



Manistee County Planning Building - 395 Third Street - Manistee, Michigan 49660

MANISTEE COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY

MEETING AGENDA

Thursday, July 22, 2021

Immediately following the County Planning Commission meeting

- A) Call to order, Pledge of Allegiance and Roll Call
- B) Housekeeping Business
 - a) Approval of July 22nd Meeting Agenda
 - b) Approval of Minutes of February 25, 2021
- C) Conflict of Interest

Members of the Brownfield Redevelopment Authority will be asked to declare any interest that could give rise to conflict in relation to any item on the agenda at the beginning of the item in question. All interests so disclosed will be recorded in the minutes. If the chairman of the meeting deems it appropriate, the member shall absent himself or herself from all or part of the Authority's discussion of the matter.
- D) Public Comment
- E) New Business
 - a) Election of Vice Chair
- F) Old Business
 - a) Joslin Cove Brownfield Plan Analysis
- G) Any Other Business from Brownfield Redevelopment Authority Members
- H) Adjournment



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DRAFT

6:15 p.m., Thursday
February 25, 2021

Manistee County Planning Building
395 Third Street
Manistee, Michigan

**MANISTEE COUNTY BROWNFIELD REDEVELOPMENT AUTHORITY
MINUTES**

The Brownfield Redevelopment Authority is operating remotely and electronically by Zoom under PA 254 of 2020 due to the COVID-19 pandemic.

A. Call to Order, Pledge of Allegiance and Roll Call

The meeting was called to order by Chair Sharon Goble at 6:15 p.m.

MEMBERS PRESENT: Bob Rishel—City of Frankfort, Phil Landis—Stronach Township, Ted Batzer—Stronach Township, Margaret Batzer—City of Manistee, Glenn Zaring—City of Manistee, Mary Becker-Witt—St. Augustine, FL, and Sharon Goble—Pleasanton Township

MEMBERS ABSENT: none

Ex-OFFICIO MEMBERS PRESENT: Mike Szokola, Interim Planning Director; Zach Sompels, Planner 1/City Zoning Administer, Katie Mehl, Planner 1, and Nancy Baker, Assistant to Planner/Planning Secretary—all in the Planning Department Office, City of Manistee

OTHERS PRESENT Lisa Sagala—County Administrator, and Robert Blackmore—Onkama Township

B. Housekeeping Business

a. Approval of the February 25, 2021 Agenda.

Mr. Rishel moved, seconded by Mr. Zaring to approve the February 25, 2021 Agenda as printed.

**Roll Call vote: Ms. Becker-Witt, yes; Ms. Goble, yes; Mr. Landis, yes; Mr. Rishel, yes; Commissioner Batzer, yes; Mr. Batzer, yes and Mr. Zaring, yes.
Motion passed.**

b. Approve January 28, 2021 Minutes.

Commissioner Batzer wished to add to the minutes the notation of operating under PA 254 of 2020 due to the pandemic.

Mr. Batzer moved, seconded by Ms. Becker-Witt to approve the January 28, 2021 minutes as amended.

**Roll Call vote: Ms. Becker-Witt, yes; Ms. Goble, yes; Mr. Landis, yes; Mr. Rishel, yes; Commissioner Batzer, yes; Mr. Batzer, yes and Mr. Zaring, yes.
Motion passed.**

D. Conflict of Interest

There are no members with a conflict of interest regarding the agenda item.

E. Public Comment.

None

E. New Business

a) Review of Agreement for Joslin Cove

Mr. Szokola stated the Brownfield Agreement for Joslin Cove is 15 years old and has been amended 3-4 times. The agreement states fees may be used for administrative review of the agreement to be sure things are done correctly and reimbursements are done within reason. Mr. Szokola is seeking approval to take this to Ways and Means.

Mr. Rishel moved, seconded by Mr. Zaring to approve taking the Brownfield Agreement for Joslin Cove to Ways and Means to seek professional review of the agreement to assure reimbursements and other aspects of the agreement are being issued correctly.

**Roll Call vote: Mr. Zaring, yes; Ms. Goble, yes; Mr. Landis, yes; Mr. Rishel, yes; Ms. Becker-Witt, yes; Mr. Batzer, yes and Commissioner Batzer, yes.
Motion passed.**

F. Old Business

None

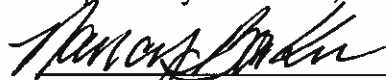
G. Other business from Brownfield Redevelopment Authority members or staff.

None

H. Adjournment.

Meeting was adjourned by call of the chair at 6:28 p.m.

Respectfully submitted,



Nancy Baker, Planning Assistant
Recording for Mary Becker-Witt
Brownfield Authority Secretary
Date: February 25, 2021

Joslin Cove Brownfield Plan Analysis

Manistee County Brownfield Redevelopment Authority

July 2020

The following is an analysis of the Joslin Cove Brownfield Plan in Manistee, Michigan under the auspices of the Manistee County Brownfield Redevelopment Authority.

The analysis includes background on Act 381, the original Brownfield project in 2006, and the revised Brownfield project in 2016, with information on the key elements of the arrangements for Brownfield Tax Increment Financing (TIF) for Brownfield Eligible Activities for the Joslin Cove project.

Summary

- Manistee Lakes, LLC are in default of the Development and Reimbursement Agreement by not paying taxes on time and not meeting performance milestones.
- There do not appear to be enough Brownfield TIF revenues to fully reimburse the City for the pump station within three years.
- There is a basis to withhold payment to the Developers and ultimately to terminate the Development Agreement and potentially the Brownfield Plan.
- Brownfield TIF Revenues and Payments have been documented and reconciled.
- A meeting with the Developers, the City, and the MCBRA is recommended to determine if there are any remedies and, if not, inform the parties that the process to terminate the Agreement will be initiated.

Background

Act 381, PA 1996 as amended, Michigan's Brownfield Redevelopment Financing Act (Act 381) provides for reimbursement of certain Brownfield Eligible Activities through the capture of increased future taxes generated by additional private investment on Brownfield Eligible Property. A Brownfield Plan must be approved by a Brownfield Authority and the governing body and if a County Brownfield Authority, the local governmental unit in which the project is located must concur with the Brownfield Plan. For capture of School Operating and State Education Taxes, an Act 381 Work Plan must be approved by the Brownfield Authority and by the Michigan Department of Environment, Great Lakes and Energy (EGLE) - formerly the Michigan Department of Environmental Quality (MDEQ) for Environmental Eligible Activities and the Michigan Strategic Fund (MSF) - formerly the Michigan Economic Growth Authority (MEGA).

Brownfield Eligible Property must qualify as contaminated (Part 201 Facility), blighted, functionally obsolete, or historically designated. Property owned by a land bank authority or tax reverted property owned by a Qualified Local Government Unit (Core Community), a county or the state also qualify as blighted.

There are two primary categories of Brownfield Eligible Activities: Environmental and Non-Environmental. Environmental Eligible Activities include Baseline Environmental Assessments to provide an exemption from environmental liability for pre-existing contamination, Due Care Activities to prevent exposure to or exacerbation of pre-existing contamination, and Additional Response Activities to protect human health and the environment. Non-Environmental Eligible Activities include lead and asbestos and demolition, and for Qualified Local Governmental Units (Core Communities), including the City of Manistee, and property owned by a land bank authority, site preparation, infrastructure, and property acquisition for economic development purposes.

Joslin Cove Brownfield Plan - 2006

A Brownfield Plan was proposed for the former AD Joslin building at 111 Arthur Street and the former Moonlite Motel at 123 Arthur Street to be demolished and construct six three-story buildings each containing six or eight residential waterfront condominiums with attached parking garages. The project also included boat docks on Manistee Lake, recreation building, boardwalk, and public sidewalk.

The original Brownfield Plan included Environmental and Non-Environmental Eligible Activities totaling \$1,756,223. Act 381 Work Plans for approval of State tax capture were prepared, submitted and approved by MDEQ for Environmental Eligible Activities on September 7, 2006 and by MEGA for Non-Environmental Eligible Activities on September 19, 2006 totaling \$1,612,100.

The following is a summary breakdown of the Eligible Activities.

Eligible Activities	Subtotal	Brownfield Plan Total	Act 381 Work Plan Approval
Environmental Eligible Activities		\$179,950	\$160,950
Baseline Environmental Assessment	\$19,000		
Due Care Activities	\$155,950		
Act 381 Work Plan	\$5,000		
Non-Environmental Eligible Activities		\$1,546,273	\$1,451,150
Site Preparation	\$1,405,461		
Infrastructure	\$140,812		
Administrative and Operating Costs		\$30,000	
TOTAL		\$1,726,233	\$1,612,100

The developers were also approved for a Brownfield Single Business Tax Credit of \$1 million by the Michigan Economic Growth Authority on September 26, 2006.

Joslin Cove Brownfield Development and Reimbursement Agreement

Prior to independent representation for the MCBRA, a Brownfield Development and Reimbursement Agreement was prepared by the developers’ representative and executed between the City of Manistee and West Coast, LLC effective August 1, 2006. A review of the Agreement noted that the City of Manistee did not have the authority to obligate the Manistee County Brownfield Redevelopment Authority to the terms and conditions of the Agreement.

Subsequently, a Brownfield Development and Reimbursement Agreement using the same format with modifications was negotiated and executed between the MCBRA and West Coast, LLC, effective February 26, 2007.

The following are the key provisions of the Agreement:

- The Developer was required to complete construction within 36 months after the Act 381 Work Plans were approved and after all other governmental approvals. The Act 381 Work Plans were approved on September 7, 2006 by MDEQ and September 19, 2006 by MEGA. Assuming that all approvals were in place by this time, the project was to be completed by September 19, 2009.
- The reimbursement period was limited to 72 months after the Act 381 Work Plans were approved and after all other governmental approvals, which would be September 19, 2012.

- Real and personal property taxes must be paid in a timely fashion, before any additional interest penalty for late payment is applied.
- The Authority may: 1) withhold future payments, 2) recover reimbursement payments already disbursed, or 3) terminate this Agreement for non-compliance with the Agreement.

Original Brownfield Project Implementation

The Brownfield Plan and Act 381 Work Plans establish the maximum budget for Eligible Activities. Reimbursement is based on actual Eligible Activity expenses, as documented and submitted to the Brownfield Authority for review and approval.

Eligible Activity expenses were submitted by the developers totaling \$1,292,921.22 for review and approval by the Manistee County Brownfield Redevelopment Authority. The MCBRA approved Eligible Activity expenses totaling \$1,135,934.77 on December 19, 2007.

Eligible Activity	Act 381 Work Plan Budget	Requested Amount	Recommended Amount
Environmental	\$160,950	\$222,727.70	\$130,299.25
Site Preparation	\$1,334,460	\$1,013,647.02	\$949,088.02
Infrastructure	<u>\$115,690</u>	<u>\$56,546.50</u>	<u>\$56,546.50</u>
Total	\$1,611,100	\$1,292,921.22	\$1,135,934.77

Over the next three years, Brownfield TIF capture and reimbursement was made to West Coast, LLC in the amount of **\$217,879.67**, leaving a balance of \$918,054.08.

	2007	2008	2009	Total
State Brownfield Captured Taxes	\$16,729	\$35,290	\$24,873	
Local Brownfield Captured Taxes	\$29,710	\$62,671	\$44,171	
Local Site Revolving Fund	\$0	\$0	\$0	
	\$46,439	\$97,961	\$69,044	\$213,444

(From previous information - Need to reconcile these numbers with amount above)

In 2009, payments were terminated. The project was affected by the Recession, construction stopped, Summer Taxes were not paid and, as a result, Brownfield TIF payments were terminated.

Restarted Brownfield Project

In 2014, the County was contacted by a representative of one of the original owners, Warren Stansbury, who desired to start the project back up and requested reimbursement for the balance of previously approved Eligible Activity costs.

After a few starts and stops, the remaining developer came back in February 2016 with a proposal to proceed with the project as long as they can be reimbursed for the prior Eligible Activities. (Letter attached).

Amended Brownfield Plan: An Amended Brownfield Plan was prepared and approved in July/August 2016 that extended the period of capture and amended the Eligible Activity budget for line-item adjustment and the addition of a pump station improvement that served the development. The overall Eligible Activity budget remained the same. Table 1.2 MSF Non-Environmental Eligible Activities from the amended Brownfield Plan that shows the adjustments is attached. The amended Brownfield Plan is also attached that provides a narrative of the situation in the Project Summary as well as the Introduction. The Brownfield Plan anticipated reimbursement of the Eligible Activity obligation in 10 years from 2016, but did not include a specific capture termination date other than the 30 year maximum under Act 381.

Development Agreement: A Development Agreement was negotiated between the County BRA, the City and the Developers which provided in Section 2.2 on page 6 payment of Brownfield TIF revenues first for MCBRA admin costs, second for the payment for the pump station in three equal payments and third, the balance to the developer of already approved Eligible Activities of \$918,550.10 and for any additional Eligible Activities per the Amended Brownfield Plan and approved by the MCBRA. The Development Agreement did not include a specific capture termination date other than the 30 year maximum under Act 381.

The Agreement also includes the following performance requirements of both the Developer and the City in Section 2.1 on page 5.

Section 2.1 Construction of the Developments

- (a) Developer will initiate redevelopment of the Manistee Lake Condominiums – Joslin Cove property, within two (2) months of the execution of this Agreement. Substantial completion, which means receipt of occupancy permits for all units, of Developer's Development Phase I, which is eighteen (18) condominium units, the gazebo, and the public sidewalk as described in the Development Site Plan in Exhibit A, shall be within eighteen (18) months of commencement, but may be extended to a total of twenty-one (21) months of commencement by the mutual agreement of the parties.
- (b) Developer will complete the entire Development Project, including a total of forty (40) condominium units, the gazebo, and sidewalk within forty-eight (48) months of the execution of this Agreement; and will be responsible for ongoing maintenance of the sidewalk and gazebo, and will maintain public access to the sidewalk and gazebo. Developer shall insure that the Condominium Master Deed and related documents reflect that ongoing maintenance after the Developer completes the project shall be the responsibility of the condominium homeowner's association.
- (c) If the Development Project is not completed by the Development Completion Date, within forty-eight (48) months from the date of execution of this Agreement, the Eligible Activity obligation balance to the Developer will be reduced by four percent (4%) per month for each month after the Development Completion Date.
- (d) The City shall initiate the upgrades of the Arthur Street Pump Station and/or Joslin Pump station within three (3) months of the Development Completion Date. Construction of pump station upgrades shall be substantially complete within twelve (12) months of commencement of same, unless extended by the mutual agreement of the parties.

(Need to gather information on performance requirements and get executed agreement)

The following are the Brownfield captured taxes as reported by the County Treasurer and input into the State reporting portal:

	2017	2018	2019	Total
State Brownfield Captured Taxes	\$8,922	\$7,937	\$11,888	\$28,747
Local Brownfield Captured Taxes	<u>\$12,279</u>	<u>\$13,794</u>	<u>\$22,509</u>	<u>\$48,582</u>
	\$21,201	\$21,731	\$34,397	\$77,329

A concern is the relatively low amount of capture. In 2019, \$34,397.13 was captured, less than the estimated \$50,000 per year payments for the pump station.

Key Questions

- Have the performance requirements been met? Based on anecdotal information, it appears that the development has not met the construction timeline.
- Have the Eligible Activity expenses been submitted by the City and the Developer to the MCBRA? The MCBRA is not obligated to approve invoices submitted later than one year after the invoice date.
- What are the remedies? It appears that a meeting is necessary with the developers and the City to determine whether there are any options to continue capture and reimbursement.
- Is there a basis to terminate the Brownfield Plan, as well as the Development Agreement?
- Can the payment to the City be extended beyond the three years anticipated in the Development Agreement because of a lack of Brownfield TIF revenue.

Next Steps

- Review Eligible Activity costs for City pump station and approve long term obligation for reimbursement.
- Determine if any additional Eligible Activities were conducted by the Developers.
- Compile all Brownfield TIF revenues and payments to the MCBRA, City, and Developers.
- Estimate 2021 revenues based on Taxable Value as of December 31, 2020 to determine if revenues are projected to increase to reasonably meet the long term obligations.