

Brownfield Redevelopment

Brief Overview / Orientation



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Novi City Council & Economic Development Corporation Joint Meeting
Monday, June 4, 2007 – 6-7pm
(Presentations followed by Q&A)

Prepared by:
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Presenters:

Tom Wackerman

Brownfield Restoration / Risk Assessment
ASTI Environmental

-- Applied Science & Technology, Inc. (ASTI) has provided environmental and training services to industry and government since 1985. ASTI service groups are staffed by engineers and scientists certified as hazardous materials managers, regulatory compliance managers, professional geologists, environmental professionals, underground storage tank professionals, wetland scientists, asbestos inspectors, environmental property assessors, building inspectors, and management planners.

Brad Hansen

Environmental Program Coordinator
Oakland County

-- Mr. Hansen represents Oakland County's Brownfield programs. He is a support staffer for Oakland County B.R.A. In the fall of 2000, Oakland County became an Environmental Protection Agency (EPA) Brownfield Assessment Demonstration Pilot Community. Initiating this program means that Oakland County will be able to more effectively protect its natural resources, particularly critical water and waterways, while restoring and increasing built environments and urban vitality.

Ron Smedley

Brownfields Redevelopment Coordinator
Michigan Department of Environmental Quality (MDEQ)

-- Mr. Smedley is the Brownfield Redevelopment Coordinator for MDEQ. Under the MDEQ, he coordinates the Michigan Brownfield Cleanup Revolving Loan Fund; a program was initiated in 2004 to seek brownfield cleanup projects from local units of government which would have an identifiable source or repayment of the loan funds.

Patrick F. McGow

Principal
Miller, Canfield, Paddock and Stone, P.L.C.

Patrick McGow is a principal with Miller, Canfield; and has been with Miller, Canfield since 1992. He graduated from U of M Law School, cum laude, 1992. His practice in Municipal law includes water and sewer financing, tax increment financing, road financing, special assessments, private activity financing, brownfield redevelopment, economic development, election law, public finance, municipal securities law, and general governmental law.

What is a Brownfield?

Brownfields are abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contaminations.



In city planning, a brownfield is land previously used for industrial purposes, or certain commercial uses, and that may be contaminated by low concentrations of hazardous waste or pollution and has the potential to be reused once it is cleaned up. Land that is more severely contaminated and has high concentrations of hazardous waste or pollution does not fall under the brownfield classification.

Generally, brownfield sites exist in a city or town's industrial section, abandoned factories or commercial buildings, or other previously polluting operations. Brownfields may also be found in many older residential neighborhoods. For example, many dry cleaning establishments or gas stations produced high levels of subsurface contaminants during prior operations and the land they occupy might sit idle for decades as a brownfield.

The City of Novi, as a community which is not completely developed, has minimal brownfield sites in comparison to other communities in the redevelopment stage of their existence. (A map is attached identifying *potential* areas)

The Department of Environmental Quality reports over 1,900 projects statewide where Brownfield projects are currently taking place. In Oakland County, there are 88 projects. A complete list of current projects can be found at:

<http://www.deq.state.mi.us/ustfields/default.asp>



What parameters should a city make when identifying potential areas of Brownfield?

If city council were to take action in cleaning up Brownfield sites, a rationale and cost effective policy should be established. Many brownfield sites sit idle and unused for decades, because the cost of cleaning them to safe standards is more than the land would be worth after redevelopment. In the process of cleaning contaminated brownfield sites, surprises are sometimes encountered, such as previously unknown underground tanks, buried drums or buried railroad tank cars containing wastes. When unexpected circumstances arise, the cost for cleaning up the brownfield land increases and as a result the clean up work is either delayed or stopped entirely.

Professor Richard Hula, Michigan State University, author of "An Assessment of Brownfield Redevelopment Policies" commented:

How should policy makers deal with demands for increased environmental justice?

Brownfield sites are most likely to be in low and moderate income, and minority neighborhoods. Critics of the Michigan brownfield initiative see the implementation of reduced contamination standards and institutional controls as creating patterns of environmental injustice. That is, minority and low-income citizens are put at greater health risks simply because of their proximity to sites to be redeveloped. Others — very often local elected

officials — stress the critical need for economic development within these communities. For example, recently the mayors in Michigan's core cities led the fight against federal environmental justice standards that would have reduced the capacity of cities to promote redevelopment projects.

What is to be done with unsuccessful programs?

Although the long-term impact of the brownfield initiative remains problematic, there is evidence that it has spurred redevelopment projects across the state. Obviously this success has not been universal. Failures do occur. Indeed, failures can occur at both the site and community level. Site-level failures occur when local jurisdictions are unable to attract investment to specific parcels. Such problem parcels may suffer from relatively high levels of contamination or may be undesirable for development because of location, size, or other factors. Failure can also be community-wide. In this case a community is unable to attract significant private investment in any local brownfield sites. Community failure can also be traced to a variety of factors. Some communities simply do not have the capacity or the political will to implement brownfield programs. In other communities the available economic incentives are not sufficient to attract developers to local projects. Such local policy failures pose important issues for state policy makers. For example, should more incentives be made available for so called "problem sites"? If so, how can one identify these sites? The issue of community program failure is even more complex. How, for example, can one differentiate city needs? Should the state take a more direct lead in redevelopment efforts in such jurisdictions, or should the state focus on those jurisdictions capable of generating private investment?

The City of Rochester Hills does not clean-up brownfield sites without a corresponding development or redevelopment project. They also do not want to assume the liability for the clean-up. The city requires that the property owner complete the clean-up, including writing a work plan and getting it approved by MDEQ. The only area in which they might initially participate is environmental testing.

This is done to ensure that the TIF payback from the proposed development will be sufficient to pay for the clean-up activities. Their approved brownfield plans are for a 28 acre and 100 acre sites. The development, including uses, of both properties are governed by consent judgments. This allowed them to tie the clean-up process with the site plan process and gave City Council some additional control. The use of a consent judgment in both cases was coincidental but understandable, in that both projects are mixed-use.

If council were to establish policy on making available local incentives for Brownfield development, please review of the current property tax abatement policy (attached) along with Appendix D in the 2007-08 Budget regarding tax values. Each of these documents serve a purpose to provide a criteria and rationale for types of projects (e.g., non-residential, job-creating, high investment, conformance with master plan) providing a long-term benefit to the City.

What are the Brownfield Redevelopment Incentives?

Under the Brownfield Redevelopment Act (1996 PA 381), a municipality may create a Brownfield Redevelopment Authority to develop and implement brownfield projects. The Brownfield Redevelopment Authority is a resource that may use Tax Increment Financing (TIF) and allow developers to apply for Single Business Tax (SBT) Credit incentives.

The success of Michigan's brownfield efforts are due in part to liability protection and reduced remediation costs. Title may be taken to environmentally impaired property without assuming liability for existing contamination, provided the buyer conducts a baseline environmental assessment (BEA) and discloses it to the state. Lenders may also conduct a BEA to avoid potential liability upon taking title in lieu of foreclosure. Cleanup costs are now 50% lower for industrial and commercial properties.

I. Brownfield Redevelopment Authority (Brownfield BRA)

A municipality or community may create a Brownfield Redevelopment Authority to develop and implement brownfield projects.

II. Brownfield Tax Increment Financing (Brownfield TIF)

The Brownfield TIF allows the utilization of tax increment financing to implement brownfield redevelopment projects.

III. Brownfield Single Business Tax Credit (Brownfield SBT)

The Brownfield SBT provides an incentive in the form of a tax credit for eligible redevelopment investments on brownfield property.

I. How does a Brownfield BRA work?

Once created, a Brownfield Redevelopment Authority reviews proposals for the redevelopment of eligible property and determines what financial incentives are necessary to assist the redevelopment. The Authority prepares a plan that identifies the brownfield projects. Each project section of the plan includes the description of the eligible property, the eligible activities, the TIF and SBT approaches to be taken and other issues related to the subject parcels. The Authority then recommends to the governing body of the municipality (city or village council, township board or county commission) that the decision-making body hold a public hearing regarding the plan and subsequently act to approve with modifications or deny the plan. The Authority would recommend revisions to the plan as new projects are submitted or revisions are requested on existing plan projects.

What Is the Process to Create a BRA?

The municipality may hold informational meetings to explain the purpose, powers and benefits of a Brownfield Redevelopment Authority. In order to create an Authority, the municipality must do the following:

1. The governing body of the municipality must adopt a Resolution of Intent to create an Authority and set a date for a public hearing on the Resolution creating an Authority.
2. Two public notices regarding the public hearing must be published no more than 40 days nor less than 20 days from the date of the hearing.
3. The governing body holds a public hearing.
4. The governing body adopts a Resolution creating the Brownfield Redevelopment Authority immediately following the public hearing portion of the meeting or within 30 days of the public hearing.

5. The governing body designates the members of the Authority. The Authority members may be chosen from an existing Downtown Development Authority (DDA), Local Development Financing Authority (LDFA), Tax Increment Financing Authority (TIFA), Economic Development Corporation (EDC) or chosen at large.
6. The municipality must then file a copy of the Resolution creating the Brownfield Redevelopment Authority with the Michigan Secretary of State. Following the creation of the Brownfield Redevelopment Authority, the Authority members would then hold meetings at which they would elect officers of the board, adopt by-laws of the Authority and adopt governing rules.

Why Would a Local Unit of Government Want to Create a BRA?

The creation of a Brownfield Redevelopment Authority allows local decision-making in the various aspects of brownfield redevelopment. Through redevelopment a municipality can:

- Focus development in existing service areas.
- Enhance tax base through private development.
- Receive multiple taxing jurisdiction participation in redevelopment financing.
- Provide reimbursement for eligible brownfield activities.
- A Brownfield Redevelopment Authority provides a municipality with the opportunity to create a local brownfield financing resource, enhance local economic development capacities and market difficult sites based on the private investment incentives.

II. Brownfield Tax Increment Financing (Brownfield TIF)

The Brownfield Redevelopment Financing Act, Public Act 381 of 1996, as amended, allows Brownfield Redevelopment Authorities to utilize tax increment financing to implement brownfield redevelopment projects.

The incremental increases to property tax revenues can be used to finance eligible activities on the site, including baseline environmental assessments, due care activities and additional response activities. Within Core Communities, tax increment financing can also be used to fund demolition, public infrastructure, site preparation and lead and asbestos abatement. Unlike other Michigan tax increment financing tools (DDA's, LDFA's, etc...), the brownfield program allows for the capture of both local and school taxes. In order to capture school tax levies, Michigan Department of Environmental Quality (MDEQ) and/or Michigan Economic Growth Authority (MEGA) approval is required.

How does a Brownfield TIF work?

A Brownfield Redevelopment Authority may recommend capture of increases in property tax revenues from an eligible property and use of those captured funds to reimburse those who incurred eligible Brownfield expenses on that site. The Authority may also recommend the creation of a Local Site Remediation Fund to cover eligible expenses on other eligible properties.

ELIGIBLE PROPERTY-In a Non-Core Community, eligible property is commercial, industrial or residential property identified in a Brownfield Redevelopment Authority's plan as contaminated. In a Core Community, eligible property is commercial, industrial or residential property identified in a Brownfield Redevelopment Authority's plan as being contaminated, blighted or functionally obsolete.

ELIGIBLE BROWNFIELD EXPENDITURES-In Core and Non-Core Communities, eligible expenses include costs for baseline environmental assessments, due care obligations and additional response activities. For Core Communities, additional eligible expenses include costs for infrastructure improvements, site preparation, demolition (not as a response activity) and lead and asbestos abatement (not as a response activity).

The process:

1. Once the community has created a Brownfield Redevelopment Authority, the Authority will execute a plan containing projects and their respective TIF funding.
2. The Brownfield Plan contains general information about the Authority and specific information on each proposed Brownfield Project including:
 - Property description
 - Eligible activity expenses
 - Impact on property tax revenues
 - Property's existing and projected tax value
 - Recommended TIF process to address reimbursement for cost of eligible expenses.
3. The Authority makes a recommendation to the governing body of the community to act on the new or amended plan.
4. The governing body sets a date for a public hearing on the new or amended Brownfield Plan and publishes notice of the hearing no less than 20 nor more than 40 days before the public hearing.
5. The governing body must notify the applicable taxing jurisdictions of the public hearing not less than 20 days prior to the hearing.
6. The governing body holds the public hearing and on that date or within 30 days of that hearing takes action on the plan. That action may be to approve the plan as presented, approve a modified version of the plan, or reject the plan and send it back to the Authority.
7. Once the plan is approved, the Authority may begin to reimburse, using local tax capture, for those eligible activities that occur after the plan is approved. To seek school tax capture, the Authority must adopt a Work Plan to be submitted to MDEQ and/or MEGA. A work plan must include the following:
 - A copy of the Brownfield Plan
 - Current ownership information for each eligible property and a summary of available information on proposed future ownership, including the amount of any delinquent taxes, interest and penalties that may be due.
 - A summary of available information on the historical and current use of each eligible property, including a brief summary of site conditions and what is known about environmental contamination as that term is defined in section 20101 of the natural resource and environmental protection act, 1994 PA 451.
 - Existing and proposed future zoning for each eligible property.
 - A brief summary of the proposed redevelopment and future use for each eligible property.
 - A separate work plan or remedial action plan, or part of a work plan or remedial action plan, for each eligible activity to be undertaken.
 - A copy of the development agreement between the municipality and the owner or developer of eligible property. (For MEGA submittals only.)
8. Upon receipt of a complete work plan, MDEQ has 60 days and MEGA has 65 days to act. Any eligible activities that take place prior to state approval are not eligible for tax increment financing reimbursement.
9. Once the approved eligible expenses have been reimbursed, the Authority may choose to stop capturing the increased property tax revenues or may continue to capture from those approved taxing jurisdiction for no more than five years.

10. This excess captured revenue by the Authority is placed in the community's Local Site Remediation Revolving Fund to be used to cover eligible expenses on eligible property.

PROPERTY TAX CAPTURE

The property tax revenue that may be captured is the change in value on real and personal property on an eligible site times that total millage of eligible and available taxing jurisdictions.

The defined portion of the property tax revenue that is available to capture by an Authority from all eligible taxing jurisdictions is dependant on:

- The existing TIF activities on the particular site.
 - The eligibility of certain taxing jurisdictions based on the specific review process pursued by that authority on that site.
1. If the site of a Brownfield Redevelopment Authority project is located in an existing TIF authority's district, such as a DDA, the Brownfield Redevelopment Authority can only capture those tax revenues not captured by the other authority. The DDA may be capturing all property tax revenues to pay off an eligible obligation like a bond, it may be capturing only local property tax revenues, it may be capturing an agreed upon percentage of all property tax revenues or it may be capturing none of the property tax revenues. The Brownfield Redevelopment Authority can only capture those non-debt property tax revenues not already being captured.
 2. For each particular project site, a Brownfield Redevelopment Authority may choose to capture all of the available property tax revenues (school and non-school) or only the non-school portion of the available property tax revenues. If the Authority chooses to pursue the available school property tax revenues for the site's eligible environmental activities, the MDEQ must approve the environmental Work Plan. If the Authority is representing a Core Community and seeks to capture the available school property tax revenues for the eligible economic development activities that are exclusive to Core Communities, the Authority must apply to MEGA.
 3. The maximum time period to capture taxes to reimburse eligible costs associated with a project is 30 years.
 4. An Authority may issue bonds to finance the eligible activities.
 5. An Authority can capture school taxes for five years after the costs of the eligible environmental activities are reimbursed. Those excess taxes captured must be placed into a local site remediation revolving fund and can be used for eligible activities at other sites in the municipality.

Why Would a Community/Business Want to Consider Brownfield Authority Tax Increment Financing?

- The advantages of using Brownfield Authority Tax Increment Financing are:
- Tax Increment Financing through an Authority allows a community to pay for eligible environmental and in some instances public infrastructure expenditures.
- The community may create its own remediation fund through excess TIF capture to address long term redevelopment issues.

III. Brownfield SBT

The Brownfield Single Business Tax (SBT) Credit, (Public Act 143 of 2000), as amended, provides an incentive in the form of a tax credit for eligible redevelopment investments on brownfield property. *The credit is against the Single Business Tax liability of the developer.*

Available Grants for Brownfields

There are only two grant programs available through the State of Michigan. Currently, no grants are issued until budget is settled)

http://www.michigan.gov/deq/0,1607,7-135-3311_4110_29262---,00.html

The other is the EPA's brownfield program- www.epa.gov/brownfields and they just gave out their funds for this year. Funding for next year will probably be announced in the fall, but cleanup funds are hard to come by. Ron Smedley, MDEQ can discuss this in more detail.

Helpful Brownfield Redevelopment Links

MDEQ http://www.michigan.gov/deq/0,1607,7-135-3311_4110---,00.html

ASTI Environmental <http://www.asti-env.com/>

Oakland Brownfield Initiative <http://www.oakgov.com/waste/brownfield/>

Oakland County B.R.A http://www.oakgov.com/waste/brownfield/bra_about.html

ICMA <http://www.icma.org/main/topic.asp?tpid=19&hsid=10&t=0>

EPA <http://www.epa.gov/>

List of known Part 201 facilities in Novi- <http://www.deq.state.mi.us/part201ss/>
(Just type in Novi- there are two former landfills listed.)

List of known Part 213 Leaking Underground Storage Tank sites
<http://www.michigan.gov/deq/0,1607,7-135-3311---,00.html>

Under Featured Online Services- Leaking Underground Storage Tanks When you get to the database server- Click on the Leaking Underground Storage Tank Tab- and then enter the city into the Search Criteria. You will get a list of 14 sites. You can also look at all of the Underground Storage Tank sites- same type of search, 30 sites listed here.

List of all sites in our Waste Data Systems database
(basically any company that uses or stores hazardous materials including UST sites).

<http://www.michigan.gov/deq/0,1607,7-135-3312---,00.html>

Look under Featured Online Services

Waste Data System (the last bulleted item) there are 388 sites (5 of the 393 that come up are in Casanovia)

For Brownfield related information- you might be specifically interested in finding out about Act 381, the Brownfield Redevelopment Financing Act

http://www.michigan.gov/deq/0,1607,7-135-3311_4110_23246---,00.html

Targeted Brownfield Incentives

http://www.michigan.gov/deq/0,1607,7-135-3311_4109_4217-9546--,00.html

Footnote:

This packet is intended to offer an overview of Brownfield Development as well as beginning dialogue for Council. Realizing that the one hour meeting may limit some questions from Council/EDC, if between now and June 4th there are specific questions that you wish answered prior to the meeting, please feel free to contact me so that I can get that information to you prior to the meeting. – Ara T.