



151 Martin  
Birmingham, MI 48009  
248.530.1800

**BIRMINGHAM BROWNFIELD REDEVELOPMENT AUTHORITY AGENDA**  
**Wednesday, August 7, 2019 at 9:00 a.m.**  
Birmingham City Hall (151 Martin Street)

City Commission Room

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1. Call to Order
  2. Approval of minutes of September 5, 2018 and June 14, 2019 meetings.
  3. **2400 E. Lincoln – Brownfield Reimbursement Request**
  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](http://www.bhamgov.org).*

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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

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

**Friday, June 14, 2019**  
**2:00 p.m.**

1. Chairwoman Beth Gotthelf convened the meeting at 2:02 p.m.

Members Present: Chairwoman Beth Gotthelf  
Vice Chairman Robert Runco  
Harry Awdey  
Dani Torcolacci (arrived 2:10 p.m.)

Member Absent: Wendy Zabriskie

Administration: Tiffany Gunter, Assistant City Manager  
Mark Gerber, Finance Director  
Brooks Cowan, City Planner  
Jeffrey Haynes, Beier Howlett, City Attorney  
Laura Eichenhorn, Transcriptionist

2. Approval of September 5, 2018 Minutes

**Motion by Mr. Runco**

**Seconded by Mr. Awdey to approve the September 5, 2018 minutes as presented.**

**Motion Failed, 2-0.**

**ROLL CALL VOTE**

**Yeas: Runco, Awdey**

**Nays: None**

**Absent: Torcolacci, Zabriskie**

**Abstain: Gotthelf**

3. Resolution To Meet In Closed Session Pursuant To Sections 8(H) And 8(E) Of The Open Meetings Act

**Motion by Mr. Runco**

**Seconded by Mr. Awdey 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.)**

**Motion Carried, 4-0.**

**ROLL CALL VOTE**

**Yeas: Runco, Awdey, Torcolacci, Gotthelf**

**Nays: None**

**Absent: Zabriskie**

5. Open to the Public for Items not on the Agenda

There was no public in attendance.

6. Adjournment

Chairwoman Gotthelf announced no action is anticipated following the closed session and adjourned the meeting to closed session at 2:12 p.m.

Chairwoman Gotthelf reconvened the regular meeting at 4:04 p.m. and, there being no further business, the board passed a motion to adjourn at 4:04 p.m.

Respectfully submitted,

Laura Eichenhorn  
Transcriptionist





# MEMORANDUM

Planning Department

**DATE:** August 2, 2019

**TO:** Brownfield Redevelopment Authority

**FROM:** Jana Ecker, Planning Director

**SUBJECT:** Request for Reimbursement – 2400 E. Lincoln

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The former developer of the above-captioned property submitted its first request for reimbursement on October 23, 2017, and a consolidated request for reimbursement dated March 29, 2019, under the Brownfield Plan for the property approved by the City Commission on June 27, 2005. Since that time, there have been ongoing discussions between the City, the former developer, and legal counsel to determine if the developer is eligible for any reimbursement under the terms of the Brownfield Plan for 2400 E. Lincoln.

The Brownfield Authority (“BRA”) has discussed this issue extensively over the past year and a half, during which time a lawsuit was filed against the City, and numerous meetings were conducted between legal counsel. In addition, a public hearing was held by the Brownfield Redevelopment Authority on June 19, 2019.

ASTI Environmental, the Brownfield Redevelopment Authority’s consultant, in Tom Wackerman’s May 17, 2019 memo recommended that the BRA find that the expenses eligible for reimbursement be \$1,052,999.11 and that interest on those expenses be set at \$206,128.39.

At this time, the Brownfield Authority’s attorney is recommending consideration of the attached resolution for reimbursement under the Brownfield plan for 2400 E. Lincoln.

**Suggested Action:**

Motion to approve the attached resolution for reimbursement under the Brownfield Plan for 2400 E. Lincoln.

**RESOLUTION APPROVING REIMBURSEMENT REQUEST  
UNDER THE BROWNFIELD PLAN FOR 2400 LINCOLN**

Moved by \_\_\_\_\_

Seconded by \_\_\_\_\_

A. WHEREAS, the Birmingham City Commission approved the Brownfield Plan for property at 2400 East Lincoln on June 27, 2005; and,

B. WHEREAS, the City of Birmingham, the Birmingham Brownfield Redevelopment Authority, and 2400 Lincoln, LLC (“Developer”) entered into a Reimbursement Agreement dated July 25, 2005; and,

C. WHEREAS, the Developer performed work and incurred eligible expenses at the site; and,

D. WHEREAS, the Developer submitted its first request for reimbursement on October 23, 2017, and submitted a consolidated request for reimbursement dated March 29, 2019, with supplements; and,

E. WHEREAS, the Developer filed suit against the City of Birmingham and the Brownfield Authority in Oakland County Circuit Court by complaint dated August 2, 2018, No. 2018-167484-CB, and the action is still pending; and,

F. WHEREAS, the Brownfield Authority consultant, ASTI, reviewed the reimbursement requests and submitted a memorandum dated May 17, 2019; and,

G. WHEREAS, the Brownfield Authority held public hearings on the reimbursement requests on June 19, 2019 and August 7, 2019; and,

H. WHEREAS, Chase Bank, N.A., presented the Brownfield Authority with a Bill of Sale dated April 28, 2010, that purported to convey the rights of 2400 Lincoln, LLC under the Reimbursement Agreement to the Bank; and,

I. WHEREAS, Chase Bank has sold and transferred to the Developer all of the Bank’s rights and claims under the Reimbursement Agreement and the lawsuit, as evidenced by the bill of sale and release, attached.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Brownfield Authority approves the reimbursement request for eligible expenses in the amount of \$ \_\_\_\_\_.
2. The Brownfield Authority approves the request for interest in the amount of \$ \_\_\_\_\_.
3. The Brownfield Authority denies the request for reimbursement of pre-plan expenses because they are not eligible costs under the Brownfield plan.

4. The Brownfield Authority requests that city staff pay the Developer \$31,020.50 as the final repayment of the undocumented loan from the Developer to the City relating to the grant from the Department of Environmental Quality.

AYES: \_\_\_\_\_  
\_\_\_\_\_

NAYS: \_\_\_\_\_  
\_\_\_\_\_

PRESENT: \_\_\_\_\_  
\_\_\_\_\_

ABSENT: \_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATION**

I, J. Cherilynn Mynsberge, being the duly appointed and qualified Clerk of the City of Birmingham, Oakland County, Michigan, do hereby certify and declare that the foregoing is a true and correct copy of Resolution, the original of which is on file in my office, adopted by the Birmingham Brownfield Redevelopment Authority at a regular meeting held on August 7, 2019.

I further certify that notice of the meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, as amended.

\_\_\_\_\_  
J. Cherilynn Mynsberge, City Clerk

**BILL OF SALE**

KNOW ALL PERSONS BY THESE PRESENTS that JPMorgan Chase Bank, N.A., as seller (“Seller”), hereby sells, bargains, grants, conveys and assigns unto 2400 Lincoln, LLC, a Michigan limited liability company with an address of 25925 Telegraph Road, Suite 202, Southfield, Michigan 48033, as purchaser (“Purchaser”), all right, title and interest of Seller in (i) that certain Reimbursement Agreement (the “Reimbursement Agreement”) pursuant to a certain Brownfield Plan under 1996 PA 381 with the City of Birmingham (the “City”) and the City of Birmingham Brownfield Redevelopment Authority (the “BBRA”) in connection with cleaning up certain property located at 2400 East Lincoln, Birmingham Michigan (“Reimbursement Claim”) and (ii) any and all causes of action pending in the Oakland County Circuit Court, Case No. 2018-167484-CK (collectively, the “Property”), in consideration of a payment of good and valuable consideration, by Purchaser to Seller, the receipt and sufficiency of which are hereby acknowledged.

The disposition of the Property transferred to Purchaser is all of the Seller’s rights, title and interest therein on an “as is” “where is” basis, free and clear of all security interests of Seller, if any.

Seller assumes no responsibility for and makes no warranties or representations of any kind or nature with respect to the Property.

IN WITNESS WHEREOF, this Bill of Sale has been executed and acknowledged effective \_\_\_\_\_, 2019.

**“SELLER”**

JP MORGAN CHASE BANK, N.A.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED**

**“PURCHASER”**

2400 LINCOLN, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**JPMORGAN CHASE BANK, N.A. RELEASE**

JPMorgan Chase Bank, N.A. ("JPM"), on behalf of itself and its agents, employees, officers, directors, shareholders, members, subsidiaries, parent companies, predecessors, and successors, hereby releases, waives and forever discharges the City of Birmingham (the "City") and the City of Birmingham Brownfield Redevelopment Authority (the "BBRA"), and their respective agents, employees, officers, directors, shareholders, members, subsidiaries, parent companies, predecessors, and successors, from any and all causes of action, proceedings, claims, defenses, demands, damages, costs, liabilities, agreements, promises, warranties, representations, duties, debts, and obligations of every kind whatsoever in law or equity, whether contingent or matured, whether asserted or unasserted, whether known or unknown, that relate to the City and/or the BBRA approving the payment of any sums, and/or the paying any sums, now or in the future, to 2400 Lincoln, LLC ("2400 Lincoln") (a) pursuant to that certain Reimbursement Agreement entered into on or about July 25, 2005 between the City, the BBRA and 2400 Lincoln, and/or (b) related to payment of \$31,020.50 related to that certain Michigan Department of Environmental Quality Grant.

**AGREED TO BY THE JPM'S DULY AUTHORIZED REPRESENTATIVE:**

JPMorgan Chase Bank, N.A.

By: \_\_\_\_\_

[Print] \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_