



151 Martin
Birmingham, MI 48009
248.530.1800

BIRMINGHAM BROWNFIELD REDEVELOPMENT AUTHORITY AGENDA
Friday, June 14, 2019 at 2:00 p.m.
Birmingham City Hall (151 Martin Street)

City Commission Room

-
1. Call to Order
 2. Approval of minutes of September 5, 2018 meeting.
 3. Resolution to meet in closed session to discuss an attorney/client privilege communication in accordance with Section 8(e) of the Open Meetings Act, MCL 15.268(e), to consult with the Brownfield Authority's attorney regarding trial or settlement strategy in connection with 2400 Lincoln, LLC v City of Birmingham, Case No. 2018-167484-CB.
(A roll call vote is required and the vote must be approved by a 2/3 majority of the authority. The authority will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)
 4. Open to the public for items not on the Agenda
 5. Adjournment

Approved minutes of the meeting are available in the Community Development Office or online at www.bhamgov.org.

Notice: Due to Building Security, public entrance during non-business hours is through the Police Department—Pierce St. Entrance only. Individuals with disabilities requiring assistance to enter the building should request aid via the intercom system at the parking lot entrance gate on Henrietta St.

Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).

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

**Wednesday, September 5, 2018
8:30 a.m.**

1. Vice-Chairman Robert Runco convened the meeting at 8:31 a.m.

Members Present: Vice Chairman Robert Runco
Harry Awdey
Dani Torcolacci
Wendy Zabriskie

Member Absent: Chairperson Beth Gotthelf

Administration: Jana Ecker, Community Development Director
Mark Gerber, Finance Director
Jeffrey Haynes, Beier Howlett, City Attorney
Carole Salutes, Recording Secretary
Brett Stuntz, AKT Peerless, City Brownfield Consultant

2. Approval of June 22, 2018 Minutes

Motion by Mr. Awdey

Seconded by Ms. Zabriskie to approve the June 22, 2018 minutes as presented.

Voice

**Vote: Yeas, 4
Nays, 0
Abstain: 0
Absent, 1 (Gotthelf)**

Motion carried, 4-0.

3. Request to add 215 Peabody to the approved Brownfield Plan for 34965 Woodward Ave.

Ms. Ecker advised that the developer of 34965 Woodward Ave. (the former Peabody's restaurant) and 215 Peabody (the former Frame Shop), is seeking approval by the City to amend the Brownfield Plan for 34965 Woodward Ave. to include the property at 215 Peabody. Both parcels are now under the same ownership, and the developer is in the

process of combining the parcels to allow construction of the proposed five-story building on both parcels. Oakland County has advised that they will not combine the parcels until the Brownfield Plan is amended to include both properties.

The City Attorney has reviewed the request, and is recommending approval by the City of the requested amendment to the Brownfield Plan for 34965 Woodward Ave. to include 215 Peabody under the approved Brownfield Plan.

The Reimbursement Agreement would stay as-is - the only change is to the Brownfield Plan itself. Nothing is changed with regard to the amount the developer is asking or the amount that would be paid back; but it may speed up the payback process because more assessed value is being added.

Motion by Ms. Torcolacci

Seconded by Ms. Zabriskie to recommend that the City Commission approve the developer's request to amend the Brownfield Plan for 34965 Woodward Ave. to include the property known as 215 Peabody.

Voice

Vote: Yeas, 4

Nays, 0

Recused, 0

Absent, 1 (Gotthelf)

Motion carried, 4-0.

4. Project Updates - 2400 E. Lincoln

Mr. Haynes recalled at the last meeting the Brownfield Board approved filing a motion in bankruptcy court seeking to re-open the case, and the City Commission agreed. The bankruptcy judge heard the motion last week and decided not to re-open the case.

Two days after the City filed to re-open the case in bankruptcy court, 2400 E. Lincoln and its two members of the LLC filed an action in Oakland County Circuit Court for a declaratory judgment seeking to have the Reimbursement Agreement declared valid. That complaint has been answered with several affirmative defenses, including lack of standing. However, the bankruptcy judge felt that the City had a remedy in Circuit Court on the standing question and she also suggested that had she re-opened the bankruptcy case she probably would have held on the merits that 2400 E. Lincoln had standing to bring the claim under the Reimbursement Agreement.

So it appeared that even if she had re-opened the case and filed a motion and brief to test the standing of 2400 E. Lincoln, the bankruptcy judge probably would have ruled that the bankrupt debtor had standing.

Therefore, on recommendation of bankruptcy counsel the City will not appeal that ruling of the bankruptcy judge.

Mr. Haynes noted that he and Mr. Arthur Siegal, attorney for 2400 E. Lincoln, have been discussing the 2400 E. Lincoln Reimbursement Agreement for the last several months. The Reimbursement Agreement requires 2400 E. Lincoln to keep the property insured against property damage and personal injury and liability during the life of the Agreement which is for 30 years. There are no documents that they could find that provide evidence of insurance to the City from when the Brownfield Plan started in 2005.

One of the ways the Reimbursement Agreement can be terminated is by the developer not insuring the property. In order to terminate the contract, the City has to send a Notice of Termination and they have 28 days to cure the default. If they don't cure the default the contract is terminated on the 29th day.

Therefore, Mr. Haynes has drafted a resolution by this board authorizing the chair or acting chair to sign a Notice of Termination. He will then send it to 2400 E. Lincoln under the contract.

Mr. Arthur Siegal, attorney for the prior developer of 2400 E. Lincoln, spoke. His client basically did all of the Brownfield cleanup work ten years ago. With the economic downturn back in 2008, the property was turned back to the lender and the development was not completed. The site was then conveyed to a new developer who has since developed it. His client had spent somewhat in excess of \$1 million cleaning up the property so that it could be redeveloped. Therefore, his client feels that it would be fair for him to be reimbursed at least to the extent that funds are available. It is virtually certain that he will not be fully reimbursed given the time that has passed.

Mr. Siegal added he finds it troubling that the Authority and its counsel are going out of their way to try to deny his client reimbursement for funds that were spent in good faith to improve the environmental condition of the property as a precursor to development. He went on to state that it is starting to feel like the Brownfield Authority and the City are looking for loopholes for reasons not to make the reimbursement that his client really is entitled to.

Mr. Siegal asked for the opportunity to review the Agreement and the motion and to speak with counsel to see if they can come up with a resolution. He requested the Authority defer the motion until their next meeting. He added that the issue of insurance was only recently discovered by Mr. Haynes and it was never raised with them. He suspects that his client, given they no longer own the property, probably does not have the appropriate insurance. Further, he suspects that the current owner has the insurance and they may be able to reach some accommodation with that current owner to satisfy the obligation.

Vice-Chairman Runco read into the record the proposed Resolution Authorizing Notice of Termination for 2400 E. Lincoln:

WHEREAS, the Reimbursement Agreement for 2400 E. Lincoln describes conditions of termination of the agreement and notice of termination, and

WHEREAS, it appears that 2400 E. Lincoln is in default under the Reimbursement Agreement for failure to provide commercial general liability insurance for claims for personal injury, death, or property damage, occurring upon, in, or about the property that is the subject of the Reimbursement Agreement,

NOW, THEREFORE, be it resolved that:

1. The Brownfield Redevelopment Authority authorizes its chair or acting chair to send 2400 E. Lincoln a notice of termination of the Reimbursement Agreement.

Ayes: _____

Nays: _____

Abstain: _____

Dated: _____

**Motion by Ms. Zabriskie
Seconded by Ms. Torcolacci to authorize the sending of the notice of termination.**

Voice

Vote: Yeas, 4

Nays, 0

Recused, 0

Absent, 1 (Gotthelf)

Motion carried, 4-0.

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

6. Adjournment

No further business being evident, the board passed a motion to adjourn at 8:55 a.m.

Respectfully submitted,

Carole Salutes
Recording Secretary

DRAFT



MEMORANDUM

Planning Department

DATE: June 12, 2019

TO: Brownfield Redevelopment Authority

FROM: Jana Ecker, Planning Director

SUBJECT: Request for Closed Session

The Brownfield Authority's attorney is requesting a closed session to discuss matters regarding trial or settlement strategy in connection with 2400 Lincoln, LLC v City of Birmingham, Case No. 2018-167484-CB.

Suggested Action:

Motion to approve a resolution to meet in closed session to discuss an attorney/client privilege communication in accordance with Section 8(e) of the Open Meetings Act, MCL 15.268(e), to consult with the Brownfield Authority's attorney regarding trial or settlement strategy in connection with 2400 Lincoln, LLC v City of Birmingham, Case No. 2018-167484-CB.



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Arthur H. Siegal
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September 14, 2018

Mr. Robert Runco
City of Birmingham
Birmingham Brownfield Redevelopment Authority
151 Martin Street
Birmingham, MI 48009

**VIA FACSIMILE AND
VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED**

Re: Response to Notice of Termination

Dear Mr. Runco:

This letter is sent on behalf of 2400 Lincoln, LLC (“2400 Lincoln”), in response to the Notice of Termination (“Notice”) sent by you dated September 5, 2018. The Notice references paragraph 6(b) of the Reimbursement Agreement (“Agreement”) between 2400 Lincoln, the City of Birmingham (“City”) and the Birmingham Brownfield Redevelopment Authority (“BBRA”). We are also transmitting a copy of this letter to the City Manager as indicated in paragraph 14(l) of the Agreement.

Paragraph 9(a) of the Agreement cited in the Notice states in part: “Before such termination the BBRA shall deliver to the Owner a written notice of termination specifically describing the breach causing issuance of the notice of termination. The Owner shall have 28 days after delivery of the notice to cure such breach. If the Owner cures within the time allowed, then this Agreement shall not be terminated for the breach. If the Owner does not cure, then the termination shall be effective on the 29th day after the notice of termination is delivered.”

The Notice fails to “specifically describe” the alleged breach leading to issuance of the Notice or what documentation is requested. When I appeared before the BBRA at its meeting on September 5, 2018, I asked that 2400 Lincoln be provided a clear statement of the documentation sought by the BBRA and members of the BBRA agreed that this would be done by the City’s legal counsel. The Notice does not do that. Given that the Agreement has been in effect since 2005, the lack of specificity of the written Notice and a comment made during the BBRA meeting, 2400 Lincoln understands that the Notice is requesting current documentation. This is logical as the City and BBRA certainly are not raising questions that they could have raised over the last 13+ years. Moreover, we are not aware of any claims having been asserted or existing under the Agreement at any time during the term of the Agreement.

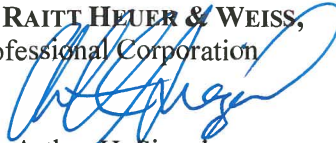
Mr. Robert Runco
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Therefore, enclosed is a copy of a current certificate of insurance that specifically documents commercial general liability, and umbrella liability, insurance covering personal injury and property damage and it specifically names the City, the BBRA and their commissioners, members, officers, employees and agents as additional insureds.

Therefore, 2400 Lincoln has cured any alleged breach relating to paragraph 6(b) of the Agreement pursuant to paragraph 9(a) of the Agreement and termination of the Agreement is not appropriate nor permitted thereunder. 2400 Lincoln believes that this answers the question posed by the Notice and requests that the BBRA withdraw the Notice. Unless the BBRA and City respond to this letter in writing no later than 5:00 pm, Tuesday, September 18, 2018, 2400 Lincoln will move forward with the understanding that the Notice has been satisfied and withdrawn.

Thank you for your prompt attention. Please contact me if you have any questions regarding this matter.

Very truly yours,
JAFFE RAITT HEUER & WEISS,
Professional Corporation



Arthur H. Siegal

Enclosure

cc: Mayor Andrew Harris, w/enc.
Mr. Joseph A. Valentine, City Manager, w/enc., via fax
Jeffrey K. Haynes, Esq., w/enc., via fax
Timothy J. Currier, Esq., w/enc., via fax

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER Meadowbrook, Inc. Southfield Commercial Agency 26255 American Drive Southfield, MI 48034-6112	CONTACT NAME: Georgia Leslie-Morency
	PHONE (A/C, No, Ext): 248 358-1100 FAX (A/C, No): 248-603-8430 E-MAIL ADDRESS: _____
INSURED North Management, LLC 25925 Telegraph Road, Suite 202 Southfield, MI 48033-3199	INSURER(S) AFFORDING COVERAGE INSURER A : Auto-Owners Company NAIC # 18988
	INSURER B :
	INSURER C :
	INSURER D :
	INSURER E :
	INSURER F :

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____			04105897	10/08/2017	10/08/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 _____ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ _____ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10000			44105897	11/20/2017	10/08/2018	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 _____ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
2400 Lincoln LLC is a named insured on all referenced policies.
City of Birmingham and the Birmingham Brownfield Redevelopment Authority
and their commissioners, members, officers, employees and agents are named as additional insureds with respects to the liability policies.

CERTIFICATE HOLDER City of Birmingham 151 Martin St. P O Box 3001 Birmingham, MI 48012	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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