

NEW BUSINESS

2022-0208

Request for review and approval of the fourth reimbursement request associated with the cost for eligible activities completed for the Legacy of Rochester Hills (City File No. 17-043) brownfield cleanup, located at the northeast corner of Adams and Hamlin, zoned by Consent Judgment, Parcel Nos. 15-29-101-022 and -023, LRH Development, LLC, Applicant

(Reference: Memos, prepared by Sara Roediger, dated April 14, 2022; Thomas Wackerman dated April 18, 2022; AKT Peerless Reimbursement Request dated February 18, 2022 and letter dated April 6, 2022; Rochester IRR dated April 6, 2018; Legacy Review of IRR dated April 22, 2018, Signed Reimbursement Agreement and Brownfield Plan had been placed on file and by reference became part of the record thereof).

Present for the applicant were Brian Westock and Samantha Seimer with AKT Peerless, 22725 Orchard Lake Road, Farmington, MI 48336, and Stan Jaske, Goldberg Companies, 25101 Chagrin Blvd., Suite 300, Beachwood, Ohio 44122.

Chairperson Justin introduced the request for the reimbursement for the Adams and Hamlin Rd. project. He asked Mr. Wackerman for any comments to add.

Mr. Wackerman said that tonight the applicant is presenting the fourth reimbursement request for the Legacy of Rochester Hills project. He said he would like to spend a little more time tonight, since the end of the project is close and it is a little more complicated. He said there is an extra sheet of paper in front of the board members, which is a memo with four options for the board to make a decision. He said that the first option is to approve \$1.429073 million, and below he listed the remaining budget because that should also be discussed today since the project is mostly completed. He explained that the second option is that you add two of the contingent categories, and approve \$1.446373 million. The third option is that the board approves only one of those two, those are the disposal costs of the soils, \$1.44129 million, and the last option is that the board approves the other one. He said the objective today is to approve a specific amount for reimbursement. He provided a memo dated April 18, 2022, and subsequent to that the applicant's consultant, AKT, provided a letter dated April 20, 2022, which AKT will discuss.

Mr. Wackerman directed the board members to turn to the April 18th memo, the third item on the agenda. He said this is the fourth request for reimbursement, and he referred to the conclusion in his memo that is based on the documents, that the total amount of eligible expenses to date before interest is \$9,475,587. He explained the reimbursement also has a limit in it, Page 3 shows the summary of all of the different work plans, and it supports the amount that has been approved by the State of Michigan and the BRA. The state approved the modified amendment. The reimbursement requested today is \$1,556,659.70 for eligible activities, those are summarized on the attached Table One by line item. He said there are four items on there that he did not approve for reimbursement which he will review.

Mr. Wackerman said the first item is lines 207 and 208, and he explained that as an invoice comes in it is given a number. The Michigan Department of Environment, Great Lakes and Energy (EGLE) limits State reimbursement for preparation of brownfield plans and 381 work plans to \$30,000. He noted the BRA had previously approved approximately \$34,730 for those, and he explained that he missed that in the last approval. What he is proposing is according to the way the brownfield plan and the reimbursement plan is written, any expense that is not approved by the State can only be paid by the City as a proportional share of the local taxes. He is proposing that the City pay its proportional share of the \$4,730 that was already approved by mistake, and the amount being requested today. So on line items 207 and 208, it says potentially eligible information needed that they have \$5,082.68 that could be approved as a proportional share of the total amount. They have an ineligible amount of \$6,227.32 that would not be approved because that would be the State share. Mr. Wackerman referred to the column called Total Amount Recommended for approval where there is a negative amount that is a correction to the previous \$34,730. So the net result is that the BRA already approved \$30,000, he is recommending that if the board would like to do that to approve the proportional share.

Mr. Wackerman directed to the board to Options 2 and 4, and explained that this is the \$5,000 line item called "Add Back in Local Only". He said the second item on Page 4, for line items 218-219, these are items where proof of payment was provided in the terms of a canceled check, but no waiver of lien was provided. The agreement requires proof of payment and doesn't specify what that proof of payment has to be. He said the BRA has previously approved landfill invoices without waivers of lien and only checks. However this continues to be an issue, and City Attorney John Staran has brought it up; and his preference is that we have waivers of lien. So for these particular items which total \$12,216.84, they need to provide additional information that is approvable. He mentioned that in the handout that is Options 2 and 3.

Mr. Wackerman noted that Item 3 is reference line 223, it is an invoice from HM Environmental which is actually an invoice from Mersino. He said that is fine, as it is for the first attempt at the slurry wall which didn't work, which AKT can explain further. However the problem is it was for the same dates as a previous invoice for the slurry wall that was already submitted and approved. He has asked the applicants for additional information on that. The applicants have said they'll withdraw that request and come back later - they can always come back later with additional information for a denied item.

Mr. Wackerman said Item 4 is for lines 229-272, which are listed as ASTI but they are actually payments of invoices to the City of Rochester Hills for ASTI's services. Mr. Wackerman said his view on these are that is that those are administrative costs that the City has incurred and they are not reimbursable. He said the applicant responded and said that Act 381 permits cost accounting even if it's municipal, and he would say that's true; however he pointed out that most of these charges are not for cost accounting, they are for the review of work plans, for attending meetings, for field inspections, and things like that. Secondly, this is more of a contractual issue and not an issue with the work

plan. In other words the question is the terms of the agreement between the City and the applicant. The applicants have agreed to bring this request back to the table with additional information.

Mr. Wackerman noted Items 3-4 do not appear on the option sheet he provided today, only Items 1 and 2 which he put in as potentially eligible if additional information is provided. He said on page 5 it shows reimbursements to-date and it summarizes the three previous reimbursement approvals plus this one. He said that it is prudent that the BRA makes sure to preserve the \$576,000 that was allocated to Parcel B operation and maintenance, and make sure that does not get expended on any other eligible expense. On the supplemental handout he provided he pointed out that on the bottom he took out \$576,000 from the budget and provided what is remaining. Mr. Wackerman said that in addition to providing the four options for the approval of reimbursable expenses, he also provided the corresponding remaining budget. He said that he expects there will be at least one more application for reimbursement. He said the applicant provided in their letter that Parcel A is 100% complete, and Parcel B is 80%, he said he thinks now it is 90.765% completed. The applicant stated that the cover is in place. Mr. Wackerman noted there are little things left to do. So he wanted to be really clear about what the remaining budget is. He asked the board members for any questions.

Chairperson Justin asked about the split of costs between the State and the City, and whether is that adjusted in the numbers shown in Options 1, 2, 3 and 4?

Mr. Wackerman responded yes, the \$5,082.68 is just the proportional share of the amount that they're requesting in Request #4. He said that he has already taken into account backing out the \$4,000 that was unintentionally approved with the last agreement.

Chairperson Justin asked for additional questions from the board. Seeing none he asked for comments from the applicant, particularly about Parcel B and how much money will be required to pay off the additional work, and whether it can be accomplished within budget.

Brian Westock, Senior Project Manager with AKT Peerless, explained that they installed the two engineered covers, the Bentomat material and the flexible membrane layer over the highly contaminated areas of Parcel B that are within the slurry walls. Those are in place and were finished today. HM Environmental is the general contractor, they are bringing in sand and topsoil to the site. Mr. Westock stated that they will bury those two layers 3.5 ft. per the specifications in the 381 Work Plan Amendment that was approved by the State and the City. That will take approximately 3-4 more weeks to complete. He said the last main task in the field is burying the material and putting seed cover over it, and then the project will transition into Operations & Maintenance, and they will monitor landfill gases to see what the concentrations are. And then they will submit documentation for due care compliance as soon as the field work is completed. He said they anticipate the field work to be completed just before Memorial Day, with the documentation of due care compliance to be submitted to the State at

the end of June.

Mr. Wackerman asked if the City could review the due care compliance documentation before it goes out, noting that it is very important for the city's ongoing obligations, and to allow the City to make comments on it.

Mr. Westock responded that there would be no problem with that.

Chairperson Justin asked if anyone else on the panel had any comments to add.

Samantha Seimer, Vice President of Economic Development Services with AKT Peerless, introduced herself to the Board.

Stan Jakse said that he represents Goldberg companies on the construction side and said he has been working with Brian and AKT for the last three years, he is glad to see the cover on the site and hopes to see some grass growing in June.

Chairperson Justin asked how soon do they expect to be taking residents for Parcel A.

Mr. Goldberg responded that by mid-summer should be able to get some of the first units occupied, and they hope to get the last units occupied by the same time next year.

Chairperson Justin asked for any other questions or a motion from the Board. There were no further questions.

Motion was made by Nachtman and seconded by Turnbull to approve the request for \$1,446,373.12.

Chairperson Justin asked for any discussion of the motion. There being none, he called for a roll call vote.

After the vote, he announced that the motion passed unanimously.

MOTION by Nachtman, seconded by Turnbull, that this matter be Approved. The motion carried by the following vote:

Aye 5 - Justin, Braun III, Nachtman, Turnbull and Deel

Excused 2 - Sera and Stanley

Resolved, in the matter of City File No. 17-043, the Brownfield Redevelopment Authority approves the fourth reimbursement request associated with the cost for eligible activities completed for the Legacy of Rochester Hills brownfield

cleanup, with any items removed as requested by ASTI, for \$1,446,373.12, as this portion of the request is in compliance with the approved Brownfield Plan, the Reimbursement Agreement, 1996 PA 381 (Act 381) at the time of the Brownfield Plan approval, the City's cost reimbursement procedures, and generally accepted practices.

TRAINING

Ms. Roediger mentioned that staff together with ASTI would be preparing training for the next meeting.

ANY OTHER BUSINESS

Ms. Roediger noted that staff has been talking with Mr. Wackerman for a while with regard to reviewing BRA policies and the bylaws and this should be discussed in the near future.

Motion was made by Deel, support by Braun, to direct staff to review the BRA bylaws and come back with recommendations.

The motion passed unanimously.

NEXT MEETING DATE

July 21, 2022

ADJOURNMENT

There being no further business it was moved by Deel, seconded by Nachtman, to adjourn the meeting at 7:23 p.m.

*Robert Justin, Chairperson
Rochester Hills Brownfield Redevelopment Authority*

Jennifer MacDonald, Recording Secretary

NEW BUSINESS

2021-0131

Request for review and approval of the third reimbursement request associated with the costs for eligible activities completed for the Legacy of Rochester Hills (City File No. 17-043) brownfield cleanup, located at the northeast corner of Adams and Hamlin, zoned by Consent Judgment, Parcel Nos. 15-29-101-022 and -023, LRH Development, LLC, Applicant

(Reference: Memos, prepared by Sara Roediger, dated April 8, 2021 and Thomas Wackerman dated March 31, 2021, the list of eligible expenses, Brownfield Plan and IRR had been placed on file and by reference became part of the record thereof).

Present for the applicant were Brian Westhoff and Jeremy McCallion from AKT Peerless, 22725 Orchard Lake Rd., Farmington, MI 48336, Arthur Siegal, Jaffe, Raitt, Heuer & Weiss, 27777 Franklin Rd., Suite 2500, Southfield, MI 48034 and Stan Jakse, Goldberg Companies, 25101 Chagrin Blvd., Beachwood, OH 44122.

Ms. Roediger explained that there were two requests under New Business, both of which were related to the Legacy project. There had been two previous reimbursement requests for the project approved by the BRA. The applicants were present to request the third. She noted that the environmental construction had been underway and had been very successful. There was still work being done on Parcel B. She turned the discussion over to Mr. Wackerman and advised that Mr. Snyder, the City's CFO and Mr. Staran, the City Attorney were also present for any questions.

Mr. Wackerman felt that the request was very straight-forward, and he commented that the applicant's consultant had been great about working on the numbers and making sure that everything functioned. He pointed out Table 2 in the back of the memo, which was the most important. It showed all three requests compared to the Brownfield Plan, the total amount recommended for reimbursement and the remaining balance. All of the expenses were eligible under the Brownfield Plan and Act 381, with the exception of three or four, which were expenses for things that were partially complete. The applicant chose to withdraw those and will be resubmitting with the fourth request. Page three of the memo indicated the summary of \$38,821 withdrawn, which left a balance of \$2,163,850.88 eligible for reimbursement. Table 2 showed that amount in the second column. If that was approved, the total for reimbursement to date for eligible expenses, not including interest, would be \$6,486,667.73. That

would leave \$3,132,919.27. He said that he would be happy to answer any questions.

Hearing no further discussion, Chairperson Justin called for a motion.

MOTION by Nachtman, seconded by Turnbull, in the matter of City File No. 17-043, the Brownfield Redevelopment Authority approves the reimbursement request #3 dated February 16, 2021 from AKT peerless on behalf of LRH Development, LLC, with the items removed as noted in the March 31, 2021 memo from ASTI for \$2,163,850.88 for the cost of eligible activities for the Legacy of Rochester Hills project as this portion of the request is in compliance with the approved Brownfield Plan, the Reimbursement Agreement, 1996 PA 381 (Act 381) at the time of the Brownfield Plan approval, the City's cost reimbursement procedures, and generally accepted practices.

Ms. Morita noted that there had been some discussion about the change in entities and the removal of easements between the amended Plan and the existing. She wondered if Mr. Staran had had a chance to look at that.

Mr. Staran said that he had looked at Parcels A and B which were owned by separate entities. The names had changed, and although the current parcels were owned by different LLCs, there was some common ownership. He believed that Ms. Morita was referring to cross easements, which he believed still existed, even though they were not spelled out as specifically as they were before. He had not identified any concerns about the ability of the developer and the operating entity to go onto Parcel B to perform the necessary remediation and on-going maintenance.

Ms. Morita said that one of the big changes was for the upkeep of Parcel B at \$24,000 per year for the next 30 years. She went over Section 1.1.3, which currently stated that Parcel B would be owned by a to-be-determined entity and would be subject to an agreement permitting the owner of Parcel A to access and implement the remedial work described in the Plan. She said that language had been removed. With the change in the amount of money, and the fact that the owner of Parcel A no longer appeared to have the required authority in the Plan, she asked if there were any concerns about potential issues the site might have in the future and who would pay for those. There was a new shell LLC. The owner of Parcel A, according to the agreement, no longer was required to have the ability to go onto Parcel B and fix it. As much as she would like to believe that everything in the world would go well, and people

owned properties forever, and businesses stayed in business, and there were no bankruptcies and people always paid their taxes, they knew that was not always the case. Her concern was that they were putting in an apartment complex next to Parcel B, and the owner of Parcel A, according to the Work Plan they were requested to approve, would not necessarily have the ability to go onto Parcel B to do any fixes to keep their residents safe. They would also be changing the amount of money that was being held and looking at a lower amount of \$24,000 as opposed to \$30,000 for 30 years for upkeep. She asked what would happen after 30 years.

Mr. Wackerman felt that some of Ms. Morita's questions could be answered when they went through the review of the amended Act 381 Work Plan. The function of a 381 Work Plan was to spell out what was going to be done on a property. He thought that access agreement issues were external to a Plan. The Plan was a technical document stating what would be done and what the costs would be.

Ms. Morita asked if they had seen easements, and if the owner of Parcel A had provided easements that gave access to Parcel B if there was a problem.

Mr. Staran was sure he had seen them, although he did not have them in front of him. It was one of the things that they looked at when they were entering into the Consent Judgment and considering the Brownfield Plan.

Ms. Morita asked if they understood her concern about changing the amount of money to be held. Before she would be comfortable voting on a change for how much money was required to be held, she wanted to make sure that if something went wrong, there would be a fix.

Chairperson Justin asked if they could discuss the matter with the second item - the amendment to the 381 Work Plan. They were first talking about the reimbursement.

Ms. Morita stated that she was talking about the reimbursement. She said that she would not vote in favor, and she would tell City Council why she would not vote in favor, unless the issue was cleared.

Mr. Siegal believed that the Chair was correct. The motion before the BRA was to approve the reimbursement of already expended expenses relating to the cleanup of Parcel A. There would be a second motion on the amendment of the 381 Work Plan. He said that they would be happy

to address Ms. Morita's questions now or at that time, but he thought Ms. Morita had jumped one ahead on the agenda. All that they were asking for was an approval of the amounts submitted, or what had been called request for reimbursement number three so that when the tax monies were generated, reimbursement could occur.

Ms. Morita asked if he could answer the question about the easement. Mr. Siegal maintained that there were cross easements. He believed that it had been addressed, but if it had not been to the BRA's satisfaction, they could do that. Staff had recommended a further agreement between the City and the development team to address any lingering concerns. If the easement remained a lingering concern, it could be addressed there. He said that at the moment, Parcel A and Parcel B were owned by two separate but related entities, both subsidiaries of the same parent organization. At the current time, there was no issue in terms of going back and forth. The developer had done all of the environmental work on both Parcel A and B and would continue to do the work on Parcel B with the permission of the owner of Parcel A pursuant to an agreement and easement to complete the environmental work. The entity that had been spending the money and doing the work was the entity that was also the developer of the apartments. There was not a shell entity spending the money. For long-term monitoring and maintenance, it would be the same setup. If they needed to memorialize that in some form or fashion to the satisfaction of the BRA and Council, he stated that they could absolutely do that.

Ms. Morita asked Mr. Staran if he had seen recorded easements. Mr. Staran said that he did, but it had been a couple of years. He believed that the issue was covered, but he suggested that when they got to the second item and if there was a favorable vote of the amended Plan, they could add a condition regarding it. They could make sure that there were no issues Ms. Morita mentioned, and they could tighten it up. He felt that it was something that was easily solvable. All the intentions of the current parties were there, and it was the time to make sure that it was wrapped up. If additional documentation was needed, it was the time to make sure that any obligations and rights of access were perpetual.

Ms. Morita asked Mr. Wackerman if he had no concerns with the reimbursement request. She asked if the request should be tied to providing the BRA proof of the recorded easements.

Mr. Wackerman stated that he had no problem with reimbursement request number three. All of the expenses were in compliance with the

documents of the Act 381. As far as tie-barring to access agreements, in his experience, it would be unusual. He thought that it was a separate issue. Ms. Morita clarified that he was good with not tie-barring it and leaving it for the second item on the agenda. Mr. Wackerman agreed that was the place they wanted to “delve deep into the weeds.”

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

Aye 5 - Turnbull, Justin, Morita, Braun III and Nachtman

Excused 2 - Sera and Stanley

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

2021-0148

Request for review of the 381 Work Plan First Amendment for Legacy Rochester Hills redevelopment

(Reference: Memos, prepared by Sara Roediger, dated April 8, 2021 and Thomas Wackerman dated March 26, 2021 and April 15, 2021 and the amended Act 381 Work Plan had been placed on file and by reference became part of the record thereof).

Present for the applicant were Brian Westhoff and Jeremy McCallion from AKT Peerless, 22725 Orchard Lake Rd., Farmington, MI 48336, Arthur Siegal, Jaffe, Raitt, Heuer & Weiss, 27777 Franklin Rd., Suite 2500, Southfield, MI 48034 and Stan Jakse, Goldberg Companies, 25101 Chagrin Blvd., Beachwood, OH 44122.

Chairperson Justin suggested that for the next item, there could be a motion on the floor and then discussion, which he said was preferable. If amendments needed to be made to the motion, they could be done afterward. The request was to amend the 318 Work Plan. It would rearrange where the money was going to be allocated, and it talked about ongoing funding after the cap on Parcel B. Currently, there was a 30-year plan at \$30k per year set aside to take care of that. The suggested change was to 24 years, and the total dollar amount was \$720k. Mr. Wackerman’s memo suggested that they keep it at \$30k for a total of \$900k. Chairperson Justin said that he would entertain a motion to get the discussion started, and then there would be questions and answers.

MOTION by Braun, seconded by Turnbull, in the matter of City File No. 17-043, the Brownfield Redevelopment Authority approves staff to submit the amended 381 Work Plan to EGLE for review and approval with the

following conditions:

- 1. Operation and maintenance obligations for Parcel B will continue well beyond the 24-year period stated in the Amended 381 Work Plan, and are a critical component of maintaining the remedy and providing public access to Parcel B. Therefore:*
 - a. to be explicit about requiring operation and maintenance beyond the duration of the Amended 381 Work Plan, ASTI recommends that the description “for at least a total of 30 years” be removed from Section 3.1.1.7; and*
 - b. to assure the maximum duration for operation and maintenance on Parcel B, cost should not be reallocated to other eligible activities but should remain at the amount of \$900,000 as indicated in the Brownfield Plan, and reimbursement should be assumed annually for a full 30 years; and*
 - c. to illustrate reimbursement to the Applicant for operation and maintenance in Parcel B for 30 years, the assumed duration of the tax capture table be extended to 30 years, with annual reimbursement of \$30,000 to cover this expense in years 25 to 30 and that the LBRF be extended during that period, but that there be no change in the total amount approved for reimbursement or the total duration of reimbursement for all other costs.*

Ms. Roediger said that she appreciated the motion being made. Since the agenda had gone out, staff had a chance to work with the applicant team, and they addressed many of the concerns noted in the conditions. They had provided supplemental information that had also been emailed. Mr. Wackerman provided an updated memo for consideration. She suggested that perhaps he could give a brief overview of what had changed, and the applicant could speak to it, as well.

Mr. Wackerman apologized for the last minute change. They had been working closely with the applicant’s consultant and attorney to try and make things work. They were on a tight timeline, and they needed to get back with their financial institution. He talked with the applicant’s environmental consultant. As Ms. Morita had said, one of the key things that jumped out was that the amended 381 Work Plan maintained a \$30k per year assumption for operation and maintenance on Parcel B, but reduced the duration to 24 years to be consistent with the Plan life. He wrote back and said that operation and maintenance on Parcel B was a critical component of the Plan. It had always been the City’s objective to get the Parcel cleaner and safer and to drop that down and allocate the

funds to something else did not make a lot of sense. Consequently, the memo recommendations just read in the motion came out. There were other things, too. Subsequent to that, he was able to talk with the applicant's consultant and go over their estimate of the real costs for annual operation and maintenance. When Brownfield Plans and 381 Work Plans were put together, often there were slags. They tried to get them right, but there were a lot they did not know until they put a backhoe into the ground. The \$30k per year used in the Brownfield Plan and the original 381 Work Plan was one of those slags. When he did his calculation, he had maintained that if the applicant said that it was \$30k, then they would keep it at 30 years. In going over the actual expenses with AKT, it turned out that it was more like \$24k per year. That was contained in his memo dated April 15, 2021 that was sent to the members around 1:00 p.m. earlier in the day. That cost consisted of three components: Inspections and miscellaneous repair, primarily associated with the monitoring of the vents as required by EGLE, which had to be done annually; annual reporting requirements, which were also required by EGLE; and a contingency for other types of repair, such as erosion and receding. They provided a detailed cost breakdown for the first and second items, which looked reasonable. The frequency of testing typically got changed when there was an understanding of the system. Once they knew what was really going on, they did not have to do it every month. It could be done every three months or so. There was a high probability that the frequency of testing in the future was going to be lower than the frequency of testing currently. That dollar item seemed more than adequate to cover the testing and reporting. The thing he was most concerned about was the miscellaneous component - contingency for repair and replacement. He did not know if that was adequate for continuing operation and maintenance on Parcel B for 30 years. He did some quick calculations, and he assumed that 10% of the cap, which was a pretty big area, had an erosion problem once every ten years. He felt that was a pretty conservative assumption. It was a flat cap without much of a slope. It was probably going to be pretty stable. When he ran those numbers, they were less than the amount being proposed for that contingency. He thought that the \$24k a year was an acceptable number to provide sufficient funding for operation and maintenance on Parcel B. There was not a lot to be maintained. It was a passive cap and vent. His recommendations changed, and the \$720k (24 x 30) was acceptable in the modified plan. It went from \$900k to \$720k, and he felt that was acceptable. He did not feel that it should be reallocated to any other expense. It should be absolutely dedicated to operation and maintenance of Parcel B. He suggested that a mechanism should be put in place to manage operation and maintenance funds beyond the

24-year life of the Plan. There were a couple of recommendations in the memo as to what that would look like. The first item was that the City and the developer enter into an agreement to put aside \$144k of the revolving loan fund to pay for the operation and maintenance in years 25-30. That recommendation required that an additional agreement be drawn, and that the funds came out of the revolving loan fund, and it assumed that there was a revolving loan fund. The City had not established one yet. One of his subsequent recommendations was that it did so, to take advantage of what that would do for the City and to provide funding for things like Parcel B. The third recommendation was that because \$144k would be reimbursed from the revolving loan fund, to keep the total amount of reimbursement the same, \$144k would be reduced from the amount that would be reimbursed under the 381 Work Plan and the Brownfield Plan. The amount of reimbursement would be the same; it was just a different mechanism for the years after the Plan sunset.

Chairperson Justin asked how sure he was that there would be \$30k from the revolving loan fund. Mr. Wackerman remarked that it was a good question. He pointed to the tax table in the 381 Work Plan and Brownfield Plan and said that the way they had been set up by the applicant, annually, 3% of the available capture went into the fund every year. In some cases, the revolving loan fund would collect funds from the last five years, but they had put it in for every year. In year four, for example, it would be capturing \$20k to be deposited in the revolving loan fund. At the end of the 24-year period, there would be approximately \$1 million in the revolving loan fund from the Legacy project. That would adequately fund the \$144k that would be required in years 25-30.

Ms. Morita asked if there were any documents to look at to see what things would look like. Under the Brownfield Policy, any substantial changes needed to be provided to the BRA before the day of a meeting. She asked what they were talking about and what types of agreements they would need to enter into and what City Council would have to do. She asked how long the process would take. She asked why it was in front of them for approval when it sounded like there were a lot of other steps to go through in order to make things work.

Mr. Wackerman explained that there were two choices. The first, in his original memo, which was designed with the same objective but did not have a good mechanism for collecting the annual fee in years 25-30, was to come up with a mechanism by which those fees could be collected and used for the maintenance in years 24-30. All the other components of the 381 Plan were as in his original memo and were reallocations of funds for

actual costs. The only substantive issue he saw was the operation and maintenance. They could implement the original memo as read or take a look at what they tried to craft at the 11th hour. He said that Mr. Staran would have to discuss agreements to be crafted.

Mr. Staran said that there would have to be an agreement for some of the things they spoke about earlier. Any such agreement would be presented to City Council.

Ms. Morita said that what Mr. Wackerman was basically asking them to do was agree to amend the Work Plan conditioned upon agreements that they had not seen in a form acceptable to the City Attorney and approved by City Council. All that would have to be done before they could agree to the amended Work Plan that would then be sent to the State.

Mr. Wackerman said that it was not necessarily the only way to look at it. They were trying to craft a solution to move things forward. The BRA could accept the recommendations they had read, which would protect the City for the maintenance period. Later, they could craft an agreement for how future expenses would be allocated (in year 25). That way, they would be protected.

Ms. Morita asked if they approved the motion as read, and she would include the requirement that easements in a form acceptable to the City Attorney relative to access and management of Parcel B be provided, if they could go back later and amend the Plan again with a new agreement for years 26-30.

Mr. Siegal clarified that the BRA approved a Brownfield Plan in 2018, which provided for a reimbursement up to a certain dollar amount. There was also a 381 Work Plan previously presented to and approved by the BRA and sent to EGLE. The State came back and took off \$1.2 million for expenses they did not believe would be necessary. They wound up with two different numbers. The purpose of the request for the amended 381 Work Plan was to increase the amount on the State side. They were not talking about extending the period of reimbursement or tax capture - that would stay at 24 years. They would not be increasing the amount of local taxes captured and reimbursed to the developer for expenses. The reason for the increase of the school (State) taxes was that there had been more work done than originally projected. They found more waste. There were also some challenges with the Parcel B encapsulation. They had to go to a more expensive approach to address that, and hence, the need for additional money. That was what was on the table. His

understanding was that after all the work AKT and Mr. Wackerman had done, Mr. Wackerman recommended approval of the 381 Work Plan with the caveat and concern regarding the period of operation and maintenance. With respect to the motion, the first item, in terms of the language change to Section 3.1.1.7, they were fine with that. The remainder that the development team would like to keep was the flexibility that the Brownfield Plan provided in terms of how they could use the money. There was still a significant amount of money to be spent, and the contingency that was left was \$377k to cover unexpected expenditures. By silo-ing the money in the way that Mr. Wackerman had suggested, it might tie the hands of the developer somewhat and make it more difficult and more likely that they would come back and ask for an amendment to both Plans to increase dollars. They were trying to avoid that and stay as flexible as possible, however. The developer had no issue with continuing O&M beyond 24 years. They appreciated the suggestion that rather than trying to amend all of the various agreements, there would be a six-year agreement for the tail of the monitoring period to fund years 25-30. He felt that it would be a simple, straight-forward agreement and a benefit to the community to have a local revolving loan fund. The community could use the remainder of the money to pay for additional brownfield-related expenses. They felt that it was appropriate to have a further agreement that tied up some of the last few issues. They were a little concerned about trying to silo monies, which was generally not done in brownfield programs. They appreciated the fact that Mr. Wackerman tried to work through the issues relating to the cost of the maintenance. The Plan before the BRA reflected the \$720k amount, and they would like to keep that the way it was. He agreed that there could be a follow-up agreement that addressed the remaining issues. The developer was prepared to move forward with the encapsulation of Parcel B. The contractor was ready to go, but he stated that if he did not get started, he would have to put other jobs in front of Legacy, which might increase the cost.

Ms. Morita did not feel that anyone was contesting that Parcel B needed to be cleaned. Her concern was that the extra agreement they needed would delay the process of getting the Plan, as originally presented a week ago, approved. She was trying to not hold that up. She wanted the amendment to go through, assuming they received the easements she discussed. She still wanted to make sure that they had a hammer to make sure that the issues outlined by Mr. Wackerman in his April 15th memo were addressed. She asked Mr. Staran if he had a suggestion. She did not want to tie-bar the amendment from last week to agreements that were acceptable as to the issues raised in the April 15th memo. If

they did that, it could delay things for months. She did not think that anyone wanted that. She asked how they made sure that happened.

Mr. Wackerman pointed to the wording in the April 15th memo. The item about the additional agreement was an "if" item. It said "if a revolving loan fund was established, then a separate agreement will be made." He felt that the language might address what Ms. Morita was talking about. In the original motion, the \$900k would be changed to \$720k, which he was comfortable with, and the "if" would be added, which meant if they did decide to set up such a fund, which he would strongly recommend. It went to Ms. Morita's question about what would happen in years 31 and 32. The landowner would continue to have the obligation for due care, but things could happen. By establishing a revolving loan fund, they would have a fund that could step in and fix problems.

Ms. Morita asked where that "if" language was in his memo. Mr. Wackerman said that it was under Item 2. Ms. Morita clarified that Mr. Wackerman was asking the maker of the motion to consider amending the motion to include the language in the second paragraph #2 on page 2 of the April 15 memo and including all three sub parts. Mr. Wackerman said that he recommended that. Item 2a recognized that if there was a revolving loan fund, there was an opportunity to reimburse the developer in years 25-30 at \$24k per year for a total of \$144k for the operation and maintenance costs. 2b was if they got the funding out of the revolving loan fund, they would not also seek to get funding out of the Brownfield and/or 381 Work Plans. The third item was that in order to make the total amount the same as currently approved, which was \$9,619,586, the BRA would remove \$144k from the approval in the Brownfield and 381 Work Plan. That would be paid out of the revolving loan fund. The total amount paid to the developer would be the same.

Ms. Morita asked if the maker of the motion could just reference those paragraphs as being included. Mr. Staran agreed that it would be the simpler way.

Chairperson Justin confirmed that Mr. Braun would like to amend the motion to include paragraph 2 with subparts a., b., and c. as part of the motion. It would change the dollar amount as requested. Mr. Braun agreed. Chairperson Justin asked Mr. Wackerman and Mr. Staran if they were okay with that, which they confirmed. The amended motion:

MOTION by Braun, seconded by Turnbull, in the matter of City File No. 17-043, the Brownfield Redevelopment Authority approves staff to submit

the amended 381 Work Plan to EGLE for review and approval with the following conditions:

- 1. To assure the maximum duration for operation and maintenance on Parcel B, the modified cost of \$720,000, which is based on 30 years at an average of \$24,000 per year, not be reallocated to other eligible activities; and*
- 2. That if a Local Brownfield Revolving Fund is established, a written agreement be developed and approved by counsel, Developer, and the City to provide reimbursement of Parcel B operation and maintenance costs for years 25 through 30 of the plans from that Local Brownfield Revolving Fund. This agreement should include the following:*
 - a) Reimbursement for Parcel B operation and maintenance costs at a not-to-exceed amount of \$144,000, based on \$24,000 per year for years 25 to 30 of the plans, from the Local Brownfield Revolving Fund;*
 - b) The applicant would not seek reimbursement under the approved Brownfield Plan or 381 Work Plan for Parcel B operation and maintenance costs for years 25 to 30; and*
 - c) The total amount of reimbursement for eligible costs (not including interest) under the approved Brownfield Plan and 381 Work Plan would be reduced by \$144,000 to a maximum of \$9,475,587.*
- 3. Applicant to provide documents indicating that there are recorded easements in place allowing access to Parcel B that are acceptable to the City Attorney.*

Chairperson Justin said that they had consolidated a bunch of numbers, and he was curious if there was enough money in the Plan to finish the work that needed to be done.

Mr. McCallion said that the last step in the process would be to get the slurry wall end cap installed. They were trying to utilize the conditionally approved amount - the \$1.2 million and convert that to use to get the job done. The Work Plan showed about \$376k contingency. With the proposed motion, that would reduce the contingency by \$144k. That would be the challenge they would be facing to get the job done. They had contractors lined up and a rough time frame for EGLE to approve the

amended Work Plan of 60 days. They hoped that it could be done sooner. The longer they had to wait, the contractor might move on to another project. Labor and materials were through the roof, and they were a little concerned that reducing the \$376k contingency would put them in a smaller window to get things done.

Mr. Wackerman said that the reduction would actually be in the operation and maintenance cost for Parcel B. It would go from \$720k minus \$144k, and that task would no longer be under the 381 Work Plan. There would still be the remaining contingency. The \$381k contingency was originally \$1.2 million, and it had been reallocated to other activities. He said that hopefully, it would still fit their plan.

Mr. McCallion said that it would be great if they were reducing the \$720k by \$144k. He felt that it would be a perfect resolution. As mentioned, there was an overarching requirement of due care to maintain operation and maintenance for the longevity of the property.

Chairperson Justin asked when he thought the project would be done. Mr. Jakse responded that they were very proud to be an owner in Rochester Hills, and looked forward to being part of the community. They had spent \$15 million to date so far on the project. They hoped to have their first occupancies in the spring of 2022 and by the end of the year, complete the project. They hoped to go vertical next month. He indicated that it would go very quickly with the type of construction proposed. He remarked that once it started, people would not believe how fast it went.

Mr. Nachtman asked what happened with the first attempt at the slurry wall. Mr. Westhoff explained that they attempted to use the one pass technology. It was like a giant chain saw that went into the ground. They encountered several obstacles and a couple of large boulders. They tried it in three different areas. They had a new method that was listed in the Work Plan. It was a panel method, done in 40-foot sections with a long arm excavator that was able to reach down. If it encountered any obstruction, it could pick it out and set it aside, and they could keep going.

Chairperson Justin asked how long it would take to get that job done. Mr. Westhoff said that the slurry wall section would take five weeks. Mr. Nachtman asked if there had been extra costs and more debris than estimated for removal. Mr. Westhoff agreed that they had to remove about 17% more landfill material. He added that it had been a great project.

A motion was made by Braun III, seconded by Turnbull, that this matter be Approved. The motion carried by the following vote:

Aye 5 - Turnbull, Justin, Morita, Braun III and Nachtman

Excused 2 - Sera and Stanley

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

ANY OTHER BUSINESS

Mr. Staran mentioned the concept of creating a local brownfield development fund. He commented that they had given it lip service over the years, but it was always put aside for later. Especially in the last few days, the consulting team felt that it would have a lot of merit for the BRA to consider. He suggested that it might be something for the next agenda where they could discuss and undertake the necessary steps to establish a revolving loan fund. The BRA, under the statute, was the authority responsible for creating it. It would have a lot of advantages to the City, not only for the Legacy project, but for future projects. They knew that Avon Township had been heavily landfilled. There were a lot of areas in the City for which the revolving fund could be very useful in the future. He thought that it was a worthwhile topic, and that the time had come for them to give it serious consideration.

Chairperson Justin agreed with that and also recommended it, after hearing the economics Mr. Wackerman had pointed out. Chairperson Justin recalled asking some previous Legacy folks how long the cap would be good, and he was told 50 years, if they were lucky. He felt that having some dollars in place to be able to deal with issues that came sounded good, and the economics sounded like they would work. He asked staff to tell the BRA what they needed to do. He took a straw poll to see if the members thought it would be a good idea, and they unanimously agreed.

Mr. Staran said that he would take it as a directive, and they should have something for the BRA at the next meeting. Chairperson Justin asked Mr. Staran how long it would take him to get a recommendation to them. Mr. Staran believed that the next regular meeting was not until July. He claimed that they did not need anywhere near that long, and he thought that within a couple of weeks, they would have everything figured out and ready to go. He could assist with the legal aspect, and Mr. Snyder would actually manage the accounts and make it work. He said that it was a



Rochester Hills

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Brownfield Redevelopment Authority

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

Chairperson Robert Justin
Vice-Chairperson James Nachtman
Members: Werner Richard Braun III,
Mark Sera, Del Stanley, Thomas Turnbull
Council Member Ryan Deel

Monday, September 16, 2019

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

Chairperson Robert Justin called the Special Meeting to order at 7:00 p.m. in the Auditorium.

ROLL CALL

Present 7 - Mark Sera, Del Stanley, Thomas Turnbull, Robert Justin, Werner Richard Braun III, James Nachtman and Ryan Deel

Quorum present.

Also present: Sara Roediger, Director of Planning & Economic Dev.
Joe Snyder, Director of Fiscal and Treasury
Thomas Wackerman, ASTI Environmental
Maureen Gentry, Recording Secretary

APPROVAL OF MINUTES

[2019-0406](#) March 26, 2019 Special Meeting

A motion was made by Nachtman, seconded by Deel, that this matter be Approved as Presented. The motion PASSED by an unanimous vote.

COMMUNICATIONS

There were no Communications presented to the BRA members.

NEW BUSINESS

[2019-0136](#) Request for review and approval of the second reimbursement request associated with the costs for eligible activities completed for the Legacy of Rochester Hills (City File No. 17-043) brownfield cleanup, located at the northeast corner of Adams and Hamlin Roads, zoned by Consent Judgment, Parcel Nos. 15-29-101-022 and -023, LRH Applicant.

(Reference: Memos, prepared by Sara Roediger, dated September 11, 2019 and Thomas Wackerman, dated August 6 and September 9, 2019, including the list of eligible expenses, and the Reimbursement Agreement and Brownfield Plan had been placed on file and by reference became part of the record thereof).

Present for the applicant was Kirstie Hardy from AKT Peerless, 22725 Orchard Lake Rd., Farmington, MI 48336.

Ms. Roediger outlined that the City had received a second request for reimbursement for the Legacy project. She recalled that the board had met back in March for their first request, and since then, there had been quite a bit of work done on the site. The second request was submitted on July 22, 2019 for a little over \$3.6 million for environmental cleanup. She noted that Thomas Wackerman from ASTI Environmental and Joe Snyder, the City's CFO were present. The first summer tax bill had been paid by the applicant, and she remarked that it was great to see improvement and progress on the property which had been sitting undeveloped for quite a long time. She had prepared a memo with a motion, but advised that there had been an inaccuracy in terms of the reimbursement, and she asked Mr. Wackerman to clarify.

Mr. Wackerman stated that in general, the request for reimbursement was consistent with Act 381, the City's policies, the Brownfield Plan and the Reimbursement Agreement. However, there were two areas for which he had requested additional information or recommended that they be made ineligible. He pointed out that his memo was simply a recommendation, and the BRA members had the final say on how to allocate the reimbursement dollars. The vast majority of the expenses, \$3,573,829.54, were eligible. They were expenses listed in the Plan that had been anticipated in the Reimbursement Agreement, and they were eligible under the Act. Of those, there was a subset of expenses for which he had requested additional documentation from AKT - proof of payment. In the previous request, that had not been done, and it slipped through. AKT provided a Waiver of Lien, which satisfied, and Mr. Staran reviewed and approved it as proof of payment. There was an amount of \$44,275.50, which Mr. Wackerman had listed as ineligible, and there were issues associated with expenses to date. The site was divided into two parcels: Parcel A, which was the development for the apartments, and Parcel B, which would retain the waste material in a capped and covered state. There had been some problems with Parcel B relative to the technology for the slurry wall, and they were looking at creating a solution. One of the concerns had always been that as the project progressed, and

all of the environmental work was done on Parcel A and the development was constructed, that there would be enough money in the Plan to complete the solution on Parcel B. That had been a major concern, and he had talked with the applicants about it.

Mr. Wackerman advised that the \$44,275.50 was for legal services associated with the Brownfield Plan. There were two reasons why he was recommending that it be ineligible. First, it was for a series of invoices where some of the work had been redacted, but the price had not changed. That made no sense to him, because only a portion of the line items were for work done. ACT 381 limited Brownfield Plan costs on a State level to \$30,000, and that had already been expended. He said that it led into the question about managing the money for both Parcels A and B. He referred to Table 2 in his memo, which was a summary of expenses to date. The total to date was \$4,322,816.85, which included the amount approved at the last meeting, and the amount he was recommending for approval. He pointed out the second to last column on the right. There were individual line items which were over budget. Overall, the project was not over budget, and he was not currently concerned. They were within the Brownfield Plan, and all of the expenses approved had been anticipated. Some of the items were largely over, such as \$103,000 and \$233,000. It was a total of \$427,000 over budget. They wanted to make sure that there was enough reimbursement in the Brownfield Plan to complete the remedy on Parcel B, which was critical to the Agreement. They could easily begin expending additional funds in other areas, and it would creep up on them. The funds were legitimate; they found additional waste material, which always happened in such cases. The fourth from the bottom line showed \$1.2 million in contingency, and they were not even into the contingency yet. He said that he would rather bring it up now than bring it up four times from now so that as they went along, they would be good stewards of the budget. He recommended that the motion be changed to not allow the \$44,275.50 as eligible. He advised that the applicant could resubmit, or the BRA could approve it, however.

Chairperson Justin said that the overages on project management and administration seemed high if they only planned \$25k. He wondered why it would go to \$128k so quickly, which was \$103k over budget.

Mr. Wackerman said that AKT would have to answer that. He warned that the allocation of expenses was somewhat loose. The City did not get a specific list of tasks; they got invoices and checks. There was a lot of need onsite to address issues as they arose. He was sure that was part of

the contingency, and it was not allocated to line items. They did get surprises with such projects, which took a lot of management. He asked Ms. Hardy to explain.

Ms. Hardy advised that she was the person who prepared the request. She said that Mr. Wackerman was right. They over exceeded the budget because of the extra unknowns that came up. The AKT Peerless invoices went through May of 2019. The invoices for environmental activity costs, the removal of the soil and the costs associated with disposal at the landfill were through 2018. There had been a little timing difference. The third request in the future would help explain the overage for project management.

Mr. Braun said that the other big thing that stood out was the \$233k that was over to import clean fill for land balancing. He asked if that was all related. Ms. Hardy agreed, and said that they dug out more than they had anticipated, and they then had to backfill more in the excavation areas.

Chairperson Justin asked if there were any other surprises likely to come up. Ms. Hardy said that Parcel A was cleaned, and they were working on vertical construction. Any unforeseen issues would be related with Parcel B. They were dealing with some current problems with the slurry wall. She did not have a technical update, but they were working with the contractor and their client to find a solution.

Mr. Wackerman said that they found additional materials by area D, and he asked if that had been remediated. He wondered if that was additional discovery that happened a few weeks ago. Ms. Hardy confirmed that it had been.

Chairperson Justin said that the dollars that had been consumed were through May of 2019, and the rest of the invoices went through December of 2018. He asked how many dollars had been expended since 2019. Ms. Hardy believed that it was \$6 million in total. Chairperson Justin said that left about \$2 million for the cleanup of Parcel B. Ms. Hardy agreed. He asked the budget for the cleanup of Parcel B. Ms. Hardy said that they anticipated that they would hit or come very close to the budget that had been approved in the Brownfield Plan when the project was completed. Mr. Braun reminded that was without surprises, and Ms. Hardy agreed, and said that current surprises had been accounted. Chairperson Justin asked what the largest expenditure would be for Parcel B. Ms. Hardy was not sure. They would put in the slurry wall and

cap it. Chairperson Justin asked if there would be anything else done on Parcel B, and Ms. Hardy advised that there would be ongoing, long-term monitoring for the system installed.

Mr. Wackerman said that he could provide an update on the slurry wall. He had been talking with Mr. Anthony at AKT. The original approach was to use a very long extending arm with rotating teeth. The problem was that the cobbles and the gravel on the site tore all the teeth off of the machine. It could not do what was intended. They were looking at an alternative of backhoe and application of something in smaller rises. They were in the process of putting together a modified work plan to address that, which he would get a chance to comment on. The big issue was how deep they could really go with a bucket as opposed to using the trenching tool they had out there. They had to go deep enough to tie it into the underlying clays. AKT was preparing that, and they should see something in a week or so.

Chairperson Justin asked if \$2 million seemed enough to cover what needed to be done on Parcel B. Mr. Wackerman felt that the issue was not just whether \$2 million was enough, but whether \$2 million in total, given what had already been expended, was enough. There had already been some expenses for Parcel B. In the Brownfield Plan was a summary of the original estimated cost. He could answer the question better once he knew what the new estimated cost for the slurry wall installation would be. He anticipated that it would be more expensive - there would be a lot more hand work and digging than if they used the trenching tool. It might not be, but he did not know yet.

Seeing no further discussion, Mr. Sera moved the following:

MOTION by Sera, seconded by Deel, in the matter of City File No. 17-043, the Brownfield Redevelopment Authority approves the reimbursement request #2 dated July 22, 2019 from AKT peerless on behalf of LRH Development, LLC for \$3,573,829.54 for the cost of eligible activities for the Legacy of Rochester Hills project as this portion of the request is in compliance with the approved Brownfield Plan, the Reimbursement Agreement, 1996 PA 381 (Act 381) at the time of the Brownfield Plan approval, the City's cost reimbursement procedures and generally accepted practices. Further, the Brownfield Redevelopment Authority approves the remaining \$44,275.50 pending receipt of the documentation with review and approval by City staff and consultants.

A motion was made by Sera, seconded by Deel, that this matter be Approved. The motion PASSED by an unanimous vote.

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

ANY OTHER BUSINESS

2019-0410 Request for approval of the 2020 BRA Meeting Schedule

***MOTION** by Nachtman, seconded by Turnbull, the Brownfield Redevelopment Authority hereby approves the 2020 meeting schedule at its September 16, 2019 Special Meeting, consisting of four quarterly meetings to be held on January 16, 2020, April 16, 2020, July 16, 2020 and October 15, 2020, and acknowledges that Special Meetings may be scheduled throughout the year if necessary.*

A motion was made by Nachtman, seconded by Braun III, that this matter be Approved. The motion PASSED by an unanimous vote.

NEXT MEETING DATE

Chairperson Justin reminded that BRA members that the next Regular Meeting was scheduled for January 16, 2020 (subsequently cancelled).

ADJOURNMENT

Hearing no further business to come before the Brownfield Redevelopment Authority, Chairperson Justin adjourned the Special Meeting at 7:20 p.m.

Robert Justin, Chairperson
Rochester Hills
Brownfield Redevelopment Authority

Maureen Gentry, Recording Secretary



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Brownfield Redevelopment Authority

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Chairperson Robert Justin
Vice-Chairperson James Nachtman
Members: Werner Richard Braun III,
Mark Sera, Del Stanley, Thomas Turnbull
Council Member Ryan Deel

Tuesday, March 26, 2019

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

Chairperson Thomas Turnbull called the Special Meeting to order at 7:03 p.m. in the Auditorium.

ROLL CALL

Present 5 - Mark Sera, Thomas Turnbull, Robert Justin, Werner Richard Braun III and James Nachtman

Excused 2 - Del Stanley and Ryan Deel

Quorum present.

Also present: Sara Roediger, Director of Planning and Economic Dev.
Joe Snyder, CFO
Thomas Wackerman, President, ASTI Environmental
Maureen Gentry, Secretary

APPROVAL OF MINUTES

[2019-0135](#) Special Meeting of April 10, 2018

A motion was made by Justin, seconded by Sera, that this matter be Approved as Presented. The motion PASSED by an unanimous vote.

COMMUNICATIONS

There were no Communications presented to the BRA board.

NEW BUSINESS

[2019-0136](#) Request for review and approval of the reimbursement request associated with the costs for eligible activities completed for the Legacy of Rochester Hills (City File No. 17-043) brownfield cleanup, located at the northeast corner of Adams

and Hamlin Roads, zoned by Consent Judgment, Parcel Nos. 15-29-101-022 and -023, LRH Applicant.

(Reference: Memos, prepared by Sara Roediger, dated March 21, 2019 and Thomas Wackerman, dated March 20, 2019, including the list of eligible expenses, and the Reimbursement Agreement and Brownfield Plan had been placed on file and by reference became part of the record thereof).

Present for the applicant were Arthur Siegel, Attorney with Jaffe, Raitt, Heuer & Weiss, 27777 Franklin Rd., Suite 2500, Southfield, MI 48034 and Brian Westhoff and Kirstie Hardy from AKT Peerless, 22725 Orchard Lake Rd., Farmington, MI 48336, the environmental consultants.

Ms. Roediger stated that the last time the BRA met, it was to recommend approval of the Brownfield Plan for the Legacy project at the corner of Hamlin and Adams. Since that time, staff had been very busy working with the applicant in actualizing the environmental improvements on a majority of the property. The applicants were present with their first reimbursement request; actually, it was the City's first request for reimbursement. Mr. Tom Wackerman, who had led the review, was present for questions about the request, and Mr. Joe Snyder was present for any other financial considerations.

Mr. Wackerman referred to page two of his memo, noting that the applicant would talk about what had been done at the site, which was substantial. The subject request was the first of several reimbursement requests. On page two, he had compared the request with the applicants' budget, which was a percentage of the budget. The applicants were far ahead in terms of percent completed, and he would expect another reimbursement request associated with soil removal fairly soon. The reimbursement request was for almost \$749k, which was 5.6% of the approved amount under the Brownfield Plan. He had broken down each of the categories relative to the Brownfield Plan. He stated that all of the expenses were eligible under Act 381 and the Brownfield Plan. The documentation provided was sufficient to show that the consultant had been paid, and to show that the requirements of the Brownfield Plan and Reimbursement Agreement were complied. Subsequent to the memo, although it had not been included in the packet, the applicant had provided copies of cancelled checks. They were incorporated in a subsequent review, and everything matched. He asked if there were any questions.

Mr. Siegel stated that they were present seeking approval of a significant

amount of money, although it was not a significant percentage of what was originally approved. They expected to have a second submission later in the year. They were not asking the City to write a check now for the amount, but they were asking for approval of the expenses as documented for reimbursement when the tax increment was received at the local and State levels. When the money came back to the City, they would ask for disbursements of what had been approved. He advised that the City would make a number of approvals before the money was in hand, as spelled out in the Brownfield Plan and Reimbursement Agreement.

Regarding the work that had been done thus far, he indicated that he would turn it over to Mr. Westhoff. When the process was started, there was a large parcel of land that was divided into Parcel A and Parcel B. The site plan for Parcel A had been approved at City Council the previous evening. Parcel B would be left with an encapsulated area, and it would be a green space. The cleanup work on Parcel A was fully completed, and a request for a No Further Action (NFA) determination had been submitted to the MDEQ. It should take several weeks before they heard back regarding that. Work had been done on Parcel B, but the majority (the encapsulation) was set to begin shortly.

Mr. Westhoff noted that he was the project manager for the redevelopment. He advised that they had excavated approximately 97,000 tons of impacted material until just before Christmas. There had been a lot of trucks coming and going. There were a number of areas excavated, and they had to over-excavate a few areas and dig a little deeper until they got the analytical results that confirmed that the material was off the site. They submitted those results in the No Further Action report in early February. Over 330 samples were collected and analyzed. He claimed that they analyzed for everything under the sun, including volatile organics, semi-volatiles, pcbs and all Michigan metals. All the results, from soil groundwater sampling to soil gas sampling were included in the report. They had met the unrestricted residential use as planned.

Mr. Justin asked if there had been any other surprises besides having to dig deeper. Mr. Westhoff stated that the challenges were more from a logistics standpoint and from moving such large volumes. They were able to excavate in two different areas at two different times and coordinate. That was one of the biggest challenges they faced. Some of the challenges in terms of the material they saw was that the buried fill was very consistent, with one of the indicators being glass present in it.

They could see and hear the glass as they excavated and loaded it onto the trucks for offsite disposal. That was their “tell” that they knew they were in it. Once they got to a very beige, tan sand, it was really cleaned. When they got the confirmatory analytical, they knew they had gotten it and carved it all out of there. Mr. Siegel added that there were some areas where the contaminated materials were of a larger footprint than they had originally anticipated based on the sampling. Mr. Westhoff said that C east was deeper, and B was wider and deeper. Parcel B was up near the residents on the north side. They went in excess of 20 feet down into the earth in both those areas and got the material out.

Mr. Siegel mentioned that he had seen staff’s memos, and it appeared that they were recommending approval in full, so it did not seem as if there was much more to talk about unless there were specific questions. Mr. Wackerman pointed out that the NFA that was talked about was on the City’s website. Also, on page two of his memo, he had commented that certain tasks were completed. That did not mean that those were the last bills; it just meant that the task was completed, and there would be additional requests for reimbursement.

Ms. Hardy explained that the request was just for AKT’s bills for the environmental investigation work and for their oversight over the last six to eight months. She was working on another request that covered the actual digging out of the material and the hauling and disposal. She noted that there was a lot of paperwork, so it would take some time. That would be the next request that came before the BRA, and it would involve most of the costs in the Brownfield Plan. She believed that there would be two more requests, and she hoped that the next one would be ready in the next month or so.

Hearing no further discussion, Mr. Justin moved the following:

MOTION by Justin, seconded by Turnbull, in the matter of City File No. 17-043, the Brownfield Redevelopment Authority **approves the reimbursement request #1** dated February 11, 2019 from AKT peerless on behalf of LRH Development, LLC for \$748,987.31 for the cost of eligible activities for the Legacy of Rochester Hills project as the request is in compliance with the approved Brownfield Plan, the Reimbursement Agreement, 1996 PA 381 (Act 381) at the time of the Brownfield Plan approval, the City’s cost reimbursement procedures, and following generally accepted practices, based on Mr. Wackerman’s report and City staff’s recommendation.

Mr. Nachtman asked where the soil was sent, and Mr. Westhoff advised that it was sent to Citizen's Landfill in Grand Blanc.

A motion was made by Justin, seconded by Turnbull, that this matter be Approved. The motion PASSED by an unanimous vote.

Chairperson Turnbull stated for the record that the motion had passed.

ANY OTHER BUSINESS

2019-0142

Request for 2019 Election of Officers - Chairperson, Vice Chairperson, Secretary and Treasurer for a one-year term.

MOTION/NOMINATION by Sera, seconded by Braun, the Rochester Hills Brownfield Redevelopment Authority hereby **appoints** Robert Justin to serve as its Chairperson; James Nachtman as its Vice Chairperson; Maureen Gentry as its Secretary; and Joe Snyder as its Treasurer for a one-year term.

A motion was made by Sera, seconded by Braun III, that this matter be Approved. The motion PASSED by an unanimous vote.

2019-0143

Request for Approval of the 2019 Meeting Schedule

MOTION by Justin, seconded by Sera, the Brownfield Redevelopment Authority hereby **approves** the final meetings of the **2019 meeting schedule** at its March 26, 2019 Special Meeting, consisting of quarterly meetings to be held on July 18, 2019 and October 17, 2019, and acknowledges that Special Meetings may be scheduled throughout the year if necessary.

A motion was made by Justin, seconded by Sera, that this matter be Approved. The motion PASSED by an unanimous vote.

NEXT MEETING DATE

Chairperson Turnbull reminded the BRA members that the next Regular Meeting was scheduled for July 18, 2019 (subsequently cancelled).

Beth Johnson
Brian Kevelin
Cathy Kroll
Bradly Lawrence
Jane Mancour
Erik Rubin
Kate Tansley
Joe Tarajos
Randy Truscott
William Vibbert
Bill Warner
Yvonne Whiteley
Dawn Yerge-Gialanella

Now, Therefore, Be It Resolved, that the Mayor and City Council of the City of Rochester Hills hereby thank the Rochester Hills Community Emergency Response Team for their extraordinary service for the safety and protection of our residents.

PLANNING AND ECONOMIC DEVELOPMENT

2006-0294 PUBLIC HEARING - Request to approve an amended Consent Judgment pertaining to Adams/Hamlin Development Co. v. the City of Rochester Hills, Case No. 2004-060730-CZ, entered on April 20, 2006 and specifically regarding two parcels of land totaling approximately 28 acres, located at the northeast corner of Hamlin and Adams, Parcel Nos. 15-29-101-022 and -023; Rochester Hills, Oakland County, Michigan

Attachments: [042318 Agenda Summary.pdf](#)
[Suppl Presentation.pdf](#)
[Amended Consent Judgment REDLINED 2-27-18.pdf](#)
[Goldberg Introductory Cover Letter 4.12.18.pdf](#)
[Goldberg Companies - Diversified Real Estate 2017.pdf](#)
[Rochester Hills FAQ 2.pdf](#)
[Conceptual Elevations.pdf](#)
[Public Hearing Notice 042318.pdf](#)
[020518 Agenda Summary.pdf](#)
[Consent Judgment 013018.pdf](#)
[Suppl Presentation 020518.pdf](#)
[Site Plan \(SK-5\) CONCEPT-17037.pdf](#)
[Hamlin-Adams Brownfield Plan Final 110917.pdf](#)
[Plan Comparison Table 121117.pdf](#)
[Memo on Brownfield Plan 013018.pdf](#)
[Legacy Introductory Cover Letter.pdf](#)
[Legacy Rochester Hills FAQ.pdf](#)
[Goldberg Companies - Diversified Real Estate 2017.pdf](#)
[Legacy Proposed Elevations.pdf](#)
[Conceptual Rendering 012618.pdf](#)
[Minutes CC 41906.pdf](#)
[041906 Agenda Summary.pdf](#)
[Public Hearing Notice.pdf](#)
[041906 Resolution.pdf](#)
[020518 Resolution \(Draft\).pdf](#)
[Resolution \(Draft\).pdf](#)

President Tisdell announced that the Public Hearings for Legislative Files 2006-0294 and 2018-0130 would be held concurrently.

In attendance were **Sara Roediger**, Planning and Economic Development Director, **Seth Mendelsohn**, Goldberg Companies, **Bret Stuntz** and **Tony Anthony**, AKT Peerless, and **Thomas Wackerman**, ASTI Environmental.

Ms. Roediger noted that the property under consideration consists of 28 acres on the northeast corner of Hamlin and Adams Roads, which was a former illegal landfill resulting in a number of areas of contamination. She explained that it is zoned Single Family Residential; however, development is governed by a Consent Judgment approved in April of 2006 as the result of a controversial rezoning request. She noted that the Goldberg Companies approached the City to request it consider a different development for the parcel, which would require an amendment of the Consent Judgment in order to proceed. She explained that the existing Consent Judgment provides for 95,500 square feet of office and 72,600 square feet of retail; and the City can choose to either allow development per the current Judgment or to amend for the proposed project.

She presented an overview of the proposed project, consisting of 368 residential luxury apartments with development focused toward the corner of Hamlin and Adams Roads. A 100-foot buffer will exist to the north, and the easternmost portion of the property between residential and Innovation Hills Park will remain an undeveloped natural area.

She summarized the differences between the existing and proposed Consent Judgments. She noted that the existing Judgment allows for \$3.5 million in environmental cleanup, while the proposal will result in \$13.4 million in cleanup yielding cleanup to residential standards on most of the property with encapsulation of the rest. She mentioned that estimated road trips resulting from the proposed Judgment would be less, with 2,000 to 2,700 trips versus 10,100 trips for the existing Judgment.

She explained that since Council's February 5, 2018 meeting, language was added to address the following:

1. Final building elevations will be approved as a part of site plan review consistent with the surrounding neighborhood and provide a Tudor style with partial fieldstone front facade.
2. Trees within the northern buffer will not be removed unless absolutely necessary.
3. Reimburse up to \$20,000 toward the cost of constructing a right turn lane off of northbound Adams onto Portage Trail if constructed within 10 years of the Consent Judgment (as opposed to two years previously proposed).
4. Specify how the landscape allowance would be divided amongst the 13 abutting parcels.
5. Install outdoor exercise equipment for public use on the east property adjoining Innovation Hills.

She reviewed the proposed Brownfield Plan, noting that it was recommended unanimously by the Brownfield Redevelopment Authority during two reviews.

The Plan was also reviewed by Chief Financial Officer Joe Snyder and Assessing Director Laurie Taylor. The initial taxable value of the property is \$37,440, with a future taxable value of \$19.75 million. Tax capture will begin in 2020 for an estimated 18 years to reimburse \$13,419,587 including eligible activity costs, contingency and a five percent interest. She explained that because of the extent of the cleanup, the project is appropriate and eligible to allow for interest.

She noted that the Reimbursement Agreement is an in-house internal document which allows the City to collect up to \$10,000 per year for oversight costs. She explained that City Staff and the City's consultants recommend approval.

She stated that if all items are approved this evening, the City Attorney will work with the Mayor, Staff and legal counsel, and the Amendment would go through the Court. The Brownfield Redevelopment Authority's next step would be to submit a Act 381 Work Plan to the Michigan Department of Environmental Quality (MDEQ), with the MDEQ having final approval of the Plan. A site plan will need to be submitted to the City.

Mr. Mendelsohn noted that changes were made to the proposed Consent Judgment since the February Council Meeting, and he stated that their environmental team members were in attendance to answer any questions.

Mr. Stuntz explained that the property has a presence of landfilling from the 1950s and 1960s, with household-type trash above a residential standard. He noted that the eastern corner shows contamination from the dumping of paint waste with a substantially higher level of contamination on the site. He pointed out that the delineation between the two parcels was pushed eastward with the entire western parcel slated to be cleaned to the highest residential standard. He noted that the eastern parcel will receive a feasible and customary type of encapsulation to isolate the contamination and keep it from migrating. He explained that between February and now there has been time to work with the City to evaluate the property and work on a reimbursement schedule. He noted that the schedule shows a maximum of 18 years if all activities anticipated are deemed necessary.

President Tisdell noted that this is not a choice between the proposed development and status quo. He pointed out that the property is ruled by a Consent Judgment for an approved commercial development or consideration of a proposed residential development.

President Tisdell Opened the Public Hearings for Legislative Files 2006-0294 and 2018-0138 at 7:33 p.m.

Lawrence Schloss, 2851 Current Drive, stated that the original party to the 2006 Consent Judgment is not involved in the negotiations. He questioned whether Vice President Morita has recused herself from any financial consideration for landscaping. He commented that he opposes the project as he believes it is being ushered in and has legal and environmental problems.

Melinda Hill, 436 Streamview Court, expressed her opposition, stating that the

city does not need 368 apartments. She commented that it is too dense and will create problems with infrastructure. She stated that ownership is surpassing renting and apartments promote a transient community.

Laura Cunningham, 3335 Kenwood Drive, stated that as an architect, she has concerns that the development proposed is too dense, and there is a lack of details on landscaping and curb cut locations for traffic control. She noted that the whole site will not be cleaned up and questioned what the long-term care plan will be. She commented that the developer has not contacted residents. She expressed concern regarding cleanup activities and dust control, and stated that she would hope the City will make the approvals meet all current standards.

Edmund Baron, 3310 Greenspring Lane, stated that while he can see that the company is reputable and has developed in 10 to 12 areas similar to Rochester Hills, he still has concerns regarding resident safety. He questioned whether methane is a concern, noting that years ago a home on Parke Street close to a landfill blew up. He mentioned that the Medical Main Street project was scrapped because the first bulldozer on the property sank.

Seeing No Further Public Comment, President Tisdal Closed the Public Hearing at 7:44 p.m.

President Tisdal requested concerns and questions raised during the Public Hearing be addressed. He noted that Vice President Morita has chosen to refrain from accepting the offer of compensation for landscaping made to 13 abutting or adjacent residents.

Vice President Morita stated that she and her husband have chosen to opt out of the offer of compensation in order to remain in the conversation. She noted that page 24 and 25 of the redlined version of the proposed Consent Judgment provides wording that eliminates her participation. She mentioned that if she and her husband sell their home within two years a new owner will be able to partake of the offer.

President Tisdal noted that the cleanup of the western parcel would be supervised by the MDEQ and result in a No Further Action (NFA) standard.

Mr. Anthony stated that the area where the development will occur is a removal action. He noted that the eastern area mentioned during public comment will result in some material left in place and encapsulated within that area. He explained that a clay layer runs below, a clay wall barrier will be installed, and a cover installed over the top to prevent direct contact or infiltration of water into the material. He stated that this is one of the most protective ways for the Clinton River, and he noted that migration is occurring today.

Mr. Wackerman stated that this is clearly a cleanup of the residential portion and will meet the unrestricted residential standard. He noted that there will be significant cleanup on Parcel B as well with excavation and removal of material. He pointed out that under the previous Consent Judgment and Plan, there was no way for the MDEQ to be actively involved in cleanup activities. He explained that the rules have changed, and under the current proposed Plan and Consent

Judgment the MDEQ will be actively involved, with 10 to 12 plans filed with the MDEQ for review. He stated that at the end of the process, the MDEQ will issue a No Further Action letter, and all activities to create an unrestricted residential closure will be complete. He noted that Parcel B will have documentation of due care and compliance, which will indicate what will be done on that parcel to protect both currently and going forward.

President Tisdell mentioned that the MDEQ did not fare favorably during the Flint water incident, and he commented that they are under a significant amount of scrutiny.

Mr. Wackerman responded that the MDEQ is incredibly conservative now. He commented that the MDEQ has been one of the top five most conservative agencies in the country.

President Tisdell questioned whether the project could be considered too dense and would promote a transient population.

Mr. Mendelsohn responded that their developments do not have a large transient population and explained that their main focus is members of the community who want to downsize as well as millennials growing older and wanting to start a family. He mentioned that a large conservation area will be included. He noted that prices will be determined by market forces and will be significantly higher than anything currently located in the community with amenities above as well. He explained that young families and individuals in their 30s can come into a community and start there.

President Tisdell questioned whether there is a methane concentration in Parcel A.

Mr. Anthony responded that a recent methane study detected no methane. A study was also done in 2008, and in the 10-year period, the results have shown that no methane has crossed from the property across Hamlin Road.

Mr. Mendelsohn pointed out that venting will be added in the event methane is encountered. He mentioned that compaction was also checked.

President Tisdell questioned whether site planning will be reviewed by the MDEQ and the Planning Commission.

Ms. Roediger responded that landscaping and curb cuts will be reviewed by the Planning Commission and recommendations for approval will go to City Council.

Vice President Morita noted that a meeting was held with adjacent neighbors. She questioned how dirt would be kept onsite and not in the street or airborne in dust.

Mr. Anthony stated that an excavator will load the dirt into trucks and there will be a requirement for wetting or mechanical dust suppression methods. He noted that air monitoring will be implemented with monitor stations set up along boundaries between the excavations and the houses.

Vice President Morita stated that the monitoring areas should be moved around the site.

Mr. Anthony responded that while he did not feel that it is necessary to do so as spacing and location would be adequate to intercept a cloud elongating by the wind, he would have them moved.

Mr. Wackerman noted that this will be the subject of a fugitive dust control plan, and the MDEQ will monitor and determine the equipment needed.

Vice President Morita questioned whether tires will be rinsed down before leaving the site.

Mr. Anthony responded that a decontamination area will be set up at the point of egress which will consist of a mechanical means to knock dirt off of the tires and the truck. He explained that if dirt is being tracked onto the road, street sweepers will be required on a daily basis.

Vice President Morita stated that the residents should have assurances that dirt will not be on the walking paths.

Mr. Wackerman responded that the dirt should not be off the property and details of the program will be a part of a future sedimentation control plan.

Vice President Morita noted that the Medical Main Street project was for the former Suburban Softball site, and she noted that compaction issues were encountered. She mentioned that any recent activity bringing dirt onto that site is only to check compaction and how fast the dirt is sinking. She expressed appreciation that the developer has offered to help create a right turn lane for Portage Trail to mitigate entrance and traffic issues, and noted that language to this effect is in the redlined Consent Judgment.

Mr. Hetrick questioned what recent testing has been done at the site in addition to methane.

Mr. Anthony responded that the bulk of testing was done in 2007 including soil borings which provided the characterization of the site. He noted that another investigation is underway with findings updated.

Mr. Stuntz stated that the methane testing was done last year. He explained that while the MDEQ is reviewing the 381 Plan, more investigations will be undertaken.

Mr. Anthony noted that once removal is complete, additional samples will be collected to verify that all materials have been removed to MDEQ guidelines.

Mr. Hetrick questioned whether additional testing could adjust what the hot spots would be.

Mr. Anthony responded that the squares have been drawn conservatively, and it is his opinion that the areas could be smaller.

Mr. Hetrick questioned the development density.

Ms. Roediger responded that the City has worked with the applicant to reduce the density as much as feasible, with 35 fewer units than originally proposed. She noted that the environmental cost for the cleanup was considered.

Ms. McCardell commented that she had a Bachelor's Degree in Environmental Science, and stated that the number one consideration dividing Council was the cleanup. She noted that the proposed cleanup goes above and beyond, and she stated that she appreciates the extras thrown in to give the project a great feel for Rochester Hills.

Mr. Anthony stated that the developers do not want dirt migrating off the site. He commented that he has the benefit of knowing more about the details for protection, and monitors are only one line of a multiple-line defense.

Mr. Deel questioned what steps will be taken to prevent methane migration.

Mr. Anthony responded that there has been no methane detected crossing Hamlin Road, and the MDEQ has not seen any migration in their monitoring. He pointed out that each building will have a sub-slab depressurization system to prevent vapors from collecting.

Mr. Deel questioned what responsibility or liability the developer will have for any dirt coming off of the site.

Mr. Anthony responded that their firm is in the project to build relationships and has 30 years of experience. He commented that it is his personal reputation on the line.

Mr. Deel questioned whether it would ever be viable to have single family homes developed on the site.

Mr. Mendelsohn responded that cleanup costs alone make single family homes not viable. He pointed out that the lender and insurance company required methane testing, and stated that had any methane been found, they would not be financing the project. He stated that their company is not a merchant builder, and this will be one of their communities. He noted that the other requirement is a NFA classification of the property that the units will be built on so that there is no stigma remaining on the property.

Mr. Deel commended the company, noting that in negotiations they have met every one of the City's demands. He stated that this shows the level of commitment they have to Rochester Hills.

Mayor Barnett noted that this and previous Councils have grappled with this property for decades. He commented that to see a tract of land in Rochester Hills that has not been developed is a clue that something is wrong with the property.

He stated that there are not many people that want to invest \$13.8 million into cleaning up a property before money can be made. He noted that there are many landfill areas that the City would like to see developed and turned back into value-added parcels in the community. He pointed out that Vice President Morita had Staff meet with all 13 adjacent homeowners. He stated that the worst thing possible is to leave the site as it is. He noted that Councils and residents want to see less traffic versus more, residential versus commercial/retail, and more cleanup versus less.

Vice President Morita noted that out of 13 adjacent residences, 12 attended the meeting and 11-1/2 favored the development. She noted that one spouse was in opposition.

Mayor Barnett mentioned that the compensation for the adjacent homeowners is similar to an agreement made during the development of the Village of Rochester Hills. He commented that the City's weakness is that it is largely a community of 2,500 to 3,500 square foot homes. He stated that there is a burgeoning market for this type of development. He mentioned that the next item on the agenda is to consider a foreign company adding to its workforce in Rochester Hills.

Mr. Kubicina noted that no one has mentioned this evening that Innovation Hills is adjacent to the parcel. He stated that cleanup of this parcel will enhance its property value, and Innovation Hills will enhance the quality of life for the residents of the development.

A motion was made by Deel, seconded by McCardell, that this matter be Adopted by Resolution. The motion carried by the following vote:

Aye 6 - Deel, Hetrick, Kubicina, McCardell, Morita and Tisdell

Absent 1 - Bowyer

Enactment No: RES0105-2018

Resolved, that the Rochester Hills City Council hereby approves the Amended Consent Judgment pertaining to Adams/Hamlin Development Co. v the City of Rochester Hills, Oakland County Circuit Court Case No. 2004-060730-CZ.

Be It Further Resolved, that the City Attorney and the Mayor are authorized to execute the amendment to the Consent Judgment and any other documents necessary to implement this settlement on behalf of the City.

Be It Finally Resolved, that the City Attorney is authorized to undertake the necessary actions to arrange for the Amended Consent Judgment to be entered by the Court and recorded at the Register of Deeds.

2018-0130 PUBLIC HEARING - Request for Approval of a Brownfield Plan for Legacy of Rochester Hills, City file No. 17-043, for the remediation of property for a proposed residential apartment development on 28 acres located at the northeast corner of Hamlin and Adams, zoned by Consent Judgment, Parcel Nos. 15-29-101-022 and -023, Goldberg Companies, Applicant

Attachments: [042318 Agenda Summary.pdf](#)
[ASTI Memo on Brownfield Plan 040918-041218.pdf](#)
[Hamlin-Adams Brownfield Plan Final - 04 09 18.pdf](#)
[Rochester IRR 040618.pdf](#)
[Applicant response TIF & Interest.pdf](#)
[ASTI Memo on 381 Work Plan 040418-041218.pdf](#)
[Hamlin Adams Act 381 Work Plan DRAFT 4 4 2018.pdf](#)
[Minutes BRA 041018.pdf](#)
[PHN 042318.pdf](#)
[Hamlin Adams Brownfield Application.pdf](#)
[Memo Roediger 4-10-18 Mtg..pdf](#)
[Brownfield Policy Final.pdf](#)
[Resolution \(Draft\).pdf](#)

Public Hearing and Discussion for this item was held during Legislative File 2006-0294 immediately preceding this item.

A motion was made by Hetrick, seconded by Deel, that this matter be Adopted by Resolution. The motion carried by the following vote:

Aye 6 - Deel, Hetrick, Kubicina, McCardell, Morita and Tisdell

Absent 1 - Bowyer

Enactment No: RES0106-2018

Resolved, that the Rochester Hills City Council hereby approves the Brownfield Plan for Legacy of Rochester Hills, for remediation of property for a proposed residential apartment development on 28 acres located at the northeast corner of Hamlin and Adams, zoned by Consent Judgment, Parcel Nos. 15-29-101-022 and -023, Goldberg Companies, Applicant, with the following findings and conditions.

Findings:

1. The submitted plan meets the requirements for a Brownfield Plan under State Act 381 and the City of Rochester Hills.
2. The subject parcels qualify as a "facility" under the terms of Act 381.
3. The submitted plan qualifies for the use of tax increment financing based on the policies and goals of the Brownfield Redevelopment Authority.
4. If implemented, the amount, pay-back period and use of tax increment financing is reasonable for the eligible activities proposed.
5. The submitted Internal Rate of Return (IRR) evaluation supports the need for the requested incentive.
6. The applicant has demonstrated that the proposed project requires a 5% interest capture to succeed.
7. The extreme circumstances associated with this site's history and the desire of the City to use this site for residential purposes have increased the cost of environmental cleanup. Therefore, the City finds that the requested interest cost is considered an eligible and appropriate activity in this case.

Conditions:

1. A reimbursement agreement shall be negotiated between the City and the applicant prior to any TIF monies being paid out for eligible activities. The reimbursement agreement and the Brownfield Plan will dictate the total cost of eligible activities subject to payment, provided that the total cost of eligible activities subject to payment or reimbursement under the reimbursement agreement shall not exceed the estimated costs set forth in the

Brownfield Plan by more than 15% without requiring an amendment to the Brownfield Plan.

2. That if the extent of due care activities related to the subject site is altered or revised due to a change in the proposed development plans or proposed use of the site, the applicant shall submit for an amended Brownfield Plan to the Brownfield Redevelopment Authority.
3. Items to be addressed in the letters from ASTI Environmental dated April 12, 2018 as discussed by City Council.

2018-0156 Request for Approval of the Brownfield Reimbursement Agreement for Hamlin/Adams Properties, LLC for the Legacy Rochester Hills project, City File No. 17-043, located at the northeast corner of Hamlin and Adams Roads

Attachments: [042318 Agenda Summary.pdf](#)
[Brownfield Reimbursement Agmt with RH.pdf](#)
[Resolution \(Draft\).pdf](#)

Discussion for this item was held during Legislative File 2006-0294 preceding this item.

Sara Roediger, Planning and Economic Development Director, stated that the details of the reimbursement agreement were covered during Legislative File 2006-0294 this evening. She noted that the formal document was prepared by City Staff and was reviewed by legal counsel to ensure that the City recoups its costs.

A motion was made by Kubicina, seconded by Hetrick, that this matter be Adopted by Resolution. The motion carried by the following vote:

Aye 6 - Deel, Hetrick, Kubicina, McCardell, Morita and Tisdell

Absent 1 - Bowyer

Enactment No: RES0107-2018

Resolved, that the Rochester Hills City Council hereby approves the Brownfield Reimbursement Agreement for Hamlin/Adams Properties, LLC for the Legacy Rochester Hills project, approximately 28 acres located at the northeast corner of Hamlin and Adams Roads.

2005-0377 PUBLIC HEARING - Request to consider approval of the Sixth Amendment to the Consent Judgment in the case, Grand/Sakwa Properties Acquisitions, LLC v City of Rochester Hills, Oakland County Circuit Court Case No. 02-046199-AW, concerning the development use of the property located south of M-59, north of Adams

NEW BUSINESS

2018-0130

Request for approval of a Brownfield Plan for Legacy of Rochester Hills, City file No. 17-043, for the remediation of property for a proposed residential apartment development on 28 acres located at the northeast corner of Hamlin and Adams, zoned by Consent Judgment, Parcel Nos. 15-29-101-022 and -023, Goldberg Companies, Applicant

Ms. Roediger stated that the subject request had come before the BRA board on March 6, 2018. It was recommended for approval to City Council. Before it went to the City Council meeting, it was discovered that there was some outdated and missing information. In particular, the City was looking for a five-year Internal Rate of Return (IRR) and justification for the interest being requested. For that reason, the topic was pulled from the March 12th City Council meeting with a request for more information, which the applicant had provided. At the City Council meeting the previous evening (April 9th), a Public Hearing was scheduled for the April 23, 2018 meeting, pending a decision by the BRA about the Plan. Since the packet was sent out a week earlier, staff had continued to work with the applicant in fine tuning and reviewing the information submitted. She introduced Laurie Taylor, the City's Director of Assessing and Joe Snyder, the City's CFO. The whole team, with input from John Staran, City Attorney and Tom Wackerman, the environmental consultant from ASTI reviewed the numbers. As a result, supplemental information was submitted. The new Plan tweaked some of the numbers the City had some concerns with. The updated information resulted in a reduction in the total reimbursement costs, a shortened repayment period and less interest paid in total. She noted that the Plan was the same as from March 6 in terms of the environmental cleanup, but it was better in terms of the fiscal impact to the City. She had also included a draft Act 381 Work Plan. That was included as a reference, and it had been reviewed by Mr. Wackerman. The Work Plan was included so the members could consider the entire environmental cleanup, but it would actually be forwarded on to the DEQ by staff and was not included for any type of approval. It was an ongoing working document. She referenced Mr. Wackerman's memo, in which he had asked questions and raised points. The applicant had responded and submitted an updated Work Plan which was not reviewed yet, but it was something for staff to work out and submit to the DEQ.

Ms. Roediger advised that the BRA's role regarded the funding incentives associated with the cleanup required for the property. Any action taken would be a recommendation to City Council, which ultimately had the final say in how much interest was granted and what the terms of the Plan would entail. There had been questions from the public related to the

cleanup methods, the physical development, impact on traffic and things of that nature. While those were very important questions, they were more appropriate for the Planning Commission and City Council as part of a site plan and Consent Judgment review. The BRA was being asked to evaluate the project and the financial need for the incentives and the requested interest as an eligible expense. The Brownfield Policy stated that interest was not considered by default an eligible expense, however, the BRA could make a recommendation based on circumstances that they believed it was warranted. It was the applicant's job to indicate why interest was needed in this case.

Mr. Seth Mendelsohn, Goldberg Properties, introduced Tony Anthony and Bret Stuntz from AKT Peerless, their environmental consultants. He stated that they had a lot of experience and a tremendous amount of experience with the subject property. He introduced Arthur Siegal, who was an attorney from Jaffe, Raitt, Hever & Weiss who worked specifically in environmental law.

Mr. Stuntz agreed that they had worked with the City and the developer on the Plan. He said that there were activities that would be conducted, and revenue would be generated to reimburse those activities. Nothing about what was intended to be done with the site had changed. They worked with the City to coordinate the numbers. When they did the first cut at the reimbursement schedule, it was based on a \$15 million taxable value, which was based on comps for the nearest development. With the proforma and income based analysis done to look at the valuation of the property with an income approach, it yielded about \$20 million in taxable value. That meant that the property would generate more taxes, and each year the increment would be higher to reimburse the eligible activities. Instead of being reimbursed over 21 years, the \$9.6 million of eligible activities would now be over 17-18 years. There was a small change in the annual inflation factor from 2.1% to 2%. Because it would be a shorter reimbursement period, the simple interest calculation went down. The overall dollar amount in the Plan was lower, because eligible activities stayed the same, but the interest went down from \$4.5 million to \$3.8 million. That was really all that had changed.

Ms. Taylor said that she was asked to review the income statement and the capitalization of the income in determining what the estimate of taxable value might be in a "crystal ball" type of view. They talked with the applicant and discussed what the potential gross income might be by reflecting the market rents and applying the vacancy and bad debt percentage. In the original application and the income statement, the

real estate taxes were included in the expenses, and it was more appropriate to put an effective tax rate in with the capitalization rate to calculate the net operating income. It took the taxes out of the expense, and the net operating income was then capitalized. They came up with a value of almost \$40 million, and they were very comfortable that they would be able to assess at that value. It could possibly be higher, but she would rather value it as it existed. They were very confident that the \$40 million was obtainable.

Mr. Snyder said that once there was a taxable value assigned, his job became quite easy. He just dumped in the numbers. They worked with the applicant and let him know what the approximate tax bill would be and how they came to that. They all agreed it was reasonable and defensible. They bumped up the taxable value from \$15 million to \$20 million, which would speed up the timeline on the tax capture. In the prior example, they had year one as 2019 as the first time the tax capture would start flowing in, but it would be pushed off one year to 2020. The tax values for 2019 had been established. They had to shift everything out one year until the recapture cycle started flowing in. They had all gone over everything, and they were all on the same page with the financial situation.

Ms. Roediger asked the applicants to talk about their justification for the 5% interest. Mr. Mendelsohn said that it was his understanding that interest was very common throughout the state, especially in projects such as this. In Rochester Hills, they needed to demonstrate a funding gap. They were dealing with a very contaminated site on two parcels that they would clean up. Parcel A was slightly contaminated and for that, there would be a full cleanup to residential standards, and they would acquire a No Further Action (NFA) letter from the MDEQ. Parcel B would never be used for any value but as a commitment they had made, there would still be a pretty extensive cleanup. They would remove some soils and also encapsulate the property, which was very expensive. He pointed out that a while back, the State of Michigan came in and started to clean the site and spent about \$5 million and ran out of funds. When they were dealing with something so expensive and going to use the land for the apartments, it created a very significant funding gap. When they discussed the project with the City, they kept talking about how skinny the deal was and how difficult it was to make a minimum IRR. They used Key Bank as a lender on all their projects, and their company had been around for 65 years. The Bank had been involved in hearing about the cleanup for over a year. They would be extremely comfortable once the NFA was obtained and the cleanup was done. They were not lending on the cleanup activities. That was part of the financing gap. Because the

developer would be spending a lot of extra money without having a loan, the project would fall far below any kind of IRR hurdles that anyone had. They would be lending money for the project, and they needed some sort of interest to be able to clear the IRR hurdles. They were just meeting their threshold at the 5% and with some of the changes the City made and some they had agreed to as well.

Mr. Siegal noted that the City's Policy stated that interest was not automatically approved. It was an eligible expense under the Michigan law that authorized the BRA and Brownfield Plans. Every community made its own determination, and the vast majority of communities in southeast Michigan that he had been involved with had approved interest. The State would also approve it at a 5% simple rate. The City's Policy stated that interest might be approved in order to cover a financing gap, and there were a couple of gaps for them. The first was that the lender was not making a loan to fund the cleanup work. That was a very tangible gap. The developer would front the money and take the risk on the return that the project would be completed timely. They would not be able to finance that money, so there was a carrying cost for those funds that would make interest appropriate. They felt that it was exactly the situation that the Policy addressed. The west parcel would be redeveloped with apartments, and the east parcel would be left as a green space and not redeveloped. It would be capped, which meant that there would be digging all the way around it, putting in an impervious layer and covering it on top and putting in systems to make sure there was no methane buildup, and those sorts of things. It was a complex and very expensive system. Out of the \$9.6 million of the remedial expense, which did not include the interest or a number of other expenses, well over 50% would be for the east parcel. Mr. Stuntz added that it was atypical from the normal brownfield project where the brownfield activities that were included actually went toward a development. The east parcel would be an additional lift for the project at a substantial cost that would not generate any sort of cash like a typical brownfield would.

Mr. Siegal maintained that it would safeguard the community and the development and the City's park system, and it would address a situation that had been left unaddressed for over 30 years. It did create an economic hardship, but they felt that the Policy wanted to prevent the problem of a development not happening. Without the interest to support the cost of the work, there was no guarantee that the project could go forward, and he believed that the project would be nonviable due to the economics and the property would sit for another 30 years.

Mr. Mendelsohn did not think it would sit; he thought that it would be developed as the original Brownfield Plan had intended with retail. He noted that when they were last before the BRA, the interest was in the Plan. Nothing had been added, and some of the interest had actually been deducted based on the City's expected valuation. He was grateful that Ms. Taylor helped them with that. It was always a big question mark with a new development. He reiterated that interest was always in the Plan. At the last meeting, there were no questions about the interest, and if there had been, they would have been prepared to discuss it at that time. Mr. Siegal advised that the reduction in the interest number was about \$700,000 from last month.

Mr. Justin asked how long it would take from start to getting people into the apartments. Mr. Mendelsohn said that a lot of it would depend on seasonality to start construction. One fear they had was that the window to start the cleanup was starting, and it involved a lot of dirt work. That would be done in the spring, summer and fall. They hoped to be able to start this summer and over the winter, while they were waiting for the NFA letter, they would not be able to work the regular construction, but they would start again the following year at the same time on the building pads, etc. From that point, it usually took two years to build a community. One year in, they already had residents moving in. Two years in, it would be completely done. Mr. Siegal asked if there would be residents sometime in 2020, and Mr. Mendelsohn agreed, if they were able to start in the spring of 2018.

Mr. Braun asked the applicants if they could describe the capping further on Parcel B. Mr. Anthony said that there would be a petroleum based liner that was used in landfills. It would be rolled out in sheets. The sheets would be seamed together and it would be anchored around the perimeter. Above the liner, there would be sand and top soil, and a grass vegetation would be planted on top of that. Part of the maintenance was to not allow anything but grass to grow there.

Mr. Justin asked the life of a liner. Mr. Anthony said that the manufacturer put it at 50 years. The liners were used in landfills every day. The EPA determined that once a landfill was closed, operations maintenance was required for 30 years. At the 30-year period, they felt that no further work would be needed. That was a regulatory limit by Congress. The guarantees were generally beyond what the regulatory limits were or the expectation of the life of a landfill post closure.

Mr. Justin asked if there were any landfills that had been closed and gone

50 years. He wondered what kind of experiences there were with those. Mr. Anthony said that he used to live in South Lyon, and there was the old BFI landfill in New Hudson. That was covered, and there were city parks and ball diamonds now, and there was residential property nearby. That had been really well incorporated into a useful benefit to the community.

Chairperson Turnbull opened the discussion to the public and called the first speaker.

Ed Baron, 3310 Greenspring Lane, Rochester Hills, MI 48309 Mr. Baron stated that he was a former Planning Commissioner and City Council member. He was the environmental chairman of the Quail Ridge Homeowner's Association. His members asked him to bring some questions. He stated that Mr. Mendelsohn was very fortunate. The land was the gateway to the Oakland Technology Park. It was the gateway to Chrysler Corporation. The philosophy at the time was that they would create the jobs in Auburn Hills and the residential would be in Rochester Hills. He was there in 2006 when Nino Homes was going to build. They had five bulldozers to do the land balancing. They started hitting barrels that were contaminated and rusty. The operators stopped the equipment, jumped off and ran. It had been shut down completely since then. Nino Homes did not see it coming. The Mayor mentioned that there were two types of developments available - one for the apartments and the other for retail/office. Mr. Baron said that he would appreciate it if the applicant could tell him if that was correct and what he favored. He asked if the applicant would use the Oakland County 2017 EPA Site Assessment Grant. He asked if Mr. Staran and Mr. Wackerman could share whether all the t's were crossed and the i's were dotted so when it went to Council it would not return back to the BRA.

Lawrence Schloss, 2851 Current Dr., Rochester Hills, MI 48309 Mr. Schloss asked about the history of the applicant and/or the owner. He wondered if they had a history with the type of project they were discussing. He asked if there would be insurance involved to protect against human liability should there be an occurrence. He asked the most current environmental evaluation. He said that he could not find a thorough evaluation of the property. He knew what the intentions were for Parcel B. He said that he did not think the Plan was adequate. He said that he was a lawyer, and he went over things carefully. He wondered what methodology was used to make such huge, enormous decisions. He said that when a jury was instructed, they were given instructions on how to decide a case. He was not an expert, but he was about 200 yards north of the hot zones, and he was not impressed with the information to make

such a weighty decision.

Christine Weglarz, 3136 Greenspring Lane, Rochester Hills, MI 48309

Ms. Weglarz said that she had two issues. She was really disappointed in the City for how they let the homeowners in the area know about what was going on and it being cancelled from the last Council agenda. She had been told that it was pretty much a done deal. She had emailed and left messages for her representative, with no return call. She was very worried about the cleanup of the area. She felt that it was being pushed through. There was already a start date. She had not seen any paperwork for how it would be done or evaluations of the soil. She asked how it would be contained especially in the summer months with homeowners so close. Kids with asthma was an issue at Freedom Hill. When they tried to remove dirt years and years ago, it was capped and they were able to use it. Then they put in a subdivision, and there were a lot of issues when she and her parents lived in Sterling Heights. People had tried to clean the area before with people not knowing what was going on when they went in there. The State and other builders tried, and the funding was not there. She was worried about what would happen if they started, and it was more than they expected, and it was left for the City again. She was worried about health and who would be maintaining air quality. She was worried about the traffic flow. They were talking about three years of construction at that corner, and the traffic could not handle it. She would like to see what the plan was. As a resident of Rochester Hills for 15 years, she could not get any information, and she said that she would like to see it. She said that she was very disappointed in how fast it was going through without enough of the details being done. She said people stated that the project had to be four-story apartments, or there would be a 24-hour CVS on the corner, and she thought that was railroading the residents. She knew the area would be developed, and she knew it was contaminated, but being threatened that if the City did not say yes to the project there would be a 24-hour CVS was not the best way for the City to handle it with the residents. She believed that it was not the best thing for Rochester - building a four-story apartment complex on the corner. She felt that it would set a precedent for other residential areas. She stated that she was against the project, and she was not thrilled with the soil remediation. She had seen capping before to be used for retail only, and she thought that maybe it should be looked at.

Deanna Hilbert, 3234 Quail Ridge Circle, Rochester Hills, MI 48309

Ms. Hilbert echoed the concern with the notification. The City had been talking about the project for a year, but a lot of the residents just found out about it a month or two ago. There was little chance for them to

understand what was going on and to have input. It was a done deal, but that was the way things had been done in the past, so it did not surprise her. Years ago, she talked to the MDEQ about the landfill to the south. She was told that every load of dirt removed would be tested. If it tested at a toxic level or if it had to go to a different landfill, the price could go up. She wondered if there was a limit on what could be spent for the cleanup and removing the soil. She wondered if they still tested every load removed.

Chairman Turnbull closed the public comments at 7:45 p.m. He asked Mr. Mendelsohn if he would like to respond.

Mr. Mendelsohn said that they definitely appreciated the site. It was a great gateway. They appreciated the entire community as well. That was why they were very excited about the project. Someone asked about apartments versus retail. He said that there was currently a Brownfield Plan that had been approved for retail ten years ago. There was a lot more interest for residential and maintaining the character of the neighborhoods, and that was why they worked very hard to try to figure out how to make that cost effective. With retail, there would be significantly less cleanup, and it would bring a lot more traffic. There was a question about grant money, and that was something they would definitely look into. As far as having the skills for the project, he felt that they had the best possible team they could imagine. Not only did they have AKT and Mr. Siegal, they have had a tremendous amount of input from ASTI. Between those two environmental firms, he felt that it would be hard to find a better team. It had been very important for them, because some of the later questions got into the cost. There had been extensive testing, and that would be some of the first work they would do. They wanted to make sure they were getting the right areas and to make sure that the costs could not get out of hand. They were comfortable with the two teams of experts and with the testing they did to make sure that the costs would not get out of hand, and that they would be able to complete the project. There would be insurance. Their goal for Parcel B was to keep it as an open space. Per the Consent Judgment, they would want to keep it as a conservation easement. Had the retail plan gone through, there would have been parking and buildings. They thought it would be much nicer for the community. There were some questions about the cleanup, and a lot of those were addressed in the Plan. He stated that it was a very thorough Plan. Regarding the timeframe and moving fast, they met with the neighbors adjacent to the site about three months ago. They had taken significant input from the City. There was nothing being done rashly. It was one of the most thought out and deliberate projects he had

seen. He was very impressed working with the City and to have the Assessor look at the numbers before a project even started. He concluded that it was difficult and professional.

Mr. Siegal stated that it was not the last step in the process. It was the beginning of the end of the process. The BRA had to make a determination as to whether or not the Plan would be recommended for approval. City Council would have to act on that. There was already in place an existing Consent Judgment with a prior developer that would need to be amended. There would have to be site plan approvals also. The Plan before them was not a full blown plan for remediation of the site. It reflected their best thinking, and there would be additional delineation work to help focus the remediation to make sure the shovels in the ground were in at the right depth and location. They wanted it to be done right the first time. The purpose of the Brownfield Plan was to lay out the anticipated expenses to the best of the developer's and the City's knowledge. It had been a team effort. It had not been a fast process by any means. It had taken over a year, and it had been an exhaustive process. They appreciated the City's expertise in making sure they had all the i's dotted and all the t's crossed. The BRA would decide whether the costs were reasonable, appropriate and eligible for reimbursement. They would be working with the DEQ to get an NFA letter when the west parcel was remediated. They would work with the DEQ and the City on developing a due care plan for the construction and for the maintenance of the capped area long-term. It was a long-term commitment. He stated that it was not a done deal. If the BRA did not approve it, the project could not go forward, because the economics would not work. There was an existing Consent Judgment with the current owner. If the proposed project did not happen, it was likely that the previously proposed project, which was a lesser cleanup, would. It would not be residential; it would be retail and office. Regarding the process for the development, that issue would be dealt with by the DEQ and the City. It was clear in the Plan that they would provide a series of plans including those relating to soil and dust control to ensure that the residents were not negatively impacted. That would be shared with the City to allow staff to comment. He wanted them to know that if the Plan was approved, they could not just put shovels in the ground tomorrow.

Ms. Roediger said that in the past year, the Planning Department had been consciously trying to increase public awareness of projects. There was a State mandate for any Public Hearing, which included a 300-foot mailing. The City did not stop at that. Staff made an effort to reach beyond that. Any time the topic had come up, staff provided mailings to

the homes within 300 feet and also to the Homeowner's Associations. They met with the 13 property owners that abutted the subject site in early January. They put up a sign on the property. An Ordinance was created to require Rezoning or Conditional Use requests to have signs on those properties. The subject site was neither of those, but staff felt that since it was such a large project, that it would be helpful to make the public driving by aware as well. In addition, there was an interactive development map on the City's website which had all of the proposed and approved projects. People could go in and see plans and elevations at any time. There was a Notify Me email list developed where notifications of meetings were sent to anyone who signed up. Staff was trying to go above and beyond what traditionally had been done in the City. They wanted to be at the forefront in notifying neighbors through technology. The City had been working with Mr. Wackerman for over a year, because the property was unique, and it involved a Brownfield Plan and a Consent Judgment. The existing Consent Judgment had a level of detail relating to brownfield cleanup that was more detailed than normally found in a Consent Judgment.

Mr. Wackerman said that the Brownfield Plan and the 381 Work Plan for the project went way beyond what was typically required. That was primarily because of the City's concern about the site and because of the existing Consent Judgment and all of the things that required additional plans and monitoring and stewardship of the process. He did not think it was the beginning of the end; it was the first step. He felt that the citizens needed to realize that if they had not heard anything about it was because it was at the first step. He explained that the first step was the Brownfield Plan, the next step was the 381 Work Plan, the next step was more sampling, the next step was getting approval for the design, and on and on. He listed about 11 of them in his memo (on file). There would be a lot of opportunity to discuss and make sure the details really would work. He knew they were still looking at design alternatives for the slurry wall and the cap. He said that it would be a better cleanup, but the most important thing was that the process now required DEQ approval. The previous Brownfield Plan and Consent Judgment did not. The applicant would get approval for a NFA letter for Parcel A and a documentation of due care plan for B, and those were critical to the City because that meant that the DEQ, the experts, would be involved from day one. He felt that was a major improvement in terms of improving the environmental quality on the site. Someone mentioned sampling every truck that left a site. He said that was one way to do it, but there was extensive environmental information on the property. They wanted to have enough information to manage the soils and do proper disposal. When it was done, there would

have to be confirmation sampling to prove that they had done what they said. There would be all kinds of checks and balances to make the project significantly better than the previous.

Mr. Staran felt that Mr. Wackerman covered it well. He agreed that there would be a much higher level of cleanup, and there would be an additional, important agency involved. There was much more detail regarding the specifics of the cleanup under the original Consent Judgment. The current Consent Judgment would have the same level of involvement and approval level. They had to spell out some of the particulars because previously, there would have been a commercial level cleanup. What was now proposed was a residential cleanup, the highest standard, with an NFA. The applicant would be required, before they moved forward with occupying the buildings, to have that NFA letter issued by the MDEQ. That was the golden certificate that the property had been cleaned up to the highest level. The things being taken out of the proposed Consent Judgment were not a downgrade - it was quite the opposite.

Hearing no further discussion, Mr. Justin moved the following, seconded by Mr. Turnbull:

MOTION by Justin, seconded by Turnbull, in the matter of City File No. 17-043, the Brownfield Redevelopment Authority **recommends that City Council approves the Brownfield Plan** dated February 20, 2018 for Legacy of Rochester Hills, as amended Parcel Nos. 15-29-101-022 and -023 with the following seven (7) findings and subject to the following three (3) conditions:

Findings

- 1. The submitted plan meets the requirements for a Brownfield Plan under State Act 381 and the City of Rochester Hills.*
- 2. The subject parcels qualify as a "facility" under the terms of Act 381.*
- 3. The submitted plan qualifies for the use of tax increment financing based on the policies and goals of the Brownfield Redevelopment Authority.*
- 4. If implemented, the amount, pay-back period and use of tax increment financing is reasonable for the eligible activities proposed.*
- 5. The submitted Internal Rate of Return (IRR) evaluation supports*

the need for the requested incentive.

6. *The applicant has demonstrated that the proposed project requires a 5% interest capture to succeed.*
7. *The extreme circumstances associated with this site's history and the desire of the City to use this site for residential purposes have increased the cost of environmental cleanup. Therefore, the City finds that the requested interest cost is considered an eligible and appropriate activity in this case.*

Conditions

1. *A reimbursement agreement shall be negotiated between the City and the applicant prior to any TIF monies being paid out for eligible activities. The reimbursement agreement and the Brownfield Plan will dictate the total cost of eligible activities subject to payment, provided that the total cost of eligible activities subject to payment or reimbursement under the reimbursement agreement shall not exceed the estimated costs set forth in the Brownfield Plan by more than 15% without requiring an amendment to the Brownfield Plan.*
2. *That if the extent of due care activities related to the subject site is altered or revised due to a change in the proposed development plans or proposed use of the site, the applicant shall submit for an amended Brownfield Plan to the Brownfield Redevelopment Authority.*
3. *Items to be addressed in the memos from ASTI Environmental dated April 2, 2018 and February 27, 2018 as discussed by the Brownfield Redevelopment Authority.*

A motion was made by Justin, seconded by Turnbull that this matter be Recommended for Approval to the City Council Regular Meeting. The motion carried by the following vote:

Aye 4 - Stanley, Turnbull, Justin and Braun III

Excused 3 - Sera, Nachtman and Deel

Chairperson Turnbull stated for the record that the motion had passed. Ms. Roediger reiterated that City Council had set the Public Hearing for the April 23, 2018 meeting, and that the recommendation would be carried forth at that meeting. It was also anticipated at that time that the amended Consent Judgment would be brought forward, and potentially, the Reimbursement Agreement.

Attachments: [CC Min 032618.pdf](#)
[Resolution \(Draft\).pdf](#)

This Matter was Adopted by Resolution on the Consent Agenda.

Enactment No: RES0095-2018

Resolved, that the Minutes of a Rochester Hills City Council Regular Meeting held on March 26, 2018 be approved as presented.

- 2018-0125** Request for Purchase Authorization - DPS/ENG: Blanket Purchase Order/Contract for Shoulder Right-of-Way and Pathway Mowing Services in the amount not-to-exceed \$55,000.00 through December 31, 2018; Brantley Development, LLC., Inkster, MI

Attachments: [040918 Agenda Summary.pdf](#)
[Resolution \(Draft\).pdf](#)

This Matter was Adopted by Resolution on the Consent Agenda.

Enactment No: RES0096-2018

Resolved, that the Rochester Hills City Council hereby authorizes a Blanket Purchase Order/Contract for shoulder right-of-way and pathway mowing services to Brantley Development, LLC., in the amount not-to-exceed \$55,000.00 through December 31, 2018 and further authorizes the Mayor to execute a contract on behalf of the City.

- 2018-0129** Request for Purchase Authorization - PLANNING: Blanket Purchase Order/Contract for wetland and environmental consulting services in the amount not-to-exceed \$78,200.00 through March 31, 2020; ASTI Environmental, Brighton, MI

Attachments: [040918 Agenda Summary.pdf](#)
[Resolution \(Draft\).pdf](#)

This Matter was Adopted by Resolution on the Consent Agenda.

Enactment No: RES0097-2018

Resolved, that the Rochester Hills City Council hereby authorizes a Blanket Purchase Order/Contract for wetland and environmental consulting services to ASTI Environmental, Brighton, Michigan in the amount not-to-exceed \$78,200.00 through March 31, 2020 and further authorizes the Mayor to execute a contract on behalf of the City.

Passed the Consent Agenda

A motion was made by Morita, seconded by Kubicina, including all the preceding items marked as having been adopted on the Consent Agenda. The motion carried by the following vote:

Aye 7 - Bowyer, Deel, Hetrick, Kubicina, McCardell, Morita and Tisdell

The following Consent Agenda Item was discussed and adopted by separate Motion:

- 2018-0077** Request to schedule a Public Hearing regarding the approval of a Brownfield Plan for Legacy Rochester Hills, for the remediation of property for a proposed

residential apartment development on 28 acres located at the northeast corner of Hamlin and Adams Roads, zoned by Consent Judgment, Parcel Nos. 15-29-101-022 and -023; Goldberg Companies, Applicant

Attachments: [040918 Agenda Summary.pdf](#)
[Hamlin Adams Brownfield Application.pdf](#)
[Memo Roediger 041018 Mtg..pdf](#)
[Letter Wackerman 040218.pdf](#)
[Hamlin Adams Act 381 Work Plan DRAFT 032718.pdf](#)
[Hamlin-Adams Brownfield Plan Final 02 20 2018.pdf](#)
[Rochester IRR.pdf](#)
[TIF & Interest.pdf](#)
[Memo Roediger 030618 Mtg..pdf](#)
[Brownfield Policy Final CC.pdf](#)
[Minutes BRA 030618.pdf](#)
[031218 Agenda Summary.pdf](#)
[Agenda Summary Rescind 013118.pdf](#)
[Hamlin Adams Brownfield Application.pdf](#)
[Memo ASTI 022718.pdf](#)
[Minutes CC 020518.pdf](#)
[031218 Resolution \(Draft\).pdf](#)
[Resolution \(Draft\).pdf](#)

Public Comment:

Laura Cunningham, 3335 Kenwood, stated that as a resident of Quail Ridge Subdivision, she has extreme concerns about the development at Adams and Hamlin Roads. She noted that her subdivision has the following concerns:

- Documentation regarding the full work plan for cleanup.
- Protection of the Clinton River.
- Potential methane migration.
- Truck traffic.
- Concerns that portions of the site will be encapsulated rather than fully cleaned up.
- Groundwater contamination by chromium and lead.
- The timeline for cleanup.
- Electrical capacity.
- Increased traffic due to development density.

She stated that she did not believe that landscaping proposed was sufficient to screen the site.

President Tisdell stated that what is requested of Council this evening is to approve a request to schedule a Public Hearing where many of these details would be presented.

Ed Baron, 3310 Greenspring Lane, stated that he reviewed the ASTI Environmental report and commented that there were questions that were not addressed, including a lack of information on the reimbursement dollars and interest expense. He stressed that individuals who provide technical and environmental data should be available at the Public Hearing to address questions and suggested that the consultant, City Attorney and Engineering staff be present.

He expressed appreciation to President Tisdell for handling this item the right way this evening.

Joan Love, 3186 Greenspring Lane, expressed concern regarding the removal of hazardous and non-hazardous materials. She stated that she has a compromised immune system and lives two streets in from Hamlin Road.

William Mann, 3301 Quail Ridge Circle, stated that he shares the concerns of the previous speakers this evening. He noted that he only recently learned of the project and stated that it appears to be a major undertaking with severely contaminated soil posing a threat to those living in Rookery Woods and Quail Ridge Subdivisions. He expressed concern that the developer is not planning to conduct any soil analyses to determine the hot spots for remediation. He stated that it is his opinion that the development is much too dense for the area and will add to the traffic issues.

Lawrence Schloss, 2851 Current Drive, stated that his home is approximately 200 yards north of where the barrels were discovered in Parcel B. He commented that he would like to see current studies on the contamination prior to the next Council Meeting. He mentioned that there were some conflicts observed in the information presented by ASTI Environmental and staff. He stated that while complying with the minimum required notice for those who border the property, notice should also be provided to all of River Valley, Quail Ridge and Rookery Woods residents.

President Tisdell stated that he would reiterate that this item is a request to establish a Public Hearing where much of the information will be delivered and discussed. He pointed out that the property under question is currently managed by a Consent Judgment that has been changed from a commercial development to this residential development. He stated that the land will be reclaimed to a residential standard by which it would receive Michigan Department of Environmental Quality (MDEQ) status of no further action monitoring. He noted that it will be cleaned up to residential standards, and that would not be the requirement under the Consent Judgment that was originally governing this piece of property. He stated that as a residential property with approximately 360 units planned, one-quarter of the traffic volume is anticipated over what would have been allowed under the earlier commercial Consent Judgment ruling this piece of property. He noted that the City will rely heavily on its environmental consultant. He stated that ASTI Environmental has been in the business for over 30 years and uses techniques in place for decades across the state for property remediation.

Mayor Barnett expressed his thanks to the residents who spoke this evening, stating that he is aware that this is a passionate issue. He commented that the intent is to provide as much information as possible. He mentioned that staff would be meeting with Mr. Baron and Mr. Schloss tomorrow and pointed out that Vice President Morita met with the 13 adjoining homeowners individually. He stated that notices have been sent out to all of the homeowners associations mentioned, and commented that the City has been reaching out the best that it can. He noted that the property is under Consent Judgment and a development would occur there starting this month or next month. He stated that it would either

be as previously approved in the Consent Judgment as mostly a retail and office/retail/technology development, or they would allow the City to consider the possibility of a residential development. He stressed that the office and commercial development does not need any further approvals and site plans currently exist as to parking and density. He noted that the City was interested as residents generally prefer residential over commercial and prefer more cleanup over less cleanup. He stated that the proposal presented met those two criteria, offering residential over commercial and significantly more cleanup over less. He noted that the previous amount of cleanup encompassed a cost of approximately \$3.5 million and the proposed cleanup will be in the range of \$11 or \$12 million.

He commented that it is important to consider that the property is currently an untamed site. He stated that he is sympathetic to the nearby residents and their concerns of living near a site that is not clean. He commented that the nearby land has all been developed and the reason that this parcel has remained is that it has a significant amount of contamination. He noted that the City has met with nearby residents to review the proposal and has decided to move forward with the option of residential as opposed to commercial. He commented that something will be happening in the near future.

He noted that the incremental traffic increase is lower for the residential development than the commercial development. He stated that the challenge is that this is a complicated site. He mentioned questions presented in an email from Mr. Windschief, Mr. Baron and Mr. Schloss regarding the environmental cleanup were answered by the team and the environmental consultant and the responses were available for distribution to those attending this evening. He stressed that while the City is not an expert in decontaminating property, it has access to those who are. He noted that the MDEQ will be the oversight organization as the authority on decontamination.

He listed the number of reports and plans that are required to be submitted and approved by not only the City but the environmental consultant, MDEQ and all other organizations associated with State-mandated cleanup of sites considered contaminated. He noted that the Brownfield Redevelopment Authority's activity concerns the financing component of the project.

- The Applicant has submitted a rough draft of the Brownfield Development Plan. This must be approved by the MDEQ .
- A 381 Work Plan.
- Report on the results of the proposed additional soil and groundwater samplings, including background calculations for metals.
- Soil erosion and sedimentation control plan.
- Health and safety plan.
- Fugitive dust and emission and control contingency plan.
- Environmental Construction Management Plan and Construction Summary Report.
- Operation and Maintenance Plan for Engineered Controls for Parcel B.
- Operation and Maintenance Plan for venting system along Hamlin Road.
- No Further Action request for Parcel A.
- Documentation for Due Care and Compliance for Parcel B.

- As part of the 381 Work Plan, the City has requested the additional plans of specifications for engineered controls, truck cleaning plans and spill contingency plans.

He noted that there is a long list of people who have an incredible amount of education and experience in this activity who will be part of every single part of this process. He stressed that residents with rightful concerns regarding contamination removal should note that the contamination for 80 percent of the site will be moving away from their houses to a landfill where it can be properly maintained. The result will be a residentially-cleaned site which has never been proposed in the history of this topic. He stated that Council has been adamant that the Administration work closely with experts in this field and Council and the associations be kept informed.

He commented that the property is changing and when Council considered cleanup levels, safety, traffic counts and residential impact, this particular development was generally considered far better than the proposed development already approved. He stressed that the process is ongoing and residents with questions can contact staff and will be provided information.

Council Discussion:

Ms. McCardell reiterated that the residents concerns are being taken very seriously. She stated that Council asked many hard questions specifically regarding excavating and transporting materials and the possible impacts on health. She commented that she is glad to hear that the Administration always does an excellent job responding to Council questions. She noted that she has a Bachelor's Degree in Environmental Science and understands the dangers of these materials; however, she also understands the value of a cleanup of this level. She commented that it could be a great opportunity, and she would agree that vigilance is needed during the process. She stated that she has faith in the City and the MDEQ that the process will be monitored. She expressed her thanks to those residents in attendance, noting that the best ideas come forward through a diverse partnership with residents and professionals.

President Tisdell noted a public comment regarding the reconstruction of Hamlin Road and how it could be affected by trucks. He noted that he would assume that Hamlin Road would be replaced with concrete which would take up to two weeks to cure properly. He stated that the roadway weight limit would be observed.

Mayor Barnett stated that the City is in communication with those who are involved in that project, and he noted that the public is demanding that this stretch of roadway be completed as quickly as possible. He commented that the DPS team is working closely with Planning Staff on the construction challenges and timeframe alignments.

Mr. Deel noted that questions were raised regarding the proper delineation of the contaminated areas. He displayed a map from the Brownfield Plan, noting the hot spot areas of contamination were identified. He reiterated the need to address the site.

A motion was made by Morita, seconded by Deel, that this matter be Adopted by Resolution. The motion carried by the following vote:

Aye 7 - Bowyer, Deel, Hetrick, Kubicina, McCardell, Morita and Tisdell

Enactment No: RES0098-2018

Whereas, Act 381 of 1998, the Brownfield Redevelopment Financing Act, requires the City's Brownfield Redevelopment Authority to recommend to City Council approval of a Brownfield Plan; and

Whereas, Act 381 of 1996, the Brownfield Redevelopment Financing Act, Title 125.2663, Section 13(10) requires a Public Hearing to consider the request for approval of a Brownfield Plan; and

Whereas, the Public Hearing will be held conditioned upon the approval of the Brownfield Plan by the Brownfield Redevelopment Authority at its April 10, 2018 meeting.

Resolved, that the Rochester Hills City Council hereby sets a Public Hearing on April 23, 2018 to consider the request for approval of a Brownfield Plan for Legacy Rochester Hills.

LEGISLATIVE & ADMINISTRATIVE COMMENTS

Mr. Deel expressed his hopes that everyone enjoyed the Spring Break time.

Mr. Hetrick encouraged those residents in attendance speaking on the proposed Legacy development to attend the April 23, 2018 meeting or seek answers to any questions before that meeting occurs. He noted that the meeting will be designed to provide answers in order for Council to decide whether to move forward. He mentioned that he has received emails from individuals both in favor of or opposed to public transportation. He commented that as the Public Safety and Infrastructure Technical Review Committee prepares to meet on the subject, he would ask individuals to be specific in any emails to the Committee as to their stance for or against public transportation along with reasons for their opinion. He stated that this data will be critical for the Committee to use in its work toward a recommendation on this item.

Mr. Kubicina thanked the residents in attendance, noting that this is how government is supposed to work. He complimented Mayor Barnett for his State of the City address. He commented that this was the best that he has seen in representing the good things going on in the city. He urged anyone not in attendance to visit the City's website for a link to the video.

Ms. McCardell commented that the State of the City was an awesome performance. She announced that on April 26, 2018 at 6:30 p.m. the Building Department will be hosting a Homeowners' Association Meeting at City Hall. She noted that changes to Ordinances and other items of interest to the associations will be discussed. During that meeting, the Public Safety and Infrastructure Technical Review Committee will be giving a presentation on stormwater infrastructure.

Mayor Barnett made the following announcements:



Rochester Hills

Minutes - Final

Brownfield Redevelopment Authority

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

Chairperson Thomas Turnbull
Vice-Chairperson Robert Justin
Members: Werner Richard Braun III, James Nachtman,
Mark Sera, Del Stanley
Council Member Ryan Deel

Tuesday, March 6, 2018

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

Chairperson Thomas Turnbull called the Special BRA Meeting to order at 7:00 p.m. in the Auditorium.

ROLL CALL

Present 4 - Mark Sera, Thomas Turnbull, James Nachtman and Ryan Deel

Excused 3 - Del Stanley, Robert Justin and Werner Richard Braun III

Quorum present.

Also present: Sara Roediger, Director of Planning & Economic Dev.
John Staran, City Attorney
Thomas Wackerman, President, ASTI Environmental
Maureen Gentry, Recording Secretary

APPROVAL OF MINUTES

[2018-0076](#) November 16, 2017 Special Meeting

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

Aye 4 - Sera, Turnbull, Nachtman and Deel

Excused 3 - Stanley, Justin and Braun III

COMMUNICATIONS

There were no Communications presented.

NEW BUSINESS

[2018-0077](#) Request for approval of a Brownfield Plan for Legacy Rochester Hills, City File No. 17-043, for the remediation of property for a proposed residential apartment

development on 28-acres at the northeast corner of Hamlin and Adams, zoned by Consent Judgment, Parcel Nos. 15-29-101-022 and -023, Goldberg Companies, Applicant

Ms. Roediger stated that the request was for a Brownfield Plan for Legacy Rochester Hills, proposed for a 28-acre site at the northeast corner of Hamlin and Adams. She noted that the site had been the source of a previous Brownfield Plan that was approved. There was also a Consent Judgment on the property. They were both approved over ten years ago, and neither came to fruition. The City had been working for the past year or so with a potential developer who would like to do residential apartments. The previous plan was for a combination of retail and office, and the new project would change the Brownfield Plan and the Consent Judgment. Staff had discussed with the applicant the willingness on the City's part and the property owner's part to amend the Consent Judgment. That topic went to City Council on February 5, 2018. After much discussion with the applicant and staff, City Council looked very favorably on the revised plan. The Consent Judgment delved pretty deeply into the details of the environmental clean-up, and the clean-up was what drove part of the Consent originally. She introduced the City's environmental consultant, Tom Wackerman of ASTI Environmental and John Staran, the City Attorney. They had been working with staff and the applicants on the Brownfield Plan. At the February 5, 2018 City Council meeting, the existing Brownfield Plan was terminated. The applicant wished to present a new Brownfield Plan, which was one of many steps that had to happen as part of the process. A site plan had to be submitted for development of the site, which would be a recommendation from the Planning Commission to City Council. There had not been an official site plan submittal yet. She noted that the amended Consent Judgment was under the purview of the City Council. The Brownfield Plan talked about the funding associated with the clean-up required. The Brownfield Redevelopment Authority (BRA) was a recommending body to City Council. She advised that the Board would hear about the funding in the Plan from the applicants.

Mr. Seth Mendelsohn, from Goldberg Companies, introduced the team. He said that they were definitely looking forward to working with Rochester Hills. They felt that it was a project that everyone would be proud of. It involved a very significant clean-up that was as important to them as to the City. They wanted to make sure there was no stigma, and they very much cared about their reputations. Getting it right was extremely important. He introduced Arthur Siegal, an environmental attorney with Jaffe, Raitt, Heuer & Weiss. AKT Peerless was their environmental consultant on the project. They had relied on them as well as ASTI (the

City's environmental consultant) to help guide them. From AKT Peerless, he introduced Tony Anthony and Bret Stuntz.

Mr. Siegal stated that the purpose of getting a Brownfield Plan approval was to provide a funding mechanism. He agreed that the BRA had approved a Plan for the site back in 2006, and that Council terminated it in February. By approving the Plan, they would be determining that the development team had put together a Plan that met all the requirements of the Statute, identified the costs, and identified that the costs were reasonable. The result of the approval, as well as approval by the MDEQ, would allow the capture of the tax increment created by the development. The Plan was a financing tool, and it meant that the property had a low value currently because it was so fallow. Following the clean-up of the property, he maintained that its taxable value should go up dramatically to everyone's benefit. The increase would be captured. There were certain exceptions in the Statute for things that could not be captured, such as monies that would go to pay off bonds or the Detroit Zoo taxes. The bulk of the increase, both local and state taxes, would hopefully be captured. The City would continue, for the period of the capture, to receive the same tax monies all the taxing jurisdictions previously had been getting. Once the developer was repaid, all the taxing jurisdictions would get all of the increase in the taxes. The Plan would allow the developer to take the risk of investing money in the project and spend it on eligible activities, which were largely clean-up expenditures. If the project was successful, and it generated the tax revenues that were expected, those unequal costs would be reimbursed to the developer. That process started with the BRA. The hope was that the BRA would approve the Plan and agree that it checked all the boxes, and that the costs identified were reasonable and appropriate. It would then move on to the City Council and the State of Michigan.

Mr. Siegal confirmed that there was a Consent Judgment in place, and along with the Brownfield Plan, they called for similar kinds of work at the property but not the same. If the original Plan from 2006 had been followed, there would be a commercial development. The clean-up, therefore, would not be as complete. At the time, there was a proposal to do commercial standard clean-up, which was not the most rigorous or complete, and it would not have restored the property to a pristine condition. There were two components to the property; an east half and a west half. The east half had a much more daunting problem, because there was basically a small landfill there. In both proposals, that landfill was going to be removed. The prior proposal did not give much in the way of description as to how that landfill would be dealt with, and it just

said that it would be discussed between the parties. If the parties could agree as to how it would be addressed, it would be encapsulated, but there were no details. The difference with the proposed Plan was that the west half of the property, which would be fully developed for residential purposes, would be fully remediated. All the contaminants would be removed, and there would be confirmatory sampling done by the consultants to verify that the site had been restored to a pristine condition. They had committed in the draft Consent Judgment that the developer would go to the MDEQ and request a No Further Action (NFA) letter. Not only would the City have an opportunity to review the work and confirm what was done, but there would be certainty from the MDEQ that no further action would be needed. He claimed that it should give a great deal of comfort, because the property would have literally been restored to a green condition. That was not proposed previously. The contaminants would be hauled to a landfill at a greater expense.

With respect to the east half of the property, Mr. Siegal advised that there had been a vague commitment made previously about encapsulating the landfill area. The new developer was proposing a much more robust approach. There would be some excavation and disposal of hot spots on the property, but there would be a more robust encapsulation. While it would not be a licensed landfill, it would serve a lot of the same functions. There would be a slurry wall around the waste. There would be a cap on top, and it would be engineered, and it would do what the City hoped it would - effectively entomb the material in perpetuity. The former developer proposed developing on the eastern parcel. With the new proposal, with the exception of perhaps parking, it would be left as a recreational green space for the community. It would not be a part of the park, but it would blend with it and provide value to the park system. He said that he would be happy to answer any questions.

Mr. Stuntz noted that he did economic development work at AKT Peerless, and that Mr. Anthony was a Principal. Mr. Anthony had been working on the site for about 15 years. Mr. Stuntz showed a slide of the east/southeast portion of the site, where paint waste was dropped in the late 1960's. He said that the site sloped from Adams to the east and downward on the northeast. The plan for the western parcel was to clean it so they could get an NFA determination approved by the MDEQ. They were trying to redraw the parcels and push the eastern parcel boundary as far east as possible so they could clean up as much of the site as economically feasible and utilize as much of the site as possible for productive use. It would limit the area where the encapsulation would occur, and the greenspace would be created. He pointed out red boxes

designated as areas A-F. Historically, the site was the Christenson Landfill from the 1950's. It was undulating, and over time, people deposited municipal waste there. They analyzed the environmental data for organic compounds, PNAs (the oilier contaminants), metals and PCBs. He claimed that the site had everything, but the magnitude of the contamination increased toward the east. There was metals contamination, in particular, in the further west areas. They started to see more PNAs, VOCs and PCBs going further east. There had been investigations on the site for decades. The EPA got involved in the 1980's, and their concern was PCBs. They wanted to determine if they should get involved, and if they thought the PCBs were mobile and created further issues. The EPA determined that they were not, and therefore the site was just under the DEQ. The DEQ got involved in the 1990's and did some clean-up activities on the paint waste in 2000 until their funding could not remedy all the problems.

Mr. Stuntz advised that there were about 70,000 yards of impacted soil that needed to come out on the west parcel, which was a substantial amount of material. Sampling and reporting needed to be done, and potentially dewatering. If everything went well, they would eventually submit a Work Plan to the DEQ, and they would approve the activities. They then might be able to commence clean-up activities on Parcel A in the beginning of June. That work would take three to four months, and they hoped to get an NFA determination from the DEQ in the fall. In 2019, they would complete the work on Parcel B. That would entail further excavation in area E on the west side of the encapsulation area. Based on the degree of contamination in that area, the materials would be classified as hazardous, which meant that the disposal costs would go up significantly. Not only would there be a high volume of material that was contaminated, but the cost to get rid of it would be higher than the disposal costs for the non-hazardous, contaminated material. They would construct a clay wall and excavate a trench around the north and east sides of the encapsulation area. Depending on where they were on the slope, there was a clay layer about 15-25 feet down which went another 50 feet down. They would tie in a two-foot compacted clay wall to the clay confining layer that was currently beneath the encapsulation area and put a two-foot cap with a flexible membrane liner on top of the encapsulation area to completely encapsulate it. That would all be coordinated with the DEQ and be part of the 381 Work Plan and would identify the activities and further detail necessary on what response activities were going to go into place. They would complete a documentation of due care with the DEQ. That was essentially a roadmap for the future. Whereas the western parcel would be completely cleaned up, the eastern parcel would

still have contamination that was present on site, but it would be manageable in accordance with the DEQ's regulations. One of the provisions in the Brownfield Plan was an operations and maintenance budget to make sure the due care was met going forward. The other issue they were dealing with was the potential for methane migration on the site. They had not detected big issues, but it was in the area, and methane tended to move. The residential homes and the occupied areas on the site would have passive venting systems as a precautionary measure. They would work with the DEQ to identify whether additional interceptor trenches were necessary to mitigate methane issues. Those could be along the southern side of the property (Hamlin Rd.) or between the landfill area and Parcel A. In total for brownfield eligible activities, it would be \$9.6 million to address all of the issues. The development itself was approximately a \$49 million cost. That included the \$9.6 million of environmental response activities. They had worked with the City's Assessor to estimate the taxable value. They felt comfortable with the projections in the Plan. Once the development was fully stabilized, the projection was that the annual reimbursement would be approximately \$600,000, depending on how the development increased or decreased in taxable value over time. That would include a 21-year reimbursement period and another three years to fund the Rochester Hills Brownfield Revolving Fund, if necessary.

Mr. Siegal stated that the \$9.6 million Mr. Stuntz mentioned included a contingency factor, as recommended by the DEQ for every Brownfield Plan. If, for some reason, things went more easily, it would not be as expensive. If the money did not get spent, there would be less to be reimbursed. There was an agreement that it would not go beyond 24 years, but it could be less. They also understood that the City had elected not to have a Brownfield Revolving Fund. He asked Mr. Staran if that was correct, which was confirmed. Mr. Siegal said that the 24 years would become 21 years. If the City changed its mind in the next 20 years and decided it wanted to have a Revolving Fund, the Plan would provide for that money (almost \$3 million over the life of the Plan).

Mr. Nachtman asked if they had an estimate of the total volume of the containment area. There was an estimate of 70,000 cubic yards to be hauled off from Parcel A, which was non-hazardous waste. Mr. Stuntz said that area E was approximately 23,000 yards. The area was relatively similar, but the depth was greater on the encapsulation area. Mr. Siegal asked the anticipated acreage of the encapsulation area. Mr. Stuntz believed it was an acre or two out of a 27-acre site. Mr. Mendelsohn added that the conservation was just over three acres. The entire eastern

side would not be built on. Mr. Stutz said that the quick calculation on the encapsulation area was approximately 25,000 yards, and that the cost for disposing the hazardous material was greater.

Mr. Turnbull asked if Parcel A would be taken to an unlimited residential closure. Mr. Siegal said that was correct. Mr. Turnbull asked if everything that was Legacy would be there. He asked if there would be a different ownership for Parcel B. Mr. Siegal said that the intention was to have it in a non-profit entity. Mr. Turnbull asked if the developer would still retain ownership. Mr. Siegal said that the developer would retain the responsibility for conducting all of the work and be responsible under the Consent Judgment to maintain the due care activities. Mr. Turnbull asked if the developer would retain it, be responsible for due care going forward with two separate entities from the residential portion and still own it. Mr. Siegal agreed.

Chairperson Turnbull opened the Public Comments at 7:37. He advised that a Public Hearing would be held at City Council.

Paul Boulanger, 2025 Mapleridge, Rochester Hills, MI 48309 Mr. Boulanger said that as a resident, he was concerned about his daily life. He presently overlooked the site, and since he was retired, it was what he looked at all the time. It was mentioned at the Council meeting about the site being polluted, and he asked if the sites A-F were the only polluted sites. He asked if the study was done by the EPA.

Mr. Siegal said that there were a number of studies done over a number of years by different entities. A-F were the primary pollution areas, but there was contamination throughout the entire property.

Mr. Boulanger asked if there could be contamination in places other than what was shown, which was confirmed. Mr. Boulanger asked if there would be more testing.

Mr. Anthony said that when the EPA originally did some work, it was very minimal. The reason they did some work was that back then, there were Super Fund sites. The State reported it to them, and they wanted to see if there was an imminent threat to human health and environment. They only did a few borings, and the answer was "no." Then it was turned over to the State. The State said that it did not meet the Federal level of imminent threat, so they wanted to see if they could find a viable party to clean it. In the containment area, they found drums of paint waste. They excavated what they could until the allocated funds were exhausted. At

that point, all work ceased. In 2007, a developer took a look at it again and investigations began. They tried to answer questions that the previous investigations had opened up. For example, they knew that there were PCBs. They wondered if the PCBs had migrated towards the residential property. There was considerable work done to address that, and it went across the entire northern property line in order to show that PCBs were not migrating. As that progressed, they began to find that there was a distinction between the type of landfill material that occurred on the western portion and the eastern. They did a much broader investigation and put in monitoring wells in a grid fashion so they could geographically spread across the entire property looking at the ground water quality and the soil. They found spill material. They put in a series of test pits to try to narrow the amount of fill material and where it was located. He believed that the whole area was used as a landfill. To the south across Hamlin was the old Cardinal Landfill, which was much larger. That was where the methane was produced. The early waste was dumped into the lower areas of the property, leaving a shallower municipal-type of trash. They thought they had identified all the major areas, and once they began to open the ground, they would collect samples. They would use visual and lab results to indicate when they were done. There was one other part, and that was during construction when the grading started. The soil on the top would be moved, and if there was fill material, it would generally be at the top. They could see it, and they would respond immediately and remove the fill.

Mr. Boulanger asked how long it would tie up the area to remove the dirt and if more would be brought in. Mr. Anthony said that part would involve the site planning with the final site elevation. The final site elevation indicated land balancing. They knew they would be removing a volume of material that was contaminated. Based on the final land elevation, it would tell whether soil would be brought in or not. They were anticipating that they would bring in some soil in order to achieve the proper land balance.

Mr. Boulanger claimed that soil would be moved around and emptied on the roads. It would be a large project with tall buildings. Mr. Anthony said that they would keep all truck traffic on Hamlin Rd. It would be a shorter direction to the highway. Mr. Boulanger said that they would not access M-59 at all. If they exited on Hamlin and they wanted to go to M-59, the signs directed people to go north on Adams to make a U-turn. He asked if they would drive up Adams. Mr. Anthony emphasized that they would not go up Adams.

Mr. Siegal said that the Plan had a proposed truck route, and it kept the trucks only on Hamlin. They would make a U-turn west of Adams. Mr. Boulanger stated that it was a bad intersection. There was stopped traffic during rush hour and bumper to bumper coming off the expressway. They would be locked up during rush hour traffic, so he suggested that they should see what they could do about that. Mr. Anthony said that with any construction, they would have to deal with some disturbance. They would try to minimize that. To control tracking dirt onto the road, before the trucks left the site, they would have a dirt knock-off area. Mr. Boulanger asked if how they removed the contaminated soil had to be approved and if someone oversaw that. Mr. Anthony said that definitely someone would oversee it.

Mr. Siegal said that both the City and the DEQ would have the opportunity to review what was being done as it was being done. At the end, there would be sampling done and a report prepared.

Dawn Harimoto, 3106 Quail Ridge Circle, Rochester Hills, MI 48309

Ms. Harimoto asked if Parcel B would be remediated before any of the development took place on Parcel A. She wanted to make sure that if costs went so high on Parcel A that there was a requirement for Parcel B to be remediated. When she read the Plan, and they mentioned Parcel B and how it would be excavated, it said that the criteria they would use was visual and olfactory, meaning see and smell. She heard from Mr. Anthony that it was visual and laboratory. She hoped that would be changed in the Plan. If the encapsulation needed to be larger, she wondered if that would happen. It might be that two acres was enough, but it might need to be larger. She was concerned about continued spill-off to Innovation Hills. She would like the encapsulation to be the appropriate size to protect the adjacent land.

Mr. Siegal said that under the proposed, amended Consent Judgment, clean-up work would start west to east. Development work could start once the clean-up work on Parcel A was completed, but in terms of getting a Certificate of Occupancy, the work would have to be all done on Parcel B before that happened. Apartments could go up on the west end, and remedial work would continue at the east end on Parcel B.

Mr. Anthony said that regarding the size of the encapsulation, if they saw that a larger area was needed, it would be made larger. They estimated the area based on the investigation, and a considerable amount was done. They would do a small investigation between now and finalizing the Plan that would specifically look at the western edge of the encapsulation

area.

Mr. Stuntz said that regarding visual and olfactory on Parcel A, they would be going for an NFA, and they needed to demonstrate that they had not left anything behind. For Parcel B, they would excavate up to a point where the nature of the material changed from hazardous to non-hazardous. The easiest way to see that in the field would be based on visual and olfactory observations. All the material that came off the site would be subject to waste characterization sampling, so there would be laboratory analyses done on the material that came off of Parcel B. In terms of getting the earliest identification of where the perimeter of the encapsulation area was, the easiest way would be in the field where they started to see and smell the paint waste. Whatever the area ended up being, it would be based on the conditions of where the hazardous material physically began.

Mr. Anthony said that he did not like to rely solely on olfactory. It was put in the Plan to illustrate the point that it would not be ignored, but it was not a primary tool for defining extent.

Edmund Baron, 3310 Greenspring Lane, Rochester Hills, MI 48309

Mr. Baron said that he was a former City Council member and served four years on the Planning Commission. The reason he was involved was not because the developer with a four-story unit would discourage quality development with an eye sore. He said he was not present for that. He was there strictly for the health and safety of the residents. He asked what was more important than the people. He pointed out that the parcel was adjacent to the Clinton River. They loved the River and spent a lot of money helping to clear it. If things were not done properly, there could be severe damage to the Clinton River. He hoped that aspect by the State and proper departments would be involved. When he looked at the original data on the website, the map showed a section M which said playground. He claimed that it would be next to the worst contaminated site on the property. He asked if that was due diligence to present to the BRA. He did not think that anyone on the board would give approval based on that item. He knew that they had a difficult decision to make, but he thought it was easy - health and safety of the residents and no contamination of the Clinton River. He said that they appreciated all the members were doing for the community. It would be a long process. The residents had already contacted the people at the EPA they used for previous landfill projects. They also contacted the State people, for instance Gary Peters, who was a resident of Rochester Hills and was now a State Senator. He was an environmental-type of person. They were

going to do everything to make sure everything was legitimate and worthy of consideration. He asked the members to help and protect them, as they were their neighbors.

Laura Cunningham, 3335 Kenwood Dr., Rochester Hills, MI 48309

Ms. Cunningham said that in terms of the environmental, they were very concerned about the water. Methane migrating was mentioned. They lived across Adams from the development. She was concerned about the roads. They were due to get a new Hamlin, and there would be a bunch of trucks all over it destroying it again. She claimed that everyone knew the condition of Hamlin at the intersection, which was horrible. In terms of planning, which she knew was not part of the discussion, it dealt somewhat with the pro-forma of the project where the costs were offset. She saw a lack of landscaping, and the curb cut locations really concerned her. There would be parking right on the road. She was concerned about the offset of costs for an intense development versus the clean-up, and it did not sound like a full clean-up. She was concerned about the project as a whole.

Lawrence Schloss, 2851 Current Dr., Rochester Hills, MI 48309 Mr.

Schloss asked who would be in charge, if the project proceeded, of the level of removal and encapsulation. Mr. Turnbull said that it would be part of the response plan, and the State of Michigan would be involved. Mr. Schloss asked who would be in charge.

Mr. Siegal said that with respect to Parcel A, there was a commitment to see and obtain a No Further Action letter from the MDEQ, so the MDEQ would be the final arbiter and review all the data and documents. If they found that something was missed, they would have to go out and satisfy them.

Mr. Schloss asked if that determination would be made at the end of the process of encapsulation and containment or if it was made as they went along. He asked who would be in charge on a daily basis of directing the removal and the encapsulation. Mr. Siegal said that it would be the developer and the environmental consultants with oversight by the City. The City would have the opportunity to observe and comment on everything that was done.

Mr. Schloss said that there was a level of risk to humans, real estate and personal property, and he asked how that risk would be borne and who would bear it. He asked if there would be insurance involved. Mr. Siegal said that there was a risk associated with the current condition of the

property. It was contaminated, and there was debris throughout the property. It could be leaching into the ground, the groundwater and the Clinton River right now. The developer would eliminate that risk on Parcel A and dramatically control it and eliminate some of it on Parcel B. He did not believe that the developer was ready to make a commitment as to whether or not there would be cost overrun insurance. There had been a significant amount of investigatory work. The cost estimates in the Plan were based on all the professional expertise and judgment of the environmental consultants. There were provisions for some contingency costs. The developer would take the risk. If the costs went above and beyond, the developer would eat those costs. Mr. Schloss said that he was informed that the project to the south failed because it was deemed not insurable by the carriers involved. Mr. Turnbull explained that it was a different project, and it was a different group and site.

Amro Sheta, 2093 Mapleridge Rd., Rochester Hills, MI 48309 Mr. Sheta said that it was a toxic site, and methane migration was mentioned. They would do something for the buildings to alleviate pressure underneath them. He lived on the west side of Adams, and he asked how they could make sure the migration did not go into the surrounding neighborhoods. The developer would be securing his buildings, but Mr. Sheta asked if something could migrate under the streets and go into the neighborhoods.

Mr. Nachtman asked Mr. Anthony if he had a layout of all the test wells that had been on site. Mr. Stuntz said that in the Plan, it showed where soil and ground water samples had been collected. Mr. Nachtman pointed out that wells from the 1980s were shown. He said that when extensive ground water test wells and hydrostatic studies were done, they determined what the flow rate of the ground water was. He was surprised that the ground water flow under the site did not go directly north underneath the neighborhood. It actually went east. He said that was not unusual for the geology. He lived in Fairview Farms on a big chunk of clay. The clay lenses had a habit of directing water flow in different directions. For the subject site, the ground water did not go directly up, where it would seem likely because of the Clinton River, it went east. There was a lot of contamination and if it was in the ground water, it would not go into the neighborhood but into the Innovation Hills park. His interest was that the encapsulation area was basically where all of the ground water would be flowing, and that was the reason why they had the slurry wall. That would keep the ground water from flowing through and carrying the contamination further along into the Clinton River.

Mr. Sheta said that there was no guarantee that it would always go to the east. He asked if it could go to other areas as well. Mr. Nachtman said that ground water was not like surface water. It flowed a foot a year at most. If there were a lot of test borings done, it would give a pretty good idea of where the ground water would go, unless things were dug up for construction, which was one of the reasons why they had to go through all the studies, and the State had to give its blessing. Mr. Sheta asked about methane gas.

Mr. Deel said that it was his understanding that the landfill across the street to the south, which was not a part of the subject development, was from where the methane was coming. If there was anything coming from the property to the south, he reminded that it was related to that property. He added that whatever methane was getting released, it was getting released right now by the landfill across the street. The developers would be protecting their property being in such close proximity to the other landfill, which currently existed. He indicated that the landfill to the south would still be there once the project was in place. The developers were protecting their property from any methane that might come from the south.

Mr. Sheta asked if there would be any instruction in how the methane would move when they started securing their site. Mr. Deel said that it was his understanding that the proposed Plan would be creating another methane release that might be better.

Mr. Anthony said the question was whether their work would open up a new pathway. There had been over ten years of monitoring by the State. The methane had not been shown to have crossed Hamlin. There was quite a bit of data. Since they would not be doing any work in the road, they would not be opening up any new pathways. Their systems under the building were a requirement of the lenders.

Mr. Sera said that one of the citizens was concerned because on the east side there was the small landfill, and the Plan showed a playground there. The developer had proposed a two-foot clay cap and other things. He asked if there was any history on what they were proposing and how it protected something and if it had ever gone awry.

Discussed

Mr. Anthony said that the small playground would be on the property that they were seeking the NFA letter. Mr. Nachtman asked if it would be on

Parcel B or A, and Mr. Anthony said it would be in Parcel A. He said that they would be putting in a pretty aggressive landfill cap. He suggested taking a look in New Hudson where they had baseball diamonds over a landfill. It was commonplace to have some type of open field recreation over a contained area. They would not even allow that for their project. It would be away from the cover itself, and the cover would just be open space.

Mr. Siegal advised that there was a commitment in the Consent Judgment that the landfill would be fenced or have some type of access barrier. Kids could go onto the green space around the hill, but they would not be able to go on the hill.

Sherif Matta, 2019 Mapleridge Rd., Rochester Hills, MI 48309 *Mr. Matta said that he was a control engineer at Chrysler, and he lived across the street. He also was concerned about pollution. They talked about the project, and it seemed to be a good project, but at the same time, he asked what the cost would be. He did not want to pay the cost of his kids' health, and he asked what could go wrong. He asked if any studies showed what could go wrong.*

Mr. Siegal asked if he meant during the project as opposed to the current situation, which was completely uncontrolled. Mr. Matta asked how it would be better. He asked if it would really be better. Mr. Siegal said that it absolutely would. The vast majority of the site would be scraped clean. The contaminants left from the 1950's and 1960's would be dug up, hauled away to a landfill and be properly disposed rather than be left out there as it was currently. Mr. Siegal said that the vast majority of the site would be a Greenfield.

Mr. Anthony said that part of their investigation ten years ago was to show that it was not migrating into the neighborhood. He said that his kids were grown, but he could see that the property would be a magnet for kids. There was considerable fill material on the property without any type of engineered or controlled cover. He said that what they planned would definitely improve the site. It would greatly reduce any risk of exposure. With the steps that had been incorporated, it was one of the most rigorously tested sites that he had worked on in his career. He assured that all of the safety aspects would be in place.

Mr. Matta said that there would be a certain degree of pollution, and he asked if the proposed project would lower the pollution. Mr. Anthony said that it absolutely would.

Mr. Deel said that there was one thing they had not heard, and he wanted to make it clear. The current status of the pollution on the property, as he understood, was fairly dangerous stuff. So the residents understood, he stated that there was uncontrolled pollution in an illegal dumping site. There was currently nothing there to protect the neighbors. He thought that it would be a good time to hear about the current state of the property.

Mr. Wackerman stressed that the site had to be cleaned up, and he had stated that at every public meeting. He indicated that it was a dump in the technical sense of the word. There were parts that had some controls on them, such as partial caps. He commented that it was lucky that it had not migrated. It was fairly stable and had been there a long time, but it needed to be cleaned up. He agreed that it would be much cleaner when the project was done than it was now. They kept talking about the cap on Parcel B and the slurry wall and how it would not be completely remediated. The standard that the developers had to meet for that Parcel was the same standard they would have to meet for a shopping center or an office building or any other use that was also contaminated. People went to shopping centers that were built on contaminated properties. The subject property would be usable, and currently it was not at all usable. He recalled that at one of the meetings, he went up to a parent with kids because he heard the kids say that they went onto the subject property all the time. He told the parents, "Not anymore. You do not want children on that property." It looked beautiful, but it was contaminated with PCBs at 525 times the residential standard in the old landfill area. He emphasized that it was a lot of contamination.

Mr. Matta asked if there would be another measure of the pollution after the project was done or during the project. He asked how it was measured.

Mr. Siegal said that all of Parcel A, which was about 70% of the site, was going to be excavated, and there would be confirmatory sampling to demonstrate that the levels were below what the DEQ viewed as acceptable for residential. It would effectively be a green site. Metals were naturally occurring, and they were found on clean sites in the soil. The DEQ standards would be applied, which were the most conservative for residential use. With respect to Parcel B, it would be encapsulated using standards that were modern, and the area around the encapsulation would also be tested and confirmed that it was below acceptable non-residential standards. The encapsulated area would have a long-term maintenance plan to make sure that the cap stayed intact

and did not erode or wash out. Currently, there was none of that. If there was a lot of rain and the soil washed off and a drum got exposed and started leaking and washing toward the River, there was nothing stopping it. The project would put controls in place, and they would be monitored for an extended period of time.

Mr. Matta asked about the road capacity, and if they had taken into account the number of units (368). Mr. Turnbull said that he appreciated the question, but the board was the Brownfield Redevelopment Authority. He advised that the Planning Commission and City Council would entertain questions about the road capacity.

Chairperson Turnbull closed the Public Comments at 8:24 p.m. He said that he personally wanted to thank the applicants for the presentation and their interest in undertaking the project in Rochester Hills. He had had involvement with the site for 30-plus years. He liked the fact that they were willing to give a kick at the can when others had picked it up and put it back down. He also liked that they were going to take the full development piece to a No Further Action level. It would be a property they would be proud of, and they would take care of the other parcel that would be a separate entity. It would get the City a lot further than it had ever been, and he felt that it was an admirable plan. Hearing no further discussion, he moved the following, seconded by Mr. Nachtman.

MOTION by Turnbull, seconded by Nachtman, in the matter of City File No. 17-043, the Brownfield Redevelopment Authority **recommends that City Council approves the Brownfield Plan** dated February 20, 2018 for Legacy of Rochester Hills, Parcel Nos. 15-29-101-022 and -023 with the following four (4) findings and subject to the following two (2) conditions:

Findings

- 1. The submitted plan meets the requirements for a Brownfield Plan under State Act 381 and the City of Rochester Hills.*
- 2. The subject parcels qualify as a “facility” under the terms of Act 381.*
- 3. The submitted plan qualifies for the use of tax increment financing based on the policies and goals of the Brownfield Redevelopment Authority.*
- 4. If implemented, the amount, pay-back period and use of tax increment financing is reasonable for the eligible activities proposed.*

Conditions

- 1 *A reimbursement agreement shall be negotiated between the City and the applicant prior to any TIF monies being paid out for eligible activities. The reimbursement agreement and the Brownfield Plan will dictate the total cost of eligible activities subject to payment, provided that the total cost of eligible activities subject to payment or reimbursement under the reimbursement agreement shall not exceed the estimated costs set forth in the Brownfield Plan by more than 15% without requiring an amendment to the Brownfield Plan.*
2. *That if the extent of due care activities related to the subject site is altered or revised due to a change in the proposed development plans or proposed use of the site, the applicant shall submit for an amended Brownfield Plan to the Brownfield Redevelopment Authority.*

Voice Vote:

Ayes: *Deel, Nachtman, Sera, Turnbull*

Nays: *None*

Absent: *Braun, Justin, Stanley*

MOTION CARRIED

Chairperson Turnbull stated for the record that the motion had passed unanimously, and he thanked the applicants.

Ms. Roediger mentioned that the item would go to the City Council for a Public Hearing. If someone spoke and provided an address, staff would notify of the meeting. It would be posted on the website. Staff was targeting the March 26th meeting, however, that was not official.

ANY OTHER BUSINESS

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

NEXT MEETING DATE

Chairperson Turnbull reminded the BRA Board that the next Regular Meeting was scheduled for April 19, 2018 (subsequently scheduled for April 10, 2018).