was in perpetuity. She asked that the Authority not feel rushed. She understood the developer had priorities and interests to protect, but the Authority had the Community's interest to protect. She stated she had also spoken to the EPA and was told they would make a decision within one to two weeks regarding whether they would have any input in the project, and she wondered if it would be better to wait, noting she had understood the Authority was not going to meet until they had that information. She stated she wanted to know if the decision about whether the EPA would weigh in on this property would make a difference legally if the Authority approved the plan and sent it in, and then the EPA came back and wanted something done differently, and if that would be a problem down the road.

Chairperson Stevenson stated that would conclude the public comments, and asked the developer if he wanted to update the Authority on any items.

Mr. Silver stated a couple small changes had been made from the Plan presented at the last meeting, and hoped that Mr. Anderson had had an opportunity to review them, based on Mr. Anderson's March 6, 2008 letter.

Mr. Silver explained that one of the changes was that if the EPA or the DEQ wanted the wells to stay in place for future monitoring, they included a provision that those wells would remain in place until those authorities decided if they needed them or not.

Mr. Silver stated that based upon Ms. Morita's comments at the February meeting, they had worked on the storm water issue and eventually provided three different options, which had been provided to the Authority. He explained the options discussed fully above ground lined; partial above ground with a below; or a full below. If it was the pleasure of the Authority not to see any above ground retention, they

would be willing to submit to the State, as part of the 381 Work Plan, a fully below ground retention system. However, there is about a \$140,000.00 cost differential between the small above ground versus a fully enclosed below ground system. If that was what the Authority wanted, they would indicate it was for the maximum protection of storm water in order to tie it to environmental reasons so the Department of Environmental Quality (DEQ) would approve the cost, and submit it that way.

Mr. Silver stated that Region 5, the RCRA Group, had made a determination from their end that this was a pre-1978 landfill. He stated they were attempting to get word from the EPA, but noted the EPA was not legally obligated to respond.

Mr. Silver stated he had some discussions with City Attorney John Staran with respect to how they felt the interplay between the Consent Judgment and the timing of the submittals should be handled, and they had made some modifications to the proposed motion included with the packet materials. He stated they would agree that once the Authority accepts the 381 Work Plan, they would immediately go before City Council to describe the clean-up procedure and plan to them, if they can also discuss the Reimbursement Agreement, which is also an open item with the City Council.

Mr. Silver stated they would also agree that if the State acted prior to the EPA acting, if the EPA intended to act, then the City and the developer would agree upon a course of action, if they can. If not, he pointed out the Consent Judgment included specific terms and times and what the developer can and cannot do before certain approvals.

Mr. Silver urged the Authority to accept the Work Plan at this meeting so the Plan can be submitted to Lansing so Lansing could begin their review.

Chairperson Stevenson called for discussion from Staff.

Mr. Staran commented that he, Staff, Mr. Anderson and Ms. Silver and his team had spent a lot of time since the last Brownfield Authority meeting trying to resolve some of the issues, including trying to get the EPA to act. He noted Mr. Silver was correct in stating that the EPA was not under any legal obligation to respond, which meant that unlike the MDEQ and other agencies that had so many days in which to make a decision, the EPA can do what it wants, when it wants. He stated it was encouraging to hear the news from Ms. Hilbert and Mr. Anderson that the EPA was promising to make some type of decision on the jurisdictional issue within two weeks. Although, he stated he was under the impression over a month ago that the EPA would make its decision within days. He hoped the EPA would make its decision soon.

Mr. Staran stated they had been trying to work through the issues, recognizing and appreciating they needed to get this property cleaned up and remediated, and also

appreciating some of the developer's issues with urgency, and recognizing there were certain levels of comfort the City had to reach, and for the City Council to weigh in. He explained there were areas of the Consent Judgment that indicated some need to have City Council's satisfaction with the method of remediation. He stated the Brownfield Authority was charged with the responsibility under State Law to provide a financing vehicle with the use of Tax Increment Financing (TIF) to assist with the brownfield reclamation projects; however, the Brownfield Authority was not intended to displace the City Council as the governing body as to what the Consent Judgment meant. He noted there had been much debate at the last Brownfield Authority meeting regarding what the Consent Judgment did or did not require the Authority to do.

Mr. Staran stated that what had been discussed, and what he believed he could support, was a position where the Brownfield Authority would, if so inclined, move forward with the proposed motion recommended in the packet materials, with the conditions as recommended, with two modifications that Mr. Silver and he worked on prior to the meeting, to make sure both he and Mr. Silver were comfortable with the motion. Mr. Staran provided copies of the two suggested modifications to the proposed motion to the Authority, Staff and the audience, which stated:

Modified Conditions to BRA Motion:

- At the end of Condition #2, add the following sentence:

“If no resolution of EPA jurisdiction and any associated review is reached before the MDEQ's approval of the 381 Work Plan, the Applicant shall meet with the City to discuss and attempt to agree upon the next step.”

- Modify Condition #3 to say:

“Upon submittal of the Work Plan to the MDEQ, the applicant shall, at the next available City Council meeting, present the proposed remediation and reimbursement agreement to City Council.”

Mr. Staran referred to the proposed motion included in the Staff Report in the packet, and explained the suggested modification to the second condition was not waiving the requirement that some type of resolution is received from the EPA, but states that if no resolution of the EPA jurisdictional issue and any other associated review or approval that the EPA may ultimately deem necessary happened before the MDEQ's decision on the Work Plan, then the applicant will come back to the City to discuss what the next step will be. He noted there was no guarantee what the next step will be. He stated the City might agree or disagree on a certain approach, or might end up at

loggerheads. He hoped that the EPA would have a better idea of what the circumstances were with the EPA, and hopefully have some feedback from the MDEQ as to whether the Plan looked like it would be an acceptable remediation plan.

Mr. Staran stated the suggested modification to the third condition to indicate that upon submittal of the Work Plan to the MDEQ, the applicant shall at the next available City Council meeting, present the proposed remediation and reimbursement agreement to the City Council. He noted that at the last Brownfield meeting there had much discussion about what the Consent Judgment did or did not require, and who decided those issues. He explained the modified Condition #3 would represent an agreement by the applicant to appear before City Council so that City Council could hear the presentation made to the Authority in February; ask appropriate questions, and weigh in and provide their input regarding questions or concerns about the proposed Plan. He noted that would be consistent with the Consent Judgment that does in at least two or three places require mutual approval or mutual consent as to the nature of the remediation plan.

Mr. Staran stated he believed the suggested revisions to the proposed motion were protective of the City and allowed the City Council to weigh in on the matter, and maintains the City's position that they want the EPA to weigh in regarding jurisdiction. While that was going on, the Plan was still moving ahead and included the MDEQ in the matter and allowed the MDEQ to provide their input. He noted the MDEQ would not tell the City anything until something was submitted to them.

Mr. Silver asked if the developer had already satisfied the requirements of Condition #4 as stated in the Staff Report. He noted additional documentation had been provided to Mr. Anderson.

Mr. Webber referred to the different options regarding the storm water retention, and noted it appeared there were four options, although Option 2 did not appear to be a good option, and asked which option the developer intended to include in the Plan. Mr. Hunter explained the cost difference between Option 3 and Option 4 was about \$140,000.00.

Mr. Webber asked which of the four options the applicant proposed to do. Mr. Silver explained the current Work Plan included Option 3; however, if it was the pleasure of the Authority that Option 4 be done, the developer would gladly put that in the Work Plan to see if the State would approve it. He noted the Authority had to approve the increase in cost, which would be an additional \$140,000.00. He pointed out the DEQ would also have to approve that line item.

Mr. Webber clarified that Option 3 was included in the current Plan. Mr. Silver

stated that was correct.

Mr. Webber referred to the 45-day time frame within which the DEQ was to review the Plan and respond, and asked if that was calendar days. Mr. Silver responded, "calendar".

Mr. Karas asked if the Authority would be recommending that the Plan be sent to the DEQ before a response was received from the EPA, and before City Council heard the presentation.

Mr. Staran stated that the proposed motion included in the Staff Report provided that the Plan did not move forward to the MDEQ until those items are resolved. His suggested modification to Conditions #2 and #3 would be a way to move the Plan forward to the MDEQ, but to still put it before the City Council and get the EPA issue resolved, but allow the Plan to start through the MDEQ process.

Mr. Karas expressed concern that if the EPA had standards that were a little higher, and there was no funding for it, or if a conflict developed between the DEQ and the EPA.

Mr. Staran stated that was the discussion he and Mr. Silver had. He noted it was entirely at the developer's risk if they wanted to move forward with the MDEQ and take the risk that the EPA would come in and possibly significantly impact the project.

Mr. Silver commented that the EPA could take a year, two years or five years to weigh in, and if they did what was proposed in the Plan, they would have made the site far safer than it was today. He stated if the EPA came in at a later date and stated they wanted more, obviously that was their risk as the property owner, and it was not the risk of the Brownfield Authority to have to approve more money for it, and it would solely be the developer's risk and could collapse the project. At least they would have gotten the property in a safer position for the public than it was today. If the EPA came in tomorrow and said that every ounce of soil that was PCB contaminated must be removed, the City might be looking for other funding to clean up the property because the developer might not be able to do it.

Mr. Silver stated they were proposing to get the Plan to the DEQ to see if it was even workable for the DEQ to approve. He pointed out if the DEQ thought it was too much and would not even approve the Plan, according to the terms of the Consent Judgment, the developer did not have to do it. He noted the developer had agreed to a tougher standard than normally would have been approvable by the DEQ, and had worked very hard with STS and the City to come up with the maximum protections they could do, that are above the State's criteria for this type of a project. He stated they were trying to move the clean-up process forward rather than leave the site in the



condition it was in, and it would be totally at the developer's risk. He noted if the developer did not build anything, there was nothing to reimburse.

Mr. Karas asked if the developer started working and the EPA came in and said they wanted more, would the City have a site that was not completely finished or partially finished, and the developer walked away. He asked if the developer was willing to not start until the EPA responded.

Mr. Silver pointed out he did not know if the EPA would ever respond.

Mr. Karas stated he had read the Consent Judgment and it included EPA approval. It was his perception that the developer was not willing to work with the EPA to find an answer.

Mr. Silver responded they were and explained they had started at the beginning of December by submitting information, and had submitted more information. Mr. Anthony stated he had been calling the EPA twice a day.

Mr. Karas stated it was a matter of jurisdiction, not approval. He noted the correspondence he had read indicated that the City had been submitting data, not the developer. Mr. Silver stated that was incorrect, both had been submitting data.

Mr. Delacourt stated he wanted to respond to the questions that had been asked during the public comments about the process. He referred to the question about retention basins and how they were maintained. He explained any retention basin, whether associated with a site like the subject site, or a single-family development, has a Storm Water Maintenance Agreement with the City. He stated the City has previously dealt with underground retention systems, which did have unusual maintenance and inspection issues, and noted the City had learned from those previous experiences and had quite an extensive agreement for any underground retention systems. He noted the City's Engineering Department had the same concerns about what happened if sediment filled them or they failed to keep working and who was responsible for that. He stated it was the property owner's obligation, whether the owner was a condominium association, a private development, or a subdivision association, to maintain those Stormwater Agreements. He commented enforcing those agreements was difficult at times, but that who was legally responsible.

Mr. Delacourt noted some statements had been made during the public comments about PCBs that he believed were accurate and not questions.

Ms. Morita asked about the issue regarding the potential for the replacement of the underground. Mr. Delacourt responded that if it failed or required replacement that was the obligation of the owner. He stated that if the City determined it was failing

and needed to be replaced, he was not sure the owner's of the property always agreed that was the case. However, that became an enforcement issue, which was the same with any system in the City.

Mr. Delacourt noted there had been much discussion regarding the EPA. He stated he had spoken with the TSCA Division of the EPA, as had Mr. Anderson. They anticipated receiving an answer in the next week, which was represented to Mr. Anderson earlier today. He pointed out they had expected answers in the past and had not received them in the time represented.

Mr. Silver added there were two issues with respect to the EPA. One was jurisdictional and the other was "fix". He intended, immediately upon acceptance by the Authority that this was the clean-up approach and submittal to the DEQ, to send the clean-up approach to the EPA so they can see what is intended to be done and be comfortable with the proposed action to be taken. Right now, he could not send the Plan to the EPA because it had not been accepted. He felt it would be premature to send the EPA something that did not have the slightest bit of approval, and would cause the EPA to rule on something that was not feasible or do-able by the parties. He stated if the Authority accepted the Plan, he would send a copy of the 381 Work Plan to the EPA so they could incorporate the Plan into whatever document they were formulating.

Ms. Morita asked for clarification that City Council did not need to determine if the Work Plan was in compliance with the Consent Judgment prior to the Authority approving the Plan being sent to the DEQ.

Mr. Staran stated the Consent Judgment talked about City Council approval of the Act 381 Work Plan before Site Plan Approval, which could be interpreted differently. He stated the Consent Judgment was not clear whether that was right before Site Plan Approval, or whether that approval could be given much earlier in the process. He answered the Consent Judgment did not prevent the Brownfield Authority from moving forward with the Work Plan before City Council looked at it. He noted it was a matter of comfort level.

Mr. Delacourt referred to the revised conditions provided by Mr. Staran, and asked for clarification about the addition to Condition #2. He asked if "work with the City" meant there was some intention that if the EPA took too long to answer on jurisdiction or review, that the developer would request to start work before the EPA made their determination.

Mr. Silver responded that he thought the reality was that he did not necessarily believe the developer would want to break ground until he was comfortable with the EPA's position. However, that being said, he noted there was a Consent Judgment that

dictated certain requirements, and the developer was not willing to waive any of the rights he may have under the terms of the Consent Judgment. He stated the Consent Judgment says, "prior to site plan approval" they need to have the EPA sign off. He pointed out the applicant was not asking for Site Plan Approval at this time.

Mr. Delacourt asked if the developer felt Site Plan Approval was necessary prior to starting any remediation. Mr. Silver stated "the final Site Plan Approval - no". He noted in fact the clean-up had to occur before then pursuant to the terms of the Consent Judgment.

Mr. Delacourt referred to the proposed modification of Condition #3, and stated he was concerned that City Council would be 95% satisfied with the Plan, but wanted to see a few additional things. He noted with the last 381 Work Plan, which was done as two separate 381 Work Plans, City Council, although it was not their plan to approve, did request some additional air monitoring that the developer agreed to put in the Plan. He asked if the developer would consider or agree to revise the Plan if that situation occurred.

Mr. Silver stated that if Council came up with something that was reasonable, logical and affordable that needed to be modified, it would still be in the State's hands. He stated they could certainly send any changes to the DEQ to supplement the Plan. He commented they just needed to start the ball rolling or they would lose another construction season and the City would have another season without a clean-up.

Mr. Delacourt stated he understood, but his only concern was the possibility of work prior to EPA response. Mr. Silver stated he and Mr. Staran had spent a considerable amount of time discussing that. He noted at some point both parties may agree to disagree, and at that point, one or both parties would go back to the Judge for clarification as to what the Consent Judgment really meant. He pointed out the parties could go to the Judge together for clarification.

Mr. Delacourt advised the Authority that the proposed storm water information had been reviewed, and explained the applicant had provided four cost options and three conceptual plan options. He stated what was being proposed was the cost difference based on the potential for storm water infiltration to any remaining contaminants in native soil or anything else, to avoid any possibility of infiltration from either an above ground retention basin or an enclosed under-ground system that may have infiltration possibilities. He suggested the Authority picture an under-ground pipe with perforations in the bottom of it that would allow storm water recharge. Both of the considerations in Option 1 and Option 2 are normal storm water systems that may be associated with the development. Option 3 is the combination of underground and an above ground pond with an additional clay liner, and Option 4 is the completely enclosed system. What is being proposed is an additional cost generated by the

potential for, or perception of the potential for, contamination from the storm water, which is an acceptable review under Act 381. What the applicant is asking for is the cost difference between Option 3 and Option 4. He stated that did address Staff's concern as far as the reasonableness of the storm water system. He was not positive the DEQ would approve it as an eligible activity, but as with any 381 Plan submitted to the State, there were always items that were approved and some that were not. He stated the retention appeared reasonable, but there was a possibility the DEQ may feel differently. He noted it was completely within the Authority's right to make a decision on that item, and stated Staff was satisfied with the information that was proposed.

Mr. Delacourt stated that one condition included in the proposed motion in the Staff Report addressed the submittal of construction or engineering drawings for the City Engineer's review. He explained the remediation involved some pretty sophisticated construction techniques. He understood the applicant's desire not to send out bid documents and have formal construction and engineering plans prepared at this time, and felt that was reasonable. But did want the applicant to agree to submit those plans to the City and have the City review them prior to any construction activity taking place.

#### 2007-0435

Mr. Silver stated they agreed with that, but explained it was premature to start designing something that the State may not approve. He pointed out the expense in hiring architects and engineers to begin designing trench boxes and other items to then have the State say it was not a viable option. He stated the developer agreed if the State said that was a reasonable remediation approach that was eligible, they would sit down with the City and talk about how it would be accomplished.

Mr. Delacourt stated that a question had been asked about Condition #4, and explained Mr. Anderson had reviewed the submittal sent by email earlier in the week, and it satisfied a portion of his concerns, but there were a few questions about another portion of it. At this point he recommended that Condition #4 remain in any motion proposed by the Authority because the Plan had not been formally reviewed. Until the City had a chance to formally review the Plan and received a final version, Staff requested that Condition be included.

Mr. Silver asked if they could get a time frame on that. Mr. Delacourt stated the last review was completed in twenty-four hours, and it would be a matter of when the developer provided the Plan to the City. He pointed out that normal review time was two weeks, and it would definitely be within that time frame, if the applicant wanted an answer as far as what the City's normal procedure was.

Ms. Morita asked if an explanation could be given as to why Option 4 was preferable

to Option 3, or whether Option 3 is preferable. She asked if there were additional environmental considerations the Authority needed to think about in determining whether or not they wanted to look at Option 3 or Option 4.

Mr. Hunter stated it was purely the way the storm water is stored on the site. Option 3 includes a small detention pond at the very northeast corner of the site. Mr. Silver interjected “maybe”. Mr. Hunter stated there was the possibility of one. Mr. Silver stated that they were not going through Site Plan Approval, and neither the Brownfield Authority nor the developer had the authority to start placing items specifically in places on the property. Rather, this was merely a conceptual drawing of where it may go.

Mr. Hunter stated all the Options were conceptual in nature, but that was an above ground pond that was lined so that it does infiltrate into the ground or into the soil material below the pond. It was a more economical way of doing the detention. The other methodology outlined in Option 4 involves all the storm water being detained underground, so none of the storm water was open to the public. If there was a perceived safety factor there, that was what the safety factor was. He noted above ground detention ponds was a standard that was used in most residential development these days, and was not an unusual thing.

Ms. Morita asked if there was any environmental benefit to having the below ground versus the above ground. Mr. Hunter stated it was a perceived benefit, but environmentally he did not see any pure benefit.

Mr. Anthony explained the Option 3 concept depicted under ground areas that were watertight, and pointed out the detention area on the drawings. He stated one reason he felt they could use Option 3 was because the down flow was hydraulically down gradient. However, they wanted to try to prevent any infiltration and restrict any infiltration from getting in the ground that could come in contact with the containment area. He pointed out the containment area on the conceptual plan. He stated if he were to pick the most ideal condition to prevent infiltration, Option 4 would provide some marginal additional protection. He explained he would only say it was marginal partly because the piping itself would be sealed. Mr. Hunter explained “sealing” meant it would all have watertight joints.

Ms. Morita asked if that would prevent animals from getting into the water and tracking it somewhere else, or the actual water from moving from one place to another. Mr. Hunter stated it would prevent it from leaking out of the pipe system. All the storm water would flow over land into the catch basins, inlet structures, storm water catchments structures, into the under ground system, and go through an under ground pipe system that is watertight, and also the system would not allow groundwater in from on site. It would be a watertight system and none of the water

would be easily touched. He stated the water should not be unsafe because it was just runoff from the parking lot and landscape areas on site.

Chairperson Stevenson noted at the last meeting the developer had indicated they might be able to provide an estimate of the approximate size of the detention pond. Mr. Silver stated they had done that. Mr. Hunter stated it was about 240-feet long, and about 120-feet wide.

Chairperson Stevenson asked what depth could be expected. Mr. Hunter stated the notes on the plan showed the pond being about 4-1/2 feet deep. He explained that was at the worse case scenario because it was a storm water detention pond, and if there were a ten-year storm event, there would be about 4-1/2 feet of water in it.

Chairperson Stevenson asked for verification of the width of the pond. Mr. Hunter responded it was about 120-feet.

Mr. Silver reiterated it was the pleasure of the Authority that they submit for all below ground, if the Authority was willing to support the additional cost, they would make that change.

Chairperson Stevenson noted it would also depend on whether or not the DEQ approved it.

Ms. Morita asked if the developer went with the below ground system, if they would be willing to amend the Work Plan to make a stronger case for it. She noted Mr. Anthony had stated it would provide some marginal protection, and she thought the MDEQ would need to hear more than "just marginal".

Mr. Silver stated Mr. Hunter had to sign his name to it, but would do the best he could. Mr. Hunter stated it was marginally safer, and he did not have a problem stating that. Mr. Silver suggested Mr. Hunter could say it is safer.

Mr. Hunter stated they had reviewed the scale on the plans for the pond, and the pond was actually about 60-feet wide by 120-feet long.

Mr. Turnbull understood the applicant did not have a final site plan and did not want to commit to the location of the pond, but thought it was important to the people in the audience who would have the pond in their back yard where it would be located. He asked if it not as shown on the plan, where else could it be located.

Mr. Silver stated they did not have the authority to determine that. He noted they had discussed that and was their fear in providing drawings to the Authority when they asked to see conceptual drawings. He explained this was not the body that made that

decision, and they were not ready and prepared to present a site plan laying out all the details of the site. What they did was logically put it down gradient.

Mr. Turnbull asked if the conceptual plan were approvable, this would be their first choice.

Mr. Delacourt cautioned about details. He noted the City's Engineers had had very little involvement and tended to have a big impact on where things are located. Until the City has had a chance to look at the plan and made a determination where they think the best location is, the conceptual plan provided by the applicant was a reasonable basis of design or concept. He noted it had a cursory review by engineers and it appeared to be in locations that may have potential outlets, but this was not the time to start pushing it around, and the Authority should not base its decision on location. He stated it might change a lot by the time it comes back.

Mr. Delacourt explained what the Authority was really evaluating was whether the cost item was reasonable, and which cost should be included in the Plan. He asked if the Authority wanted to include just the limited cost for the combined estimation and only pay for that, or if they wanted to provide the maximum flexibility for review when the site plans and the engineering plans come in, which was about \$140,000.00 more, making it an \$800,000.00 cost item in the Plan that would be submitted to the DEQ, as opposed to the \$660,000.00 cost item.

Chairperson Stevenson asked if the Authority included the maximum and it was not approved, whether the Authority would get another opportunity on the matter.

Mr. Delacourt explained that what normally happened is that if the DEQ did not approve it as a cost item, it was not an eligible item. He noted the applicant could request that it be paid for through local taxes only. He suggested in this instance if there was any discomfort with that, the Authority add a condition indicating if the DEQ did not approve it as eligible, the City was not agreeing to pay for it through local tax only. He believed that would be the applicant's understanding of what would happen as a normal course of business.

Mr. Silver thought there might be a dual-purpose. He stated the parties could agree amongst themselves that the DEQ may decline Option 4, or a portion of it because it is a Cadillac when a Chevy will do. He indicated they would like the flexibility that if the DEQ denied Option 4, they be able to default to Option 3, if acceptable to the DEQ. He stated they were willing to accommodate the increase, but would hate to have the line item completely stricken.

Mr. Staran recommended the Authority would want to include in the Plan something that gave the maximum flexibility. One of the reasons Option 4 is included is because

there is another section of the Consent Judgment, apart from the section on environmental remediation, which talks about the drainage system. He stated it was unfortunate because normally drainage was at the end of the project, but in this case, because of the tie-in with the remediation plan and the payback, it had to be discussed at the front end. He stated there was a section on Page 11 of the Consent Judgment that indicated that any type of above ground storm water detention or retention would be kept out of the 100-foot buffer zone, and definitely away from any of the adjacent homes. He pointed out this was one of those areas where they were trying to find the best way to accomplish the remediation, but still observe the requirement in the Consent Judgment of doing justice to the adjacent residents.

Mr. Staran stated he did not think the Brownfield Authority should be making the decision at this meeting about whether there would be an open retention pond or not. He noted that was a decision that would have to be made later and possibly by the City Council. He indicated the Authority wanted to maintain maximum flexibility and see if the item can be approved as an eligible expense by the MDEQ to have the entirely underground system. He pointed out that did not necessary mean that is where it will end up.

*(Depart Mr. Webber: 8:30 PM)*

Ms. White stated she had read the packet several times, and what bothered her was the methane, which she was particularly sensitive to. She noted methane travels and methane was on the applicant's property. She asked if the applicant would put up methane wells that detect methane in the area behind the homeowners. Mr. Silver stated they could only put things on their property and could not legally go off site.

Ms. White asked if there would be wells on the edge of the property that bordered the homeowners. Mr. Silver stated they were not detecting methane on their property, except for a very limited area within the fill that they were removing. He explained the State had stopped the authorization for any further methane work on the property because of the minimal methane that was discovered. He stated the State would not authorize the expenditure of any additional money. He pointed out an additional \$40,000 was included in the original Work Plan authorized by the Authority, but when the State started getting the methane results the applicant was sending to them, the State told them not to put in any additional wells. He commented that to make it safer, the area where the minimal methane was found would be removed from the site and would not be generating any more methane. He noted the State would not do any more than that.

*(Return Mr. Webber: 8:33 PM)*

Ms. White stated that in Mr. Anderson's March 6, 2008 letter, the last paragraph said that the Act 381 Work Plan was an improvement over prior submittals, but a few



details were yet lacking. The letter also stated “The issues of a Plan of that nature are particularly important because they not only affect the technical execution of the project; they impact public health, safety and the environment.” She asked if Mr. Anderson’s concerns had been alleviated.

Mr. Anderson responded his answer would be a “qualified yes”. He stated the applicant had submitted substantially more information than six or eight weeks ago, with also numerous pledges to produce design documents that are actually eligible expenses to be reimbursed through the TIF capture when the time is appropriate to do that. That is all he could ask them to do at this point in time. He believed they were on the right track and things were moving in the right direction, and he would say a qualified yes.

Ms. White stated that a house had exploded on her street due to methane; the DEQ became involved, and she and many of her neighbors were on a first-name basis with the DEQ. She stated it concerned them not only on a 24 or 48-hour basis of what is going on the property behind them, but that communication from the DEQ to the residents and from the developer was very important to the residents, to let them know exactly what was going on, and the activities that are upcoming. She noted email was a wonderful thing.

Mr. Silver stated they were required to give the municipality at least three days notice before any on-site activities are going to occur. He suggested the City could set up some type of chain notification.

Mr. Staran stated the reason for that requirement was so the City could have their own consultant on site to monitor the activities.

Ms. White stated she understood the safety issues and the City notification, but she was asking for the residents. So the residents are updated on the next phase or whatever, which did not have to be on a daily basis. She explained when people are doing construction, the people in the area do not know what is going on, and it is so very important to have the communication, especially with the residents to reassure them of the safety and that everything is being taken care of.

Mr. Silver stated if the City did not want to work through the three-day notice, he was sure the developer would receive any phone calls necessary if there were any questions about what was going on. He noted he and their environmental consultant would also answer questions. He explained the consultants would be there on a daily basis, and would be glad to answer questions.

Chairperson Stevenson called for any further comments or questions from the Authority. Upon hearing none, he asked if the members of the Authority were

prepared to make a motion.

Mr. Karas stated he was not sure it was a motion, but he had a final comment. He stated he thought when they accepted the position, they hoped they could send the City Council a completed brownfield plan. He thought the developer had worked diligently and was willing to send the Plan on to City Council. He stated the motion he would propose would be the motion prepared by Staff in the Staff Report, and that Condition #3 would read:

3. That prior to submittal of the Plan to the DEQ, the applicant present the proposed remediation to City Council.

Mr. Karas commented that with due respect to Mr. Staran, who he has known for many years, he wanted the EPA and the Council to look at what the Authority was recommending before it goes to the DEQ.

Ms. Silver cautioned with all due respect and sincerity that any questions or disagreements with respect to the intent of the Consent Judgment does carry with it penalties. He stated his client would follow the terms of the Consent Judgment. He just wanted to make it clear that attorney fees and other penalties and damages are available remedies under the Consent Judgment. He stated they had tried to work together to come up with a middle ground that would serve both their purposes so they would not have to go there.

Mr. Karas asked if Mr. Silver could condense his statement to a simple sentence.

Mr. Silver stated he would try. He stated if the terms of the Consent Judgment are not followed as they believe they are written, they will be going back to Circuit Court for clarification. He stated if his interpretation of the Consent Judgment was correct, there are penalty provisions and attorney fee provisions for the party that breached the terms of the Consent Judgment. He stated they would enforce their rights under the Consent Judgment.

Mr. Staran noted there were no penalties if there was not a breach. Mr. Silver acknowledged that was correct.

Mr. Karas stated he would like to move that the motion included in the Staff Report dated March 12, 2008 in the matter of City File No. 03-013, with the five conditions. He stated the conditions would not be modified as suggested by the City Attorney.

Chairperson Stevenson asked if there was a second to the proposed motion on the floor. Ms. White stated she would second the proposed motion.

Chairperson Stevenson stated a motion had been made by Mr. Karas, seconded by Ms. White, to accept the 381 Work Plan and direct staff to submit the plan to the Michigan DEQ with conditions. He called for discussion on the proposed motion on the floor.

Ms. Morita asked if the motion maker would consider an amendment to the motion to include a condition that the Work Plan be amended to include Option 4 for the below ground detention basin, and that the Work Plan be amended to reflect the need for that. Mr. Karas and Ms. White agreed to the addition of an additional condition.

Ms. Morita asked if Mr. Webber, as the City Council representative to the Authority, would prefer to pass on this as a City Council member first, or as a member of the Authority.

Mr. Webber stated he had reviewed prior Brownfield Authority Minutes, and Mr. Duistermars, who was the Council representative the last time this matter came forward, asked the same question. He thought Mr. Duistermars had asked if he should recuse himself because he would see it again at the Council level. He was comfortable one way or the other.

Ms. Morita stated she was asking if Mr. Webber would like to see it first as a City Council Member or here.

Mr. Webber stated that whatever the precedent was. He was aware Mr. Duistermars had asked that question previously.

Mr. Staran stated he was not sure what Ms. Morita's question was. He asked if the intent of the motion as made it would go to City Council and then come back to the Brownfield Authority again before it moved on to the MDEQ.

Mr. Karas stated there was no reason for it to come back.

Mr. Staran explained the reason he asked was that the Brownfield Authority would act on it tonight, and if the motion is passed, it would go on to Council and then go on. Either way, the Brownfield Authority would act before the Council did.

Mr. Karas stated he wanted to help move it along, and he thought they were at a standstill in negotiations with the developer, and some of the questions were beyond the Authority's capabilities. He thought they owed it to the Council and it made him feel more comfortable when other people looked over his shoulder. He stated the EPA question still bothered him and he was hopeful there would be an answer within the two-week period. He noted if everything was clarified, it would move on to the DEQ. He did not expect to see the Plan again unless there were major changes, as

the motion reflected in the conditions.

Chairperson Stevenson stated it appeared to him they were where they ought to be at this point. He stated the developer was acting in good faith; there were problems and the developer acknowledged that; and there were things that still had to be answered, but in the spirit of moving it along, he thought the Authority should act tonight. He stated that unless there was additional discussion from the Authority, he would call for a roll call vote on the proposed motion on the floor. No additional discussion was heard.

Complete Motion (as voted):

**Accepted**

**Aye 6 - White, Karas, Stevenson, Turnbull, Webber and Morita**

**Absent 1 - McGarry**

**RESOLVED in the matter of City File No. 03-013 (NE Corner Hamlin/Adams Brownfield Project), that the City of Rochester Hills Brownfield Redevelopment Authority ACCEPTS and DIRECTS STAFF TO SUBMIT the SECOND 381 WORK PLAN TO THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ), subject to the following conditions:**

**Conditions:**

- 1. That all 381 Work Plans for the site are required to be reviewed and accepted by the City's Brownfield Redevelopment Authority prior to submittal to the Department of Environmental Quality (DEQ).**
- 2. That prior to any work associated with this plan being conducted on the site, that the issues related to EPA jurisdiction and any associated approval be resolved to the City's satisfaction.**
- 3. That prior to submittal of the Plan to the DEQ, the applicant present the proposed remediation to City Council.**
- 4. That a full and complete revised 381 Work Plan be provided to Staff addressing the remaining issue related to the Plan, as identified in the STS letter dated March 6, 2008, prior to submittal to the DEQ.**
- 5. That if the extent of Due Care activities related to the subject site is altered or revised due to a change to the proposed development plans or proposed use of the site, the applicant shall submit an amended BRA Plan to the Brownfield Redevelopment Authority.**
- 6. That the Work Plan be amended to include Proposed Storm Water Detention Option 4 (as outlined in the March 3, 2008 letter from Professional Engineering Associates, Inc.) for the below ground detention basin, and that the Work Plan be amended to reflect the need for that detention system.**

**2007-0435**

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

Mr. Delacourt asked for clarification for the additional condition regarding Option 4. He assumed since Staff would be reviewing the change in the cost item, that the change to include Option 4 was just the increase in the line item, and the actual conceptual plans would not be included in the revised 381 Work Plan. Rather it would just be the increase to allow the TIF reimbursement for the completely underground system.

Ms. Morita stated she would expect whatever discussion that also needed to be added to the Plan to justify that expense.

Mr. Silver stated he did not know if they could make such an argument that was compelling to the State, which was his concern. Ms. Morita responded, "whatever you can do".

Mr. Silver pointed out if the State denied the line item because they "upped" it, were they then going to be penalized so that nothing is reimbursed.

Mr. Delacourt stated Staff would be more than willing to work with whatever process there is to then submit Option 3 and asked that that be an eligible expense. That was his understanding of the situation. If the State denies it, the City will not pay for it all through local taxes, but will certainly work to amend the Plan or whatever the right process would be to put the Option 3 back in front of the DEQ. He guessed that before the DEQ denied it, they would ask if there were other options that were not quite the Cadillac.

Mr. Silver stated he was asking if the Authority was saying only Option 4 or nothing. If the State denies Option 4, is the Authority authorizing the applicant at this meeting to put back Option 3.

Mr. Delacourt stated that was not his understanding. If there was a change, Staff would bring it back as informational, and submit the revised information or the lower number to the DEQ and work with the applicant and the DEQ to address what the DEQ feels is acceptable as an eligible activity to approve school tax reimbursement.

## **8. ANY OTHER BUSINESS**

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

## **9. ADJOURNMENT**

Chairperson Stevenson reminded the Authority that the next regular meeting of the Authority scheduled for Thursday, March 20, 2008 had been cancelled. The next regular meeting was scheduled for Thursday, April 17 2008. He then called for a motion to adjourn.

Upon a **MOTION** duly made and seconded, Chairperson Stevenson declared the Regular Meeting adjourned at 8:50 PM.

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Thomas Stevenson, Chairperson  
City of Rochester Hills  
Brownfield Redevelopment Authority

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Judy A. Bialk, Recording Secretary