Rochester Hills

Minutes

Brownfield Redevelopment Authority

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Jim Duistermars, George Karas, Thomas Stevenson
Thomas Turnbull, Mark Walterhouse, Suzanne White

Thursday, September 28, 2006 | **7:00 PM** | **1000 Rochester Hills Drive**

(Rescheduled from Thursday, September 21, 2006)

MINUTES of a RESCHEDULED ROCHESTER HILLS BROWNFIELD REVELOPMENT AUTHORITY REGULAR MEETING, held at the Rochester Hills Municipal Offices at 1000 Rochester Hills Drive, Rochester Hills, Oakland County, Michigan. This Meeting was rescheduled from Thursday, September 21, 2006 to Thursday, September 28, 2006.

1. CALL TO ORDER

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

2. ROLL CALL

Present 6 - Suzanne White, George Karas, Mark Walterhouse, Thomas Stevenson, Thomas Turnbull and Kathleen Hardenburg

Absent 1 - Jim Duistermars

Also Present: Derek Delacourt, Deputy Director, Planning & Development Department

Laurie Taylor, Chief Appraiser, Department of Assessing

Trey Brice, City Attorney

Judy A. Bialk, Recording Secretary

3. DETERMINATION OF A QUORUM

Chairperson Walterhouse stated a quorum was present.

4. APPROVAL OF MINUTES

4A. **2006-0706** Regular Meeting Minutes of August 17, 2006

Chairperson Walterhouse asked for any comments or changes regarding the August 17, 2006 Regular Meeting Minutes. Upon hearing none, he called for a motion.

A motion was made by White, seconded by Stevenson, that the Minutes be Approved as Presented. The motion carried by the following vote:

Aye 6 - Turnbull, Walterhouse, Stevenson, White, Karas and Hardenburg

Absent 1 - Duistermars

RESOLVED that the Minutes of the August 17, 2006 Regular Brownfield Redevelopment Authority Meeting be approved as presented.

5. ANNOUNCEMENTS/COMMUNICATIONS

Chairperson Walterhouse called for any announcements or communications. No announcements or communications were provided.

6. PUBLIC COMMENT (Non-Agenda Items)

Chairperson Walterhouse called for any public comments regarding non-Agenda related items. No public comments were heard.

7. UNFINISHED BUSINESS

7A. **2006-0970** Hamlin/Adams Brownfield (City File No. 03-013)
Parcels: 15-29-101-022 and 15-29-101-023
Request: 1) Approval of Brownfield Redevelopment Plan
2) Acceptance and Submission of 381 Work Plan
Applicant: Hamlin Adams Properties, LLC
24400 Jefferson Avenue
St. Clair Shores, Michigan 48080-1325

Chairperson Walterhouse requested that the applicants come forward to the presenter's table, introduce themselves, and give a summary of their requests before the Authority.

Neil Silver, Strobl and Sharp, P.C., 300 E. Long Lake Road, Suite 200, Bloomfield Hills, stated he was present representing the developer, Hamlin/Adams Properties, LLC. He explained that everything he would discuss had been provided to the Authority in their packet materials, including the site plan and schematic drawings.

Mr. Silver stated that the subject property was located at the northeast corner of Hamlin and Adams Roads; was twenty-eight (28) acres in size, and the proposed development is an approximately 168,000 square feet of retail/office complex, with a price of ultimately Nineteen and one-half Million ($19,500,000.00) Dollars. He explained the property was eligible under the Brownfield Act because the property was a facility, and he thought the Authority was aware of the historic concerns regarding the property.

Mr. Silver stated that "mentally" the developer and the City had divided the property into three (3) separate pieces of property, although the property was in fact two legal parcels. He explained that one parcel, which they identified as the "landfill" had a

fence around it; had historically been used as a landfill; the State had spent a lot of money there, and there were still PCB's and potentially buried drums and high contamination levels.

Mr. Silver explained that to the west, the middle portion of the site, some metal anomalies had been found, and contamination had been found, although they did not believe the problem was severe in that area.

Mr. Silver indicated that the last westerly portion of the property was a former slaughterhouse, and minimal investigation had been undertaken at that site, and the extent of any real problems at that site were unknown at this time.

Mr. Silver stated that through discussions with the City, they had included approximately Four and one-half Million ($4,500,000.00) Dollars of eligible activities. He noted they believed that number was extremely conservative, and showed that they had come up with a very reasonable approach to make sure that money was not needlessly spent on the site.

Mr. Silver stated they had submitted the first, initial draft 381 Work Plan. He explained the 381 Work Plan contained all of the money necessary to fully investigate the contamination or potential contamination at the property. He indicated that included methane concerns, which he noted had been discussed at prior Brownfield meetings, and which might be emanating from across the street at the former Suburban Softball site. He noted that in the event the Suburban Softball site took care of the methane problem, then the methane issue on the subject site might become far less acute. He noted that REI (the Suburban Softball site developer) did find extremely high levels of methane in the road right-of-way across the street from the subject site. He indicated they had been given a notice of off-site migration because of the existence of the methane.

Mr. Silver stated that additionally, there were PCB's at the surface and near surface, and many of the adjacent homes had been investigated to determine whether the PCB's had gone off-site. He stated they had not gone off-site, but they do exist on the subject property.

Mr. Silver referred to the draft 381 Work Plan and stated they were confident that it would nail down the costs and bring the costs way down. He noted they could not be reimbursed for anything they did not spend and that was not reasonable, necessary and approved under the 381 Work Plan. He explained that despite what the newspapers said, the numbers had to be reasonable, necessary and approved by the Department of Environmental Quality (DEQ) and the City.

Mr. Silver explained the property would pay back within seven (7) years of actual

build-out. He stated they anticipated, in the current economy, it would probably take about seven (7) to eight (8) years to built out the entire 168,000 square feet.

Mr. Silver noted they had submitted schematic site plans and drawings to the Authority, and offered to answer any questions the Authority might have.

Chairperson Walterhouse asked if Mr. Delacourt would like to add anything at this time.

Mr. Delacourt introduced the Acting Deputy Director of the City's Assessing Department, Laurie Taylor, who had been involved in reviewing the tax tables, millages and other numbers included in the Plan. He also introduced City Attorney Trey Brice, Hafeli Staran Hallahan Christ & Dudek, P.C., who had been reviewing the Plan, and Mr. Jim Anderson from STS Consultants, Ltd., Milford, who had been involved in the Project from the inception, and dealt with the City through the Consent Judgment process and some of the cleanup in the backyards of the abutting neighborhood.

Mr. Delacourt explained that the Authority was being asked to review and take initial action on the Brownfield Redevelopment Plan, which is the Plan that gets the process started, and includes the tax tables for estimated Tax Increment Financing (TIF) generation, payback period and overall investment on the site. He referred to the initial 381 Work Plan, and noted that Staff sat down with the applicants and the DEQ and discussed the best process for submittal of the 381 Work Plan. He stated it was recommended that the 381 Work Plan be done in phases, with the initial plan dealing just with the investigation on the site, above and beyond what had already been done, in order to generate the remediation plans. He noted the DEQ indicated they would like to see that first to determine that the investigation is enough prior to getting into the actual remediation on the site.

Mr. Delacourt stated the Authority had received copies of the Brownfield Redevelopment Plan and an initial 381 Work Plan. He explained the Brownfield Plan is approved by both the Authority and City Council, and then submitted to the DEQ. He stated that the 381 Work Plan is not approved by the Brownfield Authority, but rather accepted and submitted on behalf of the Authority to the DEQ for review. He noted that the DEQ is the approving board on this and any subsequent 381 Work Plans.

Mr. Delacourt pointed out that the Plan submitted to the Authority included two (2) tax tables. One table reflected the numbers if One Hundred (100%) Percent of the TIF were to be captured by the City and used to reimburse eligible activities. Based on that tax table, payback would be about seven (7) years from build-out, which would amount to a total of fifteen (15) years until the eligible activities were paid for, if

approximately Four and one-half Million ($4,500,000.00) Dollars were utilized in eligible activities.

Mr. Delacourt explained that the second tax table was based on an option that was included in the Consent Judgment that discussed the possibility of the City and all the local taxing jurisdictions retaining Twenty-five (25%) Percent of their normal millages, and only capturing Seventy-five (75%) Percent of the TIF that would be generated from the site. He pointed out that tax table extended the payback period approximately an additional four (4) years. He noted that the Consent Judgment did not state whether or not the City would do that, but just provided the option for the City to do that.

Mr. Delacourt stated that both options were provided for the Authority's review, and stated the Authority could consider making a recommendation to City Council regarding which direction to follow, or just move the Plan to City Council and let City Council make that decision.

Mr. Delacourt stated there were two (2) other conditions included in the Staff Report; one was the discussion regarding interest. He explained that the Plan, as proposed, contemplated the City approving interest as an eligible activity only if the State, once it had reviewed the Plan, approved the eligible activities for capture of school tax or the repayment of interest with school tax. Only under those circumstances would the City consider reimbursing interest.

Mr. Delacourt explained the second part was that any rate or the amount of interest to be reimbursed would be decided and agreed to between City Council and the applicant as part of a Reimbursement Agreement. He stated that was a decision or recommendation that the Authority had the ability to make to City Council with respect to interest.

Mr. Delacourt stated the second condition was a proposed cap that would be included in the Reimbursement Agreement based on the estimates in the tax tables. He explained that Staff recommended that instead of $4.6 Million Dollars or 30 years, which is what the Act allows a Brownfield Plan to extend, would be for City Council, through the Reimbursement Agreement, to put a cap on the number of years it feels reasonable based on those estimates. In other words, rather than $4.6 Million Dollars or 30 years, it would be $4.6 Million Dollars and whatever number City Council decided to cap it at or whatever number was agreed to between the applicant and City Council.

Mr. Delacourt reiterated that the Brownfield Redevelopment Plan was before the Authority for approval, and the 381 Work Plan was before the Authority for acceptance and submittal to City Council, if that was the decision of the Authority. He

stated he had provided a sample motion regarding the acceptance and submittal of the initial 381 Work Plan, if the Authority decided to take action.

Mr. Silver introduced Trevor Woollatt from AKT Peerless Environmental Services, 22725 Orchard Lake Road, Farmington, who is the applicant's environmental consultant on the Project.

Chairperson Walterhouse questioned the reference to the $19.3 Million Dollars that did not match the August 2006 Memorandum of $38.5 Million Dollars from the Assessor's Office, and asked if that had been changed. Mr. Delacourt responded that those numbers had been clarified at this point. Ms. Taylor indicated that was correct.

Chairperson Walterhouse called for discussion from the Authority.

Mr. Karas stated he had reviewed the letter dated September 6, 2006 from STS Consultants, and asked if the questions raised in that letter had been answered. Mr. Delacourt responded that all the issues raised in that letter had been addressed at this point.

Chairperson Walterhouse noted some residents had come in after the meeting began, and asked if there were any members of the audience that wished to speak on this matter.

Bill Windscheif, 2872 River Trail, noted it was very hard for the public to hear the discussion by the Board. Chairperson Walterhouse asked the members of the Authority to be sure their microphones were turned on when they spoke.

Mr. Karas stated he would move a motion to accept the initial 381 Work Plan if the Authority was ready to proceed with that item. He noted the initial Work Plan was for further investigation of contaminants. Mr. Delacourt stated the initial Work Plan only covered the next phase of the investigation.

Chairperson Walterhouse clarified that Mr. Karas was proposing a motion to accept the initial 381 Work Plan and to forward the Plan on to the DEQ, and called for a second to the proposed motion. Ms. White stated she would second the proposed motion.

Mr. Delacourt suggested that as a matter of procedure, the Brownfield Plan should be considered first, followed by the initial 381 Work Plan.

Chairperson Walterhouse reminded the Authority that they had received sample motions that could be used to prepare a motion regarding the Brownfield Redevelopment Plan.

Mr. Karas stated he was not prepared to make a decision on the Brownfield Redevelopment Plan without some additional discussion by the Authority, although he did approve the initial 381 Work Plan.

Mr. Brice stated there was no particular order for the plans to be considered by the Authority; however, if the Authority wanted to move on the Brownfield Redevelopment Plan, the pending motion on the floor would have to be either withdrawn or tabled.

Mr. Delacourt pointed out that without approval of the Brownfield Redevelopment Plan, the DEQ would not accept or review the 381 Work Plan. He cautioned that if the Brownfield Redevelopment Plan was not approved, was withdrawn, or required changes before the Authority would forward the Plan to City Council, the 381 Work Plan could not be accepted or submitted.

Mr. Karas asked if the Consent Judgment had modified the Brownfield Plan in any way. Mr. Delacourt explained that the Consent Judgment had set out some parameters for the remediation and did go into some discussion about issues related to holding back Twenty-five (25%) Percent of the total TIF or allowing it to go to its normal taxing jurisdictions. He stated the Consent Judgment did not pre-approve anything, but left the brownfield process to follow its normal process. He stated that both the Brownfield Plan and the 381 Work Plan acknowledged the Consent Judgment, and noted the Consent Judgment was an attachment to the 381 Work Plan that would go to the State for review.

Chairperson Walterhouse asked the motion maker and seconder if they would withdraw their motion at this time, to allow discussion on the Brownfield Redevelopment Plan. Mr. Karas and Ms. White agreed they would withdraw their motion at this time.

Chairperson Walterhouse referred to the issue regarding the interest, and asked who would be negotiating the Reimbursement Agreement. Mr. Delacourt responded that the Reimbursement Agreement was ultimately between City Council and the applicant, although City Council might request recommendations from consultants, the City Attorney and Staff.

Chairperson Walterhouse clarified that it would not be inappropriate if the Authority did not address the issue of the interest payback, and let that be handled through the Reimbursement Agreement process. Mr. Delacourt stated that it was ultimately City Council's decision, although he did not believe there was any problem with the Authority commenting on the issue or expressing any concerns or questions they might have. He added that the rate and other portions of that agreement would depend on

whether the State approved the Plan for school tax capture, and whether City Council agreed to it in the Reimbursement Agreement.

Chairperson Walterhouse called for discussion by the Board.

Mr. Stevenson stated he was a bit concerned about the interaction between this Plan and the Plan for the Madison Park Project, because of the downhill flow towards the River of leachate and methane. He stated they knew there was methane on the Madison Park site, and they suspected there might be some on the applicant's project. He felt that should be established, as he did not want to see the Project progress half way and then encounter a methane problem. He questioned if that happened, whose problem that would be or who would be responsible.

Mr. Silver explained that the Brownfield Plan and the 381 Work Plan specifically included a full, State approved, methane investigation for the property. He noted that the Plan itself included, if it is found and is found to be a problem, a full methane ventilation system. He stated their Plan had been prepared very conservatively to assume the worst-case scenario, and in the event they did encounter a problem, it had to be addressed.

Mr. Stevenson asked who would be responsible, whether it would be the applicant or the Madison Park developer. Mr. Silver stated they had included it as part of their responsible cause.

Mr. Karas asked Mr. Delacourt to clarify his comment indicating that the capture of school taxes would be a decision made by the State. Mr. Delacourt explained that with any brownfield plan, the decision about whether an activity is eligible for school tax capture is made by the State.

Chairperson Walterhouse stated that the residents in the area of the development had expressed a concern about something happening during the remediation, whether it be odor issues, or something that caused them to have to leave their homes, how they would be notified, or who they would call. He requested that before the remediation process is started, the applicant meet with the Police, Fire and EMS officials and other relevant staff to prepare an emergency response plan that would have some of those items initially laid out so that the Public Safety Officials and the City Officials and residents would have some knowledge of what would take place should something occur during the remediation process.

Mr. Silver stated that prior to any time the environmental consultants go out to the site, they prepare a Health and Safety Plan, which is their "code" book as to how to properly handle things at the site. He noted that during the investigation related to the proposed 381 Work Plan, there should not be any of those concerns. He stated that

during the remediation, based upon the results of their investigation, and particularly if they are doing deep excavation or trench excavations in areas where there may be decaying matter that could cause problems or methane seeps, he did not see any reason why they would not coordinate with the local community to let them know they were on site and to take appropriate measures.

Chairperson Walterhouse asked for more information about what the Health and Safety Plan was. Mr. Woollatt responded that the Health and Safety Plan typically provided for the health and safety of the workers on the site. He explained it was prepared in the event they encountered something that was potentially hazardous, and covered everything from tripping on the property to explosive environments. He explained it set forth who would be contacted, which is usually a 9-1-1 call, noting usually they did not drive someone who had been hurt to the hospital, but rather called 9-1-1. He indicated the Health and Safety Plan laid out the chemicals of concern that might be encountered, and included directions to the nearest hospital, and local fire and police department information. He stated that in terms of coordinating with the local authorities, that was usually done by a 9-1-1 call, although they could certainly provide notice to the City before they undertook any excavation activities, and through coordination with the City, notify the appropriate departments that the work would begin, and arrange a point of contact who could distribute that information to the residents.

Mr. Silver stated the next 381 Work Plan, assuming the next plan is the actual remediation, would and had to be extremely detailed as to exactly what would occur. He noted the Authority would receive a copy of that plan, and if the Authority wanted notice prior to on-site activity, they could provide a copy to the local fire and safety personnel.

Chairperson Walterhouse acknowledged that was one step in the right direction, but stated if there was an emergency on the site and police and fire officials would be going on to the site, they would not know what they were going in to. He noted that as part of an emergency response plan, the applicant should meet with the Fire Chief, Fire Marshal, Command Staff from the Sheriff's Department, and EMS Officials so that they know ahead of time what is taking place on the site and what they are going in to. He noted they might have to take a different route coming in to the site; and pointed out if something occurred that might affect the residents to the north, the emergency response personnel would have to know ahead of time what their route would be to get those residents out, what direction they would go, and where they would take those residents for temporary shelter. He suggested some preliminary planning that included some initial steps in place so that if something occurred, it was somewhat planned in advance.

Mr. Silver commented they did not have any problem with that. He stated they did

not anticipate, based on the type of stuff they had found at the site, that it would ever raise that kind of red flag. He agreed that certainly, in the event the investigation indicated, they would be glad to do that.

Mr. Delacourt suggested if that was the feeling of the Authority, and the applicant was willing, that such a meeting or discussion take place prior to entering into the Reimbursement Agreement, or prior to some point. He noted the Authority could condition their approval on that taking place prior to the approval of the Reimbursement Agreement to ensure all the emergency responders are comfortable and everyone, including residents, knows who they should call in the event of a accident or emergency situation.

Mr. Silver clarified that for the initial investigation phase there would not be any need to have that, and he did not believe that it would be an issue for the initial 381 Work Plan. He noted that for the remediation it may or may not be.

Mr. Anderson stated that once they get to the actual earthwork stage, they would have fugitive dust emissions or fugitive gas emissions plans which would include on-site monitoring, including monitors at the property line, during the whole process. He explained if the levels got too high, then there would be a series of actions, in a decision-tree format. He further explained if levels became dangerous, they would move off-site, and put into place different protective measures such as hosing down the area; using a biocide or something to keep odors down, noting there was a variety of different things they could do, even just wetting the soil to keep the dust down during an excavation project.

Mr. Brice commented that part of the Consent Judgment required that, before any on-site activity began, the developer contact the City's Environmental Consultant, providing a three-day head start notice. He explained the City would always have some type of notice before work happened. He stated at that point, if the consultant had some concerns, they could be raised and addressed.

Chairperson Walterhouse asked if that notification occurred for the investigation purposes. Mr. Brice indicated that was correct. Chairperson Walterhouse verified notice would be provided for any activity at the site.

Mr. Karas asked how they determined the migration of the gas to their site from the Cardinal Landfill site. He noted it was his understanding it was going towards the Clinton River, away from the applicant's site. He questioned how they determined methane migration across Hamlin Road.

Mr. Silver stated they knew it because they received a Notice of Off-Site Migration from the Suburban Softball site. He explained that developer, through their

investigations, found it was leaving their site in the direction of the applicant's site, and they drilled in the right-of-way directly in front of the applicant's property, and that developer told them through a recorded document that it had migrated.

Mr. Woollatt stated they did not know if it had made it all the way through the right-of-way onto the applicant's property. Mr. Silver noted that developer had notified them it was headed toward their property.

Mr. Anderson explained that three (3) monitor wells were installed by a previous consultant in the median of Hamlin Road. He stated those wells showed 30% methane by volume; 50% methane by volume, and about a half percent methane by volume in each. He stated that was the most recent data that was able to be collected by the other consultant. He indicated that was pretty high, and that 50% was a big number. He explained it would not burn, because there was too much fuel, and noted getting down below 30% meant a fire triangle would work at that point. He commented 24% to 25% was a little on the rich side, but still it would work.

Mr. Anderson indicated that the State had been active in the past year or so developing new regulations or a guidance document, about how to analyze for methane. He stated it was in gas form underground; dissolved form in water, and even in a migrating form. He indicated that was all relatively new; however, the Work Plan reflected the most recent changes, and stated he had reviewed that technical piece in their Work Plan and that was the way he would write it as well. He noted they had done that on a similar site immediately adjacent to a landfill, and had been able to find it and characterize the methane flow pretty well.

Chairperson Walterhouse asked if there was a possibility that both remediation projects could be going on at the same time (the applicant's site and the Suburban Softball site). Mr. Anderson indicated "sure".

Chairperson Walterhouse asked if any members of the audience wished to speak regarding the Brownfield Redevelopment Plan.

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Bill Windscheif, 2872 River Trail, stated that the residents had been trying to understand the various remediation projects, and they wanted to ensure that the residents were as protected as possible, and they had a single point of contact should an issue arise. He indicated it had come to their attention that they needed to establish a baseline of air quality prior to anything actually being opened. He questioned whether they would have an ironclad air quality baseline established to ensure that as any of the projects went forward, the residents would understand any changes in quality that would be impacted in the form of adverse chemicals in the air, as well as adverse odors in the air.

Mr. Delacourt asked if the DEQ required a baseline sample of air quality before remediation took place. Mr. Woollatt explained they had to be concerned about worker health and safety. He stated if they encountered a situation where there was an issue with air quality, it would normally cause more of an acute affect that would be seen fairly rapidly in a worker. He indicated that most of the chemicals were fairly light and were going to go up, noting they would travel somewhat with wind, but for the most part they would dissipate very rapidly once they were exposed to the atmosphere.

Mr. Woollatt stated that one of the recommendations from STS was fugitive dust, and that was probably a bigger concern than any specific chemical that might come out during excavation. He indicated that would be addressed in their remediation plan. He advised that in terms of odor, there was no way to test for odor because it was a very subjective thing. He stated there were some standards that called for people to stand on a landfill and rate the odor on a scale, however, it was a fairly subjective thing.

Mr. Delacourt stated that the DEQ did require perimeter monitoring of air quality at stations and reports generated. He noted their initial concern was worker safety on the site, but there was a response and notice if there was a concern. He stated there was a plan in place to stop if those quality stations noticed something moving offsite.

Mr. Woollatt stated an air-sampling regime could be designed for perimeter monitoring. He explained the difficulty was that there were no standards to compare the data to. He noted the EPA standards were typically an annual exposure rate, not a daily exposure rate, and the time rated average tended to be very long, so it was very difficult to compare an eight-hour sample to a standard that applied to an annual exposure. He stated that many of the chemicals did not have an EPA standard for air quality to compare to. He indicated another problem was that by the time they collected the sample and analyzed it, it may be three or four days past when the sample was collected, and they could not go back and make an adjustment.

Mr. Anderson stated he did not think Mr. Windscheif's comment about creating a baseline of ambient data, was unreasonable, i.e., what is there at any given day, knowing it would be skewed by the time of day, traffic, weather and a variety of different parameters. He noted it would take some conversation between the applicant and the State to come up with a relatively short list of contaminants to monitor for. He did not think it was a terribly expensive item, and if there would be perimeter stations during the excavation process, noting he did not think it was a necessity to do active monitoring during the investigation stage because they were only drilling small diameter holes and backfilling; however during the excavation and clean up process, he did not think that was unreasonable.

(*Arrive Jim Duistermars: 7:44 PM*)

Mr. Delacourt stated the Brownfield Authority and the residents would want to see this addressed in some manner in the next phase or in the next 381 Work Plan.

Mr. Woollatt stated he did not know if the cost for that was reflected in the Brownfield Plan. Mr. Anderson stated it was not. He stated it would be a relatively minor thing to develop a baseline from perhaps two perimeter stations on the north, south, east and west, as far as the roads go, and setting them back into the property to keep them out of the main flow of wind generated by traffic.

Mr. Silver stated that in completing the next 381 Work Plan, they would be working with Mr. Anderson, and they could discuss it with him. He agreed they were for anything that made the community safe. He was concerned what the data would tell them based on the time of day and traffic flow.

Mr. Anderson agreed that would take some discussion with the State regarding what the trigger points would look like for any action level and where that would be determined. He also agreed there were not good numbers available from the State, unless they were dealing with a known situation and a known quantity. He explained it was different in a situation where a railroad car turned over and there was a tank of chlorine that might explode. He noted ambient air was a different structure, but he thought they could come up with something that would help.

Mr. Windscheif stated their concern was simple because they knew what they had today and it was the same air and the same standards day after day. He agreed it might change technically from one time of day to another time of day, but once a project started, even an investigation that opened up the area, they did not know what they would find. He stated they suspected, particularly on this site, that there were more aggressive potential chemicals than might be on the REI site. He indicated there were PCB's, VOC's and other things. He reiterated the residents wanted to be sure that they would not be exposed to anything beyond what they normally live with day by day. He did not think that was unreasonable and wanted to be sure that the City and all the City's authorities were cognizant of that and they would help assure the residents these projects would move forward in a safe and effective manner.

Mr. Stevenson stated he had been in several meetings with Mr. Windscheif and understood where he was coming from. He pointed out that Mr. Windscheif had asked a number of times "if something goes wrong, who do I call; who's fault is it; do I have to wait until people in my subdivision are falling over or throwing up, and if that happens who do I call and who's responsible". He thought those were reasonable questions and he did not believe Mr. Windscheif had ever received an answer from

anyone.

Mr. Silver stated that the owner of the property was not liable for the environmental contamination at the property, noting it had protection granted by the State of Michigan, followed by the EPA by agreement of the Memorandum of Understanding, and were not a liable party for the existing contamination at the property. He explained it was their job to make sure that the property maintained itself in due care; that it was safe for its intended use; that they prevent against foreseeable acts of third parties, and that they do not make the problem worse. He stated that was exactly what they were trying to do by virtue of the 381 Work Plan and in their further 381 Work Plans, which was to make the site safe for its intended use. He indicated that once the site was safe for its intended use, it would be safe for those people surrounding it because Ground Zero was always more dangerous than the rings around Ground Zero. He reiterated they were not liable, but when they complete their project, it would make it better for everybody in the Community.

Mr. Stevenson asked if the applicant was not responsible, whether the DEQ was responsible.

Mr. Anderson stated it truly was an orphan site. He explained that the State spent over Four Million ($4,000,000.00) Dollars trying to clean up the drums on the site, and they were not able to go back to sue anybody for contribution, noting they had a team of attorneys from the Attorney General's Office that pursued contributors. He stated the plan that the State and the Federal Government had prepared allowed for an interested developer to come back and go through the process. He believed that the investigation and excavation process affected the due care equation, and how that happened affected the due care process. He stated the applicant had an obligation to keep the residents safe around them, and they had not, as far as he had ever heard; read in their documentation, or through meeting with them, ever hinted at being anything less than very responsible.

Chairperson Walterhouse stated that if people were feeling ill or passing out or anything of that nature, that call would go directly to 9-1-1. He noted that Fire and EMS would respond, and when they arrived they would begin working with the developer doing air quality monitoring while doing the remediation, and it would be a joint team effort to determine what is going on and to put the steps in place in the emergency response plan. He indicated if it was 3:00 in the morning and it was an odor issue, that might be the question of "who do they call". He thought there should be a contact person.

Mr. Anderson stated there would be a hierarchy or a site superintendent and a site safety officer that would be on file with himself, the Planning Department, and likely filed with the Sheriff's Department as well as the LEPC. He stated his most recent

experience doing some investigation in the thirteen (13) backyards adjacent to the site, noting on their first day out there, he was informed that the Sheriff's Department knew exactly what they were doing because the City had informed them, and the Sheriff's Department paid a visit during the day. He thought the system worked pretty well, if the communication gets out there. He understood the process of communication should be spelled out on paper.

Mr. Stevenson thought it was very reasonable for the residents to be concerned, and they should know who to contact.

Deanna Hilbert, 3234 Quail Ridge Circle, stated she heard about guidelines to protect the workers, and noted there were residents who directly abutted the property. She stated any discussion about protecting the workers should also apply to the residents. She indicated she did not abut the property, but would have concerns if she saw people in her backyard in HAZMAT suits. She reiterated it was not just the protection of workers, but the residents had to be included in that equation.

Mr. Anderson explained that the Worker Protection Standards were the standards with the most skillfully developed set of numbers for personal protection. He explained it became more of a gray area with off-site and ambient quality. He thought the applicant would take her comments into consideration.

Steve McGarry, 2164 Clinton View Circle, referred to the baseline discussion, and stated they had met with representatives from the site across the street, and the DEQ, and they did have discussions about the difficulty of measuring for the baseline, because there was no comparison to understand if it was worse or how much worse and what was normal. He stated that was why they were bringing that point up. He said it would serve two purposes: It would help protect the abutting residents because the developer and the City would have a good way to know how much different the air is and what is escaping from the site; and there was another intangible benefit to the City because they had many residents who asked them questions even though they did not come to the meetings to speak. He guaranteed that if something got really smelly or people got ill, a lot of people would be very upset. He thought from the City's perspective, if the City could demonstrate to the residents in those immediate areas that they were taking measures to help make sure nothing was going on, it would go a long way to show the City was stepping up.

Chairperson Walterhouse reminded the Authority if they looked at the last page of the Staff Report, they would find a sample motion that could be used with respect to the Brownfield Plan. He noted the sample motion summarized the conditions that were outlined in Mr. Delacourt's Memorandum and those outlined by Mr. Anderson.

Mr. Karas stated he would move the motion contained in the packet with findings and conditions. Ms. White stated she would second the proposed motion.

Chairperson Walterhouse called for any discussion on the proposed motion on the floor. Upon hearing none, he called for a roll call vote.

A motion was made by Karas, seconded by White, that this matter be Approved (approved Brownfield Redevelopment Plan) The motion carried by the following vote:

Aye 6 - Walterhouse, Stevenson, White, Karas, Duistermars and Turnbull

MOTION by Karas, seconded by White, in the matter of City File No. 03-013 (Hamlin/Adams Brownfield), the City of Rochester Hills Brownfield Redevelopment Authority **APPROVES** the **BROWNFIELD REDEVLOPMENT PLAN** based on the Plan dated received by the Planning Department on August 18, 2006, with the following findings and subject to the following conditions:

Findings:

1. The submitted plan meets the requirements for a Brownfield Redevelopment Plan under State Act 381 and the City of Rochester Hills.

2. The subject parcels are the site of a former landfill/dump and a source of known contamination within the City.

3. If implemented, the Plan provides a reasonable course of action for the remediation of a known contaminated site.

4. If implemented, the amount, pay back period, and use of tax increment financing is reasonable for the eligible activities proposed.

Conditions:

1. That all 381 Work Plans for the site are required to be reviewed and accepted by the City's Brownfield Redevelopment Authority prior to submittal to the Department of Environmental Quality (DEQ).

2. That the applicant and City Council enter into a reimbursement agreement prior to the utilization of TIF captured for eligible activities.

3. That a cap regarding the life of the plan be imposed by City Council and identified in a reimbursement agreement to be entered into between the applicant and City Council prior to the utilization of any TIF captured for eligible activities.

4. That if the extent of Due Care activities related to the subject site is altered or revised due to a change to the proposed development plans or proposed use of the site the applicant shall submit an amended BRA Plan to the Brownfield Redevelopment Authority.

5. That all remaining issues identified in the attached STS letter dated September 6, 2006 be addressed and approved by Staff prior to approval by City Council.

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Mr. Duistermars questioned whether it was a conflict of interest for him to vote on an issue that would be going to City Council for action. Mr. Brice stated it was expected due to the fact the City had a representative from City Council sitting on this Board, and it would not be a conflict.

Mr. Duistermars agreed it was similar to having a City Council Member sitting on the Planning Commission and voting on items that were forwarded from the Planning Commission to City Council.

Chairperson Walterhouse asked if the Authority was prepared to make a motion to accept the initial 381 Work Plan and to forward it to the MDEQ.

Ms. White stated she would move the motion in the packet. Mr. Turnbull stated he would second the motion. Chairperson Walterhouse then called for discussion.

Chairperson Walterhouse noted the DEQ had asked that the Work Plan be phased; the initial phase would be the investigation, and asked whether there would be one additional phase for remediation, or whether there could be additional phases.

Mr. Silver stated they had already spent over One Hundred Fifty Thousand ($150,000.00) Dollars in investigation on the site, and noted the State had increased the amount of investigation that was included in the initial 381 Work Plan. He hoped they would get everything they needed to know from the investigation included in the initial 381 Work Plan, so the next work plan would be the last one; however, they could not guarantee that at this time.

Mr. Stevenson commented everyone knew there was some "pretty nasty stuff" on the site, and expressed concern what might be there that is unknown at this time. He believed the managers of that site, if they took the types contaminants that were now known to be on the site, probably took others. If something else were found, he questioned how that would be handled.

Mr. Silver stated that was why they were looking at a $4.6 Million Dollar Brownfield Plan. He advised they had included over One and a half Million Dollars of soil

removal costs; a Million Dollars plus towards methane; they had contingency built in, and agreed they were also very concerned about what they would find when they fully defined the various areas on the site. He commented they had loads of data, noting the Baseline Environmental Assessment (BEA) for the site was the thickest he had ever seen. He stated that typically a copy of the BEA is attached to the 381 Work Plan; however, because of the size of the BEA, they only delivered one copy to the City. He explained that there had been a lot of environmental investigation throughout the year conducted on the site; however, they were also concerned about the unknown, which is why they built in the numbers they did. He clarified they could not have that money unless they spent it, and unless the State said the money was spent well.

Mr. Delacourt stated that was also the reason the first 381 Work Plan was investigation only. He explained the DEQ had the same concerns; the City's environmental consultants had the same concerns, and they did not want to see a full remediation plan until a investigation was completed that the DEQ considered acceptable to address those concerns.

Mr. Stevenson clarified the Authority could expect something additional in the future. Mr. Delacourt responded there would be at least one more 381 Work Plan, and if the DEQ felt they still needed more investigation, there could be a second smaller Plan that just dealt with additional investigation on a portion of the site, depending on the information generated from the initial Plan.

Chairperson Walterhouse asked if the contingency amount was over Two Million Dollars. Mr. Silver referred to the Plan and noted the contingency for unknown conditions was at Ten (10%) Percent, with a total cost for contingencies amounting to One Million Two Hundred Thousand Dollars.

Ms. Hilbert stated that in reviewing the REI project, they had become aware that REI had asked for public funding through bonding and funds through the MDEQ, and asked why the applicant had not pursued public funding to ensure a higher level of cleanup.

Mr. Delacourt stated public funding sought through the Madison Park Project was facilitated and brought to the project through the Oakland County Drain Commissioner's Office. He indicated the City had sought public funding in the past and had submitted grant applications for Citywide projects related to brownfields and had been denied that money. He explained that public funding did not mean a higher level of cleanup. He stated the DEQ would not approve public funding to clean up a site to a standard above what is needed for the aboveground development, but would only approve remediation activities that are necessary for what is being developed on the top of the site. He noted the applicants are willing to pay for this work out of their

own pocket. He commented if he was assured that if public financing was obtained for a site that they could guarantee the DEQ would raise or adjust up the level of cleanup, that would be a different story, but that was not how it worked.

Mr. Delacourt commented if the City sought public financing for the subject property, the result would be to lower the developer's out-of-pocket costs. Ms. Hilbert asked why the developer would not want public financing pursued. Mr. Delacourt explained in such a case, the developer would pay less and the City would be paying for the remediation, not the site itself, and noted the TIF or payback would not be from the site itself, but would be from taxpayer money and grants. He noted there was nothing that said the City could not pursue public financing for this or any other project in the next fiscal year.

Chairperson Walterhouse asked whether that would be pursued as a request from a developer. Mr. Delacourt stated it did not have to, and noted the City had submitted grant applications in the past, but had not done so on a site-specific basis on behalf of a specific project. He indicated the City had pursued grants for additional investigation on sites that have not or are not being cleaned up out-of-pocket by a developer or reimbursed through TIF and paid for up front by a developer. He explained the City had submitted an EPA Grant Application in the past to do investigation on multiple contaminated or landfill sites in the City and was denied.

Mr. Delacourt stated that the grant and loan funds sought by the REI Project was a development specific grant and loan sought by the City on behalf of the developer to lower their out-of-pocket, up front costs. He explained that did not necessarily mean that the level of remediation would be raised because there was more money, rather it would supplement the $4.5 Million Dollars with either a grant or a loan.

Mr. Silver stated that sources of public financing meant that any funds received would lessen the burden of the developer, and the City would be at risk rather than the developer. Mr. Delacourt noted if the City accepted loan money for a project, the City becomes the contractor for the remediation of the site, and whatever amount is awarded to the City, the City is responsible for that redevelopment work. He commented that with respect to the REI Project, City Council had denied submitting the application on behalf of the developer.

Mr. Stevenson pointed out that City Council had made it very clear that they were not going to obligate the City for these types of projects. Mr. Silver stated they understood that, and they were willing to pay the up front costs.

Mr. Duistermars stated the argument was that if money was going to be expended, expend it to the clean up the site to an almost pristine state.

Mr. Woollatt stated he had done a lot of work with the MDEQ and brownfield grants and EPA brownfield grants and loans, and explained they only paid for additive costs and costs associated with getting to a specific development goal. He explained he had a site where they were going to have a basement on a large development, and the DEQ would not pay for the excavation of the soil because they knew the developer would have to excavate it any way. He stated they would only pay the landfill for the site, not the trucking because they knew the developer had to get rid of it anyway. He explained those mechanisms were out there, but they were somewhat limited. Mr. Silver noted in the subject case, pursuant to the terms of the Consent Judgment, they had already agreed to bring the site to a standard higher than that level would have funded.

Mr. Windscheif felt it was important to understand Ms. Hilbert's question in more detail. He explained the reason she asked that question was because they understood the public funding would have been available if it had been requested. He stated they knew that because they asked that question of John McCullough and he answered in the affirmative. He indicated it was their belief that as the City was negotiating with the developer, if there were additional funds available to remediate the site to get a higher standard that what was proposed, they felt the developer would be more inclined to accept those standards should the City chose to negotiate in that manner. He stated because those funds were not coming forward, it was apparent the developer had certain limitations on the amount of money he was willing to spend to provide an adequate level of cleanup for the proposed use of the property. From the resident's point of view, if they had the opportunity of funds, there would be more money available, and the residents would have gotten more cleanup. He asked if it was too late to go back and do that now.

Chairperson Walterhouse stated he thought that question had already been responded to because City Council made it clear they would not submit the application on behalf of the REI Project.

Mr. Delacourt stated he was not aware of a situation where the DEQ would approve a grant and loan for a cleanup standard higher than necessary for the development. He noted that even if the City could obtain grant and loan funding now, it was his understanding that that money would not be used for activities above and beyond what was outlined in the Consent Judgment, and the DEQ would not approve it for that. He explained the DEQ would only approve eligible activity in the utilization of grant, loan, or TIF as it amounts to school tax, for a level that is necessary for the development being proposed. He stated that the City could not get grant and loan money to clean up a site to a residential standard, if commercial or industrial was going to be put on the site. He indicated it was his understanding that the DEQ would not hand out grant and loan money to go above and beyond the standard they had identified as necessary for the above ground development.

Mr. Silver commented he understood the question to be: if there were grant money, such as Three Million Dollars in grant money, and that would only take it to the commercial cleanup criteria, and it would cost another Two Million Dollars to take it from the commercial cleanup criteria to the residential cleanup criteria, he thought the question being asked was would the developer then have agreed to spend the extra Two Million Dollars if the City brought in the Three Million Dollars, to get the site to residential.

Mr. Woollatt noted in that scenario, the DEQ would not approve school tax capture for the TIF. Mr. Delacourt agreed it would increase the local tax burden, and reduce the school tax that the State would approve for the additional Two Million Dollars, which would also extend the payback period.

Mr. Anderson stated in the subject case, the City could not necessarily force the developer to do anything. He noted it might have been negotiable from a different point of view, but it could have ended up in Court.

Mr. Delacourt stated that the negotiations were those that the City Council entered into as part of the Consent Judgment. He indicated he would verify with the DEQ that if the City were to seek that grant and loan money at this time, whether the City would be able to facilitate a higher level of cleanup, or whether it was too late to do so. He believed the answer would be it would be too late, and he did not know if it would have been possible to seek that money as part of the Consent Judgment negotiations.

Mr. Duistermars stated it was the duty of City Council to work within the framework of the law. He explained the framework regarding the remediation was that the developer had to remediate to the standard of what they were going to develop. He acknowledged they could negotiate back and forth in an attempt to get something better, and he thought Council had done that. He pointed out if Council had insisted the site be remediated to a residential level, the developer could take the City to Court, causing the City to defend another lawsuit. He thought Council had done its duty by working within the framework of the law, which said that the developer would remediate to the standard for the type of development being proposed. He noted that through negotiation, the Council and the developer reached a happy medium.

Mr. Anderson stated it was unfortunate that in this case there was not a liable party. He thought if there had been a responsible party, the State would have pursued the liable party for the cost recovery for the first effort, let alone finishing the job.

Mr. Duistermars thought that the City was being faulted for not asking for the highest possible standard, which was not possible. Mr. Anderson stated that clean-up standards were use-based, and the developer was only bound to do what would

benefit their aboveground development.

Attorney Brice stated that the Consent Judgment meant the City and the developer had already been involved in a lawsuit. He explained it was not just sheer negotiation, but was a negotiated settlement. He stated that because of the orphan chair, the developer came in and offered to do something, which was better than where the property is currently. He indicated that in a lawsuit, both parties looked at the situation, realized that with a lawsuit someone would win and someone would lose, and reached a good resolution for the current situation, particularly when there was not a liable party to go after.

Mr. Duistermars pointed out if the City forced the developer to clean up to a higher standard than the development called for, it would be a breach of contract or the Consent Judgment, since the City and the developer had agreed to the Consent Judgment.

Ms. Hilbert wanted to clarify that the remediation cleanup that was agreed to was the lowest level of commercial cleanup. She thought there were four levels, and the level agreed to for this Project was the lowest commercial level. She suggested if there were funds available, possibly there would be a higher level of cleanup, particularly since it was so close to residential property.

Mr. Anderson responded that there were four levels of commercial cleanup, but what was negotiated was a combination of levels three, four and two. He indicated that was because they "picked and chose" the exposure related criteria. He explained that the State's exposure level criteria from which the State projects the cleanup numbers for those items; they typically use examples such as outdoor workers, lawn service workers, utility workers, and do not really address the average person going to get a cup of coffee, or walking from their car to the sidewalk to a place of business, and then walking back. He stated that was why they chose some numbers higher, other numbers for less volatile things like metals that could be handled with a cover rather than excavation, and that was reflected in the Consent Judgment. He noted it was more of a custom job on this Project.

Chairperson Walterhouse reminded the Authority that there was a motion on the floor to accept the initial 381 Work Plan and forward it the DEQ. He asked if there were any other questions or comments from the Board. Upon hearing none, he called for a roll call vote on the motion on the floor.

A motion was made by White, seconded by Turnbull, that this matter be Accepted (accept initial 381 Work Plan and authorize submittal to MI DEQ) The motion carried by the following vote:

Aye 7 - Turnbull, Stevenson, White, Karas, Duistermars, Hardenburg and Walterhouse

RESOLVED in the matter of City File #03-013, that the City of Rochester Hills Brownfield Redevelopment Authority accepts the initial 381 Work Plan prepared for the proposed Hamlin/Adams Development, and authorized submittal to the Michigan Department of Environmental Equality for review.

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Chairperson Walterhouse noted for the record that the motion had carried. The applicants thanked the Authority for their time and consideration.

8. ANY OTHER BUSINESS

Chairperson Walterhouse commented that if any members of the Authority were in the Dearborn area, they should take I-94 West to the Oakwood exit and head south on Oakwood. He noted there was a development in that area that was very similar to the two projects the Authority had been discussing. He stated that a Meijer's was being constructed on that site, and there were some restaurants on the site, a Target store, and a number of other buildings on that landfill that had already been remediated.

Mr. Karas suggested it would be beneficial for the members of the Authority to visit a site that was in the excavation process. He noted it was frustrating to listen to the problems they might face, and not be able to actually see a site. He asked if Mr. Delacourt knew of any sites the Authority could visit.

Mr. Delacourt stated it would be a very difficult thing to do, because in order to enter those sites, there was a certain amount of health and safety training that was required to set foot on those sites. He was not sure anyone would agree to provide any type of tour or bring the general public onto such a site. He stated he had discussed with the City's environmental consultant the possibility of holding a workshop discussion, and perhaps bringing some examples, or operators of landfills that were not connected to sites in the City, rather than trying to organize a site visit.

Mr. Karas acknowledged he understood the liability, noting he had stopped at the Cardinal Landfill site and had difficulty observing some of the borings. He stated if the developer started the investigation, he would like to have the ability to enter the site. He asked for a description of a pit that was dug for subsoil investigation.

Mr. Anderson explained that a test pit was a hole in the ground, dug with an excavator to a variety of depths, depending on where they wanted to be. He noted that typically there was a tract excavator, which he guessed on the site discussed this evening, would be down to a depth of fifteen to thirty feet, depending on what they ran into. It was his assessment they would dig until they found clean soil.

Mr. Anderson explained the process was that they dug it out; had an area next to it that was tarped, which the spoil material was set on. He said they would log what they found; photograph it; monitor it; do some chemical testing, and they could do some testing for the PCB content.

Mr. Karas asked how that was different from borings. Mr. Anderson said it was completely different. He explained borings were done either hydraulically, or similar to drilling for oil - turning an auger.

Mr. Karas asked which was more efficient, a test pit or a boring. Mr. Anderson stated that from an efficiency standpoint, probably a boring; from a visual and data collection standpoint, the test pit because they could see more.

Mr. Karas asked if any test pits had been done on the Hamlin/Adams site. Mr. Delacourt stated he believed that subsequent to the first 381 Work Plan that was accepted and submitted, they had done some test pits. He stated he had not received a report on the investigation that had taken place since the initial 381 Work Plan was accepted and submitted.

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

9. ADJOURNMENT

Chairperson Walterhouse stated that the next regular meeting of the Authority was scheduled for Thursday, October 19, 2006. He then called for a motion to adjourn.

Upon a **MOTION** made by Stevenson, seconded by Duistermars, Chairperson Walterhouse declared the Regular Meeting adjourned at 8:25 PM.

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Mark Walterhouse, Chairperson
City of Rochester Hills
Brownfield Redevelopment Authority

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Judy A. Bialk, Recording Secretary

Approved as presented at the January 18, 2007 Regular Brownfield Redevelopment Authority Meeting.