

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

**Thursday, July 16, 2015
8:30 a.m.**

1. Chairperson Gotthelf welcomed everyone and convened the meeting at 8:30 a.m.

Members Present: Chairperson Beth Gotthelf
Paul Robertson, Jr.
Robert Runco
Dani Torcolacci

Member Absent: Wendy Zabriskie

Also Present: Brett Stuntz, AKT Peerless Environmental Services, City
Brownfield Consultant
Elizabeth Masserang, PM Environmental, Inc.
Jenny Ritchie, PM Environmental, Inc.
Sam and Mary Karana, Applicants

Administration: Jana Ecker, Planning Director
Mark Gerber, Asst. Finance Director
Jeffrey Haynes, City Attorney
Carole Salutes, Recording Secretary

Ms. Ecker introduced Brett Stuntz who will be replacing Anne Jamieson as City Brownfield Consultant.

2. Approval of May 14, 2015 Minutes

Motion by Mr. Robertson

Seconded by Ms. Torcolacci to approve the May 14, 2015 minutes as presented.

Voice

**Vote: Yeas, Robertson, Gotthelf, Runco, Torcolacci
Nays, 0
Absent, Zabriskie**

Motion carried, 5-0.

3. Resolution approving the Brownfield Plan and associated Reimbursement Agreement pertaining to the Brownfield Plan for 2483 W. Maple Rd. 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 offered background. The owner of the property located at 2483 W. Maple Rd. is proposing to demolish the existing gasoline service station and car repair facility and has leased the property to DFCU Financial for construction of a new one-story bank building with drive-through banking. They anticipate four full-time jobs and five part-time jobs when it is completed. Ms. Ecker added that all planning approvals have been granted for the construction of the new bank building and the associated drive-through facility and parking. The site contains parkland and an alley that the applicant uses under a license agreement with the City.

At this time, the applicant has submitted a Brownfield Plan seeking reimbursement of eligible environmental clean-up activities on the site due to contamination associated with its current use as a gasoline service station and car repair facility. The environmental clean-up cost for which the applicant is requesting reimbursement is estimated at \$221,930.

Both the City's legal counsel and the City's environmental consultant have reviewed the Brownfield Plan for 2483 W. Maple, and all requested amendments have been made by the applicant.

Mr. Haynes noted there were some costs removed from the plan because the actual value won't support their reimbursement. Ms. Messerang clarified that they gauged how much could be reimbursed within the 30 years and used that cost to determine what could be included in the plan. Due care activities include disposal of ground water and soil; installation of a vapor barrier if necessary, which cost is split between local and state school taxes and requires DEQ approval. Additional response activities include ground water sampling. Preparation of the Brownfield plan consists of installation of up to three new source wells.

Ms. Messerang explained that Mr. Sam Karana, the property owner, plans to pursue legal action against BP and should he prevail he will no longer seek reimbursement for any costs that overlap. Mr. Karana confirmed that he bought the property as-is in 2010 from Jabra and he is not responsible for what happened prior to that time. Jabra purchased the site from BP in 2005.

Chairperson Gotthelf stated she has found BP to be very cooperative. They prefer to take action themselves rather than the owner taking the action and then being reimbursed. Mr. Haynes clarified that the Reimbursement Agreement for this proposal contains a clause that says if the developer obtains any money from any liable party the developer will reimburse the Authority. The Authority will return those monies back to the taxing jurisdictions proportionally.

Mr. Robertson observed there is no incentive on the developer or anybody else to go after the money. Meanwhile the Authority puts up all of their taxes and hopes that somebody will go after BP. Mr. Haynes explained the statute allows the Brownfield Authority to pursue BP as well. However, the question is whether the Authority wants to do that. Ms. Torcolacci pointed out the developer's incentive is that if they pursue BP they can get reimbursement a lot sooner than 30 years.

Chairperson Gotthelf was bothered that it has been a year since the investigation began and there has been no effort to bring in BP and have them pay for some of the cost. Ms. Ritchie noted that BP will only pay for remediation of what they caused, which is basically only soil removal. They aren't going to pay for all of the other expenses to redevelop the site.

Mr. Robertson questioned why the Brownfield Authority would put up all of this tax increment financing money if no one has gone after BP who is probably responsible for the spill. Mr. Hayes explained the developer will front the money to remediate the site. He will have spent say \$100,000 in response costs to remove soil. The Authority reimburses him at about \$3,000/yr., so the taxing jurisdiction's reimbursement is pretty low. If the developer recovers the money from BP it reduces the money that the Brownfield Authority pays. So, the Authority is not fronting the money; it is reimbursing the developer to remediate the site. Mr. Robertson thought the developer should have gone after BP a year ago as opposed to starting with the Brownfield.

Mr. Haynes reiterated that the statute allows the Authority to sue BP and recover the response costs. Mr. Robertson did not think that suing BP is the Authority's job. The Authority's job is to protect the tax revenues of the City.

Mr. Stuntz noted the Authority has some flexibility through the Reimbursement Agreement process where if funding does come in from BP to address some of the costs, those will no longer be reimbursable. Also, whatever concerns the Authority might have at this point could be addressed so the developer can move forward with the redevelopment.

Ms. Ritchie said that the developer will finish taking out the tanks and the remaining soil next week. Construction is anticipated to begin in August. Ms. Ecker advised the developer has all planning approvals in place and the license agreements have been approved by the City Commission. Now it is a matter of submitting construction drawings for Building Permit review.

Mr. Robertson indicated he would be happy to pass the Brownfield, but first they have to go after BP. He thinks they have it backwards. The chairperson added that if conversations with BP had taken place a year ago, perhaps they would have been a player at this point and paid for all the investigation that has happened to date. When she has worked with BP in the past they have gotten back to her within days. Mr.

Robertson thought it is the developer's responsibility rather than that of the Brownfield Authority to have conversations and go after BP before the Authority passes a Brownfield that basically pays for BP's responsibility.

Mr. Ritchie noted that BP only has to get the LUST to closure with the DEQ. All they have to do is prove there aren't any exposure pathways, verify that contamination hasn't migrated off-site, write a closure report, and they are done. They could leave all of the soil in place and still close the open LUST. The developer is building over that and that is why the majority of the soil is coming out.

Mr. Stuntz said in this case there probably won't be much difference in the taxes because if they successfully pursue BP and get them to pay for closure related activities, say that's \$30,000. At this point there is a \$200,000 Brownfield Plan which will not be fully reimbursed at the end of 30 years. If it makes any difference at all, it will be a very small one. However, the point is precedent and process, which can be addressed through a Reimbursement Agreement.

Mr. Robertson agreed it is not about the money; it is about the process. The process is 1) the developer shouldn't have started construction if he was expecting money from the Brownfield Authority; 2) the developer should have gone to the responsible party before coming before this Authority; and 3) he doesn't want to hold up the developer but the Authority has a responsibility for the process.

It was concluded that at \$3,000/yr. it makes no difference if the Authority passes on this today or in 60 to 90 days. Two options were discussed: 1) the Authority would not approve the Brownfield Plan today; they would allow time for the developer to hire a lawyer to see what he can get and then come back; or 2) the Authority recommends approval today for a lesser amount than is being requested, based on what they think BP will pay.

Mr. Karana said he would pay an attorney 30% of the estimated \$100,000 that they capture from BP.

Chairperson Gotthelf agreed to provide two key names for BP in this area, the attorney and the head of real estate. Then the three can run this through with them and find out their response.

Motion by Mr. Robertson

Seconded by Ms. Torcolacci to table this proposal to Thursday, July 30 at 8:30 a.m. when the Authority can hear from the developer with respect to his conversations regarding BP's liability for this bill.

Voice

**Vote: Yeas, 4
 Nays, 0**

Absent, Zabriskie

Motion carried, 4-0.

4. Project Updates by Ms. Ecker:
 - On E. Lincoln a mixed-use, commercial on the first floor and residential above, building is proposed on the site of the old Birmingham School Bus garage. They have indicated their intent to pursue Brownfield reimbursement.
 - The Citgo/Shell Brownfield Reimbursement Agreement was approved by the City Commission. Mr. Haynes explained the Commission is aware that the DEQ is pursuing a liable party. He thought the process going forward should be that any applicant should provide to the Authority 1) a Title Search back to 1950; 2) any private documentation that might not be recorded relating to potential liability between people in the chain of title; and 3) their view on whether there are any liable parties out there.

Mr. Stuntz said if there were more time all of these costs could be offset by school tax revenue which would reduce the impact to the local taxing jurisdiction by about half. Realistically the DEQ will approve it if the Authority approves.

6. Open to the public for items not on the Agenda (no public comments)
7. Adjournment

No further business being evident, the board passed a motion to adjourn at 9:45 a.m.

Respectfully submitted,

Carole Salutes
Recording Secretary