Rochester Hills

Minutes

Brownfield Redevelopment Authority

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

Thursday, December 19, 2013 **7:00 PM** **1000 Rochester Hills Drive**

CALL TO ORDER

Chairperson Stephen McGarry called the Special Meeting to order at 7:05 p.m. in the Auditorium.

ROLL CALL

Present 5 - Del Stanley, Stephen McGarry, Thomas Turnbull, Bill Chalmers and Stephanie Morita

Absent 2 - Mark Sera and Robert Justin

Quorum present

Also present: James Breuckman, Manager of Planning
Kurt Dawson, Director of Treasury/Assessing
Maureen Gentry, Recording Secretary

APPROVAL OF MINUTES

2013-0493 October 24, 2013 Special Meeting

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

Aye 5 - Stanley, McGarry, Turnbull, Chalmers and Morita

Absent 2 - Sera and Justin

COMMUNICATIONS

There were no Communications presented.

UNFINISHED BUSINESS

2013-0271 Request for Approval of the 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: Memo dated December 11, 2013, prepared by Tom Wackerman of ASTI; Brownfield Plan dated December 5, 2013, prepared by PM Environmental and memo dated December 13, 2013, prepared by James Breuckman, Manager of Planning had been placed on file and by reference became part of the record thereof).

Present for the applicant were Doraid Markus, Rochester Auburn Associates LLC, 6750 Oakhills Dr., Bloomfield Hills, MI 48301 and Jessica Besaw, PM Environmental,, 4080 W. 11 Mile Rd., Berkley, MI 48072.

Mr. Markus introduced himself, and said that they were developing the former Meadowbrook dealership and Citgo gas station at the southwest corner of Rochester and Auburn Roads.

Ms. Besaw recapped that Mr. Markus had worked with the City quite a bit to make sure that the Plan was what was wanted and needed for the parcels. She noted that there was a former gas station property and a service garage/dealership property and since they had last met, the parcels for both had been combined. They also worked with Mr. Dawson, Director of Assessing, to determine a more realistic taxable value following redevelopment, as discussed at the last meeting, which had been reset to $2.65 million.

Ms. Besaw stated that the taxable value anticipated a seven-year reimbursement period if the State decided to support the Michigan Department of Environmental Quality (MDEQ) activities. The BRA had also asked them to approach the State (MEDC) about their support of the project. They sat down with the MDEQ and the MEDC, and initially, the MEDC did show support of the project concept, but ultimately, the type of projects they were really supporting now were the downtown, urban core, placemaking-type of projects. The State decided that they could not put resources towards the project. Overall, the MDEQ was supportive of the project, but their biggest concern, as stated in Mr. Wackerman's memo, was that Mr. Markus had been operating the property since ownership. Mr. Markus planned to stop operations at the end of December, at which time they would do additional investigations so they could bring the numbers to the MDEQ and make sure no new release had occurred. Assuming that was the case, Ms. Besaw believed that the MDEQ would be supportive of the Tax Increment Finance (TIF) expenses.

Ms. Besaw indicated that since the MEDC could not provide support, instead of putting forward the full non-environmental costs, they would do a proportional share - what the local taxes would have covered had the MEDC supported with State taxes. That ended up to be a 47% cost share. The total reimbursable costs for non-environmental was $138,388, and the environmental was $164,905. They wanted to get feedback on the changes they had submitted. They tried to include everything that was requested at the last meeting, and they hoped to get approval of the Brownfield Plan to be able to move forward to City Council.

Ms. Morita asked Mr. Wackerman what would happen if the applicant was determined not to be the innocent purchaser. Mr. Wackerman responded that there were two parcels on which the investigations were done, and the issue of the underground storage tanks only referred to the first parcel, although the parcels had been combined. He thought that the issue would go back to when the initial assessment was done. If the applicant was deemed not to be an innocent landowner on the gas station parcel, Mr. Wackerman did not think it changed the protection on the original dealership parcel. Ms. Morita asked if it changed the parameters of the Plan and what the BRA could or could not approve. Mr. Wackerman explained that someone had to be an innocent landowner to be eligible for brownfield incentives. Ms. Morita asked if it would be better for the BRA to have that determination first so they would know what they were considering. The applicant said the operations would be stopped next month, and testing would be done to make a determination. She would like to prevent contemplation of something that might not come to fruition. Mr. Wackerman said that the applicant was attempting to establish whether or not there had been contribution, and if there had been none, then the applicant would not void the innocent landowner position. He asked Ms. Besaw if a baseline had been done around the tanks. Ms. Besaw said that it had, but it was from a couple of years ago - at the time of purchase. Mr. Wackerman said that the additional sampling could indicate higher concentrations than in the original baseline, in which case the assumption would be contribution. The other scenario would be similar concentrations within a reasonable percentage, in which case the owner would still maintain the innocent landowner position. In the event the applicant lost the innocent landowner position, the MDEQ would not allow expenses associated with the gas station parcel. The BRA had discretion to do some things that the State might not do. The BRA would have to decide whether to be consistent with the MDEQ or not. The way the Plan was written, the BRA would cover the expenses. It said that in the event the MDEQ did not cover them, the local taxes would.

Ms. Morita asked if the BRA had ever covered expenses when there was not an innocent landowner. Mr. Breuckman said that the City only had two Brownfield Plans, and they did not have a track record to fall back on. Ms. Morita felt that in both of those cases (Adams and Hamlin and the former Suburban Softball site), there were innocent landowners. Mr. Morita asked if the current Brownfield Policy allowed the BRA to provide assistance to non-innocent landowners, and Mr. Wackerman confirmed that it did not.

Chairperson McGarry asked if was against the Policy if the City covered what the MDEQ did not. Mr. Wackerman advised that they could solve that problem by not covering anything that the MDEQ deemed non-eligible. Ms. Morita thought that would change the dynamics of the numbers they were dealing with, in terms of determining whether or not there was a sufficient Internal Rate of Return (IRR) and other items. Mr. Wackerman pointed out that his memo said that they had not done, nor did they have sufficient information to do, an IRR calculation on this project. The BRA needed to determine whether it wanted to make that determination. If so, they would need more financial information from the applicant. Ms. Morita said that she would like to see that, and she would also like a determination as to whether or not the property owner was an innocent landowner. It would make the decision much cleaner, as opposed to having to deal with "what ifs" and not knowing whether or not there was an appropriate IRR, in light of the improvements that would be covered.

Chairperson McGarry agreed. He pointed out that the applicant had owned the property for about two years, and he wondered how long the property had been used as a gas station. He would like to get a better idea of the percentage of time Mr. Markus had owned the property during its life as a gas station. Ms. Besaw replied that it had been a gas station since the early 1950s. Chairperson McGarry noted that Mr. Markus had owned it perhaps two years out of over 50. He wondered if there were benchmarks from other communities that looked at a relative ownership period and tied it back to whether an owner was innocent or not. Mr. Wackerman said that there were not any that he knew of, because it was not the definition of an innocent landowner. The innocent landowner definition started with completion of a Phase I and if necessary, a BEA. Those would get voided if the owner violated any due care obligations, one of which was non-exacerbation or non-contribution. There was no percentage or duration factor. Some of the samples would come back higher, because environmental samples could not be duplicated, and

they could be within a reasonable percentage. It might come back where it was higher, but not significantly higher, but he stated that it had nothing to do with ownership percentage.

Mr. Turnbull asked how they would determine if the results were from the current owner or from the BEA from two years ago. Mr. Wackerman agreed that it could be quite difficult. Mr. Turnbull felt that it would be impossible. Mr. Wackerman said that sampling around the tank at the time of purchase and at the time of decommissioning would have had to been done. Mr. Turnbull commented that they were talking about doing something that really could not be done. Mr. Wackerman asked Ms. Besaw if the MDEQ said it would make a determination based on a second sampling around the tanks. Ms. Besaw agreed that they would need to see second samplings, and then they could move forward with a decision. She added that when Mr. Markus purchased the property, there was sampling conducted around the tank basins, and they would compare the new ones to those. Mr. Turnbull felt that it would be essentially the same. Unless there was a significant release over the last two years, which he doubted, he believed that it would be essentially the same. Chairperson McGarry agreed. Mr. Turnbull assumed that the applicant's warranty would not be void then. Mr. Wackerman said that would be the conclusion if they had not contributed or exacerbated. Mr. Turnbull asked Mr. Markus if they had done some testing this summer - he noticed that the tanks had been unearthed. Ms. Besaw advised that the last investigations were completed when the property was purchased. Mr. Turnbull had observed that there was maintenance done in the summer, and the tanks were recertified in the fall. Ms. Besaw said that she was not aware.

Mr. Turnbull explained that the tanks were uncovered at the surface, not removed. Mr. Markus said that he did not do it, and Mr. Turnbull assumed that the lessee who was there did it for compliance records.

Chairperson McGarry asked how far down the unearthing went. Mr. Turnbull said that they went down about three feet. Chairperson McGarry asked if the new samples taken would be deeper. Mr. Turnbull agreed, and said there would be distribution lines, and he added that he would be very surprised if they found anything significant from two years ago.

Mr. Wackerman felt that the issue was not the science, but the decision point the MDEQ would be making. Chairperson McGarry said that given the period of time the station had been there and given that an assessment had been done two years ago, he asked Mr. Wackerman's

opinion about the likelihood that the new testing would be different and/or whether the MDEQ would approve it. He asked if Mr. Wackerman could base it on what he had seen in the past. Mr. Wackerman said that they would probably find the same thing or something indistinguishable.

Ms. Morita asked what additional information the BRA needed from the property owner to get the IRR calculations. Mr. Wackerman suggested that the applicant could use the MEDC IRR calculation form that was on the State's webpage. They would put in their operating costs, initial costs and an assumption of resale, and that would indicate what the IRR was over a six-year period. The BRA would have to decide what IRR was reasonable for incentives.

Ms. Besaw noted that she had prepared a Sources and Uses Table (that was not included in the packet). It was based on the cost estimates of the property that they also included in the application, along with the acquisition costs and the construction loan or permanent financing that would be obtained. Essentially, there was a $1.78 million financing gap, where the developer would have to bring his own funding to the project. Mr. Wackerman recommended that before Ms. Besaw sent it out, there needed to be an owner equity line, and that was what the funding gap was defined as. She should also include the requested TIF as a source of funding, which would illustrate what the final gap was. Mr. Wackerman said that the BRA could not make the kinds of decisions they needed from the information on the table provided, which was not an IRR calculation. Ms. Besaw said that was fair; with the lack of time they had before the meeting, they just wanted to bring something to show.

Ms. Morita asked what the New Equipment line item was. Mr. Markus replied that it was for all the white box builds of all the tenants. There were bathrooms, flooring, and fixtures in most units, and every tenant had different plans for which he would contribute. Ms. Morita clarified that it was not new equipment; it was actual building finishes.

Mr. Chalmers asked if there was some sort of delineation with regards to brownfield redevelopment that was classified as equipment rather than construction hard costs. He mentioned that there was a line item called Hard Costs. Mr. Markus explained that hard costs were the building shells; the white box would be inside of the individual tenant units. Mr. Chalmers thought that hard costs, construction of new buildings, and new equipment should all be hard costs. Mr. Markus agreed they should be lumped together. They broke out the building itself, and the equipment to be housed in the building, from the HVAC to the plumbing. Mr. Chalmers

asked about personal and real property, but Mr. Dawson did not believe it included personal. Mr. Markus agreed that it was not the tenants' personal property - it was for providing fixtures, bathrooms, and whatever else was needed for tenant specifications. Mr. Chalmers confirmed that in terms of the TIF, how Mr. Markus classified it did not really pertain to the BRA or make a difference in its determination.

Mr. Chalmers asked if the contamination was limited to the Citgo site. Ms. Besaw advised that there was also contamination associated with the former dealership. Mr. Chalmers asked if there was groundwater contamination as well, and if so, which way it was migrating. Ms. Besaw believed that there was groundwater migrating to the southwest. Mr. Chalmers questioned whether there was any active or passive remediation associated with it, or if nature would just run its course. Ms. Besaw explained that there would be a vapor barrier installed in the building, and contaminated soil associated with the footings of the building would be coming out with utility trenches. Otherwise, the vapor barrier would be meeting the due care obligations. Mr. Chalmers referred to the land use to the very southwest, and he asked if it was commercial or residential. Mr. Markus advised that there were homes in that area.

Mr. Turnbull noted that the applicant would be removing 750 yards of soil, and he asked if that was only from the gas station site where they would put in foundations and the vapor barrier trenches. He wondered if they would not be remediating anything from the dealership site. Ms. Besaw clarified that a portion of that soil would be from the dealership area. Mr. Turnbull asked if there would be foundations and utility trenches there, which Ms. Besaw confirmed. Mr. Turnbull clarified that any other contamination would be left. Ms. Besaw added that there would be utility trench barriers installed to avoid the movement of the contamination in the ground along those trenches, but the biggest extent of the contamination was where the vapor barrier would be installed.

Mr. Turnbull asked about the full extent of the contamination from the gas station (volume of soil that had been impacted). For cubic yards, Ms. Besaw said that she could not give that answer. Mr. Turnbull asked the area that was impacted. Ms. Besaw pointed out the tank basin, the impacted soils found associated with the soil boring and soil boring associated with the pumps. Mr. Turnbull asked if she had a similar diagram for the dealership. He said that he saw the word "potential," but it did not list that anything was confirmed. Ms. Besaw pointed out the diagram called Soil Boring Associated with the Hoist of the Dealership. That came back with contaminants above exceedances. Mr. Turnbull

noted that Ms. Besaw had referred, in two cases, that there was a potential oil/water separator, but he questioned whether it was identified. Ms. Besaw advised that there was an oil/water separator on the property, and cleanout of that separator was part of one of the costs associated with demolition. It was her understanding that it was confirmed and included as part of the costs anticipated with the demolition of the property. Mr. Turnbull asked if that was part of what had already been demolished. Mr. Markus said that they had not taken anything from underground under the dealership building. The hoists were gone, but if the separator was underground, they had not broken ground or dug out anything yet.

Ms. Morita commented that she was in the unique position of having to take the matter back to Council. Her concern was that they did not have the financial analysis they needed or traditionally required, and they still did not know whether or not the property owner would be declared an innocent landowner. She would like the matter postponed until they had that information. She did not think the project was so unique that it warranted special consideration beyond what the BRA had done in the past for other plans. Chairperson McGarry agreed, and he confirmed that the other members agreed. Ms. Morita moved that the BRA postponed making a determination and that the matter be referred back to the property owner for the additional information discussed, including getting information on the Internal Rate of Return, and receiving a finding from the MDEQ that the applicant was an innocent landowner, so the BRA could make a determination as to whether the Plan was economically viable under the BRA's parameters (formal motion to follow).

Ms. Besaw asked Ms. Morita to expand on the parameters that the BRA was used to dealing with. Ms. Morita thought that Ms. Besaw could talk with Mr. Breuckman about it. He could show other plans that had been approved and the specific parameters the BRA required, including a sufficient IRR, in order to support the additional funding. They wanted to make sure it was a viable project. Chairperson McGarry wanted the applicants to be sure about what the BRA needed, so the next time they came together they had everything to move forward with a decision. Ms. Morita also encouraged the applicants to look at Mr. Wackerman's memo, and make sure that all of the issues he raised were addressed.

Mr. Chalmers mentioned that they had spoken about potential exacerbation of the impacts. He asked if the BRA wanted to require a Phase II testing so they could see if there was a difference from a couple of years. He wanted the applicant to know exactly what they were looking for. Chairperson McGarry thought that they had to require that in order to

make a determination as to whether or not the landowner was innocent. Mr. Chalmers agreed, and Ms. Morita believed that it would be required by the MDEQ. Mr. Wackerman asked Ms. Besaw if she knew what the sampling would look like. Ms. Besaw said that she could not describe it, but they would be going back out and sampling around the tanks to compare with the prior BEA. Mr. Wackerman asked if there would be an attachment to the BRA Plan, which Ms. Besaw agreed would be included. Mr. Wackerman pointed out the boring locations, which he said would be resampled.

Mr. Chalmers reminded that the parcels had been combined, and that they were really talking about both areas. Mr. Wackerman said that the key issue was the operation of the underground storage tank. Mr. Chalmers agreed, but he said that if they were seeking all the information, he thought there should be testing on areas other than just the Citgo piece.

Ms. Besaw indicated that the dealership had been closed down, and it had not been in use since the owner purchased the property. He was an innocent party for that portion of what used to be a single parcel. The area of concern would be the gas station that had been in operation since the owner purchased it.

Mr. Wackerman outlined that the defining issue was the use of chemicals for which the site was listed as a facility. The owner would have had to operate the former dealership as a dealership to require another set of samples. They clearly operated the underground storage tanks with the same materials that were used before. Chairperson McGarry wanted to make sure that the MDEQ would only require testing for the gas station site. Mr. Wackerman confirmed that he talked with the MDEQ, and the gas station was what they were concerned about.

Ms. Morita said that she would be fine as long as the MDEQ said Mr. Markus was an innocent landowner. She did not think it should be up to the City to make that determination. She would also not argue with them if they decided otherwise. Chairperson McGarry said that logic would say that the testing would be similar. It was a matter of having the facts in hand and a piece of paper to back up the decision. The motion was seconded by Mr. Turnbull at this point and stated as follows:

***MOTION** by Morita seconded by Turnbull, that in the matter of City File No. 12-010 (Rochester Retail Brownfield Plan) the Brownfield Redevelopment Authority hereby postpones any action and refers the*

matter back to the property owner to get additional information as discussed at the December 19, 2013 meeting, including information on the Internal Rate of Return and documentation from the MDEQ that the applicant is an innocent landowner, so the BRA can make a determination as to whether the Plan is economically viable under the BRA's parameters.

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

Aye 5 - Stanley, McGarry, Turnbull, Chalmers and Morita

Absent 2 - Sera and Justin

Chairperson McGarry stated for the record that the motion had passed unanimously.

2013-0393 Review BRA Policy Statement

(Reference: Brownfield Policy dated December 2013 had been prepared by Tom Wackerman of ASTI Environmental and by reference became part of the record thereof).

Mr. Wackerman stated that the Brownfield Policy submitted for review had been updated following the BRA's working meeting in October 2013. An issue that was discussed a lot was the opening paragraph and whether or not it was consistent with both the Authority's charge and with what they wanted to do in the future, so he made it very generic. The BRA had to determine whether or not the Policy was consistent with its By-Laws and whether it said what they wanted to accomplish. He referred to page four, and said that he was still waiting for the State to tell him whether or not the BRA could collect Revolving Loan Funds during the reimbursement period. It was interesting to him that neither the MEDC nor the MDEQ wanted to comment on it. They kept bumping him back and forth to the same people, and he did not have a decision for that yet.

Ms. Morita asked if it was just a matter of statute or a matter of policy. Mr. Wackerman stated that the statute was silent on the issue, and he wanted to see what the policy decision was at the MEDC and the MDEQ, and he did not think they had thought it through or knew. He was not sure what the next step was for that.

Mr. Breuckman asked at what point they should just do it and make them confront it. Mr. Wackerman thought that was a great strategy. He did not see anything in the law that said they could not, but he indicated that he