

DRAFT Brownfield Plan for Village of Ann Arbor

City of Ann Arbor Brownfield Plan Staff Review for Brownfield Review Committee

Meeting Date: January 6, 2023

Brownfield Plan Version 10/14/22

Updated TIF Capture and
Reimbursement Tables Dated 12/29/22

Proposed Project:

The residential project consists of 6 parcels, totaling approximately 68 acres, to the east of Pontiac Trail and south of Dhu Varren Road, previously in Ann Arbor Township, was approved for annexation into the City of Ann Arbor in July 2022.

The petitioner proposes to construct 484 dwelling units, which initially included 320 stacked apartment units on the south side, and 164 for-sale townhome units on the north side. The unit mix has been slightly amended to decrease the for-sale units from 244 to 164, and increase the apartments from 320 to 440. The unit mix does not significantly impact Tax Capture related to the Brownfield Plan. A total of 873 parking spaces are proposed. A public access easement will be provided from Pontiac Trail, east to Leslie Park.

The petitioner's environmental consultant, SME, [provided a summary of the environmental conditions on the site](#), the primary of which is the former historic landfill in the northeast corner, generating methane and potential vapor intrusion into dwellings. In addition, the City's environmental consultant, TetraTech, [has provided a December 11, 2022 review of the project](#).

A [Brownfield Plan dated October 14, 2022](#) has been submitted for City and County consideration. However, note that the [TIF Capture Table](#) and [Reimbursement Table](#) have been updated from those in the October Plan to reflect the new proposed unit mix. Developer reimbursement is now projected to be one year quicker, and the Plan is still projected to be 15 years, after all capture occurs for County Admin and Local Brownfield Revolving Fund (LBRF). The proposed starting capture date is 2027 in the updated tables, due to insignificant capture in the first two years. However, staff is not in support of delaying capture, as doing so does not provide any meaningful benefit.

The effect of the Plan would be to commit up to approximately \$31 million in Eligible Brownfield Activities, to be reimbursed using Tax Increment Financing captured on the increased taxes paid on the site after redevelopment, which is administered through the County Brownfield Authority. The developer would incur the extra costs to ensure the development and its occupants are safe in the future, which will be paid off over approximately 11 years for the developer, and several additional years for capture for the County Local Brownfield Revolving Fund (LBRF). Staff recommends a cap on the reimbursement period be set at 18 years.

The purpose of this report is to review the proposed Brownfield Plan and Eligible Activities for reasonableness and necessity, and whether the proposal is consistent with the City of Ann Arbor 2019 adopted Brownfield Policy.

Brownfield Plan Review Criteria – City of Ann Arbor Brownfield Policy

Ann Arbor City Council adopted a [Brownfield Policy in September of 2019](#). The purpose was to establish a clearer process for approval, and the approval guidelines for such requests.

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.

Plan meets this standard. Proposed developer-reimbursable Brownfield TIF is \$31,371,716 (14.6%) of a total project investment of \$214,434,229.

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 meets standard. The developer of the site that will receive the benefit of the incentive is not a Liable Party, and to staff's knowledge, no 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.

The proposal does not meet this standard. The project includes residential land use, and is not proposing to include affordable housing.

As shown in the Eligible Activity Tables in Appendix A of the Brownfield Plan, there is \$26.4 million on Environmental Activities, and approximately \$5 million in Non-Environmental Activities. The majority of the requested Eligible Activities, \$26.4 million, are necessary to address the extraordinary environmental conditions on the site. The Non-Environmental Activities consist of improvements requested by the City Planning Commission. These include construction contribution for roundabout at Dhu Varren and Pontiac Trail, Full Electrification of the for-sale units, solar street lights and clubhouse, and water harvesting through urban stormwater management. Five (5) percent simple interest is included to help offset the carrying costs for these activities.

The cost for these improvements requested will be represented and offset in the final Brownfield Plan as Site Preparation and eligible public Utilities improvements.

While increasing the supply of affordable housing is a stated community goal, sustainable and net zero developments have been more recently a focus, with climate change efforts increasing. The Brownfield Plan and proposed development, as currently planned, shift more benefits to

climate change, and do not increase the supply of affordable housing. City Council will determine whether the deviation from the Brownfield Policy to address affordable housing to instead address climate change and sustainability (and traffic mitigation) is an acceptable trade-off.

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 does not apply, as the development includes residential land use. See the previous Standard #3.

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.

The site includes a former unregulated landfill, and other environmental challenges, as detailed in an [August 9, 2022 summary memo](#) from the project environmental consultant, SME. The environmental conditions are extraordinary, and have been present for decades and posed a major impediment to redevelopment. While this development will not, and cannot, fully remediate this type of site, it will put the land back to productive use in a safe manner. Staff has reviewed the overall remediation approach with the City's Environmental Consultant, TetraTech, and revised the methane utility trench location to better isolate potential methane migration in the future. For more detailed information, refer to the [December 11th, 2022 TetraTech memo](#).

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
Plan meets standard. Non-environmental activities are less than Environmental.
 - 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;
Staff is aware that the developer has engaged MEDC on the likelihood of their support for the project, and State School capture for the Non-Environmental Activities. However, it is not clear if MEDC will support the project.

AND

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

Plan meets standard. The costs associated with environmental activities are material and have been a challenge to redevelopment.

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.

As discussed in Standard #3, requiring affordable housing for projects seeking Non-Environmental Activities, certain improvements are included in the overall cost of Eligible Activities, responding to City requests for electrification and sustainability, and traffic mitigation with a new roundabout at Dhu Varren and Pontiac Trail. The Roundabout would provide an area wide benefit by mitigating traffic for the neighborhood. The electrification and solar address energy efficiency. This standard is met.

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

Plan meets this standard. The support of environmental activities through Tax Increment Financing reimbursement will equalize this brownfield site to a comparable greenfield site.

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

Interest is included as a Non-Environmental Eligible Activity to address carrying costs of the additional activities/improvements related to the aforementioned sustainability items and roundabout. To the extent the City supports those costs, the Interest only allows the developer to cover the full cost of the additional items, due to the additional borrowing. Therefore, the Interest included in the Plan reflects and offsets the carrying costs of the requested items by the City.

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.

The Plan projects a 15 year period of capture, overall, but developer reimbursement in 11 years with the updated TIF Tables with capture starting in 2027. However, note that if capture starts in year 1 (2025), which is the staff recommendation, due to small initial capture, developer reimbursement will be 13 years. It is recommended maximum capture be set at 18 years, regardless, by including this condition in the Plan approval Resolution.

Recommendation:

Staff recommends City Council approve the Brownfield Plan, subject to the following conditions, and Plan revisions as necessary:

1. MEDC support of the project and approval of State School Tax capture to assist with reimbursement of Non-Environmental Activities. If MEDC ultimately does not approve the project, Non-Environmental Activities' reimbursement will be made with Local Millages only, but proportionally reduced pursuant to the Local/State millage proportionality in the approved Brownfield Plan.
2. TIF Capture should start in year one, and not be delayed to 2027. The TIF Tables and Brownfield Plan text should be updated to reflect this, and the updated version sent to Council.
3. Maximum capture for all approved Eligible Activities be limited to 18 years, and incorporated into the Brownfield Plan text, and made a condition of approval in the Plan approval Resolution.