

City of Ann Arbor Brownfield Review Committee

Staff Report

MEETING DATE: March 25, 2019

PROJECT: 309 N. Ashley

ADDRESS: 309 N. Ashley (206, 210 Miller, 307 N. Ashley)

**BROWNFIELD
PLAN DATE:** March 13, 2019

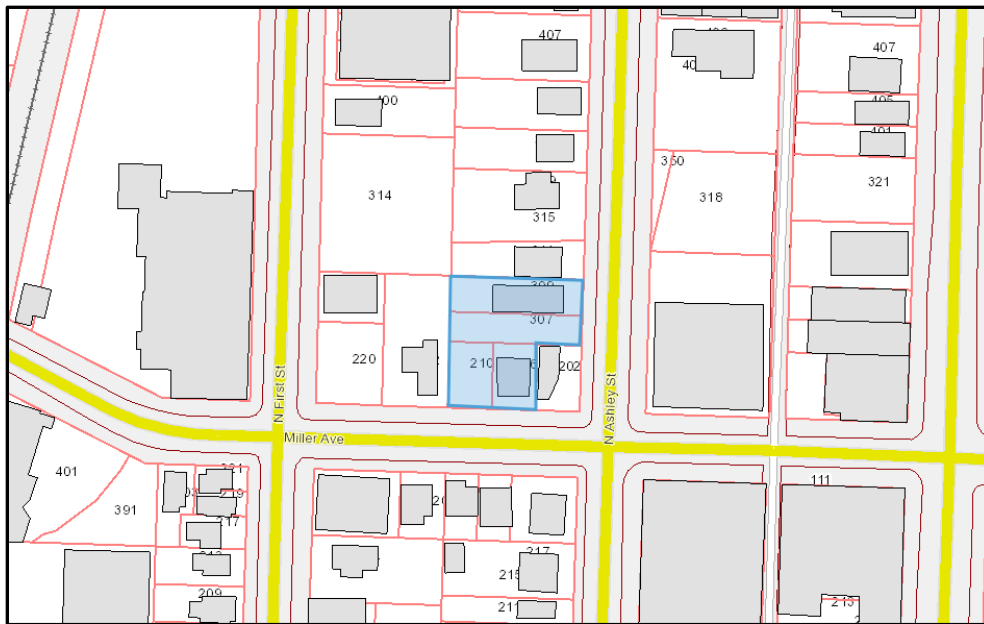


Figure 1 - Site Location

PROPOSED PROJECT: The applicant is proposing to construct a new five-story residential building providing about 17 dwelling units on a site created from four lots on the northwest corner of North Ashley and Miller Avenue. Total land area is 0.334 acres. Private investment is estimated at \$17,145,754.

The Site Plan was recommended for approval by Planning Commission in November 2018, and both the Site Plan and Brownfield Plan will go to City Council together for consideration. For purposes of the proposed Tax Capture, it's estimated that 75% of the condominium units will seek a Principal Residential Exemption. This means that those units will be exempt from the 18 mills of State School Operating Taxes, which is reflected in the TIF tables in the Brownfield Plan. Further, it's noted that while the project is located within the Downtown Development District, the DDA has reached its maximum capture allowed by local ordinance, therefore all millages usually captured by the DDA will be available for Brownfield Capture.

City of Ann Arbor Brownfield Review Committee

ELIGIBILITY: The four parcels involved are eligible for Brownfield Tax Increment Financing (TIF) as they are either a Facility, or Adjacent and Contiguous to a Facility, as defined by Part 201 of Michigan's Natural Resources and Environmental Protection Act. Act 381 requires that any property to be included in a Brownfield Plan for TIF be Eligible, or Adjacent and Contiguous to an eligible site.

BROWNFIELD PROCESS: The City of Ann Arbor participates with the Washtenaw County Brownfield Redevelopment Authority, and have successfully partnered on numerous previous Brownfield projects. The Brownfield Plan approval process is generally as follows:

1. *City Brownfield Review Committee makes recommendation on Brownfield Plan*
2. *City Council approves Brownfield Plan*
3. *County Brownfield Authority makes recommendation on Brownfield Plan*
4. *Washtenaw County Board of Commissioners notifies taxing jurisdictions, publishes notice of Public Hearing, holds Public Hearing and Adopts the Plan.*

The Brownfield Plan approval at the local level only secures the capture of local taxing millages in reimbursement of Eligible Activities. An Act 381 Work Plan is prepared and approved by the County Brownfield Authority for submittal to the MDEQ, which secures the dedication and capture of State School taxes towards financing of Eligible Activities. Note the Brownfield Plan includes specific language that states should the MDEQ not approve the use of School Tax Capture (unlikely), the local taxing jurisdictions will not make up the difference.

BROWNFIELD CONDITIONS: Please refer to the attached "Brownfield Conditions and Activities Summary," provided by the project environmental consultant, SME.

Three of the four parcels involved are contaminated with hazardous substances at levels above generic residential use criteria of Part 201, and thus meet the Part 201 definition of a Facility. The fourth parcel is Adjacent and Contiguous. The developer is not liable for the contamination and therefore is not a Liable Party. No Viable Liable Party exists for the historic contamination.

The adjacent corner lot and presumed source of the contamination was recently granted a Special Exception Use by the City Planning Commission for a Medical Marijuana provisioning center. As part of that project, the developer will remove known contamination above residential criteria, monitor indoor air conditions and maintain all exposure barriers. Occupancy will be conditional on the results of the indoor air sampling demonstrating no unacceptable exposure to occupants.

City of Ann Arbor Brownfield Review Committee

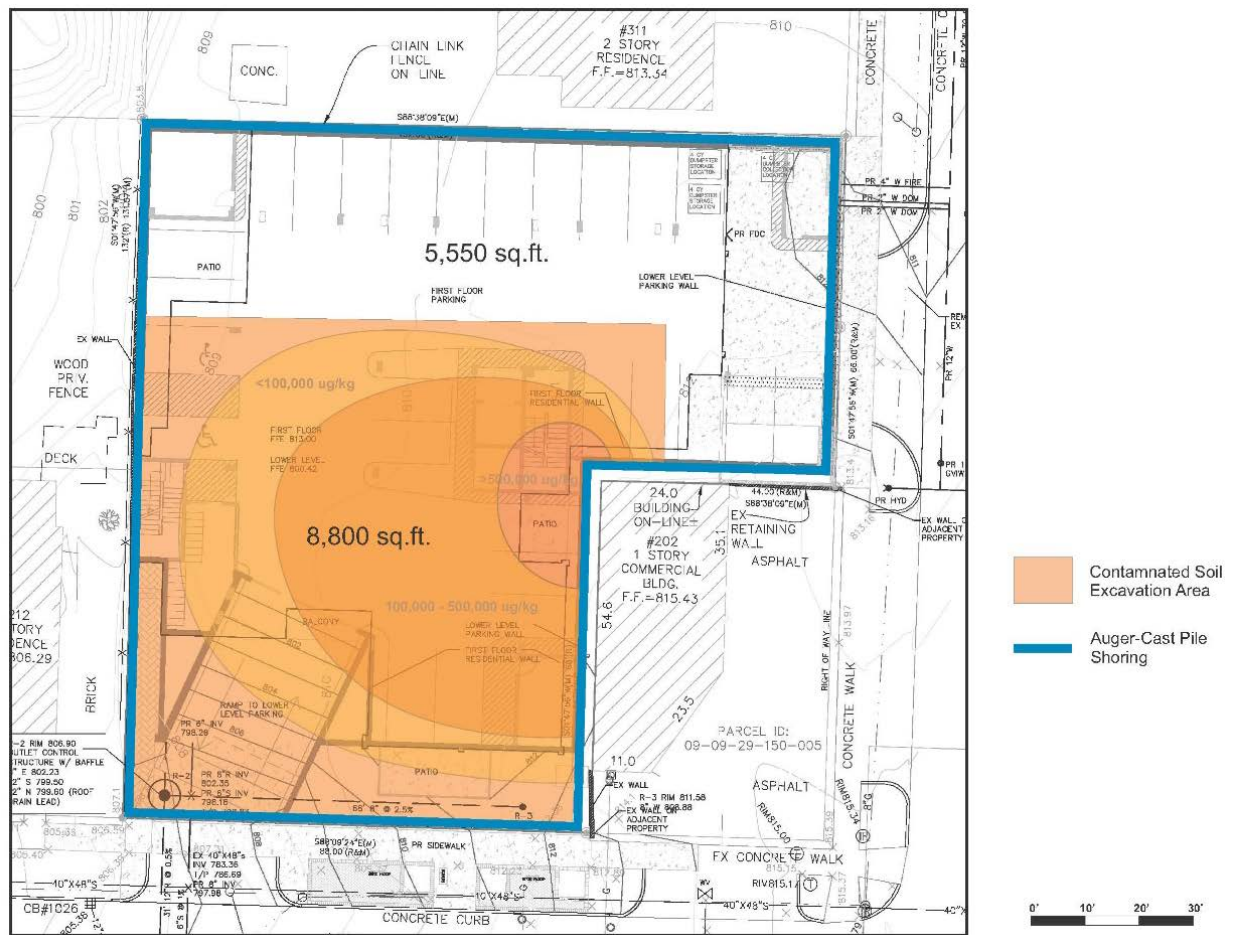


Figure 2 – Area of Proposed Contaminated Soil Excavation - SME

The source of the contamination is suspected to be historic releases from the previous gas station at 202 Miller, on the corner, which is not part of this project.

The planned design elements and response actions are proposed to address the threats to human health and the environment associated with the brownfield conditions on the properties:

- Removal and proper disposal of Asbestos Containing Materials (ACMs);
- Removal and proper disposal of soil contaminated at levels greater than Part 201 generic residential use criteria (approximately 9,400 tons);
- Use of vapor intrusion (VI) mitigation systems to protect residents from exposure to residual contamination on the site and the east-adjointing property; and
- Construction of a building and impervious pavement over any residual contaminated soil, which will significantly reduce precipitation infiltration and contaminant migration.

City of Ann Arbor Brownfield Review Committee

PROPOSED ELIGIBLE ACTIVITIES: Act 381 allows projects within the City of Ann Arbor to use TIF to finance both Environmental and Non-Environmental Activities. Only Environmental Activities are proposed to be financed using TIF. Here is Table 1 from the proposed Brownfield Plan, showing proposed Environmental activities to be financed through TIF:

ELIGIBLE ACTIVITIES	TOTAL ELIGIBLE COST
ELIGIBLE DEPARTMENT SPECIFIC (DEQ) ACTIVITIES⁽¹⁾	
BEA Activities⁽²⁾ Phase I ESA Phase II ESA BEA Report	\$ 12,600
Due Care Activities Due Care Planning Due Care Investigations Due Care Plans and Documentation ⁽²⁾ Site-Specific Health & Safety Plan ⁽²⁾ Security Fence Vapor Intrusion Mitigation Remediation of Petroleum-Contaminated Soil Transportation and Disposal of Excess Contaminated Soil Management and Disposal of Dewatering Effluent Dust and Track-out Control General Conditions Due Care Design, Engineering, Management and Coordination	\$ 1,753,250
Act 381 Work Plan⁽²⁾	\$ 15,000
Implementation of Act 381 Work Plan	\$ 30,000
Subtotal Environmental Activities	\$ 1,810,850
Contingency (15%)	\$ 188,172
Total Environmental Activities	\$ 1,999,022
BROWNFIELD PLAN	
Brownfield Plan²	\$ 40,000
TOTAL ELIGIBLE ACTIVITIES	\$ 2,039,022

Notes:
⁽¹⁾ Cost estimates are based on engineering, contractor, or developer estimates or consultant experience.
⁽²⁾ These costs are not included in the contingency calculation.

Figure 3 – Table 1 from Brownfield Plan – Brownfield Eligible Activities Cost Summary

In addition to the above developer-reimbursable costs to be financed with TIF, \$700,000

City of Ann Arbor Brownfield Review Committee

is included for deposit into Washtenaw County's Local Brownfield Revolving Fund (LBRF), a portion of which may be captured by the Authority to fund Administrative costs of the brownfield program. The LBRF fund is utilized to support Brownfield redevelopment projects in the region. Finally, \$191,154 will be captured for the State Revolving Brownfield Fund, which is the capture of 3 mills of the State Education Tax required by Act 381. These funds are distributed to the MDEQ and MEDC to support administrative operations of those agencies for TIF projects.

TIF Table 3 of the Brownfield Plan projects a 10-year TIF reimbursement period, which includes eight (8) years of developer reimbursement and the final two (2) years to complete final capture for the LBRF fund. The Plan assumes a three year period for full assessment, and a 1% increase in annual Taxable Value.

FINANCIAL ANALYSIS: City of Ann Arbor Financial & Administrative Services completed a Tax Increment Finance Analysis on February 7, 2019 (attached). This is a routine analysis that the City performs for any project seeking Brownfield TIF support. The purpose is to ensure the financial support requested is necessary to close a financial gap in the project that would otherwise render the project financially unfeasible.

The Analysis was conducted based on a previous version of the Brownfield Plan, where the developer was requesting \$5.5 million in eligible activities (\$2.4 M in Environmental activities, and \$2.1 M in Non-Environmental Activities). Based on this previous plan, it was recommended that only Environmental Activities be supported, due to a return of 15% to the developer, which was deemed excessive. As a result, the Brownfield Plan was updated to only include \$2 million in Environmental Activities.

The Analysis further recommends against the \$700,000 capture for LBRF and County Brownfield Program Administrative costs.

STAFF RECOMMENDATION: Staff recommends the Brownfield Review Committee recommend approval of the Brownfield Plan as submitted, but with the condition that maximum reimbursement be limited to 12 years, and with the further condition that, if capture is slower than anticipated and extended to the 12 year maximum, fully funding the LBRF will take priority over fully reimbursing the developer for Eligible Activities.

This recommendation is based on the following:

1. The proposed Eligible Activities are reasonable and will adequately address brownfield conditions on the site, and be protective of the environment and health of future occupants.
2. The requested TIF support will close a financial gap in the project and will not allow an unreasonable return to the developer.
3. Brownfield TIF is a discretionary tool of the City's in supporting brownfield

City of Ann Arbor Brownfield Review Committee

redevelopment of private development sites, and as such, the risk that projections in the Brownfield Plan, such as the number of years to fully reimburse all costs are not ultimately accurate, should be shared with the developer. Therefore, limiting total number of years to fully reimburse the Plan ensures the Plan does not extend unreasonably into the future.

4. County Brownfield Authority policy is for all Brownfield projects to include capture for LBRF and Administrative costs, which ensures the long-term viability of the brownfield program. The City has previously included these costs in all Brownfield Plans. Capturing these additional costs leverages City millages in capturing additional millages otherwise unavailable, which will more quickly enhance local redevelopment efforts. Therefore, staff recommends that LBRF and Administrative capture not be excluded from the Plan.