

Brownfield Plan Amendment for 303 N. Fifth Ave., 312/314 Detroit Street, Ann Arbor City of Ann Arbor City Council

Meeting Date: August 21, 2023

Brownfield Plan Amendment Version July 21, 2023

Proposed Project:

The petitioner is seeking a Brownfield Plan Amendment, due to unanticipated environmental and sub-surface conditions discovered during site excavation. The original Brownfield Plan was approved on August 3, 2022 by the County Board of Commissioners. The effect of the Brownfield Plan Amendment would be to increase the requested developer-reimbursable Environmental Eligible Activities from \$2,674,011, to \$3,298,995. This is an increase of \$624,984, or 23%. This increase also results in an increase to the County Local Brownfield Revolving Fund capture from a projected \$750,776 to \$893,842, and from \$206,465 to \$247,296 for the State of Michigan Revolving Fund.

Site construction began at the end of 2022. Currently, the site has been excavated, but no foundations or vertical construction has commenced.

The project includes demolition of several existing single-story buildings and a parking lot on three adjacent lots (0.2 acres total), and construct a 30,000 s.f. five-story flatiron style mixed-use residential and retail building with underground and integrated ground level parking. Approximately 1,900 s.f. of retail or office will be located in the northern tip of the building. A total of 14 condominiums are proposed.

Ten parking spaces will be located in the portion of the ground level not proposed for office/retail, and another 13 spaces below ground level. The parking will be accessed via a commercial drive from North Fifth Avenue. The building is proposed to be LEED Gold certified.

No new environmental activities are proposed. The requested amendment to increase reimbursement by \$624,984 is a result of increased costs due to discovery of subsurface material that prevented driving of piles. It was necessary to excavate down 10 ft., requiring additional equipment, time, and labor, and then drive the piles required for sheeting and shoring for the planned soil remediation. This resulted in the additional cost. The increase of \$624,984 includes a 15% contingency, therefore the 15% Contingency in the Plan Amendment increased from \$337,241 to \$418,760.

The 15% Contingency remains in place to accommodate other potential increases in costs related to other Eligible Activities not yet conducted, such as soil excavation, transportation and disposal. This is done also because the allocated Contingency amount was not sufficient to fully address the unanticipated increased costs. Finally, as with the original Brownfield plan, Non-Environmental activities are not being requested.

The developer is now projected to be fully reimbursed in 9 years, instead of 8, and all Eligible Activities are projected to be reimbursed after 10 (instead of 9) years, including Administrative and Local Brownfield Revolving Loan capture. The Plan still caps the Brownfield Plan at 12 years maximum.

All three existing parcels meet the definition of a “facility” due to the presence of arsenic, barium lead, mercury, selenium, and zinc in the soil beyond residential use criteria established by the Michigan Department of Environment, Great Lakes, and Energy (EGLE).

In 2019, the City Council adopted the City of Ann Arbor Brownfield Policy, and the proposed Brownfield Plan is reviewed per this policy as follows:

Brownfield Plan Review Criteria

1. Developer-reimbursable Brownfield TIF shall not exceed 20% of overall project investment. This limit does not apply to projects with \$3 million or less in private investment, not including property acquisition costs.

The Brownfield Plan meets this standard. Proposed developer-reimbursable Brownfield TIF was \$2,674,011 (16%) of a total project investment of \$17,000,000, and is now \$3,298,995, or 19%. The total project investment is likely higher, but was not reflected in the Amendment.

2. Brownfield TIF incentives shall not be reimbursed to (benefit) a Liable Party, nor used to finance brownfield activities that are otherwise the legal responsibility of a Viable Liable Party. Primary Responsible Parties are identified and pursued by the MDEQ.

Plan still meets standard. To staff’s knowledge, no Viable Liable party has been established by the Department of Environment, Great Lakes, and Energy (EGLE).

3. If a project includes residential land use, and Non-Environmental Eligible Activities are requested, and is not already paying a Fee in Lieu of providing affordable housing as part of a Planned Unit Development, affordable housing must be included. In those cases at least 15% of the total number of units must be provided to households that earn a maximum of 60% of the Area Median Income, with rents established using MSHDA rents and MSHDA PHA Utility Allowances, for at least 99 years.

- a. If for-sale residential units are proposed, AMI limits still apply and sales price will be limited to maintain affordability over the required affordability period.

This standard still does not apply, as Non-Environmental Activities are not being requested.

4. If a project does not include residential land use, and is not already paying a Fee in Lieu as part of a Planned Unit Development, and Non-Environmental Eligible Activities are requested, a payment in lieu of providing the required affordable housing is required. The payment in lieu amount shall be \$50,000 + 2% of the overall private investment, to be reserved by the Brownfield Authority and remitted to the City from first Tax Increment capture available for reimbursement to developer for Eligible Activities.

This standard still does not apply, as Non-Environmental Activities are not being requested

5. If only Environmental Eligible Activities are requested, affordable housing is not required, and the project will generally be supported with the assumption of the inherent benefits of a cleaner environment and protection of public health. The City strongly favors additional remediation beyond minimum required for Due Care and compliance with applicable environmental standards. Examples include remediation beyond property boundaries within adjacent street

rights-of-way and properties where such actions will result in meaningful current and/or future protection of public health.

City and County Brownfield Staff previously asked the developer's environmental consultant to explore extending any remediation beyond property boundaries, if feasible. Given the tight street configuration and small parcel size, "chasing" any further remediation is not possible without compromising public streetscapes, sidewalks, and utility burials. Also, shoring will be needed to reach the 16 ft. depth for soil excavation, thereby holding back any subsurface soils off-site.

6. Additionally, Non-Environmental Eligible Activities will only be considered if:

- i. Total of non-environmental activities does not exceed environmental, unless the project provides affordable housing, or Fee in Lieu, in accordance with #4, above; AND

This standard does not apply.

- ii. Projects that can demonstrate the project meets MEDC requirements, and the MEDC has given verbal conceptual support for the project. However, projects may be supported that do not qualify for MEDC support, if determined to be a local priority;

The Brownfield Plan still meets this standard. As no Non-Environmental Activities are proposed, MEDC approval is not required. EGLE will approve the Environmental Activities.

AND

- iii. A real financial gap in project feasibility can be demonstrated.

The developer has demonstrated that a gap in project feasibility exists and the amendment is warranted.

7. Public Infrastructure Non-Environmental Eligible Activities must demonstrate an area-wide benefit, and not only serve the proposed development. The proposed infrastructure upgrade shall not be an improvement that would otherwise be required to support the development. The City also encourages infrastructure that result in exemplary improvements in energy efficiency.

This standard does not apply.

8. The environmental conditions and/or extraordinary costs associated with urban, infill development prevent a reasonable Return on Investment for the developer.

The developer has demonstrated that the amendment is necessary to allow a reasonable return on investment.

9. Interest, permit review fees, building review fees, sewer disconnect fees, as an additional brownfield eligible expense, will not be considered eligible expenses.

The Brownfield Plan still meets this standard.

10. Total TIF capture period for developer reimbursement may be limited to below the maximum 30 years allowed by statute, as negotiated with the City. Any such capture period shall explicitly identify duration and eligible activities, inclusive of administrative and local brownfield revolving fund activities.

While developer reimbursement will increase from 9 to 10 years, the Brownfield Plan is still proposed to be capped at 12 years.

Recommendation:

Staff Recommends approval of the Brownfield Plan Amendment. The purpose of the amendment is to directly address unexpected subsurface conditions on the site that significantly impacted the cost for the sheeting and shoring as part of the required soil remediation on the site. This amendment does not change the original conclusions regarding the financial analysis of the plan: The developer has demonstrated a financial gap exists in the feasibility of this project and the amendment allows for a reasonable return on the investment.

Resources:

[Ann Arbor Brownfield Policy](#)

[Link to Brownfield Plan Amendment](#)