

**Brownfield Redevelopment Authority
MINUTES
City Commission Room of the Municipal Building
151 Martin Street, Birmingham, Michigan**

**Wednesday, July 12, 2017
8 a.m.**

1. Chairperson Beth Gotthelf welcomed everyone and convened the meeting at 8:18 a.m.

Members Present: Chairperson Beth Gotthelf
Robert Runco
Dani Torcolacci

Member Absent: Wendy Zabriskie

Also Present: Troy Helmick, SME
Brett Stuntz, AKT Peerless, City Brownfield Consultant
Jamie Ray Turnbull, Owner's Representative for August LLC

Administration: Jana Ecker, Planning Director
Mark Gerber, Finance Director
Jeffrey Haynes, Beier Howlett, City Attorney
Mario Mendoza, Recording Secretary

2. Approval of June 27, 2017 Minutes

**Motion by Mr. Runco
Seconded by Ms. Torcolacci to approve the June 27, 2017 minutes as presented.**

**Voice
Vote: Yeas, 3
Nays, 0
Absent, 1**

Motion carried, 3-0.

3. Brownfield Plan Application for **35975 Woodward Ave.:**

Resolution approving the Brownfield Plan and associated Reimbursement Agreement pertaining to the Brownfield Plan for 35975 Woodward Ave. (currently vacant land) and requesting the City Clerk to forward the Brownfield Plan and Reimbursement Agreement to the Birmingham City Commission for their review and consideration.

Chairperson Gotthelf recalled the Plan was discussed extensively at their last meeting. It was noted the property was a former gas station from 1961 or so until the '80s. From 1961 through

approximately 2000, BP owned the property while it was a gas station. The contamination is linked to the operations of the gas station. Under State law they are a liable party and therefore they can be responsible for some of the increased cost of the redevelopment because it is a result of contamination. So the Authority had given the owner time to talk to BP and to inform them that they are a liable party in the current situation.

Now a letter has been received from BP dated July 7, 2017 that indicates the site was sold to Armada Real Estate in 2005. As part of the sale, Armada assumed responsibility for all environmental liability on the site. Based on this information, the letter states that BP is not obligated and is not in a position to offer any contributions to the redevelopment of the property.

Mr. Troy Helmick indicated they spoke with BP who said they have a 2005 agreement with Armada Real Estate to transfer liability to them in exchange for a sum of money. That agreement is still in place. It is BP's opinion that Armada will not participate with a portion of the redevelopment. They tried to reach Armada Oil Co. but were not able to receive a contact person associated with the Armada Real Estate, LLC. portion of their company.

Responding to Ms. Torcolacci, Mr. Helmick said that BP has the original restrictive covenant on the property to protect against human contact ground water use. Deed restrictions were put on the property at a later time restricting building any sub-grade structures. That portion of the deed restriction was rescinded. None of those restrictions prohibit the City from trying to hold Armada as a liable party.

Mr. Haynes stated BP cannot transfer their liability, even though they have a document that says they have done that. So, the letter that BP sent is misleading. If they are, in fact a liable party, they remain a liable party. The Brownfield Authority has statutory authority to pursue liable parties for the reimbursement of any costs paid.

The applicant is asking for reimbursement of \$580,000. Of that, \$151,000 is cost of the soil management. BP would hopefully cover a portion of it. Chairperson Gotthelf said that \$70,000 for vapor intrusion, and any additional groundwater management fees might be something to talk to BP about as well. Also she wanted SME to be aware in the future that the authority is looking at certain limits on fees for preparation of the Brownfield Plan and the Work Plan.

Chairperson Gotthelf noted the Brownfield was created in order not to make contamination an obstacle for redevelopment. This Authority looks at reduction of the purchase price because the property is contaminated. The Authority also looks to see if someone else can pay the difference instead of them. That is why they asked SME to consider why BP is having the discussion about Armada. However, If the developer, August, LLC, is going to make this work they need financial assistance in the form of this Brownfield TIF. Also they need to have that promptly because otherwise they might lose their window of opportunity. The Authority has the following options:

- Approve as-is;
- Approve with a different amount, but the applicant always has the opportunity to come back and ask for an amendment;

- Delay for further information.

It was discussed that the timeline for negotiations between Armada and BP regarding reimbursement would be long and too costly to the developer and the owner, based on historical experience with these agreements. Ms. Jamie Rae Turnbull added that further delay would be a significant issue for the owner who is in his eighties. They are hoping to get a building permit today. Their contractors are ready to break ground.

Mr. Haynes commented that at the last meeting he asked Dan Cassidy if any of the environmental costs would be attributed to the cost of closure and he said no. So the Authority might want to think about consistency with the DFCU site at Maple Rd. and Cranbrook where there was a cost of closure associated that was deducted from the Brownfield reimbursement. In this case BP could come back and say that none of the costs are associated with their closure of the site; therefore they are not liable for any of them. Armada could say the same with regard to cost of closure.

Motion by Ms. Torcolacci

Seconded by Mr. Runco to approve the Brownfield Plan and associated Reimbursement Agreement pertaining to the Brownfield Plan for 35975 Woodward Ave. (currently vacant land) and requesting the City Clerk to forward the Brownfield Plan and Reimbursement Agreement to the Birmingham City Commission for their review and consideration. Reimbursement Eligible Costs will not exceed \$580,570 limited to 10 years. Reimbursement from Local Taxes will not exceed \$333,327.

Voice

**Vote: Yeas, 3
Nays, 0
Absent, 1**

Motion carried, 3-0.

Ms. Ecker said she said she will set a public hearing at the July 24 City Commission meeting which will likely be for August 14. Mr. Haynes agreed to send the full Reimbursement Agreement to SME. Two executed copies have to be signed by the developer before they go to the City Commission. Mr. Stuntz said that in order to qualify for State reimbursement the City must approve the Agreement.

4. Guidelines for future Brownfield Plan applications

Mr. Stuntz summarized some of the Brownfield project policies of municipalities around the State.

Ms. Ecker noted several regulations that the Authority might want to discuss:

- Consider only participating with State capture;
- Limiting Brownfield Plan for costs, interest, term;
- Capping the amount;

- Set the minimum cost on a development that is not going to add a lot of value to the community.

Mr. Haynes recommended:

- Taking another look at the taxable value after construction when the developer receives a Certificate of Occupancy and adjusting the time period of payback.

The group suggested that staff work on drafting a policy with focus on:

- Zero interest unless it is a significant project when interest would go to 3%;
- Maximum of 10 years payback unless it is a significant project;
- If the State denies paying its portion, then the applicant would have to come back to the Authority to request a Plan Amendment for the Authority to pay that portion;
- Shorten the reimbursement term depending on the taxable value. This limits the amount the developer is getting back because they didn't increase the value as much as they thought.
- Developer doesn't get their check until the assessed value is there, which means the project is built.

5. Project Updates (none)

6. Open to the public for items not on the Agenda (no public available)

7. Adjournment

No further business being evident, the board passed a motion to adjourn at 9:32 a.m.

Respectfully submitted,

Carole Salutes
Transcription Secretary