Chairperson Stevenson noted for the record that the Officers had been unanimously appointed for the current year.

7B. 2007-0436 **City Brownfield Policy**

Chairperson Stevenson stated the Authority had been discussing the draft policy for some time, and noted he appreciated the work done by both Mr. Wackerman and Mr. Delacourt. He noted for the record that Mr. Thomas Wackerman, ASTI Environmental, was present.

Chairperson Stevenson recalled that at the joint meeting between City Council and the Authority, there had been some discussion about getting developers involved and soliciting their opinion about the proposed policy, both pro and con. He suggested that could still be done prior to approving the draft policy, and asked Mr. Delacourt and Mr. Wackerman their thoughts on that suggestion.

Mr. Justin asked if Mr. Turnbull had submitted any comments about the proposed policy, noting he had some experience with the development business.

Mr. Delacourt stated Mr. Turnbull had not submitted any comments. He explained that when the policy was initially discussed, there was some discussion about a focus group that would evaluate issues and make determinations. Rather than moving forward with that idea, the joint meeting between City Council and the Authority was held to obtain feedback and an understanding of which direction the policy should take. The result of the joint meeting was the proposal to draft a policy that did not limit developers' ability to utilize the brownfield program. He pointed out that the section relating to interest might be seen by developers as a negative, but the rest of the policy did not present any detriments to developers. It was his understanding, based on the joint meeting, that the focus group would not be established. Rather, the policy was developed based on meetings with the Brownfield Redevelopment Authority; the Environmental Clean-up and Oversight Technical Review Committee and City Council.

Mr. Delacourt stated if the Authority or City Council felt the focus group was important, a group could be established. He suggested there were some standing committees within the City that included developers and business owners, and input could be obtained from those committees.

Chairperson Stevenson recalled the focus group would consist of members from City Council and the Authority, City staff and consultants, developers and residents, which would provide an opportunity to allow public comment on the policy. He thought that should be offered to the residents.

Mr. Wackerman commented that when developing policy, it was usually his approach to put an advisory committee together that represented a cross-section of the Community, i.e., developers, citizens, action committees, and City officials. He thought this policy followed a different track by holding the joint meeting. He pointed out that did not preclude forming an advisory committee or focus group and seeking comments. He mentioned the format followed for the draft policy was unusual for his company, but the process did result in a good product and a good understanding. He noted a focus group could be important if the City had very vocal citizens groups.

Mr. Webber commented that between the joint meeting and the two Brownfield Redevelopment Authority meetings, there had been open discussion on the policy that provided an opportunity for the public to participate. He thought when the policy went before City Council, the public would pay more attention to the matter. He would like to see the policy presented to City Council sooner rather than later. He suggested the Mayor's Business Council would be a good avenue to utilize to obtain thoughts and comments from developers. He was not sure if there was an opportunity to present the draft policy to the Business Council before the policy was scheduled for a City Council meeting. He stated the policy appeared to be a fairly balanced document that he thought would be looked upon favorably by both the business community and the residents.

Mr. Karas agreed it was a good policy. He explained his test was what the City would have done differently or how the policy would have affected the two brownfield projects that City currently had on-going, or how it would affect any of the other landfill properties in the City. He questioned if the policy had been in place, whether it would have changed any of the City's actions with respect to those projects. He noted the Consent Judgment process took those projects out of the City's hands, not whether the City had a policy. He thought the Brownfield Authority should have the freedom to negotiate and hold discussion, and he did not think the policy tied the Authority's hands.

Mr. Karas noted the revised Application requested the cost per square foot, and pointed out the developer would not know what tenants or businesses would be going into the development. That bothered him because he did not think it was reasonable to ask a developer for the cost per square foot, when the City knew from experience they did not know who would be occupying the development.

Mr. Wackerman explained that was because of changes in how brownfield incentive programs were rolling out today. It used to be that a developer would approach a brownfield redevelopment authority with a conceptual idea; go through the process, and then a month or two later, when their numbers firmed up, they would go to the State with a 381 work plan, often more than one time. After getting approval on the 381 work plan, they might pursue a Michigan Business Tax (MBT) application. One of the reasons it was done that way was because the brownfield plan had the

least amount of detail in it, and the MBT application asked for much more, including sources and uses of funding; financial reports; letters of credit; letters of support, etc., as it was a much more robust document. He noted that tended to make sense in terms of how a developer thought in terms of general concept to final plan.

Mr. Wackerman stated what was currently happening was that more and more communities were requesting all the documents at once. Therefore, the developer was not going to the brownfield redevelopment authority until they had a firm site plan, a firm quote, a tenant, or was doing the project on speculation and knew what it was going to cost. He was finding when he approached brownfield redevelopment authorities, he had to have items such as number of jobs created, dollar per square foot, financial reports, pro forma's, sources and uses, letters of credit or letters of support all at once. He thought it was consistent to ask for that information with the way the process currently worked. He understood Mr. Karas' point that they may not know, but developers would have the option of putting answers such as unknown, not applicable, or do not know yet. He thought the Authority would find the developers would come to them with complete concepts because that seemed to be the way the business was developing.

Chairperson Stevenson stated that currently stimulus money coming from Washington, D.C., included clean-up. He thought that might have an affect if developers went to the government with a project that include putting people to work, the government would listen. He commented that "clean-up" was particularly pointed out, and thought the City should be ready for projects, which included having the policy in place.

Mr. Wackerman stated he and Mr. Delacourt had talked about that earlier, and whether it was the stimulus package; the neighborhood stabilization program, or a new bond issue, these dollars were coming fast and furious and now was the time to put an application in. He and Mr. Delacourt agreed they would like to put an application in for a site assessment grant or the Federal Revolving Loan Fund (RLF) program. If the Authority had suggestions of sites they wanted to go after, now was the time to put applications in.

Chairperson Stevenson agreed, noting there was money available. Mr. Wackerman concurred, noting it was a one-time opportunity.

Mr. Justin asked if it would be helpful to have a policy in place so guidelines would be established. Chairperson Stevenson said definitely yes, and stated the quicker the policy went before City Council and was established, it would be better for any grant applications. He thought those available dollars could help the City.

Mr. Justin asked if there was any reason why the Authority would not want to recommend the policy to City Council at this meeting.

Mr. Wackerman stated he had some outstanding questions he wanted to review with the Authority.

Mr. Justin stated he wanted to understand what the Authority wanted to accomplish at this meeting.

Mr. Delacourt stated the goal was to get a recommendation to City Council, and explained if there were any issues the Authority wanted Council to consider, those items could be handled through conditions to any motion made by the Authority. Alternatively, if there were corrections that needed to be made, any motion could be conditioned on those corrections being made prior to any review by City Council.

Mr. Webber asked if the City Attorney had reviewed the draft policy. Mr. Delacourt stated the City Attorney had been forwarded a copy, and had not expressed any concerns at this point.

Mr. Webber noted the City Attorney did review everything that was placed on a City Council Agenda, so that review would happen. Mr. Delacourt agreed that once the policy went before Council, the City Attorney would take a close look at the policy.

Mr. Delacourt stated the meeting packet included a redlined version of the policy with the changes made since the last Authority meeting. He explained there were some typographical errors that would be corrected before the policy was forwarded to City Council. He indicated he would turn the discussion over to Mr. Wackerman to review the outstanding items.

Mr. Wackerman referred to the Brownfield Policy, first page, second paragraph, which began: "This policy is provided to *ensure* that projects that use City Brownfield incentives:". He wanted to be sure the word "ensure" was the right word to be used, as opposed to "assure" or "assume" or "provided to make sure that". He explained the reason the word was important was because of the prior comments about whether the policy would have affected prior decisions.

Mr. Wackerman stated in putting aside Consent Judgment decisions, which the policy cannot do anything about, that sentence would define whether or not the four numbered items that followed would be general guidelines or important items. He thought the word was a pivotal word. He indicated if the Authority was comfortable with the word "ensure", he would leave it. But he wanted to make sure the Authority realized it set the tone for the four numbered items following that sentence.

Ms. Morita asked if the word "ensure" came from the joint meeting discussion. Mr. Wackerman responded no, the comment noted on the redlined version referred to

the last sentence in the first paragraph that stated: "The City encourages anyone developing contaminated property in the City to discuss these incentives with the Rochester Hills Planning Department".

Ms. Morita asked if Mr. Wackerman was trying to find out if the Authority thought the sentence should say "require" or something else. Mr. Wackerman stated the word "ensure" defined the policy within the terms of the next four numbered items. For example, if the Authority determined the sentence should read "The policy is provided to *require* that projects" - that would mean that the four numbered items were items that every project had to have. He stated he was not recommending that, but rather it was an example.

Mr. Wackerman stated if the Authority were to say "The policy is provided to *encourage* projects" - then if a developer did not have any of those four numbered items, it may still be fine. He wanted to be sure the policy hit the target. He thought the word "ensure" was right, but wanted to be sure the Authority also felt it was the right word.

Ms. Morita noted that "ensure" was not that much different than "require". Mr. Wackerman agreed, but stated it was a step down. If "require" meant every one of the four items, "ensure" might mean something a little less; or it could come down another step or more. If an application came before the Authority that did not incorporate a preference for the four numbered items, would the Authority decline the project. If the Authority would do so, then the word should be "require".

Mr. Webber stated he was okay with the word "ensure". Mr. Delacourt asked if anyone was uncomfortable with the word "ensure", or if anyone would like to see something different.

Mr. Justin said he liked the word "ensure" because it allowed the Authority some discretion in making determinations.

Ms. Morita did not think that "ensure" was that far from "require" and commented she would prefer to give the Authority more discretion in making decisions, in terms of whether or not they would definitely require those four numbered items. She asked what would happen if the Authority received a great project that was only going to create part-time jobs, but would clean up a bad site. She questioned whether the City wanted a policy that said the project had to ensure it would create full-time jobs. She stated she would like to see something less than the word "ensure" used; just in the off chance a great project came along that did not meet one of the four numbered items.

Mr. Wackerman asked if it would go too far down the scale if the word "encourage" was used or if that gave the impression of being too "wishy-washy". Ms. Morita thought encourage was wishy-washy.

Mr. Webber thought the goal of the policy was to have a policy in place but to take the applications on a case-by-case basis.

Mr. Wackerman suggested the word "support" in place of "ensure". Chairperson Stevenson and Mr. Justin thought support would work.

Ms. Morita suggested the sentence be re-worded to state:

"This policy is provided so that projects that use City Brownfield incentives strive to:"

Mr. Justin thought that was a nice way to state that sentence. He commented the Authority did not want to get too far away from what they wanted to accomplish, and he thought "strive" allowed the Authority to form an opinion and focused on the four numbered items. Mr. Webber agreed.

Mr. Wackerman clarified the sentence would be reworded to read: "This policy is provided so that projects that use City Brownfield incentives strive to:"

Mr. Wackerman referred to the first paragraph on page 2 of the draft policy, which read: "In general, interest costs are not considered eligible expenses." He pointed out the third sentence was incomplete as it just stated "It will be capped". He asked if the Authority wanted to cap interest at a certain number; put an overall cap in, or decide on a case-by-case basis.

Chairperson Stevenson suggested the sentence could say "it may be capped". Mr. Wackerman asked if the Authority wanted to incorporate the concept of a cap, which was not unusual.

Mr. McGarry thought if a cap was not incorporated in the policy, it would be difficult to bring it up later if the Authority or Council wanted to impose a cap. If the policy states there will be a cap, it is part of the policy and would not be questioned.

Mr. Wackerman asked if the sentence should read "it shall be capped at a rate determined by the Brownfield Redevelopment Authority".

Ms. Morita inquired about the second sentence in that paragraph. Mr. Wackerman stated the sentence should end "to cover a financing gap" rather than "to cover a gap".

Ms. Morita suggested the sentence could be reworded to state: ". . . to cover a financing gap, in which circumstance, the rate of interest paid will be set by the Brownfield Redevelopment Authority." She asked if that clarified Mr. Wackerman's question.

Mr. Wackerman stated the sentence could read "the maximum interest rate will be set by the Brownfield Redevelopment Authority".

Mr. Delacourt suggested the sentence be reworded to state: "the applicant shall demonstrate to City Council's satisfaction".

Mr. Wackerman clarified the sentence would read" "However, under extreme circumstances, the applicant shall demonstrate to City Council's satisfaction the need for interest to cover a financing gap. The maximum interest rate will be set by the Brownfield Redevelopment Authority."

Mr. Delacourt asked if the applicant was demonstrating the need to City Council, whether City Council shouldn't set the interest rate.

Ms. Morita thought City Council should set the rate, noting she would not feel comfortable setting the rate. She suggested something be included that said not only did they have to demonstrate the need to City Council, but gave Council the ability to state the applicant did not demonstrate the need. She explained when she drafted documents, she would include the phrase "demonstrate the need as determined by City Council" or "meet the requirements of City Council" to avoid a dispute with the developer saying they had demonstrated the need, but Council just did not believe them.

Mr. Delacourt agreed, but did not think the word "satisfaction" was the correct word.

Ms. Morita suggested the sentence could read "as determined by City Council in its sole discretion".

Mr. Webber summarized from a practical standpoint, the field goal post would be set by Council and it would be very well determined going into the process so that the developer would know ahead of time. Rather than the developer coming to the meeting and finding out what Council thought at the meeting.

Ms. Morita stated the verbiage should be stated so that no matter what is presented, Council had the authority to say the applicant had not demonstrated need. She thought that would give Council some ability to say that in their sole discretion, the applicant had not demonstrated need.

Mr. Wackerman clarified the sentence would read: "However, under extreme circumstances, the applicant shall demonstrate to City Council the need for interest to cover a financing gap, as determined by City Council in their sole discretion."

Ms. Morita suggested: "whether or not the applicant demonstrates need will be at the sole discretion of City Council".

Mr. Delacourt pointed out the City Attorney may have some input into the policy before City Council approves the policy.

Mr. Wackerman clarified the sentence would read: "However, under extreme circumstances, the applicant shall demonstrate to City Council the need for interest to cover a financing gap. Whether or not the applicant demonstrates need will be at the sole discretion of City Council. The maximum interest rate will be set by City Council".

Mr. Justin asked why Council would set the interest rate, noting he was trying to understand how the interest rate related to the interest cost.

Mr. Delacourt explained it was interest on the money the developer would have to borrow for the eligible activities. Per the Act, City Council has the ability to pay back the interest on whatever money they may borrow.

Mr. Justin clarified the interest costs would be based on the rate and based on how much. Mr. Delacourt stated that had been done in other plans, and noted One (1%) Percent above prime was the rate.

Mr. Justin asked why the original paragraph was deleted and the substitute wording inserted. Why did the Authority decide to exclude interest costs from the financing.

Mr. Wackerman recalled that during the discussion, it was decided that it looked like the original wording was encouraging developers to ask for interest, and if it was there, developers would ask for interest.

Mr. Webber also recalled the discussion, and thought the idea was not to close the door on developers asking for interest, but re-word the document in such a way that if a developer does ask for interest, it was determined on a case-by-case basis.

Mr. Wackerman stated the third item he wanted to discuss was the second paragraph on page 5 under "Fees", and pointed out he had added the sentence: "This fee was determined by the average size and scope of projects that have been through the application process and may be subject to future adjustments."

Mr. Wackerman explained he added that sentence because most of his municipal clients indicated they could not charge a fee unless they have documented that the fee is appropriate. He was not sure if the Authority wanted to include that sentence, but noted he normally included a similar sentence in policies for other communities.

Mr. Justin thought it was in the City's best interest to be able to change the rate based on experience, and suggested the sentence be left in the policy.

Mr. Webber asked for clarification on whether the sentence was establishing that the City could change the rate or to let the developer know where the number came from.

Mr. Wackerman explained the last part of the sentence provided the ability to change the rate, which needed to be included. However, the first part of the sentence was what many municipal clients requested because it indicated there was a basis for the fee and it was not arbitrary.

Mr. Webber thought that was the important part in terms of a developer reading the policy and coming to the conclusion it was just an arbitrary fee. He commented developers would know that was similar to how most municipalities determined their fee.

Mr. McGarry asked if it was Mr. Wackerman's opinion that by stating the sentence in this manner, it was unlikely anybody would come back and ask to see how the rate was determined. Mr. Delacourt commented applicants were happy with the fee unless they were denied, and if they were denied they may want to challenge the fee.

Mr. Wackerman asked if the Authority thought it was reasonable to leave the sentence in the policy. The Authority concurred.

Mr. Wackerman referred to the last page of the Application Form (page 4), the section labeled "For City Use Only". He explained that would be used for evaluating the four criteria contained on the first page of the policy. He suggested that box be removed from the Application Form, because the Authority would probably never use it, and secondly because it presented an obligation to have a written record of why or how the Authority evaluated the project. He commented he had not found that section to be very useful, and he recommended that section be removed.

Ms. Morita indicated she concurred the box should be deleted from the Form. She pointed out the City could create its own cover sheet for projects, but did not need to be included with the Application.

Mr. Wackerman asked if there were any other comments or thoughts about the Policy, or whether it represented what the Authority and the Council wanted to cover while allowing the flexibility the City wanted.

Ms. Morita complimented Mr. Wackerman on providing a well-written policy and thanked him for incorporating all the comments from the various meetings. She was concerned about the reimbursement agreement that the City would request the developer to enter into in terms of transparency. She thought the policy was good, and hoped City Council would consider some type of form or sample agreement that went along with the policy, perhaps drafted by the City Attorney. She felt that for the policy to be complete, there should also be an agreement that allowed a developer coming to the City to know what the City would expect of the developer. She explained she did not want a developer to go through the entire process, and then be surprised by the City indicating that if the developer challenged their tax assessment before the Tax Tribunal, they would lose their tax incentives. She agreed those were policy decisions for City Council to make, but thought it should be part of the policy, or the policy should reference that there would be an agreement required. She understood the policy indicated there was an agreement that had to be entered into, but she thought the agreement should be available as it was an important, integral part of what the City expected the developer to do. From her perspective, the missing sample agreement made the overall policy a little incomplete. She stated she was comfortable with the policy with the understanding that there would be an agreement that City Council would approve.

Mr. Delacourt thought City Council might want to hear the City Attorney's opinion on whether that was necessary or the direction it should go before making that decision. Also, what that agreement would encompass, such as whether it would include language Ms. Morita discussed. He stated it was left out of the policy because it was seen as a disincentive for developers to consider using the brownfield process, but to put required language in a draft reimbursement agreement would be the same as putting it in the policy.

Ms. Morita asked if it was fair to present the policy as being developer-friendly, if there would be an agreement that had something else in it.

Mr. Delacourt stated it was his understanding that language would not be included in the policy because the City did not want that to be part of any formal adopted document. Such as if the tax assessment was challenged, they would not be entitled to capture tax increment financing (TIF) any longer.

Mr. Wackerman thought that was a fundamental flaw in the policy adoption process. He explained a committee could not create a legal document because it just did not work. Whereas, while developing a policy by committee worked very well, developing a legal document would be a horrible process. He stated the Authority should make sure that all the positioning and thinking and general concepts they had developed in the policy were not undermined by the development (or reimbursement) agreement. He pointed out the 381 Work Plan required the

reimbursement agreement. He noted that anyone going after the full suite of incentives would be required to enter in that agreement with the City. He asked whether the Brownfield Authority would take on that process and make it consistent with their current thinking, or leave it to the City Attorney and the City Council to take on that process, which might create some divergent thinking. He thought it was an important discussion and decision to have in order to avoid having a development agreement that was discordant with the brownfield policy. The discussion should not be whether it should be done, but who would be in charge of it and what would it look like.

Mr. Delacourt clarified the City did not have to have an adopted draft form, rather the developer would have to provide one when they presented their plan. Mr. Wackerman agreed and stated that some communities have an example development agreement, but do not require that the example be followed, rather they work on a case-by-case basis.

Mr. Delacourt stated if the Authority and City Council wanted a draft development agreement, whether it was a fill in the blank, specific language that shall be included, or an outline, he did not disagree with that idea, but saw that as a second step. Once the policy was adopted, then the development agreement could be crafted based on the principles in the policy. Rather than using it as a supplemental document that made the Authority comfortable with the brownfield policy.

Ms. Morita stated she had some concerns about some things she did not see in the policy that she felt could be handled in the agreement. She agreed those things should not necessarily be in the policy, but she felt uncomfortable not seeing the agreement before agreeing to the policy. She felt they were intertwined, and asked Mr. Webber if he thought Council would want to see the agreement with the policy.

Mr. Webber thought that Council would ultimately adopt the policy and then perhaps charge the City Attorney with putting together a draft agreement. He suggested an outline type of document that stated "every agreement shall contain these provisions". He thought the policy would govern any draft agreement, and was comfortable doing the policy first and then having the policy govern the draft agreement.

Mr. Delacourt commented City Council could decide to hold off on the policy and ask the City Attorney to provide a draft agreement first. Mr. Webber noted that would be fine.

Mr. Delacourt asked Ms. Morita to relay the language she was uncomfortable not seeing in the policy, or felt was missing from the policy, at this meeting. Therefore, if it went forward, both the Authority and Council would understand what she felt was missing. He commented he believed the policy should stand on its own, and should not need an accompanying document in order for the Authority to be

comfortable with it. He noted if there was language that should be in the document or the Authority felt should be in the document or that potential users of the tax increment financing (TIF) program should know, that should be discussed for inclusion in the policy. He pointed out it was the policy that would be considered for adoption by Council, and had much more weight than an example agreement. If what the Authority felt was missing was just a guideline or an outline of an agreement, that did not need to be included in the policy.

Mr. Wackerman agreed that the policy needed to be the communication for both developers and the City Council about the Authority's position on how the program would roll out. Then, the devil would be left to the details. He explained the reason he said that was because every brownfield application was different. Some would have a brownfield plan and no 381 work plan; some would have a little 381 work plan; some would have a huge 381 work plan; and some would have a consent order that affected it. Crafting the development agreement would be dependent on those details of the project. It was odd to try to craft a "one size fits all" development agreement when the City would be dealing with everything from a simple brownfield plan with a MBT only request, all the way up to digging up a landfill and having a six inch thick 381 work plan. He agreed the policy should provide Council with what they needed to draft the agreement.

Chairperson Stevenson stated that each agreement should stand on its own because each development would be different, which meant each agreement would be different.

Mr. Justin stated if Ms. Morita had some good ideas for language that should be considered for the policy, the Authority would like to hear them and think about them. If it was an idea that would cover everybody, it could be included.

Ms. Morita referred to the February 19, 2009 Brownfield Redevelopment Authority meeting minutes, and the minutes from the November Joint Meeting, and pointed out one of the major issues was the creditworthiness of a proposed applicant. She thought the policy, as well as the agreement, should include something regarding letters of credit and what type of letters of credit the City would require of a developer. She explained that because every community was different, if the City wanted to see a certain type of letter of credit from a developer that should be stated up front. She stated she knew from her line of work that some communities required a cash bond versus a letter of credit from a bank. Depending on what type of security this community traditionally wanted for this type of development, she felt it should be set forth in the policy itself. She did not want a developer going through the entire process, and then getting to the agreement portion and not be able to get the letter of credit the City required to go forward with the project. She expected to see that in the agreement itself, but wanted to see it in the policy, such as "this community will require a letter of credit or a cash bond" so the developer could talk to staff at the onset of the process about what would be required, and there would not be any surprises.

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Mr. Delacourt clarified Ms. Morita was talking about the surety required for the eligible activities associated with the remediation work.

Mr. Wackerman asked if the City currently required a bond or a surety for the eligible activities. Mr. Delacourt responded the City had not in the past. Ms. Morita thought the City should.

Mr. Delacourt stated that would be something that would be considered a disincentive. Mr. Wackerman stated it would be quite unusual in his experience. He explained he had never seen any community require a letter of credit or a surety bond on a TIF or MBT program.

Ms. Morita asked what happened if the project was only half completed and the developer walked away. Mr. Wackerman explained under that circumstance, the developer would not receive their TIF or MBT credits, and the money they spent was money down the drain.

Ms. Morita asked what happened if there was a hazardous condition that was left exposed and needed to be cleaned up. Mr. Delacourt noted the developer had due care obligations with the Department of Environmental Quality (DEQ). Mr. Wackerman stated Ms. Morita's questions were becoming more and more of an issue in communities, but whether it was part of a brownfield policy was a different issue. The question of how a community was assured a developer would follow through on the plans they present, was a much bigger question than brownfield, it was a question for all communities in a general sense. He commented Traverse City had a good example of what they referred to as "the big hole in the ground" where the developer had walked away. He pointed out from a brownfield, TIF or MBT perspective, because it was a reimbursement agreement, and because the developer had to incur the expenses prior to getting the benefit, the City had a certain protection involved. If they walk away from it, they do not get anything. Therefore, it was not a question of them walking away with benefits that the City would otherwise have not accrued to them.

Mr. Wackerman stated the bigger question (how do you make sure the development as intended goes through) was an important question. He suggested that was a larger City question, not a brownfield question.

Mr. Delacourt stated the City had dealt with this recently when permits were requested on a project that had been approved and pulled back at the last minute. He explained any time a developer moved dirt in the City, such as balancing land or digging a hole, they are required to get a Land Improvement Permit from the City. In issuing the Land Improvement Permit, the City Engineer can set up and require any surety he needs to make sure that work is completed. In connection with one of the City's brownfield projects that wanted to move earth in relation to eligible activities, the City made a determination that a Land Improvement Permit was required. The developer was required to submit to the City an estimate of what would be needed to "button up" the site if the developer encountered issues. The City Engineer reviewed the estimate with the City's consultant and made a determination of whether or not that number was reasonable, which then became a condition of the Land Improvement Permit.

Ms. Morita asked what the City Engineer required once the number to button up the site was determined. Mr. Delacourt responded a surety bond or a letter of credit. He explained the City was hesitate to require any type of bonding or surety for the full amount of potential TIF, because that could be dollars that exceeded what it cost to button up the site, and be an enormous disincentive to move forward with the process. He pointed out that of the two brownfield projects in the City, one was over Four Million Dollars, and the other was potentially over Thirty Million Dollars. He stated at the time of the plan submittal, the developer would not have the engineering or construction details necessary to make the determination of the level of a surety.

Mr. Delacourt asked if the Authority wanted to include a statement in the policy that stated "the City Engineer, at the time eligible activities are permitted, may require at his determination some type of surety". A general statement to that affect could be included in the policy that indicated the City reserved the right to do that.

Mr. Wackerman asked when the Land Improvement Permit was required. Mr. Delacourt responded prior to a shovel going in the ground. Mr. Wackerman clarified that was a City policy. Mr. Delacourt stated that permit was required for any developer who moved dirt. Mr. Wackerman asked why that would be added to a brownfield policy, if it was always being handled by another mechanism in the City. Mr. Delacourt agreed the Authority did not necessarily have to include it in the policy, but asked whether the policy could serve as notice that was coming down the road. He thought that might be a nice middle ground and not be a disincentive and give the developers a heads up so they can factor that in when they consider how they want to go through the brownfield process.

Mr. McGarry pointed out that then the developer could ask for more details about it.

Mr. Wackerman stated it would not be a disincentive, but would be a nice thing for the developer to know. Mr. Delacourt suggested that language could be added to the policy notifying potential applicants of future surety requirements. Council could then review the proposed language, or the City Attorney and the City Engineer could review it before it went to Council.

Ms. Morita thought that was fair. Mr. Justin noted that permits were also required. Mr. Delacourt stated the developers should be well aware of the requirements and permit.

Mr. Wackerman stated he liked the City's program, and would make that same suggestion to other clients. Mr. Delacourt stated he would much rather see that in the policy because development agreements were drafted and negotiated by attorneys.

Ms. Morita stated the credit issue was her big concern. Mr. Wackerman clarified that referencing the requirement in the policy satisfied that concern. Ms. Morita responded that it did as she did not want a developer to think they only had to complete the 381 work plan, and then find out a bond or letter of credit would be required.

Mr. Delacourt stated City Staff debated that same concern when one of the brownfield projects came close to being started. Staff thought about how they could provide some sort of assurance in case the City had to step in and button the site up. He thought that applicant was surprised when they realized a permit would be required to begin the land work. The City treated that applicant the same as they would treat any other developer moving dirt for any other project.

Mr. Wackerman indicated he would incorporate that language, and asked if the Authority would like to review the policy once more. Mr. Delacourt suggested the changes be made, and the policy be reviewed by the City Attorney and moved along to City Council, if the Authority was comfortable with that idea. He pointed out the Authority could include a condition with any motion, and the revised copy could be forwarded to the Authority for one additional review as it was being forwarded to Council.

Mr. McGarry asked if the Authority had any problem with reviewing the final draft by email. Ms. Morita did not think that would be a problem, noting the Authority could always respond if they found the language was not as they expected.

Mr. Justin moved the following motion to recommend the adoption of the Brownfield Policy as amended at this meeting and with a condition that the revised document be forwarded to the Authority for review. Mr. Karas stated he would support the motion.

Chairperson Stevenson called for any discussion on the proposed motion on the floor.

Ms. Morita clarified that the revised document would include all the changes discussed at this meeting. Mr. Delacourt indicated that was correct.

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

**A motion was made by Justin, seconded by Karas, that this matter be Approved. The motion CARRIED by the following vote:**

**Aye 6 - Karas, McGarry, Stevenson, Webber, Morita and Justin**

**Absent 1 - Turnbull**

**WHEREAS, the Rochester Hills City Council and Brownfield Redevelopment Authority held a joint meeting on November 24, 2008, facilitated by the City's Consultant, ASTI Environmental; and**

**WHEREAS, as a result of the joint meeting, both City Council and the Brownfield Redevelopment Authority agreed a Brownfield Incentives Policy should be developed for the City of Rochester Hills; and**

**WHEREAS, the Brownfield Redevelopment Authority has met with the City's Consultant, ASTI Environmental, and reviewed and discussed a proposed Brownfield Incentives Policy for the City of Rochester Hills.**

**THEREFORE, BE IT RESOLVED that the City of Rochester Hills Brownfield Redevelopment Authority RECOMMENDS that the Brownfield Incentives Policy dated April 17, 2009, be forwarded to City Council for their review, discussion and adoption, with the following condition:**

**Condition:**

**1. That all changes and additional language discussed at the April 16, 2009 Brownfield Redevelopment Authority meeting be incorporated into a revised version of the Brownfield Incentives Policy prior to the policy being forwarded to City Council for their review.**

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Chairperson Stevenson stated for the record that the motion had carried. He thanked the Authority, Mr. Wackerman and Mr. Delacourt for the work they put into the policy, and commented he thought the Authority had done a real service to City Council and the City in getting this policy moved forward.

Mr. Delacourt stated he appreciated the Authority's input on the policy because it made the policy a much better, improved document. Mr. Wackerman stated he hoped the Authority had learned something from him, and commented he knew he had learned some things from the Authority that he would incorporate in future policies.