Rochester Hills

Minutes

Brownfield Redevelopment Authority

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Chairperson Stephen McGarry
Vice-Chairperson Thomas Turnbull
Members: Robert Justin, Stephanie Morita, Mark Sera, Del Stanley
Council Member Michael Webber

Thursday, July 25, 2013 **7:00 PM** **1000 Rochester Hills Drive**

CALL TO ORDER

Vice Chairperson Thomas Turnbull called the Special Meeting to order at 7:02 p.m. in the Auditorium.

ROLL CALL

Present 4 - Mark Sera, Thomas Turnbull, Michael Webber and Stephanie Morita

Absent 3 - Del Stanley, Stephen McGarry and Robert Justin

Quorum present.

Also present: Ed Anzek, Director of Planning and Economic Development
Kurt Dawson, Director of Assessing/Treasury
James Breuckman, Manager of Planning
Tom Wackerman, ASTI Environmental
Maureen Gentry, Secretary

APPROVAL OF MINUTES

2013-0269 January 20, 2011 Regular Meeting

A motion was made by Morita, seconded by Webber, that this matter be Approved as Presented. The motion carried by the following vote:

Aye 4 - Sera, Turnbull, Webber and Morita

Absent 3 - Stanley, McGarry and Justin

COMMUNICATIONS

There were no Communications presented.

NEW BUSINESS

2013-0270 Election of Officers - Chairperson, Vice Chairperson, Secretary and Treasurer - for the term expiring the first meeting in January 2014.

MOTION/NOMINATION *by Morita, seconded by Webber, that the Rochester Hills Brownfield Redevelopment Authority hereby re-appoints the current slate of Officers to serve: Chairperson Stephen McGarry, Vice Chairperson Thomas Turnbull , Secretary - Planning and Development Department Staff and Treasurer Kurt Dawson for a term expiring at the first meeting in 2014.*

A motion was made by Morita, seconded by Webber, that this matter be Approved. The motion carried by the following vote:

Aye 4 - Sera, Turnbull, Webber and Morita

Absent 3 - Stanley, McGarry and Justin

2013-0271 Discuss proposed Brownfield Redevelopment Plan for Rochester Retail - City File No. 12-010 - For the former gasoline dispensing station and former dealership property located at 3010 and 3050 S. Rochester Road, located at the southwest corrner of Rochester and Auburn Roads, Rochester Auburn Associates, LLC, Applicant

(Reference: Documents prepared by PM Environmental, Inc., including a Brownfield Plan ("the Plan," and letters from Tom Wackerman, City's consultant from ASTI Environmental had been placed on file and by reference became a part of the record thereof).

Present for the applicant were Doraid Markus, owner of Rochester Retail Associates, LLC, 6750 Oakhills Dr., Bloomfield Hills, MI 48301, developer of Rochester Retail, proposed for the southwest corner of Rochester and Auburn Roads, and Jessica Besaw, PM Environmental, Inc., 4080 W. Eleven Mile Rd., Berkley, MI 48072.

Mr. Anzek noted that this was the first meeting the Board had held in over two years, mainly because there had not been any brownfield activity in the City. The State had been reviewing brownfield tax credit funding and some changes had occurred with brownfield incentives. Mr. Anzek advised that the applicant had submitted a request for brownfield reimbursements for acceptable activities for the redevelopment of the southwest corner of Rochester and Auburn. Staff had received the packet last week and emailed it to the members, and there were also hard copies

provided at the meeting. He asked the applicants to come forward with their proposal.

Mr. Markus stated that he was with Rochester Auburn Associates, which owned the subject property. He introduced Jessica Besaw from PM Environmental, who was helping them through the Phase 1, Phase 2, BEA and Brownfield Plan process with the existing gas station and vacant dealership on the site.

Ms. Besaw advised that they had completed the Phase 1 and Phase 2 environmental assessments on the property. Both properties were deemed a facility based on the soil and groundwater contamination found. The overall development was for demolition of the current buildings, which also included curbs, asphalt, and various similar aspects and redevelopment into four new buildings consisting of retail and restaurant spaces. The Brownfield Plan proposed to use local only taxes. They determined an estimated new taxable value of $4 million. That was a little less than half of the total investment being made on the property, which was estimated to be a little over $8 million and could be higher. They proposed a six-year payback period for the eligible activities. Eligible activities proposed were the environmental assessments, due care activities, demolition, Brownfield Plan preparation, and asbestos survey and abatement, if necessary. Ms. Besaw next opened the floor to questions regarding the content of the Brownfield Plan and the tax table that was provided.

Mr. Anzek said that since Staff had only received the Plan last week, Mr. Dawson, City Assessor, only saw it a few days ago. Mr. Dawson reviewed it and he had a lot of questions, and he asked Mr. Dawson to run through those.

Mr. Dawson said that he reviewed the table, and he asked for a clarification of the title. They started with the year 2013, and he was not sure if that was a calendar year, an assessment or a City budget year. He said that would be important. As an example, if they did the total work in 2013, that would affect the 2014 tax collections. If they did not do the work until 2014, the tax collection would start in 2015. The 2013 assessments had been updated, and he had updated numbers to give to Ms. Besaw. He referenced the local millages they showed, and he said that he was not sure where they got them. He thought they might have been from another community, and Rochester Hills did not levy the OCPTA levy (Transportation Levy of .59 mills). Regarding the Zoo Authority and the DIA levies, the legislature just passed a bill that a government entity

could not capture those. He noted that the dollar amounts would be insignificant, but it was a technicality that had to be corrected. Ms. Besaw did not think those would affect the total payback period much. Mr. Dawson referred to the Additional City Operating, Library Fund and Library Bond, and said that those millages totaled much higher than Rochester Hills', which was 9.3412. The total capturable taxes on the chart would end up being 18.9407 versus 29.5653. He concluded that those were the corrections to the table that he had observed.

Mr. Anzek stated that it would be important to correct the capturable millage that was calculated, because it would affect the term of payback and dollars.

Vice Chairperson Turnbull asked Mr. Wackerman if he would like to comment, or if anyone on the Board had questions for the applicant. Ms. Morita said that she would like to hear from Mr. Wackerman first, so that she could avoid bringing up any of the same issues.

Mr. Wackerman asked the applicants if the underground storage tank system would be closed under Part 211 or 213, and he asked if it was leaking. Ms. Besaw replied that it was currently a closed LUST site. Mr. Wackerman noted his July 19th memo, and said that he would go over some items from that. As Ms. Besaw had advised, it was an eligible taxpayer on an eligible property with eligible activities, so the basis for eligibility was there. There were a couple of key assumptions that he felt were worth discussing. The first was the new taxable value and whether or not that made sense relative to the investment and the current taxable value, which would drive the incremental taxable value. He thought that for illustration purposes that it was fairly close, but he wanted to defer to Mr. Dawson, and he asked Mr. Dawson if he had a chance to look at it. Mr. Dawson said that he had not had a chance to look at the value, and he had not yet done a value analysis for the retail center. Mr. Wackerman recommended that instead of taking 50% of the entire cost of the project, he would take only the hard costs, or the actual investments in the property, and not include all the environmental costs and then do the calculations. His calculation came out a little bit lower. He felt that it would make sense for Mr. Dawson to review it before the table was redone, so they could get a correct payback period.

Mr. Wackerman mentioned that there was a 1% assumption of annual increase in value. He thought that five years ago that might not be reasonable, but he thought that the market was changing in a way that it might be a reasonable assumption going forward. The Plan did capture

all personal property taxes. It was not illustrated in the payback period, but it made it a conservative estimate of payback. He felt that made a certain amount of sense, but they had to realize that when the Brownfield Plan was implemented, it would include any personal property, assuming that tax continued. One of the policy items he felt that needed consideration by the BRA, and he realized they had not met in over two years, was that the Brownfield Plan was independent of the the developer or changes to the Site Plan. That was standard in some cities, where the Plan was open-ended, but other cities put in a clause that asked for re-review in case the Site Plan changed substantially. It would provide a method for managing any modifications to the Plan. When the Plan was approved, there would be a reimbursement agreement which would set the terms of the payback. That was how the process would be controlled, but the BRA might consider its ability to re-review and re-approve the Plan in case of changes. He pointed out item two from his letter. The applicant had provided information about site demolition, and it looked to be all eligible. The applicant provided a response about the due care issues regarding soil removal. They would only be removing soil associated with construction. Because the site was a facility, it would have to go to a landfill anyway, so they were asking for reimbursement of that cost. There was a leaking underground storage tank, and it would be eligible for removal. If it had not been leaking and they were removing it under Part 211, it would not be eligible for reimbursement. There was a 3% interest in the Plan, and that would be another policy decision the BRA had to make - whether they would allow interest recapture. The Plan asked for reimbursement of the City's review fee, and that would be another policy decision. He indicated that those were the highlights he felt were worth discussing.

Ms. Morita said that it was her understanding under the statute that if there was more than one parcel, that the numbers had to be separated on a per parcel basis. Mr. Wackerman agreed that was right - it had to be by parcel by millage. Ms. Morita pointed out that there were two parcels, yet everything was done in the aggregate. She could not tell how much improvement was going on with one parcel versus the other or when the payback was for one parcel versus the other. She felt that when the applicants came back, they should show numbers per parcel.

Mr. Wackerman stated that was a good point. It was shown on a per mill basis, but it needed to be per parcel.

Ms. Besaw explained that the plan for redevelopment was to combine the parcels into a single development. She asked how they would split the

total new taxable value between each if the proposed plan was to combine the parcels.

Mr. Anzek clarified that Mr. Markus had been through Site Plan Approval with the Planning Commission and he had received Conditional Land Use Approval from City Council for the drive-through restaurants. Mr. Markus had also received a Zoning amendment for the gas station parcel which changed it from B-5 to B-3. That was done with a condition that the two properties be combined. He questioned whether the BRA should handle it as two parcels or one.

Mr. Wackerman asked when the parcels would be combined. Mr. Anzek felt that the sooner the better, since the zoning had been changed.

Mr. Markus stated that they hoped to demolish the dealership by the end of the year and begin construction. They wished to leave the gas station in operation until early spring of next year. Regarding the combination, if it was to happen when everything was knocked down, it would be March of 2014, weather permitting. They planned to demolish the dealership right away to get the site ready.

Mr. Wackerman explained that the reason they would show individual parcels was because they had different assessed values, and they had to be tracked separately. The cleanest thing would be to combine the parcels prior to the next tax period, although he did not know if that was possible.

Mr. Dawson stated that Assessing could accommodate the combination. It was an easy process as long as it did not violate any Ordinances and the zoning was the same on both parcels.

Mr. Anzek reiterated that the Rezoning was approved with the understanding that the parcels would be merged; otherwise, the gas station was a non-conforming parcel (not large enough). It had to occur before permits were issued, and he suggested that it could be done now, and the land could be leased back to the gas station owner to be able to operate.

Mr. Markus said that the preference, and for the numbers to make sense, was to combine the parcels. They would abide by whatever the City wanted. Mr. Wackerman said that in the event that the parcels could not be combined before the next tax period, the applicant could create two tables and on a percentage basis almost arbitrarily allocate the assessed

value between them. The combined total was what really mattered. He recommended that the BRA made the combination a condition of the Brownfield Plan, and that the applicant provided a separate table for both parcels and another showing the parcels as one.

Ms. Morita stated that under the law, when there were two separate parcels, the numbers had to be considered separately. Mr. Wackerman said that was why he was suggesting that the applicants prepare two tables and a combined table. Ms. Morita noted that if the parcels were combined, they would not have to submit it both ways; she just wondered why the parcels had not been combined yet.

Mr. Markus had assumed that when they went through Site Plan Approval and the Rezoning that they were given permission to combine the parcels into one B-3 parcel. He was waiting for construction to start, and he did not know when something was combined or not. Ms. Morita indicated that they were talking about tax parcels, and she stressed that Mr. Markus needed to call the Assessing Department.

Mr. Dawson related that it was an easy process. There was an application form for the combination of two sidwell numbers. Mr. Markus reminded again that the gas station was still operating, but if it was o.k., he would request the combination. Mr. Dawson said that they would look at the valuation as they did currently - the parcels would just be under one sidwell. Mr. Markus assured that they would apply for the combination.

Vice Chairperson Turnbull asked if there were further questions. Ms. Morita wondered about the amount of square footage. She pointed out that page three of the Plan did not show the square footage to be built; it stated that it "varies."

Mr. Markus thought they had stated the exact amount. Ms. Besaw noted Appendix C and advised that there was a Site Plan that showed each building and the square footage for each. Ms. Morita asked if they could tell her the total so she did not have to add everything. Mr. Markus determined that the total development totaled 32,191 square feet.

Ms. Morita noted the lease/sale price of $25. She asked if that was $25 per square-foot, which Mr. Markus confirmed. Ms. Morita asked if that was a lease or sale price, and Mr. Markus replied that it was a lease price. Ms. Morita asked if it was triple net, which Mr. Markus also confirmed. Ms. Morita asked if she could assume that they would all be rentals and that none would be owner-occupied. Mr. Markus said that McDonald's

would have a land lease, and not technically a lease of the building, but he was including it in the $25 per square foot. Ms. Morita asked if any part of the property would be owner occupied, and Mr. Markus advised that they would all be leases. Ms. Morita asked if all of the personal property tax proposed would be paid by the tenants and reimbursed to Mr. Markus. Mr. Markus said that was correct.

Ms. Besaw explained that the personal property tax was not built into the new taxable value estimate. Ms. Morita clarified that personal property tax was taken out. Ms. Besaw said that they did not include it in the estimate to be more conservative. Mr. Wackerman stated that the Plan would capture personal property taxes, but that capture was not illustrated in the payback period. Ms. Morita confirmed that they would be reimbursed on that capture. Ms Morita asked if the intent was that the tenants would pay the tax, and then that money would go back to the applicant from the capture. Ms. Besaw agreed. Ms. Morita asked how much the estimate was for personal property. Ms. Besaw said that they did not have an estimate at this point, because the tenants had not been completely verified, and they did not want to guess on the numbers. Ms. Morita asked if personal property was in the estimates. Ms. Besaw responded that they did not have personal property in the new taxable value estimate. It would be captured, but it was not in the estimate. Ms. Morita asked if the estimate was in the subject Plan or in something else. Ms. Besaw stated that it was on the tax increment financing table for the taxable value following redevelopment ($4 million). Ms. Morita stated that it looked to her as if they were anticipating that the property would be worth about $10 million, including personal property. Ms. Besaw agreed that was what they had estimated, based on the investment created on the property. She added that they could work with the Assessor if the number appeared too high. The taxable value of the property would be $4 million; the real value would be approximately $8 million following redevelopment, without personal property tax. If they added personal property, it would be $10 million. Ms. Morita questioned adding the $1,013,620.00, which was the current taxable value and $4 million in value. Ms. Besaw said that the difference was $2,986,380.00, and that would be the addition, which did not include personal property. Ms. Morita asked how much they paid for the property. Mr. Markus said that they paid $2.7 million for the dealership and $1.350 million for the gas station.

Ms. Morita asked if the estimated construction costs were $150.00 per square foot and if that included remediation. Mr. Markus agreed, and said it included every line item in the budget.

Ms. Morita asked Mr. Dawson if he needed additional information in order to figure out the City's estimated value added. Mr. Dawson thought they would be able to do it from the Site Plan. He had not had a chance to look at it, but they would look at the location and at other retail operations, and they would do an income analysis. Ms. Morita asked if he needed information on construction costs with regard to what they were anticipating beyond the remediation. Mr. Dawson said that he would be more interested in lease information, or the potential lease amounts of perhaps $25 per square-foot. They would do an analysis and base the valuation not so much on the cost approach but on an income approach. They would use $25 per square-foot for 32,000 square feet and give an allowance for vacancies. He suspected it would be triple net pass through. Ms. Morita added that there would be management fees, insurance, etc., and she just wanted to make sure Mr. Dawson had everything he needed.

Vice Chairperson Turnbull wondered how they would do it from an income approach, having some leases in place but also having some that were total spec. He wondered how they would look at it when there could be six, 12 or 18 month leases. Mr. Dawson said that it would be helpful to know what leases were in place, to be able to know what the market was for this location. He would need estimated prospected leases. He asked Mr. Markus if he could give him some information on each of the buildings and the type of occupants and lease rates.

Mr. Markus said that the way he did it was to look at market rents in and around the area and at the newest developments, and he stated that it hovered around $25 per square-foot. They had a potential McDonald's user, and they were negotiating a lease price. They had been at one price, but their building was moved farther west, and they were now talking about another price. He remarked that McDonald's was low-balling big time. They had been at a $100,000.00 per year land lease, and now they were in the $60's. He was trying to get them up to $70 or $80k. Mr. Dawson asked Mr. Markus if he was estimating based on his projections of the market to be around $25 per square foot. Mr. Markus said that the shopping center just south of M-59 was asking $20 to $25, and his was a newer development by a few years. He believed that Barclay Square just filled the last space at $25.50 per square foot. There was an outlot planned in front of Meijer on Auburn and they were asking from $20-30, depending on whether it was end cap or inline space. He felt that they were right there.

Ms. Morita asked Mr. Dawson if taxes for improvements with a land lease went to someone other than the land holder. Mr. Dawson noted the Burger King by Avon and Rochester, and he said that it was a land lease. The land was assessed to the landlord, and the building improvements were assessed to Burger King, for example. Ms. Morita thought that any agreement the City had regarding maintaining the taxable value or not protesting taxes could not apply to McDonald's, although McDonald's would be a party to the agreement. Mr. Dawson said that it was possible that a lot of the valuation would not be under the ownership. Ms. Morita clarified that it would be the same for personal property taxes.

Mr. Wackerman believed that part of the problem was with the line item called Estimated Tax Increment Value. He asked if Ms. Besaw could change it to Estimated New Taxable Value, which he thought would make it a little clearer. Ms. Besaw agreed.

Vice Chairperson Turnbull asked if there were any further comments. Ms. Morita asked when the property was purchased. Mr. Dawson believed that the dealership was purchased last year. Mr. Markus corrected that it was 2011. He added that the gas station was purchased in October 2012. Ms. Morita asked if the taxable values were uncapped for the parcels, which Mr. Dawson confirmed.

Vice Chairperson Turnbull said that the purchase in 2011 did not really have anything to do with what they were looking at, but he drove by it daily, and he asked when the grass would be cut. Mr. Markus responded that it was cut a day or two earlier. Vice Chairperson Turnbull stated that it was embarrassing the way the property had been maintained since it was purchased. Mr. Markus apologized. He explained that they had switched landscaping companies, because the one he used to have went out of business. He stated that there was no excuse, and he was on top of it now. Vice Chairperson Turnbull said that he was in the same position as Mr. Markus, and he had no property in the City of Detroit that looked like that, let alone Rochester Hills. Mr. Markus assured that it would not happen again. He had a big talk with his landscape crew. Once he got a letter from the City, he went through the roof. Vice Chairperson Turnbull was surprised the City had not done more. Mr. Markus promised it would not happen again, and Vice Chairperson Turnbull thanked him.

Mr. Webber suggested that the Board go through some of the considerations and talk about the next steps. For instance, he would not be opposed to putting a re-review in the Plan or some sort of timeframe. One of the memos talked about five years, and he thought that was worth

discussing.

Vice Chairperson Turnbull agreed. He thought they could add that once the applicant came back with revised tables which showed realistic capture rates, and see if it still worked. He knew Mr. Markus had costs, and he did not think those would change much. He probably had good estimates of what it would take to get to the end. If the revised tables did not get Mr. Markus to where he thought he was going in the timeframe currently proposed, Vice Chairperson Turnbull questioned what should be done. He wondered if they would add more time or if Mr. Markus would get what he could during the five year period, and that would be it.

Ms. Besaw thought that was really up to the BRA. They could work with the numbers and show new tables and see where the payback period fell, and it was up to the BRA to decide whether that would work. She thought the six year period in the Plan looked good, and they would have a few years to work with before they got to the point where it was not realistic. Usually, they looked for around ten years if they were doing local only, and if it was over that they would look at adding the State taxes. Ten years is where they would start to consider if it made sense.

Mr. Anzek indicated that Ms. Besaw made a good point about the State taxes, and he asked why they would not pursue those now. Ms. Besaw said that when they added them in, it only really made a couple of years' difference in terms of the time that it would take to go through the approvals. They had to balance whether or not it was worth the cost. Mr. Anzek said that he did not want to speak for the Board, but it would cut the City's payback time in half. The applicants were asking the City to pay the full freight, but with the State's participation, they would each pay half. Ms. Besaw said that if the BRA wanted them to look at it, they would. Mr. Anzek suggested that they would like to have all the partners that they could in the payback period. Ms. Besaw said that some municipalities liked local only, because they would be able to realize that increase in tax on those millages right away. A little would go back to the developer and a little to the taxing units. It was just what the BRA felt was best.

Mr. Anzek said that it had been a while, and there had been inactivity due to the recession, but the last time they had a prospective Brownfield Plan go forward, City Council had absolutely no interest in paying interest. He thought they should keep that in mind going forward. As a policy matter, there were things like that the Board needed to discuss - in terms of paying for the Plan development, paying administration fees and things like that. Once they had better guidance regarding that, they could

perhaps give the applicants that guidance. Mr. Markus had to make the decision of what worked for his development. Ms. Besaw commented that it did not hurt to ask. Regarding the administrative fee, Ms. Besaw said that it was an estimate based upon a prior Plan they did in Rochester Hills. She stated that it was up to the BRA whether they wanted it to be higher or lower, and the same went for the interest. She suggested that there might have to be an internal discussion about whether or not they wanted to include it.

Mr. Anzek noted that the last time they had a good working meeting with the BRA and City Council on policy setting, they looked forward to establishing a Revolving Loan Fund. No project came forward, however. The subject Plan did include that, and it looked like an opportunity for the City to consider to get seed money established to be able to help other brownfield developments in the future. If the tax tables changed, the Revolving Loan Fund would get pushed 13-20 years out, and the attractiveness would go away. Ms. Besaw agreed.

Mr. Wackerman clarified that Mr. Anzek was not talking about the BRA administration fee; he was talking about having the Rochester Hills application fee as a reimbursable, eligible activity. The way the Plan was written, the applicant would get reimbursed for the fee paid to the BRA. Ms. Besaw indicated that those types of things varied city by city. They included as much as they could, and the BRA could come back and tell them what they could not. She added that there were municipalities that allowed it, and some that did not, and it was up to the BRA's discretion.

Mr. Anzek thought that the BRA's hands were tied until they saw a clean spreadsheet with the proper capturable taxes and years. There were other items that needed clarification. He suggested that Mr. Markus combined the lots to make it clean and worked out a deal with the gas station so they could continue to operate. They could knock down the dealership but if McDonald's wanted to start, it could get complicated because of the curb cut issue and access. Mr. Anzek advised that MDOT controlled both Auburn and Rochester Rd., and they were fairly narrow about how the site would gain access. There would be two driveways to the west from Auburn and one to the south on Rochester. The gas station curb cuts could not operate if the other development was happening, and it was a timing issue. He summarized that the applicants should prepare new spreadsheets, schedule a meeting with Mr. Dawson to go over the millage rates, and get more information on the structure of the leases. They should get answers to the BRA's questions and revise the Plan as necessary. In the meantime, Staff would meet to discuss some of the

policy matters. Although several were set years ago, it was a new era, and they needed to revisit. He added that several of the Board members were missing as well, and it needed to be an inclusive discussion. He recommended that the matter be continued until the clarifications were made, and then they could schedule another meeting.

Ms. Morita said that she realized she had a lot of questions regarding the application, such as missing numbers and making sure things were clear, for example, or making sure they were not leasing the property for $25 rather than $25 per square-foot. She asked if they could make sure all the missing information was included so that when the BRA was considering it, they knew exactly what the numbers were. She maintained that it made it easier for her. It was Ms. Morita's understanding from the Act that the method of financing for the construction had to be contained within the application. Mr. Wackerman said that was only if it was being financed by the municipality through bonds.

Ms. Morita questioned the demolition costs of $246,000.00 and whether or not it was necessary and part of the remediation or whether it was related to something else. She asked if they could see a breakdown as to what the demolition costs were and how those were related to the remediation as opposed to construction activities.

Mr. Wackerman noted that in the memo of July 24, 2013 from Ms. Besaw, there was a breakdown from the demolition contractor. Based on face value, it looked like demolition costs, but they had used the words "associated with remediation," and none of the demo costs were associated with remediation; they were associated with demolition.

Ms. Morita said that she could not speak for the other Board members, but a couple of years ago, they passed a policy that required all materials to be submitted the Wednesday before the week of the meeting. She stated that they should have had all the information last Wednesday to review. She appreciated the fact that Ms. Besaw worked hard to get answers to the last minute questions, but she had not seen them, and she did not have a chance to read the memo from July 24th. Ms. Morita encouraged that if there was information the applicants wanted the Board to read, they should make sure it got to Staff two weeks before the meeting. Ms. Besaw said that next time, they would definitely be considerate of that. They submitted the Plan, and then they had two weeks for it to be reviewed before the meeting. The review came back after the two weeks, however.

Hearing no further discussion, Ms. Morita moved that the matter be continued at the next meeting. Mr. Sera seconded, and after calling for a vote, Vice Chairperson Turnbull declared that the motion was approved unanimously. Vice Chairperson Turnbull noted that the date would be determined, and he thanked the applicants.

Postponed

2013-0272 Update on new State Brownfield and Economic Development Initiatives - Tom Wackerman, ASTI Environmental

Presenter for this matter was Tom Wackerman, President, ASTI Environmental, P.O. Box 2160, Brighton, MI 48116.

Mr. Anzek introduced Mr. Wackerman, who had been the City's environmental consultant since January 2001. He was also President of ASTI Environmental, and he had been the go-to person for all environmental issues. Recently in the City, a building had been vacated by a company that left several potentially explosive hydrogen canisters, and MDOT would not let them be transported away. The company wanted to rig a temporary swimming pool in the parking lot, submerse the canisters, cut them open, let the hydrogen and water create a gas and blow fans on it to disperse it. In Mr. Wackerman's initial research, it looked like it could have an explosion radius of 1,000 yards. There was another company that located on a midnight one Saturday, and the City did not even know they were there until someone saw a press release and called the City. The company was trying to convert waste by-products into a combustible gas. That was a highly dangerous process, and it was not permitted in the district they were in. There was a lot of research done by Mr. Wackerman to track down the Italian scientist that had invented the process, and the City got the company to relocate. He commented that although the City was not in the business of chasing companies out, it did not like to have to clean up businesses that exploded. He commented that Mr. Wackerman had been a big help. His firm also supplied wetland delineation services, and activity was picking up on properties with wetlands. He had asked Mr. Wackerman to present an update on brownfield legislation. Under Governor Snyder, there had been a lot of changes with regard to tax credits and how things were reimbursed. They had drawn a little deeper line for eligibility for communities, and Mr. Anzek felt it was a good opportunity for Mr. Wackerman to give an overview.

Mr. Wackerman agreed that just four weeks ago, there had been a

number of changes to the legislation. The changes were significant for brownfield redevelopment, but he felt that it was important to see how municipalities were creating policies to deal with brownfield and other incentives. He used the word policy, because he thought it was the kind of discussion that needed to happen in a workshop, not while an applicant was taking about a Brownfield Plan. The policy could include things like whether or not to accept interest. Legislatively, that was an eligible activity, but many communities were saying that they would not pay an applicant's interest. It was an economic development tool, and cities would help someone develop, but there were some things they would not do. He referred to his memo, which said that "these were at the discretion of the BRA." Those were things that needed more thought. The BRA had the ability to allow or disallow any kind of eligible activities, as long as it was acceptable under the Act. Once that was "baked in" to the reimbursement agreement, which would be the next step for an applicant, the BRA would also have control of the actual reimbursement. Another thing that was happening with municipalities, and he noted that his firm was being hired by a lot, was that projects that were on the table four or five years ago were now generating additional taxes, and people were making application to get paid. He said that it was amazing to look at the difference between the original assumptions in a Brownfield Plan and the reimbursement agreement and what really came out in the end with the invoices. The BRA had a second opportunity to control the process when it approved the invoices for the actual expenses allowed in the Plan. With the history of communities that had now reimbursed and communities that had developed policies, there was a wide range of activities that were allowed, and he strongly recommended that the BRA got together either with City Council or in its own workshop. He mentioned that he could facilitate a workshop. They should look at best practices and come up with a set of policies for the kinds of things that had been brought up.

Mr. Wackerman strongly encouraged the BRA to go back to working on the Revolving Loan Fund. He stated that it was one of the most powerful, underutilized tools in the incentives tool kit. It allowed a City to capture taxes after it had reimbursed the applicant for expenses. It allowed a City to create a war chest which could be deployed just like any EPA site assessment grant. He indicated that Oakland County recently got a site assessment grant, and he was going to work with the City to get some of that money for the Landfill Planning Area (section 24). Money in the Revolving Loan Fund was the City's to control. He gave an example of the City of Ferndale, which set up one six or seven years ago, and they had over $300k to incentivize projects. If the City did not set up a Revolving Loan Fund, he would recommend that every Brownfield Plan

stated that "in the event that the City set one up, it would capture the taxes," so the City reserved the right to capture taxes.

Mr. Wackerman next talked about changes to due diligence and the incentive program. He said that the brownfield redevelopment process was still pretty much the same, except that there were new documents, and there was a new process added. The new documents had a lot of options. There had been a shift in focus by the MDEQ and the EPA for what they were following and for what they would approve or not. The Phase 1 was unchanged, except that a new standard would come out towards the end of 2013 that would add vapor intrusion - gases coming into buildings. The Phase 1 was still the most important document for an applicant. The Phase II investigations had changed a little in that they might require more extensive investigation to support some of the Due Care Plans that needed to be done. There were changes in the Baseline Environmental Assessment. The BEA was the third document that provided liability protection. There was no longer industrial, commercial and residential; there was just residential and non-residential. Those now complied with the Federal Phase 1 standards. There were now two exemptions. If someone leased a property for office, retail or commercial purposes, he or she would be exempt from needing a BEA. If there was a residential condominium and the contamination was consistent with residential use in the common areas, someone would not need a Due Care Plan or BEA. There was another area called Remediation Options Analysis. It had four categories, and it was limited to non-residential and residential. Another big thing was that there could be partial closures. It used to be that someone had to treat an entire property as one unit and whatever was done was done to the whole property. Now, a section of the property with an area of contamination could be treated differently. The reason that was important to the BRA was that when someone said they had closure, the City had to ask for what.

Mr. Wackerman stated that the Due Care Plan name had changed to Documentation of Due Care Compliance. He noted that they could now be approved by the DEQ, and the DEQ would no longer approve BEAs. The only approval process was now for the Documentation of Due Care Compliance. The reason that was important for the BRA was that any Federally-funded project required that approval, and it would add time to the process.

Mr. Wackerman continued that owners of property always had to do due care obligations, avoid exacerbation and take reasonable cautions against acts of third parties, and they had to make sure a property was

safe for human health and the environment. A number of years ago, he worked with the City on integrating planning, due care review and initial brownfield review, so that when a brownfield property was closed and getting incentives, they did what they were supposed to do. He remarked that this had been a bugaboo with the DEQ for a long time. People had filed Due Care Plans and said they would do certain things, and then no one followed up. The new emphasis was on following up. Property owners had to provide reasonable cooperation access to persons conducting the cleanup. They had to comply with established requirements and refrain from interfering with restrictions or response activities. The same thing happened on the State level that had happened on the Federal level. The State was going to be more concerned with reviewing, following-up and managing operation and maintenance of brownfield sites.

Mr. Wackerman indicated that there was another change to the Due Care Plan that would affect the City. Local governments used to get an exemption from due care requirements for public land. They no longer did, so parks all needed to comply with the requirements. There was a new document called a Response Activities Plan, which would come after a Due Care Plan, which was also approved by the DEQ. They had 150 days to approve what someone was proposing for a property, and it could be for one section of a property. It had added significantly to a number of different projects. In some cases, the DEQ reviewed a Plan for 149 days, and then said that it was administratively incomplete. The final new piece was something called a No Further Action Report or Letter, where the agency would say someone had done everything they were supposed to do. An applicant would get a No Further Action report and a Certificate of Completion. Afterwards, it used to come down to at what point a municipality would step in and enforce environmental regulations, because it was in the best interest of the municipality. That had been solved, because the DEQ would step in and approve the final closure, and they would require financial assurance mechanisms on some due care requirements. Municipalities were now going back to relying on the DEQ for implementation of all brownfield cleanup and requirements.

Mr. Wackerman stated that there was more of a focus on volatilization to indoor air, which was becoming more important. Any time there were volatile organics in soils, there would probably be a need for some sort of building redesign, and there would be additional costs. The BRA would more likely be seeing that in Brownfield Plans. There used to be an agricultural exemption in the Act which said that if there was an orchard and it was contaminated with lead and arsenic, which most orchards from

the 1950's were, it was exempt from being a brownfield. With the modifications to the legislation, they forgot about that, and it no longer existed in the legislation, although they were looking to reverse it.

Mr. Wackerman advised that there was now an appeal process. The DEQ had promised to put all its data online, so people could see what was happening in other communities, in terms of brownfields. There had been some changes to underground storage tank rules. The biggest change was the Collaborative Stakeholder's Group. What drove the changes and what would drive the change on incentives was this group of industry attorneys, government people and consultants that got together and said that enough was enough. They redesigned the environmental regulations in the State. They were taking on air regulations, ground water regulations and drinking water regulations, and they had made a lot of progress in making the regulations more user-friendly and understandable. In the next year or two, there would be more changes. He suggested that the Collaborative Stakeholders would be the group to watch.

Mr. Wackerman said that the BRA would see some new documents and language on brownfield applications. The BEA was still what defined a facility. The other things had to do with cleanup and operation of a property. The key ingredients were that a site had to be an eligible property with an eligible investor with an eligible project and activities. The Federal definition of brownfields was the same, but the Michigan definition had changed a little. That would affect any Brownfield Plan the BRA saw, whether or not it was eligible. The basic definition was still about a facility or a piece of property that was contaminated greater than residential cleanup criteria or a property that was in a land bank. He did not believe that Rochester Hills had taken advantage of a land bank program, and he felt that it was the second most underutilized program for brownfields in the State. He added that it was a very good program if used appropriately. There was a State Land Bank and the Oakland County Land Bank, and they had powers that eligibility under the Brownfield Act did not.

Mr. Wackerman noted that historic resources were now eligible for brownfield incentives. Rochester Hills was not a core community, so it was not affected. In all communities, demolition and lead and asbestos abatement were eligible activities. It was not that way before. Two years ago, the demolition costs and asbestos costs in a Brownfield Plan would not have been eligible for a non-core community. In addition, if the only thing an applicant was asking for was demolition and asbestos

abatement, then in non-core communities, blighted, functionally obsolete and historic resources could be eligible. The City could have someone come forward for a property that was not a facility (not contaminated) but if it were functionally obsolete or blighted, that person could bring a Brownfield Plan forward and ask for demolition and asbestos abatement costs, which went back to the policy issue. There were some communities which would, as a matter of policy, not allow demolition or abatement as an eligible activity, because the thought was that only those things someone would not have to normally do on the property, like clean up, should be eligible. He recommended that it was one of the things the BRA should consider in terms of eligible activities. Adjacent and contiguous properties had always been included, even when those were not eligible properties, as long as development on those properties added captured taxable value to the subject property. Transportation-oriented development facilities were also added.

Mr. Wackerman advised that Governor Snyder had eliminated the Brownfield Tax Credit, which Mr. Wackerman felt was one of the best programs in the country, especially for people who could leverage it as equity against bank loans. The Governor also eliminated the State Historic Tax Credit and the Employment Credit and replaced them with the Michigan Strategic Fund. He stated that Mr. Markus was not going after that. It was a $100 million fund, and it was divided into two programs: The Michigan Business Development Program and the Michigan Community Revitalization Program. It was only for businesses which created jobs and investment. The Brownfield Program was an economic development program, and the State was getting back to that. There was a time where it was just a "hand out the money" program, but now there were a lot of "but for" tests, a lot of financial gap analyses evaluations and return on investment evaluations, and they were looking for creation of real value in the State.

Mr. Wackerman related that there was now a State Brownfield Redevelopment Fund. On any application that came before the BRA that captured State taxes, they would also have to provide payment to the State Brownfield Redevelopment Fund. He mentioned that because the way the legislation was written, the City would write the check to the Fund. If it was not included in the Brownfield Plan, it would become an obligation of the City that was not funded. The City would have to make sure that was in a Brownfield Plan. It was 3 mills of the taxes captured under the State. Eligible activities could now be captured retroactively. It used to be that only assessment costs could be captured after the fact, and the Brownfield Plan had to be approved before they implemented the

activities and spent the money. That was not true anymore. The money could be spent, and an applicant could come to the City for retroactive reimbursement.

Mr. Wackerman said that the eligible activities for core communities now included parking structures, both above and below ground as well as urban storm water management systems. Those would be two very large areas in core communities. The next thing the BRA would see was a combined Brownfield 381 Work Plan. There would be one document, not two. It would be approved by the City, and it would go to the MEDC or the DEQ, depending on what the eligible activities were. He talked about trends in terms of approvals in communities, and said that most were going to high density, mixed-use, walkable and transportation-oriented development. That got the money; everything else did not. Job creation and investment targets were now required, and there were claw back provisions in reimbursement agreements. If people did not create the jobs they said they would, they would have to give back money. He noted that there was increased competition for funding, and the State had already spent all of the Michigan Strategic Fund dollars for 2013. There was starting to be a backlash against TIF in most communities - they did not want to give it out. There were obvious reasons, but especially with having to do budgets and the Headlee amendment cap and future tax capture. There had been a lot of talk about what was an eligible activity and what a City had to incentivize in order to make a deal work. Cities did not want to give away anything that was not critical to making a deal work.

Mr. Wackerman pointed out that there had been a lot of creative uses of grants, especially as they related to remediation. Demolition, underground storage tank removal, etc., had been funded. There was more focus on collaborative and area wide. That was why he and the Planning Staff had long discussions about the Landfill Planning Area. It was ripe for coordinated and collaborative efforts and, therefore, ripe for Federal funding.

Mr. Wackerman talked about the Community Revitalization Program, which could either be a grant, loan or other economic assistance. Any kind of construction was eligible. It was up to 25% of an eligible investment, so there would be hard costs, engineering and architectural fees and someone could get up to 25% for that for a maximum of $10 million for any one project, including up to $1 million for a grant and a maximum of $9 million for a loan. It was performance and need based, and the project would have to pass an economic financial gap analysis. He illustrated that the State now had a loaning or incentives profile. That

profile went back to trends; what the State wanted to incentivize was true mixed-use, three-story brick, zero lot line, new urbanist, transportation-oriented development with artist's lofts. The further a project was away from that, the less chance there would be of getting funding from the State. Some municipalities were following suit. The problem was that it left out most of the suburbs in Michigan. There had been some tension about what the State would really incentivize versus what was really built in the State. He mentioned that if anyone was interested in that subject, on November 20 and 21st, he was going to be hosting the University of Michigan Urban Land Institute Real Estate Forum in Lansing, and that was one of the subjects (what people were really building in Michigan). He remarked that it looked more like Rochester Hills than it did downtown Detroit. The State was looking for a very specific type of project, but a municipality had to have skin in the game. The City had control of an applicant's access to State funds. If the City did not, in some way, incentivize the applicant through a Brownfield Plan, a pilot or some sort of DDA payment, the applicant would not have access to the Community Revitalization Program.

Mr. Wackerman noted the second program under the Michigan Strategic Fund, the Business Development Program. It was specifically for manufacturing and for people who created more than 50 jobs or 25 jobs in high tech. The definition of a qualified investment was "anything they said it was." If an applicant did not have a manufacturing facility coming to Rochester Hills from out of state that was creating more than 50 jobs, it would not work for the applicant, but it was there in the event that occurred.

Regarding what was going on in the marketplace, Mr. Wackerman felt that there would always be something for great projects. Most municipalities were focusing their attention and incentives on what they defined as great projects. Each municipality would define that differently, depending on what they were trying to do and how they were developing, but they were focusing on those rather than spreading it out over a number of different projects. Incentives were taking more time because of the environmental requirements, and because people were asking more questions. They were more competitive, because people were being more judicious about the money they were giving out. The incentives were smaller, and the Michigan Strategic Fund Brownfield Program was about 10% of what the Brownfield Tax Credit Program used to be. He thought that gap financing would be harder to find, but he commented that the good news was that banks were lending again. He thought there would be more equity from developers required. There were a lot of deals done during the recession where the developer had no equity. It was all incentives and someone

else's debt. He thought they would see a requirement to go back to the 80/20 or 70/30 rule. If an applicant said that he did not really need the money, most communities were saying that they would not give it then. There would be more measurable outcomes. He was not sure if it was a result of Governor Snyder's desire or if it was just time, but people were looking to see if people did what they said they would. The technology, the market and the development had to be ready. Most communities were no longer giving incentives for spec or things that were just ideas. They wanted to know that there was a tenant, that the market could handle it, and that everything was in place. He reiterated that the focus would be more on urban projects from a State-wide perspective. It would be on projects that had real financing gaps. He added that there was nothing out there for affordable housing on the brownfield end.

Mr. Wackerman concluded that those were the two key areas of change: The process of doing a Brownfield Plan or doing environmental due diligence on the one hand, and the process of granting incentives on the other. He noted on his handout the State's definition of non-environmental, eligible activities. Those would be eligible for school tax capture through the MEDC, which did not include remediation.

In his handout, Mr. Wackerman had also included a list of activities that were available under each key incentive program. It was an overview of the kinds of things that were being incentivized and that the City could incentivize, which would hopefully spark some creativity and allow the BRA to look at a Plan and compare it with the handout. He had also included two articles that he published, which were about the changes to due diligence and changes in incentives. He recommended that the members considered the previous discussion and asked what types of things came out as reasonable or unreasonable and whether something should be a policy.

Ms. Morita asked if the MEDC had captured school tax before or if it was new. She questioned whether the BRA could refuse to capture the 3 mill of school tax. Mr. Wackerman advised that the Brownfield Fund was nothing more than a Revolving Loan Fund for the State, and the BRA did not have control of that. If an applicant was seeking school tax capture, the BRA would be required to put 3 mills out of the school tax capture into the new Strategic Fund. BRAs were now requiring a line item for that capture on the tax capture table. Ms. Morita wondered about approving a Plan that essentially took 3 mills away from the schools. Mr. Wackerman clarified that the school tax capture provision reimbursed the schools and made them whole. Ms. Morita asked why they would bother doing it if the

money was going out and coming back. Mr. Wackerman said that he really had no idea. He said that it was like the lottery funding of the schools, which he did not really understand, either. The way it would work was that the property owner would pay school taxes, and it would then come back to reimburse the property owner, and then the State would reimburse the schools, so the schools were not out. Ms. Morita questioned whether the State would actually reimburse the schools. She was worried about the perception that the BRA would be engaging in an activity which would take money away from the schools, where it had not been taken away before. Mr. Wackerman said that the school tax capture had always been there. They were not allowing a developer to collect 3 mills of it. They would take it away from a developer's reimbursement and give it to the new State Fund. The flow of cash had always been that if there was an approved 381 Work Plan with the State, school taxes would be paid by the developer and the developer would be reimbursed as the eligible taxpayer. The payback would be longer. Mr. Wackerman said that he had a problem with the legislation which said that the "Authority" would pay the State. If a city had forgotten to add something to a Plan, and an eligible taxpayer was reimbursed the full 24 mills, that city would have to write a check for the 3 mills. There had to be an explicit line item in the tax capture. Ms. Morita asked if someone at the City would have to cut the State a check for 3 mills. Mr. Wackerman agreed the City would collect it and cut the check. The applicant would be reimbursed 21 mills, but the State would be owed 3.

Vice Chairperson Turnbull said that Ms. Morita had a question earlier about the applicant having two parcels. The BRA did not see a breakdown on the costs for those individually; they were given overall costs for the entire site for assessment, remediation, demolition and combined activities. Vice Chairperson Turnbull said that he understood that it would be one parcel down the road, but the majority of the environmental costs were at the gas station, and the majority of the demolition costs were at the former dealership. He noted that the BRA had the discretion of letting demolition be a reimbursable expense or not, and he felt that they should ask for the breakdown regarding how the costs were allocated. There was .7 acre and 4.4 acres. The percentage of the overall development of the gas station would only generate so much in taxes, and he was not sure how much contamination was at the dealership from 18 years of operation.

Ms. Morita said the results showed that it was in one tiny spot, and Vice Chairperson Turnbull questioned whether there was any. He advised that he had been down the same path in his day job, where he had asked

developers for that type of breakdown for the costs. He believed that it was the developer's responsibility to go back to the seller and state that there was a liability that had to be factored into the sale price. The applicant was not going to be using the building, and he really did not need it. To make the developer whole in this case, the BRA would be letting him use the incentive vehicle for a significant portion of the demolition of the structure, and Vice Chaiperson Turnbull did not know if that was a cost they wanted to accept and include. He suggested that they would have to wait until they got the breakdown.

Mr. Wackerman remarked that Vice Chairperson Turnbull posed an amazingly complicated question. The law did not ask someone to break down the costs by parcel; it asked for the tax capture by parcel. That distinction was important because the costs could be reimbursed across the entire project. If one parcel was 80% of the project but had no contamination and 90% of the costs were on the remaining 20% of the parcel, the question would be how they would collect. The capture would be over both parcels, but the capture had to be illustrated separately, so that as it moved forward and each parcel was assessed separately or developed differently, it made sense. The Board had discussed whether incentives should be for cleanup. In most cases, someone did not have to do cleanup - engineered controls could be done, for example. He suggested that if the City wanted to have a policy that the incentives should be used for cleanup, it had to be explicit. He mentioned the City of Ann Arbor as an example. If something had to do with tax incentives, applicants would be required to clean not only their own sites, but any offsite contamination. By contract, the City of Birmingham did not require a cleanup, but they would not pay for anything but a cleanup. They felt it was an environmental tool. Other cities would give an applicant anything requested, because they saw it as an economic development tool. He wanted to make sure that the Board was not just talking about cleanup.

Vice Chairperson Turnbull wondered if they would see a breakdown of the costs, if that was something the applicants did not have to provide. He asked if the Board could request it. Mr. Wackerman informed that they could request anything they wanted. He did not mean to imply that they should not see the costs of the line items - he stated that they absolutely should. He had asked Ms. Besaw for those, and she had provided them in her July 24th memo. He felt that information was important to be able to understand the reasonableness of the costs and to understand the impact of those costs on future taxable value. They took the entire cost of the project to come up with the future taxable value, and most of those costs would not change the taxable value. It was only the capital

improvements to the property that would really affect the future taxable value. He agreed that the Board had to get the line item costs. He reiterated that there was no requirement to split those costs between properties, and there was really no way to do that if they were putting a building across three properties. He commented that it was rather academic how the construction costs would be split.

Vice Chairperson Turnbull understood that about development costs, but he said that demolition and remediation costs could be broken down per parcel. Mr. Wackerman agreed that the Board had the right to ask for that. The applicant might not want to be limited by parcel, and he would want to cover his costs across all the parcels. Mr. Wackerman wondered about putting a parking lot on one parcel and a building on another. All of the increased value would be on parcel two, but they would have to cover all of the costs somehow, so they would be allowed to spread them across both parcels.

Ms. Morita asked about the estimate provided. Mr. Wackerman said that on the demolition page, there was a quote from a demo company that listed building and site demo. Ms. Morita said that it did not show how many different line items and sums there were, so the Board had no way of knowing how much everything would cost. Mr. Wackerman agreed the Board had no way of knowing the cost of the line items. Ms. Morita said that basically, they had not provided what the Board was looking for. Mr. Wackerman said they had not provided what he asked, but they did provide some detail.

Mr. Wackerman maintained that it was important to note that the BRA had control in three places. There was the Brownfield Plan, which was nothing more than painting a picture. There was a Reimbursement Agreement, which was where the real clauses, requirements and detail were. When the applicant came for reimbursement, they could only get reimbursement on actual costs. If the BRA approved $800k in eligible activities, but the applicant only spent $400k, they could only get $400k. The Board had the duty of reviewing every invoice. He had seen common errors. The first was the date of the invoice. It could be ineligible because it was not approved under the program.

The second one was that the invoice was actually more than what they thought it was. Without the line item numbers or description, they would not know whether something else was buried in there. In most cases, that would be taken care of on the reimbursement end. Thirdly, the Board

could look at an invoice and perhaps ask for more detail, so there were some other places for control.

Ms. Morita said that from a policy perspective, she had an issue with demo-ing existing structures, one of which appeared to be economically viable - the gas station - and paying for demolition of that. She did not feel that there was a reason the applicant should get preferential treatment over any other developer that would come in and want to redevelop a piece of property that did not happen to have a spot of contamination on it. Generally speaking, when there were old buildings that needed to be demo-ed, the developer did not run to the City to ask for brownfield approval and at the same time, ask the Board to waive all the fees. Staff would have to be paid, and it would take time away from their other projects. Mr. Wackerman also had fees. She felt that the City should be made whole for those.

Mr. Wackerman agreed. He said that Ms. Morita brought up a couple of really good points. There were communities that categorically would not pay for demos. Their position was that the applicant bought the property, and they had to demo to build the new development, anyway. The City would not pay for that.

Vice Chairperson Turnbull said that was his point. If it was not the configuration an applicant wanted, something would have to happen in the negotiation process of the purchase. Mr. Wackerman agreed that it could just be part of the buyer's cost. He indicated that it was a policy decision that the Board had to look at. There were other communities that would give applicants anything they wanted, because they felt they really needed the development. Mr. Wackerman mentioned a comment about an applicant getting a lot of benefits plus wanting a tax abatement or fees waived. A lot of communities were saying that if they gave brownfield incentives to an applicant, they would take into account all of the other things they had done for the applicant. If they waived $10k worth of fees, they might decide not to give $10k of brownfield incentives. He felt that was an important, holistic approach as to what the true cost to the City would be.

Ms. Morita wondered about having to review invoices or pay someone to review invoices to make sure they were for eligible activities. She assumed that would be done by someone in Mr. Wackerman's office. He agreed they did that. Ms. Morita said that if the developer did not pay for that, the City would have to bear the cost, and she felt that was unreasonable. She had seen an instance where the developer was

required to pay for those costs in advance, and if the account got too low, they had to add to it to keep paying for the fees. That kept the developer a lot more reasonable and made sure the developer submitted the right documents when they were supposed to, as opposed to relying on the City to catch mistakes.

Mr. Wackerman said that was a policy decision the BRA might want to consider. They could add an additional administrative fee into the program.

Mr. Anzek advised that the City did that now for Site Plan Approvals. The applicants had to post an escrow account, and before a project moved forward, it could go through several reviews by Staff who charged against that escrow. If the escrow got to zero, Staff stopped working on a project until it was brought back into compliance.

Ms. Morita asked if the same thing was done with a Brownfield Plan. Mr. Anzek said that they really had never done one. There was an application fee, but he suggested that they should put language in the reimbursement agreement about establishing an escrow account which could be charged against for hours spent by Staff or consultants. If it became depleted, it would have to be replenished. That would be apart from reimbursement. Ms. Morita agreed, and said that there should be another line item for attorney review of the documents. Mr. Anzek pointed out that the applicants put $200k in the Plan for consultant fees for them to put the Plan together. If approved, the City would be paying the applicant's consultant through the reimbursement of taxes.

Mr. Wackerman noted that there were two fees the City charged. There was a $2,500.00 application fee, which was designed to pay for brownfield review and Mr. Wackerman's time. There was also administrative collection of the taxes over time. There were a number of communities that added to that direct cost fees, and those could come out of the developer's pocket or would be seen as an eligible activity. The problem with that was that Peter was paying Paul, and it did not make a lot of sense. He recommended using the structure the City had for planning. If the City was going to give an applicant dollars, there would be other costs it would incur first. Up until this year, the MEDC and the MDEQ charged for review of 381 Work Plans. They were no longer doing that, but it set a precedent that made perfect sense.

Ms. Morita asked if the $2,500.00 fee covered the cost of Mr. Wackerman's review of an application and for coming to the BRA

meetings. Mr. Wackerman felt that on the average, it probably did. It depended on how complicated a Plan was. That fee would not cover a review of Madison Park (Softball City). That was an extremely complicated Brownfield Plan. Something like the subject application was not even half of that, and it was fairly simple. Ms. Morita said that it depended on how many meetings were involved. Mr. Wackerman clarified that it depended on the complexity and how many times it might have to be redone. He was not exactly sure because the City had not done a Plan. Ms. Morita wondered whether the Board needed to look at restructuring the fee. If someone came in with a larger, more complex Plan, she felt that they should have to pay more than $2,500.

Mr. Anzek thought that was a good point, and he stated that it would be an easy thing to put in place. They could require $2,500 to cover the initial review and two meetings in front of the BRA. If the information was inadequate and it continued, they would have to pay additional, such as $1,000 per meeting. Meetings were not just the two hours they sat there. The meetings were about Mr. Dawson's review, Mr. Wackerman's review and Planning's Review. The applicant had submitted some initial drafts to Mr. Wackerman which were not ready to be sent to the BRA. Ms. Morita said that was the type of activity she would like to discourage by increasing the fees. The point was that the developer should be coming to the BRA with Plans that actually had the amount of square-footage in the application. She stated that it was ridiculous. She said that she could not speak for the rest of the members, but when it was 10:00 at night after she had already had a long day and then had to read the Plan, which she reminded was purely voluntary, and she could not figure out simple things in it, it was downhill from there. She wanted to make everyone's life easier and encourage developers to come to the City with a Plan that they did not have to pay to have corrected. She did not understand why it was so hard to submit a complete Plan.

Mr. Wackerman said that he and Staff had discussed that earlier. He was not sure what was going on in the environmental business, but some of the documents were not being well prepared. He had noticed in his first review that the tables were not even totaled correctly. Ms. Morita said that she looked at the tables also, and it did not even make sense to her. Either the names were not right or the numbers were not. Things were in there that should not have been. She commented that it was ludicrous that the applicant could not even bother to go on the City's website to find out the proper millages. Mr. Wackerman recommended that the things that the Board felt was important for policy and decision making needed to be included in the project summary. The City needed to ask for that

even before receiving the Plan, so they did not have to go through 20 pages of text. Ms. Morita observed that they did include the application; the problem was that it was incomplete. Mr. Wackerman agreed, and he said that would be the time to send it back, before the BRA meeting. He felt that the intent should be that the application was submitted prior to the meeting, so they could look through all of the key financial and operational indicators, and then they could submit the Plan.

Ms. Morita said that she would be interested in seeing a proposal from Staff - a wish list of how Staff would like to see the setup and what would make things easier, which would make the BRA's life a little easier.

Mr. Anzek said that regarding the Site Plan side, Staff always asked that if the applicant had information, it should be put on the plans. They should not have to keep asking for things, because it extended the process. Staff had educated a lot of the consultants to do that, and things were going more quickly for applicants. He suggested that they could require the same for Brownfield Plans. It would be better to err on the side of having too much information rather than not having enough. He mentioned again that Staff had received the Plan last week, and he and Mr. Breuckman only had a little time to review it, and they saw the same types of things the BRA was questioning.

Mr. Anzek said that they also discussed dissolving the Board, but there might now be more activity coming forward, and there was the opportunity to build the Revolving Loan Fund. That could be a powerful tool, and his department was shopping for tools. With the MEGA going away, the City's tax abatement went away. The City had not granted one in over two years, and they used to do three or four a year, which brought major business to the City. The City recently adopted a PACE program, which was an incentive for businesses to upgrade environmental components of their buildings. He liked it that they might be looking at a Revolving Loan Fund in five or six years. However, if the applicant's table was so wrong that the City would not get to that for 13 years, he would not be as excited. The City thought it had a good program, but strategies and laws were changing after the recession from four or five years ago. He believed that there would be policy discussions at the City Council level.

Ms. Morita agreed that whether or not they wanted the BRA to be a body that authorized projects for cleanup or to have an economic development tool to tear down buildings and encourage wholesale redevelopment would be a question for Council to answer. That was Mr. Webber's issue to take back to Council for discussion. Mr. Anzek added that Mr. Webber

sat on the Strategic Planning Commission for Council, which met annually to look at goals and objectives and how they should be implemented. Out of that came the objectives for departments' budgets.

Ms. Morita said that until she actually saw the purchase agreement and closing statement for the applicant's purchase, she would not be sure what the sale price was. Mr. Anzek believed it was $2.9 million, although Mr. Markus had said $2.7 million. He mentioned that in 2005 or 2006, a huge industrial building the City owned was torn down (185k square feet, three levels, thick concrete and steel) for $183k. Ms. Morita said that was why she wanted to see line items for the applicant's proposed demo, because it seemed a little high.

Mr. Webber said that from his perspective, and the BRA had not had a lot of projects recently, there were certain sites in the City, especially as there was less land to develop, where there was a need for some type of remediation in order to use them. When the applicants came before Council for a Rezoning, he had stated that they were going to have to do something with the gas station. The applicants were very confident that they would be able to clean it up. Mr. Webber felt that the BRA should focus more on that than the demolition of the buildings. He thought that the BRA might have a workshop before the applicant came back. He said that it obviously could not be a closed session, but he felt they could have a policy discussion and see where everyone was at. They could then review the applicant's final application and make a determination from there.

Mr. Anzek asked the Board for some time for Staff to work with Mr. Wackerman and look at what other communities were doing and how they were answering some of these questions. They could have a workshop when all seven members were able to attend. If Staff knew what the members' thoughts were, it would be helpful. Mr. Sera thought that was a great idea. He agreed that they should find out what other cities were doing, and Mr. Anzek said he and Mr. Wackerman would pull that information together and find a good date for a workshop when everyone was available.

Ms. Morita said that she would like to see recommendations from Staff on the fee structure for the application and perhaps some new rules for submitting an application. From her perspective, having to come to a meeting to review a Plan that was not complete added a lot more work for everyone. She felt that it could be avoided by making the developer come in with a Plan that had all the boxes filled in.

DISCUSSION

2013-0280 Meeting Date(s)

Ms. Morita had talked to Mr. Anzek about holding one annual meeting, since they had not met in the last two-and-a half years. She had suggested that it might be easier to have one meeting set per year and call meetings as needed. She believed that they were paying to publish notices quarterly and sending out emails about cancellations. Mr. Anzek clarified that it did not cost the City to post notices - they were only on the City's website and in the front foyer. Ms. Morita clarified that if there was a Public Hearing, it would have to be noticed in the paper.

Mr. Anzek recommended that they kept publishing scheduled quarterly meetings, and the Board could schedule Special Meetings whenever they decided, to which the Board agreed.

Mr. Webber thought that the applicants would want to come back before October 17. He thought that what the applicant planned for the site would look much better than what was there currently. From that perspective, he felt that they should work with the applicant to eliminate the abandoned car dealership and very old gas station, especially one with so many curb cuts.

ANY OTHER BUSINESS

Regarding policy, Mr. Breuckman wondered if there could be a dual type, with regards to the spectrum of economic development versus environmental cleanup and the way the Board structured its policies. If there was a project they really wanted to incentivize and bring to the City, he wondered if they could use more of the incentives for demolition, and if it were just environmental cleanup, they could allow an applicant to capture for cleanup activities. It would be somewhat of a two-level system.

Mr. Wackerman said they could, and it would all depend on how the policy was written. Mr. Breuckman suggested that there could even be a case where the BRA wanted to use its broader powers for more payback. The project could to go to Council, and the applicant would ask Council to direct the BRA to consider something along those lines.

Mr. Wackerman thought that this was where not having a policy might be the best policy. If the BRA wanted to very tightly script the process, such as the City of Birmingham had, that would lead to one outcome. If they wanted to be loosely scripted, it would lead to a different set of outcomes. The MEDC had a list of projects they wanted to incentivize, but if a project was really good and it was not on it, they might consider it. The BRA might want to take the middle ground and be flexible, which would allow certain areas of the City or certain types of development to be incentivized. He recommended that they could consider all the specifics and decide in a workshop. Each of those issues had implications as to how they would operate or deploy dollars. If someone wanted to come in and put a used car lot, they needed to know how to respond.

Mr. Anzek thought that Staff had enough information to get started on a workshop. Depending on how the BRA judged a project to be beneficial or of high quality for the community, it had the opportunity to assist with funding. He asked the members to shoot him an email if they had any further thoughts.

Mr. Sera suggested that perhaps they could list ten things, such as interest, demolition and other things and determine that those were the areas to discuss. Mr. Anzek recalled that the City had a similar chart for tax abatements. How many jobs were created determined how many years of abatement a company could get. Staff might try to structure something similar. Mr. Webber agreed that when something was in front of Council, they got a report which told them which criteria would be met. Mr. Anzek said that it had served Council well, but it was only a guideline. If there was a really good company with a strong potential for growth or the type of company that wanted Rochester Hills in its address, they might get a few more years. Mr. Webber said that sometimes a company had one idea for the length of an abatement, and Staff might recommend something different.

Mr. Anzek thanked everyone for their input. Ms. Morita asked if two weeks was enough time for Staff to review a Plan. Mr. Breuckman said that he could see it becoming similar to a Site Plan process. Staff would not bring a Plan before the BRA until everything was met in the requirements, and Mr. Dawson was happy that the spreadsheet was correct. There would be more internal Staff reviews. He felt that the discussion had been useful, and that Staff got some good contributions from the BRA for the future.

NEXT MEETING DATE

Vice Chairperson Turnbull reminded the Board that the next Regular Meeting was scheduled for October 17, 2013.

ADJOURNMENT

Hearing no further business to come before the Brownfield Redevelopment Authority Board and upon motion by Morita, seconded by Sera, Vice Chairperson Turnbull adjourned the Special Meeting at 9:14 p.m.

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Thomas Turnbull, Vice Chairperson
Rochester Hills Brownfield Redevelopment Authority

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Maureen Gentry, Recording Secretary