Rochester Hills

Minutes

Brownfield Redevelopment Authority

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

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 kind 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

was not an attorney. The City Attorney would have to look at it. Mr. Wackerman said that he tended to recommend that communities should defer to the MEDC and the MDEQ when it came to policy and follow their lead, but there was no lead to follow.

Ms. Morita brought up historic properties and read, "the inclusion of blighted, functionally obsolete and historic properties." They discussed at the last meeting what the authority was for including historic properties as opposed to those just blighted, functionally obsolete or environmentally contaminated. Mr. Wackerman said that the authority was that it was now included in the definition of brownfields under Act 381. An historic resource could be included as a brownfield in the same way as functionally obsolete and blighted properties could. He added that the definition of an historic resource under the Act was defined in section 90-A of the Michigan Strategic Fund Act.

Ms. Morita questioned whether it should say historic resource property as opposed to historic property (top of page five). Mr. Wackerman agreed that it should say "historic resource," so that it was consistent with the Act. Ms. Morita did not want there to be confusion between an historic resource and something of sentimental value. Mr. Wackerman assured that he would make it globally consistent. He asked the Board if they wanted to go through each change. Ms. Morita said that she did not need to, and she commented that Mr. Wackerman had done a nice job.

Ms. Morita asked about timing, and when an applicant had to get everything completed She wondered if the Board had discussed allowing an applicant five-and-a-half years. Mr. Wackerman said that they did not discuss the duration - they discussed the concept. If they added all the timeframes, it gave an applicant almost nine years to get a project done, and he asked the Board if they felt that was reasonable. In light of normal operating conditions, he suggested that they might want to tighten those. It did not say that an applicant could not come back and refresh; it was just the performance expectations. Ms. Morita said that the concern from a neighboring property owner's perspective was that if there was a contaminated site that was open and could be worked on for eight or nine years, it could be detrimental to the neighboring properties. She said that she would like to see a shorter timeframe. She would not want an open hole in her backyard for a long period of time. Mr. Wackerman mentioned the Softball City site, which had been going on for a long time. If they finally started remediating it, it might take all that time. There were a couple of key sites like that in the Landfill Planning Area. He thought they would have to have some sort of a re-up. Ms. Morita thought that

should be required, so the City had some control and could impart some urgency to get sites closed. She was thinking of the site across from Softball City where there were barrels that had to be pulled out of the ground. It used to be a superfund site, and it was right next to a residential neighborhood. She would not want that open and have people do a day's work of construction a month for four or five years there, which she stated would be awful for the neighbors. Mr. Wackerman said that he would encourage the Board to tighten it up, because the opening prepositional phrase gave the ability to deal with sites like that. They could negotiate the longer ones in writing. His expectation would be that construction should start within two years of signing the reimbursement agreement and be completed within four. Ms. Morita asked what would happen if an applicant gave a ten-year, estimated completion date. Mr. Wackerman said the applicant would be allowed 11 years the way the Policy was written. Chairperson McGarry asked if they would have the ability to approve or disapprove based on the length. Mr. Wackerman said that they would always have the ability to re-negotiate any of the terms for which they were giving incentives.

Mr. Wackerman recommended that they include something he had seen another municipality do. If the BRA estimated the payback period to be ten years, that would be it. The reason others were doing that was because a lot of the tables submitted by applicants were not panning out the way they were intended. The incremental value was much smaller than anticipated for a lot of reasons. One might be that an applicant overestimated when they did the table, or it could just be the economy. Instead of taking ten years, something could take 20 years, which meant a City would lose ten years of local taxes.

Ms. Morita considered that if a property owner came to them and said something would take ten years to complete, the way the Policy was written, the BRA could agree to ten years, but she felt the trick would be to have a default shorter period of time. If they needed more time, they would have to explain to the BRA why they needed more. Mr. Wackerman clarified that Ms. Morita would like to see the sentence changed to "and construction may be completed within x years of the executed reimbursement agreement." Mr. Wackerman asked how many years they wanted to give the developer for start of construction and completion of construction. Ms. Morita indicated that she would rely on the builders in the group for direction.

Mr. Turnbull stated that it really depended on the nature and extent of a project. If it was a residential development to be built in phases, he could

not imagine it ever being ten years. Ms. Morita said that hypothetically speaking, if they were dealing with an old car dealership next to a gas station, she wondered would a reasonable period of time for that would be.

Mr. Breuckman noted that the Rochester Retail applicant had a Site Plan with four buildings. They might build two or three initially and prep the site but not build the third or fourth building until the market demanded. The BRA would be concerned about the time the environmental cleanup and construction activities were open and if general construction was another issue entirely. He questioned whether an applicant should get the clean up done quickly. Mr. Wackerman said that he did not believe it had anything to do with the clean up activities. The tax increment financing was a redevelopment tool, and the time limit was recognizing that the applicant had promised to invest so many dollars for so many jobs in the community, and the City had promised to give so many dollars back in incentives. The question would be whether the applicant did what he said he would do. He did not think the applicants would be doing what they said if they did not complete all the buildings. Mr. Breuckman asked if that was where the "ten years and they were done" came into play.

Mr. Turnbull reminded that if an applicant did two of five buildings, there would not be enough increment to collect. If they were timed out, that was the risk the applicant would take. Mr. Breuckman said that if the environmental activities had to be done within four years of the reimbursement agreement, and whenever the applicant said the capture was done it was done, he wondered if that covered the City. He asked if that was a reasonable way forward. Mr. Wackerman agreed that it was a reasonable way to control the timeline, but he strongly suggested that it was an agreement between a municipality and a developer to invest a certain amount of dollars in the City. Whether they ever were paid back was one consideration, and whether it was open-ended or the exposure was capped was another consideration. He felt that there was a duty for a developer to perform the investment that was promised.

Ms. Morita mentioned the timeframe for the dealership and gas station. Mr. Turnbull said that hypothetically, the site could be built in a year to eighteen months. Mr. Turnbull maintained that he would not undertake the project unless he had tenants in hand and planned to build it out, because it was not a spec corner. Mr. Breuckman believed that the two buildings fronting on Rochester were mostly leased. He thought that McDonald's was committed, and he did not think the project would move forward without McDonald's. He was not sure about the middle building on Auburn, although it was a fairly small part of the overall picture. Mr.

Turnbull noted that the applicant owned the land. He was surprised that Mr. Markus did not go back to the sellers and work the costs. The BRA was trying to do the two sites on Hamlin and in the east part of the City. Those were sites that really needed attention. The applicant should have gotten the price adjusted based on the environmental. He thought it was a little bold to assume that the City would hand over money to demo and to deal with their due care, and he still questioned how well thought out the overall plan was.

Chairperson McGarry said that if they looked at the construction costs, the bathrooms and the HVAC, there were the same numbers on both, and it was not a deep dive into what it would cost to do things. Ms. Morita thought they were trying to decide the proper time limits for the Policy. The reason she got on the BRA in the first place was that she had a brownfield in her backyard. She asked the members what they would expect for a cleanup timeframe if they lived next to it. Chairperson McGarry said that it all depended on the project. They needed to have wording in the Policy that allowed them to look at each project and make an intelligent decision about the timeframe.

Mr. Stanley asked if they were trying to tighten the Policy to cover everything. He thought that every proposal should be evaluated on its own case. If they tried to tighten it too much in a Policy, they might reach no end. Someone with a project could make a proposal, and it made sense or it did not, and they could adjust it. He wondered why it was different from other proposals.

Ms. Morita felt that the paragraph handled it when it said, "unless otherwise agreed to in writing." They were trying to figure out the default time period unless they felt it should be longer or shorter. She did not want it to be open-ended. If it said "must be completed within three years of the estimated completion date," it could be years and years.

Mr. Wackerman said that most communities ran afoul when there were people who got incentives and then did not start, or they started and did not finish. It was the proverbial hole in the ground. He thought they should focus on not so much the end date but whether when an applicant came to the City and asked for incentives if they were shovel ready and if they were really viable. If someone did not finish something in five years, the City would not get the revenues, and it would not be a good situation. He recommended that they should put the emphasis on the start.

Ms. Morita asked Mr. Wackerman if he recommended a two-year period -

that is, starting construction within two years of the executed reimbursement agreement. Mr. Wackerman felt that was reasonable. Ms. Morita recalled that the applicants for the Hamlin and Adams site got a Brownfield Plan approved, but then they did not have money for construction bonds. Mr. Wackerman said in that instance, the City should yank a Brownfield Plan. Ms. Morita asked if that was still an open Plan. Chairperson McGarry thought the site was under a Consent Agreement. Mr. Breuckman agreed the site was under Consent, but he did not know if that affected the Brownfield Plan or not. Mr. Wackerman pointed out that although all Brownfield Plans had a statutory limit and had an estimated payback period, none of them expired unless the BRA took action to void. The State did not automatically do anything. Ms. Morita hoped that Mr. Wackerman was not suggesting that they voided the Hamlin and Adams Plan. The Board decided to change the timeframe in the Policy from five years to two and three years to one.

Ms. Morita realized that Mr. Wackerman had cleaned up the language about an escrow requirement, but she wondered if the BRA's expectations could be a little clearer (page 6). It said that the City required a fee for legal and administrative review as well as for verification of expenses. Mr. Wackerman said it could say, "in order to verify expenses." Ms. Morita agreed, and asked if they just needed to discuss legal and administrative review or if it should include financial. She thought of administrative as someone in house, but if an outside auditor or CPA firm was needed for a complicated project, she would not expect City Staff to spend weeks reviewing finances to make sure everything had been paid appropriately. Mr. Wackerman thought that was a good suggestion. In the dozen or so that he had been involved, the waiver of lien was a question of simply matching invoice, check, waiver and line item from the Brownfield Plan. Most people did not delve much deeper than that. Ms. Morita said that she has had to do that on behalf of clients with large construction projects, and she thought they were much less complicated than Madison Park, which she assumed could go on for years and be very complicated.

Chairperson McGarry asked if there were any other questions or comments. Mr. Wackerman indicated that he would make the changes. He asked if he should include a limitation in the payback duration as described in the Brownfield Plan. If someone asked for a ten-year payback, it would be limited to ten years whether someone was paid back or not. Mr. Turnbull felt that was more than reasonable. Chairperson McGarry agreed that it was reasonable, and he also felt that it put the responsibility and risk back on the developer. Mr. Wackerman added that he would include a paragraph.

Ms. Morita asked if the Policy had to go before Council for approval. Mr. Breuckman advised that the BRA approved it. Ms. Morita explained that they did not go through the full process the last time, so she was not sure if it had to go to Council. Mr. Breuckman asked if there was anything in the Statute that required it to go back to Council. Mr. Wackerman said not that he was aware. He recalled that they did hold a joint workshop with Council before, and it was to get everyone on the same page more than to get certain approvals. Mr. Breuckman suggested that they could look at doing a workshop again, or they could make a presentation to Council. Ms. Morita thought it would be great to give a presentation to Council to give them a head's up that the BRA did exist, and they had been working very hard. They would highlight the changes that they were proposing. Council should understand the parameters under which something would or would not be approved by the BRA, because Council would have questions. Ms. Morita asked the next steps.

Mr. Breuckman said they could do the presentation while Mr. Wackerman revised the Policy or after it was adopted. Ms. Morita suggested that the BRA should adopt the Policy first and then present it to Council.

Mr. Chalmers noted that only a Phase I was required when an applicant applied, and he wondered if that was piggybacking off the MDEQ, or if that was something cities required. He felt that a Phase II should always be required to know the location and extent. Mr. Wackerman said that the language said "a Phase I conducted prior to purchase and if applicable a BEA within 45 days of purchase." That was the definition of an innocent landowner on a facility. A brownfield could also include a blighted or functionally obsolete building. In those cases, a Phase I might be the only document required because there were no recognized environmental conditions. He said that he would make sure that was what the language said (page two).

Ms. Morita pointed out that the BRA had a meeting scheduled on January 16, 2014, and she asked if the Rochester and Auburn property would be back then. Mr. Breuckman did not think they would have the MDEQ determination of an innocent landowner by that point. Mr. Wackerman said there were two Brownfield Plans for that site, both dated December 5, 2013, but they were different documents. He had asked Ms. Besaw to put a new date on future submittals. Ms. Besaw had asked him if they should drop anything associated with the gas station. He told her that it would make things easier. They might want to come back in January without the MDEQ determination. Ms. Morita wondered if they really thought they

would get help from the City if they were not coming in with an environmental issue. Mr. Wackerman said that was a good question, because they listed asbestos and demo costs. He was not sure, and one of the items in the draft Policy was a preference for environmental mitigation. Mr. Breuckman said that they should have the IRR done, or they would not be going back to the BRA. He asked if the BRA had required applicants in the past to submit an IRR, or if it was new with the Policy. Mr. Wackerman advised that it was specific with the Policy, but he recalled that with Softball City, the applicants did have to show financial need. Ms. Morita believed the applicants to the north had to also. Mr. Wackerman thought there had been a history of asking for financial need, but that codifying it and saying it was an Internal Rate of Return calculation was new. Ms. Morita asked if they still planned to have a January meeting to finalize the Policy. Chairperson McGarry thought that they should, because they had so few meetings.

Mr. Stanley said that with the scarcity of funds from the State and with the priority of having to be a less affluent community, he asked the probability that Rochester Hills would ever get approval for a brownfield project. Mr. Wackerman responded that there were two pots of money. The first was the tax increment financing component. If there was a Brownfield Plan asking for TIF for school mills for environmental cleanup, he thought the City had a good chance. If there was a Brownfield Plan that was asking for school tax capture for non-environmental, he did not think the City would have much of a chance. For the proposed application, the MEDC was not just focusing on less affluent communities; it was focusing specifically on high density, urban core, downtown, multiple-story, redbrick, transportation-oriented development projects. He thought that the answer the applicants got from the MEDC was the answer almost all applicants would get unless it was newsworthy. If the Governor loved it, he felt that it would change things. Regarding the Community Revitalization Program, he did not think they would see a penny. Chairperson McGarry concluded the discussion.

Discussed

ANY OTHER BUSINESS

There was no further business to come before the Brownfield Redevelopment Authority.

NEXT MEETING DATE

Chairperson McGarry reminded the BRA Board that the next meeting was scheduled for January 16, 2014.

ADJOURNMENT

Hearing no further business to come before the Brownfield Redevelopment Authority, and upon motion by Mr. Turnbull, seconded by Ms. Morita, Chairperson McGarry adjourned the Special Meeting at 8:27 p.m.

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Stephen McGarry, Chairperson
Rochester Hills
Brownfield Redevelopment Authority

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Maureen Gentry, Recording Secretary