

Meeting Agenda
Brownfield Redevelopment Authority
Thursday June 27, 2024, 8:00 a.m.
Owosso City Council Chambers, 301 W Main Street
Owosso, MI

Call to order and roll call:

Review and approval of agenda: June 27, 2024

Review and approval of minutes: March 6, 2024

Communications:

Public Comments:

Public Hearings:

Items of Business:

1. Consider Consent and Clarification Agreement – Qdoba BRA (OLD BUSINESS)
2. Approve Developer Reimbursements and Balances
3. Approve Armory Brownfield Reimbursement Benefit Transfer
4. Approve BRA Meeting Schedule

Public Comments:

Board Comments:

Adjournment:

[The City of Owosso will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon 72 hours notice to the City of Owosso. Individuals with disabilities requiring auxiliary aids on services should contact the City of Owosso by writing or calling Amy Kirkland, City Clerk, 301 W. Main St, Owosso, MI 48867 (989) 725-0500 or on the Internet. The City of Owosso Website address is www.ci.owosso.mi.us.]

**MINUTES
OWOSSO BROWNFIELD REDEVELOPMENT AUTHORITY
MEETING OF MARCH 6, 2024**

Meeting was called to order at 8:00 a.m. by Chairperson Susan Osika.

Roll Call.

Members Present: Vice Chairperson Janae Fear, Members Gregory Brodeur, Michael Dowler, Dallas Lintner, Randy Woodworth, and Chairperson Susan Osika.

Members Absent: None (one vacancy).

AGENDA:

It was moved by Authority Member Brodeur and supported by Authority Member Woodworth to approve the agenda for March 6, 2024 as presented.

Yeas all. Motion passed.

MINUTES:

It was moved by Authority Member Brodeur and supported by Authority Member Woodworth to approve the minutes of the June 14, 2023 meeting as presented.

Yeas all. Motion passed.

COMMUNICATIONS:

None.

PUBLIC COMMENTS:

None.

**PUBLIC HEARING: **Owosso Brownfield Redevelopment District #23
Woodland Trails/Washington Park Redevelopment****

City Manager Nathan R. Henne began the hearing by describing the purpose of the plan and noting its complexity. The plan was developed by AKT Peerless and involves two separate properties, two developers, and two local governments. It proposes \$14,000,000 in capital investment, ultimately resulting in 30 new housing units within the City. Site #1 is the current Woodland Trails condominium development. The sewer system in the development was originally intended to become part of the City's sewer system, but construction deficiencies present since its installation have prevented the City from accepting it. The proposed Brownfield Plan will allow the City to fix the deficiencies, officially accept that portion of the sewer system, and be reimbursed for this expense which would normally be borne by a developer. Upon completion of the sewer repair, a developer has agreed to build out the remaining 14 units of the original development. Site #2 is the future Washington Park condominium development. Utilities infrastructure will be constructed, and 16 new housing units developed. All of the properties are currently held by the Shiawassee County Land Bank, thus making them eligible for Brownfield treatment. Mr. Henne concluded by recommending approval of the full 24-year plan, noting that the proposed plan does not score well according to the City's current tax abatement policy because the policy is geared toward economic development and not housing development.

Sam Seimer, VP of Economic Services for AKT Peerless Environmental Services and author of the proposed plan, indicated that the plan suggests a "public, public, private, private" partnership to accomplish the end goal. The developer of the Washington Park project will have the most investment to recoup, but will be the third party repaid, after the County and the City respectively. Due to the plan's complexity, she indicated that she would always be available to answer any questions.

Justin Horvath, representing the Shiawassee County Land Bank, said the SEDP will administer the plan which will result in 30 new homes in the City. J. W. Morgan Construction will complete the build-out for the Woodland Trails development and Venture Incorporated will be responsible for infrastructure development and build-out of the Washington Park project. He also noted that the City will be completely financially protected by the plan and related agreement for all City investments required by the projects.

There were no citizen comments.

Authority Member Dowler asked about adding a 5% administrative fee for the City to the plan. It was noted this addition would add another year to the plan.

City Manager Henne inquired if the plan needed to include specific language regarding costs that have already been incurred. He also noted that the School sinking fund millage expired in December of 2023 and should be removed from the plan.

Ms. Seimer indicated she will make the necessary changes to the plan.

Authority Member Dowler noted for the group that the Washington Park project will also have a PILOT agreement. Venture Incorporated representative Allan Martin indicated that in exchange for the PILOT the townhomes in the project will be rentals for the first 15 years, the units will then be sold according to income restriction guidelines.

The hearing was closed at 8:33 a.m.

Motion by Authority Member Brodeur, supported by Authority Member Woodworth:

RESOLUTION NO. 2024-01-BFA

**CITY OF OWOSSO
BROWNFIELD REDEVELOPMENT AUTHORITY
BROWNFIELD PLAN FOR THE WOODLAND-WASHINGTON PROJECT**

WHEREAS, the Michigan Brownfield Redevelopment Financing Act, Act 381, P.A. 1996 as amended, (the "Act") authorizes municipalities to create a brownfield redevelopment authority to promote the revitalization, redevelopment, and reuse of contaminated, blighted, functionally obsolete, historically designated or housing property through tax increment financing of eligible environmental, non-environmental, and/or housing development activities with an approved Brownfield Plan; and

WHEREAS, the City of Owosso City Council (the "City Council") established the City of Owosso Brownfield Redevelopment Authority (the "OBRA") under the procedures of the Act, to facilitate the cleanup and redevelopment of Brownfields within the City of Owosso; and,

WHEREAS, the Shiawassee County Board of Commissioners (the "Board of Commissioners") established the Shiawassee County Brownfield Redevelopment Authority (the "SCBRA") under the procedures under Act 381, to facilitate the cleanup and redevelopment of Brownfields within Shiawassee County; and

WHEREAS, a Brownfield Plan (the "Plan") has been prepared for the redevelopment of the Woodland Trails and Washington Park Properties located at 1493 N. Mallard Circle, 1491 N. Mallard Circle, 1487 N. Mallard Circle, 1485 N. Mallard Circle, 1479 N. Mallard Circle, 1477 N. Mallard Circle, 1473 N. Mallard Circle, 1441 Pintail Ct., 1411 N. Mallard Circle, 1430 N. Mallard Circle, 1426 N. Mallard Circle, 1424 N. Mallard Circle, 1406 N. Mallard Circle, 1408 N. Mallard Circle, and N. Washington Street, all of which are currently under control of the Shiawassee County Land Bank Authority (the "SCLBA"); and

WHEREAS, the City Council will review the Brownfield Plan for the Woodlands-Washington Project at a public hearing with notice of the public hearing and notice to taxing jurisdictions provided in compliance with the requirements of Act 381, the City Council will offer a Resolution of Concurrence and a Resolution of Understanding to authorize the Plan to be administered by the Shiawassee County Brownfield Redevelopment Authority; and,

WHEREAS, the SCBRA, pursuant to and in accordance with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the State of Michigan of 1996, as amended (the "Act"), will review and recommended for approval by the Shiawassee County Board of Commissioners, a Brownfield Plan (the "Plan") pursuant to and in accordance with Section 13 of the Act; and

WHEREAS, a public hearing on the Brownfield Plan is anticipated to be held by the Shiawassee County Board of Commissioners and notice of the public hearing and notice to taxing jurisdictions will be provided in compliance with the requirements of Act 381.

NOW, THEREFORE, Be It Resolved that the City of Owosso Brownfield Redevelopment Authority hereby approves the Brownfield Plan District No. 23 for the Woodland-Washington Project, and recommends approval of a Resolution of Concurrence and Resolution of Understanding by the City of Owosso City Council, and further recommends approval by the Shiawassee County Brownfield Redevelopment Authority, and Shiawassee County Board of Commissioners with the following changes:

1. the addition of lookback language for costs already incurred by the County and City
2. the addition of a 5% administration fee for the City
3. removal of the expired School sinking fund millage from the plan; and

BE IT FURTHER RESOLVED that should any section, clause or phrase of this Resolution be declared by the courts to be invalid, the same shall not affect the validity of this Resolution as a whole nor any part thereof, other than the part so declared to be invalid; and,

BE IT FURTHER RESOLVED that any prior resolution, or any part thereof, in conflict with any of the provisions of this Resolution is hereby repealed.

Yeas 6, nays 0. Motion passed.

ITEMS OF BUSINESS

Consider Consent and Clarification Agreement – Qdoba BRA District #16

City Manager Henne introduced the next topic saying that it was postponed from the last meeting while the Authority awaited an opinion from the City Attorney. The case involves a request from Qdoba to allow the sale of the property and change the terms of their loan repayment. On its original presentation, the Authority took no issue with the sale of the property, but questioned whether the TIF could be transferred to a new buyer, whether the developer is required to pay-off the MDEQ loan upon the sale of the property, and whether the developer should be reimbursed for any shortfall payments it was required to make.

Mr. Henne indicated the Authority is now in receipt of guidance from the City Attorney advising the board that while the TIF could be transferred to a new owner they are under no obligation to use tax capture to reimburse the developer for shortfall payments made over the course of the agreement. Mr. Henne further opined that it was never intended for the City to take responsibility for shortfall payments, and he does not want to see taxpayers ultimately saddled with an expense that rightfully belongs to the developer.

Authority Member Woodworth asked if the buyer of the property could assume the terms of the plan and related agreements. City Manager Henne indicated they could, but the loan would need to be paid in full

prior to the transfer. The MDEQ is insisting on sticking to the terms of the pass-through loan agreement it has with the City, making it difficult for the City to agree to changes in the terms of the City's corresponding loan agreement with Qdoba. Authority Member Woodworth protested, saying those terms penalize the developer for paying off the loan early. City Manager Henne indicated that Qdoba was welcome to negotiate different terms if they so desire, but it is not the City's responsibility to come up with the terms.

Authority Member Dowler noted that the developer has yet to deed the extra lot to the City the way they had suggested last summer.

Authority Member Woodworth said he felt it was a problem that the developer was not formally invited to today's meeting. City Manager Henne noted that their request had not changed, and it was on the developer to maintain their involvement. Authority Member Woodworth felt very strongly that he wanted the opportunity to hear from the developer before making a decision on the matter.

There was further discussion regarding whether the City was obligated to provide their attorney opinion on the matter to the developer.

Authority Member Brodeur asked if anyone could think of anything the developer could say that would cause the Authority Members to shift the burden of the shortfall payments to another party.

Motion by Authority Member Brodeur to deny the Consent and Clarification Agreement presented by Southwind Restaurants, LLC.

Motion supported by Authority Member Dowler.

Roll Call Vote.

AYES: Authority Members Brodeur, Dowler, and Chairperson Osika.

NAYS: Vice Chairperson Fear, Authority Members Lintner and Woodworth.

ABSENT: One vacancy.

Motion fails for lack of affirmative votes.

There was further discussion regarding notifying the developer of the next meeting and whether the attorney opinion should be shared. City Manager Henne cautioned the group saying the City would be treading on a slippery slope if it began reaching out to each person/organization that it thought might have an interest in a meeting. Some members expressed concern for the developer because the Authority only meets on an as-needed basis. Vice Chairperson Fear indicated that she would be comfortable addressing the issue again at the next meeting as long as the developer is notified.

The discussion then turned to whether the Authority should hold regular meetings and how frequently they should be held. It was noted that the City's auditors would like to see them establish some sort of regular schedule. City Manager Henne indicated he would put together a suggested schedule.

Authority Member Dowler inquired what should be done with companies receiving abatements that do not comply with the annual reporting requirements?

PUBLIC COMMENT:

None.

BOARD COMMENT:

None.

ADJOURNMENT:

Motion by Authority Member Woodworth to adjourn the meeting at 9:10 a.m., supported by Vice Chairperson Fear.

Yeas 6, nays 0. Motion passed.

Nathan R. Henne, City Manager

akk



MEMORANDUM

301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ WWW.CI.OWOSSO.MI.US

DATE: February 6, 2024
TO: Brownfield Authority
FROM: Nathan Henne: City Manager
SUBJECT: **Consider Consent and Clarification Agreement with Southwind Restaurants, LLC**

RECOMMENDATION:

Do not approve Consent and Clarification Agreement with Southwind Restaurants, LLC. SEE ATTORNEY OPINION.

BACKGROUND:

In 2015 the City of Owosso approved a DEQ Loan Agreement with the current owners of the Qdoba property. This loan agreement - along with a reimbursement agreement and brownfield plan – was a component of a project to redevelop the site of an old dry cleaning facility. As part of this loan agreement, the developer committed to assuming the responsibility of ensuring that the loan payments were made – even if the Tax Increment Revenue was insufficient to cover the payments. The developer has been in a position requiring that they make the loan payments whole because the TIR is indeed insufficient to cover the annual loan payments. Usually this developer payment is around \$8000/year that the city invoices the developer. The remainder of the loan payment is made with TIR that is captured per the brownfield plan.

The total loan amount was \$292,963 and was funded by the DEQ to be repaid by the tax capture. However, as stated above, that tax capture is insufficient to make the annual payments to the tune of about \$8,000/year.

In 2023, the owners contacted the city requesting the city allow them to sell the property. All that is required for this to be approved by the BRA is a letter from the owners making said request. The issue here is that the buyers wish to inject a “Consent and Clarification” agreement that defies the loan agreement – as well as the reimbursement agreement – and adds costs to the plan by requiring that the city reimburse the owner for all shortfall loan payments made by the developer as a result of the insufficient tax capture.

Agreeing to reimburse the owner for developer-paid loan payments made to the DEQ as a result of insufficient tax capture would directly violate the loan agreement and the reimbursement agreement. It is not in the BRA’s or City’s best interest to do anything more than agree to the transfer of ownership – if there is indeed a buyer.

Brownfield tax increment plans are inherently risky. And that risk is borne by the developer in projects like this. That’s why in every reimbursement agreement the city has for these projects, there is a section that explicitly states that the developer assumes the risk if the tax capture is not

sufficient to reimburse for all eligible costs. The BRA and the City should not begin straying from that important model because it would shift all the risk to the taxpayers.

FISCAL IMPACTS:

Unclear. Approving the consent agreement would extend the plan – thereby increasing the abatement approved by the city at the plan's outset.

CONSENT AND CLARIFICATION AGREEMENT

This Consent and Clarification Agreement ("Consent") is made as of _____, 2023, by and between Southwind Restaurants, LLC, a Michigan limited liability company ("Developer"), the Owosso Brownfield Redevelopment Authority (the "Authority"), and the City of Owosso, a Michigan municipal corporation (the "City"). Developer, the Authority and the City are sometimes hereinafter referred to collectively as the "Parties" or individually as a "Party".

BACKGROUND

MDEQ Loan Agreement. The City has entered into a CMI Brownfield Development Loan Contract dated _____, 2015 ("MDEQ Loan Agreement") with the Michigan Department of Environmental Quality (predecessor agency to the Michigan Department of Environment, Great Lakes and Energy) ("MDEQ") pursuant to which the City obtained a loan from MDEQ in the amount of \$292,963 ("MDEQ Loan"). The City provided the proceeds of the MDEQ Loan to Developer to be used in connection with agreed improvements and redevelopment expenditures (the "Project") at 910 East Main Street, Owosso, Michigan (the "Property") which is owned by Developer.

BR Loan Agreement. Developer and the City entered into a Brownfield Redevelopment Loan Agreement dated October 9, 2015 ("BR Loan Agreement"), to evidence their agreement regarding disbursement of the MDEQ Loan to Developer and repayment of the MDEQ Loan. As set forth in the BR Loan Agreement, it was intended that the MDEQ Loan would be repaid using capture of tax increment financing revenue ("TIF Revenue") generated by Project improvements at the Property. In the event TIF Revenue was inadequate to make a scheduled payment under the MDEQ Loan, Developer would be responsible to pay any such shortfall directly to MDEQ ("Shortfall Payments").

Reimbursement Agreement. Developer and the Authority are parties to a Reimbursement Agreement dated October 12, 2015 (the "Reimbursement Agreement"), pursuant to which the Authority has agreed to collect TIF Revenue generated by the Project improvements at the Property, and then use that TIF Revenue as follows: First, to repay the MDEQ Loan; then, to reimburse the Authority for planned administrative costs in the amount of \$1,500 per year ("Authority Costs"); then, to reimburse Developer for any other "Eligible Expenses" (as defined in the Reimbursement Agreement) ("Additional Developer Costs"); and then to provide funding to the Local Site Remediation Revolving Loan Fund.

Implementation of Development Agreements. The Reimbursement Agreement and the BR Loan Agreement are sometimes referred to collectively in this Consent as the "Development Agreements". As contemplated by the Development Agreements, the Authority and City have been capturing TIF Revenue to make payments on the MDEQ Loan, and Developer has been making Shortfall Payments as needed. The total of all Shortfall Payments made by Developer through the date of this Consent is \$49,135.80.

Proposed Sale of Property. Developer now wishes to engage in a sale and leaseback transaction with respect to the Property ("Transaction"). Pursuant to the terms of the Development Agreements, the City and the Authority must consent to any such sale unless Developer pays off the entire MDEQ Loan. Rather than require Developer to pay off the entire MDEQ Loan, the City and the Authority are

consenting to the Transaction and are further clarifying implementation of the terms of the Development Agreements as set forth in this Consent.

AGREEMENT

Accordingly, for their mutual benefit, and intending to be legally bound, and in consideration of the foregoing premises, the Parties agree as follows:

1. Consent to Sale. The City and the Authority consent to the Transaction.
2. TIF Payments under Development Agreements. To clarify the relative rights of the Parties and how the terms of the Development Agreements are to be implemented following the Transaction, the Parties agree as follows:
 - (a) Developer will enter into agreements in connection with the Transaction such that either Developer, as tenant, or the buyer, as owner, shall pay any and all real property taxes related to the Property on time and in full.
 - (b) The City and the Authority will continue to capture TIF Revenue and use TIF Revenue to make payments on the MDEQ Loan and for the other purposes set forth in the Reimbursement Agreement.
 - (c) Developer will continue to be responsible to make any Shortfall Payments as needed.
 - (d) Developer will place in escrow for the benefit of the City the amount of \$100,000 to be held as security in the event that Developer does not make one or more Shortfall Payments, such escrowed funds to be held pursuant to the terms of an Escrow Agreement in the form attached to this Consent as Exhibit A.
 - (e) Following payment in full of the MDEQ Loan, the City and the Authority will use TIF Revenue as and when the same becomes available to reimburse Developer for the amount of any Shortfall Payments paid by Developer.
 - (f) Once Developer is reimbursed in full for any and all Shortfall Payments, the City and the Authority will use TIF Revenue to reimburse the Authority for its Authority Costs and to fund the Local Site Remediation Revolving Loan Fund as contemplated by Section 2 of the Reimbursement Agreement, it being understood that Developer hereby waives any right or claim for reimbursement of Additional Developer Costs.
3. Miscellaneous. This Consent: shall be governed by the internal laws of the State of Michigan; may only be amended by further written agreement of all Parties; and is intended to be legally enforceable. Any legal action brought to enforce or interpret the terms of this Consent shall be brought solely in State or Federal courts serving Shiawassee County, Michigan, and all Parties hereby consent to

the personal jurisdiction of such courts and waive any right to object on the basis of inconvenient forum or improper venue. ALL PARTIES WAIVE THE RIGHT TO TRIAL BY JURY.

IN WITNESS of their intent to be legally bound by the terms of this Consent, the Parties have set forth the signatures of their authorized representatives below.

DEVELOPER:

SOUTHWIND RESTAURANT, LLC

By: _____

Its: _____

THE AUTHORITY:

OWOSSO BROWNFIELD REDEVELOPMENT AUTHORITY

By: _____

Its: _____

THE CITY:

CITY OF OWOSSO

By: _____

Its: _____

Exhibits:

A (Form of Escrow Agreement)



MEMORANDUM

TO: Nathan Henne, City Manager
FROM: Scott J. Gould, City Attorney
DATE: September 21, 2023
RE: BROWNFIELD ASSIGNMENT – QDOBA – 910 EAST MAIN ST.

- 1) **Question:** Does Public Act 381 of 1996 allow for an assignment of a Brownfield contract from the original developer to a subsequent purchaser?

Answer: Yes

- 2) **Question:** Does the Brownfield Redevelopment Loan Agreement between the City and Developer allow for the assignment of the contract from the Developer to a subsequent purchaser?

Answer: Yes, with the City's written approval.

- 3) **Question:** The second sentence of Paragraph 11 (Brownfield Redevelopment Loan Agreement) dictates that upon the sale of the property, net sales proceeds shall be paid to the City until the loan is satisfied in full; is this provision mandatory?

Answer: No, with advisement.

- 4) **Question:** Is the Developer to be reimbursed by the tax capture for the Developer's "shortfall payments" made over the term of this Agreement?

Answer: No; as stated in the Reimbursement Agreement, last sentence of Paragraph 9. "In the event the captured tax revenues are insufficient, the Developer assumes financial responsibility for any unreimbursed shortfall.

BACKGROUND

The City entered into a Brownfield Redevelopment Agreement with Southwind Restaurants, Limited Liability Company in the year 2015. The Agreement allowed for the redevelopment of property located at 910 East Main Street, which up to this point, was hampered by dilapidated structures that were underperforming commercially. There were concerns of hazardous materials in or about said property too. The City concluded that it was in its best interest to enter into a Brownfield Redevelopment with a private entity to address the aforementioned issues.

To date, it appears that the private entity (Developer) has performed as obligated by the Agreement, however, the Developer now seeks to sell the property ahead of the Agreement term. As part of the sale, Developer is seeking the City's approval of assigning its interest in the Brownfield Agreement to the purchaser. The term of this Agreement is set to expire by the year 2028.

- 1) **Question:** Does Public Act 381 of 1996 allow for an assignment of a Brownfield contract from the original developer to a subsequent purchaser?

Answer: Yes

RULE

Act 381 of 1996 authorize municipalities to create a brownfield redevelopment authority to facilitate the implementation of brownfield plans; to create brownfield redevelopment zones; to promote the revitalization, redevelopment, and reuse of certain property, including, but not limited to, previously developed, tax reverted, blighted, or functionally obsolete property; to promote the utilization of certain property for housing development; to prescribe the powers and duties of brownfield redevelopment authorities... MCL 125.2657 Powers of authority; determining captured taxable value; transfer of municipality funds to authority.

Sec. 7.

(1) An authority may do 1 or more of the following:

(d) Make and **enter into contracts** necessary or **incidental to the exercise of its powers and performance of duties, including, but not limited to**, lease purchase agreements, land contracts, installment sales agreements and **loan agreements**.

Michigan Courts have defined an assignment as:

A transfer or setting over of property, or of some right or interest therein, from one person to another, and unless in some way qualified, it is properly the transfer of one's whole interest in an estate, or chattel, or other thing. It is the act by which one person transfers to another, or causes to vest in another, his right of property or interest therein. [*Allardyce v Dart*, 291 Mich 642, 644-645; 289 NW 281 (1939) (quotation marks and citation omitted).]

An assignee stands in the shoes or in the place of, or in the same position as, the assignor. *Crossley v Allstate Ins Co*, 139 Mich App 464, 470; 362 NW2d 760 (1984). Therefore, an assignee generally obtains only the rights possessed by the assignor at the time of the assignment. *Shimans v Stevenson*, 248 Mich 104, 108; 226 NW 838 (1929). *Soliman v. Dinh*, No. 344978 (Mich. App. Apr 30, 2020)

ANALYSIS

By and through Public Act 381 of 1996 and specifically MCL 125.2657(1)(d), the City of Owosso's Brownfield Authority may enter into contracts incidental to the exercise of its powers and performance including loan agreements. Although the Act does not define "incidental" the definition and common use is: subordinate to something of greater importance; having a minor role. *Black's Law Dictionary Page 346 Bryan A. Garner, Third Pocket Edition 2006*.

Because the Owosso Qdoba and Retail plan has been established and the development has come to fruition as promised, less the complete term of tax capture, the question of assignment is likely to be considered incidental. In other words, a modification allowing for another party to step into the shoes of the developer for the remaining term of the Agreement is likely to have minor implications because the City has gained its bargained for consideration. The Developer is yet to see the full consideration of its end of the deal, as of the date of its request, i.e. offset its contribution to the redevelopment through tax capture.

Whether the developer or the purchaser experiences the bargained for consideration is of no real consequence to the City. The City has gained the finished redevelopment, the increase in property value, experienced an increase in commerce and mitigated hazardous materials within its jurisdiction.

Therefore, if the City is so inclined to allow for the assignment, it is well within its authority to do so.

- 2) **Question:** Does the Brownfield Redevelopment Loan Agreement between the City and Developer allow for the assignment of the contract from the Developer to a subsequent purchaser?

Answer: Yes, with the City's written approval.

RULE

The Brownfield Redevelopment Loan Agreement says:

11. **Sale and Assignment.** Developer's rights and obligations under this Agreement may not be assigned without prior written consent of the City, which shall not be unreasonably withheld. However, in the event of any sale of the Property, net sales proceeds (after payment of any mortgages against the Property and reasonable expenses of sale) shall be paid to the City until the Loan is satisfied in full.

ANALYSIS

The Developer's rights and obligations may not be assigned without the written consent of the City, which **shall not be unreasonably withheld**. Reasonable is defined as "[f]air, proper, or moderate under the circumstances. *Black's Law Dictionary Page 594 Bryan A. Garner, Third Pocket Edition 2006*. The Developer must first gain the written permission of the City; however, the City can't say "no" for the sake of saying "no"; nor can the City say "no" because it dislikes any term(s) of the original Agreement which it now deems inadequate. The City would have to show that there is a material problem with the original Agreement which it believes the Developer intentionally misled or concealed; or that Developer's request of an assignment will place an undue burden (improper) upon the City which it did not originally agree to. In this case, allowing for the Purchaser to step in the shoes of the Developer should have no effect upon the City's remaining performance of its obligation to this Agreement.

The Developer, to date, has performed as required. Without a specific reason from the City, denying the Developer's request would likely be deemed unreasonable. Therefore, the assignment request, as presented, is reasonable and the City should capitulate. Unless the City has some evidence or reason to the contrary.

When evaluating whether a lender should allow for an assignment, often times the lender will perform a credit review of the potential assignee. If the potential assignee has a credit report that is less than the strength of the original debtor, the lender will often deny the assignment or require additional consideration by the debtor or the potential assignee. It is reasonable to deny an assignment when the assignee has poor credit or credit less than the original debtor.

- 3) Question:** The second sentence of Paragraph 11 (Brownfield Redevelopment Loan Agreement) dictates that upon the sale of the property, net sales proceeds shall be paid to the City until the loan is satisfied in full; is this provision mandatory?

Answer: No, with advisement.

The focus is upon the word "shall" in the above referenced Paragraph 11 of the Agreement. The definition of "shall": has the duty to; more broadly, is required to, *Black's Law Dictionary Page 653 Bryan A. Garner, Third Pocket Edition 2006*. This obligation is placed solely upon the Developer, not the City, because only the Developer has the vested interest to sell, not the City. Therefore, if the City is so inclined to waive this provision, it may. Whether the City waives this provision is more of a fiduciary decision of the City. The City, as a good steward of public funds, may want to have an independent appraisal of the property prior to the waiver of this provision to see if the Purchase Agreement appropriately factors in the remaining debt obligations.

Lastly, I personally met with the State of Michigan's Brownfield advisors by way of a Zoom meeting to discuss the questions at hand. The State Agents explained that assignments do happen and that to their knowledge, nothing prohibited assignments between a developer, purchaser and the municipality. Further, it was their belief that the law gives much power to the local boards to enter into and manage their own contracts. In fact, the State's involvement regarding Brownfield contracts only comes about when a municipality is seeking different terms of the loan due to unforeseen difficulties.

4) **Question:** Is the Developer to be reimbursed by the tax capture for the Developer's "shortfall payments" made over the term of this Agreement?

Answer: No; as stated in the Reimbursement Agreement, last sentence of Paragraph 9. "In the event the captured tax revenues are insufficient, the Developer assumes financial responsibility for any unreimbursed shortfall."

Reimbursement Agreement

2. **Capture of Taxes.** The City shall, during the term of this Agreement, collect all Tax Increment Revenues from the Property and transmit revenues generated from real and personal property to reimburse the parties for the costs of eligible activities based upon the following priority:

- a. Michigan Department of Environmental Quality – Remediation and Redevelopment Division for the loan of \$292,983.00
- b. Planned administrative costs of \$1,500.00 per year;
- c. Developer's Eligible Expenses; and
- d. Local Site Remediation Revolving Loan Fund.

9. **Loan Payments by Developer.** Under the City/MDEQ Loan Agreement, as reflected on the Amortization Schedule attached as Exhibit B to that agreement, the City is required to make loan payments to the MDEQ. The parties mutually agree and understand that tax increment revenues generated in accordance with a Brownfield Plan approved by the OBRA and will be used to repay the MDEQ loan proceeds. It is expected that there will be sufficient available tax increment revenues to repay the full MDEQ loan amount. However, notwithstanding anything in this Agreement to the contrary, if for any reason the Development does not result in sufficient revenues to satisfy the Authority's reimbursement obligations, the Developer agrees that it will not have any claim or further recourse of any kind or nature against the city of Owosso or the Authority. Subject to Developer's right to request an amendment to the Plan Amendment of Act 381 Work Plan, in the event the captured tax revenues are insufficient, the Developer assumes financial responsibility for any unreimbursed shortfall.

CONCLUSION

The City of Owosso should allow for the assignment as requested by the Developer, unless the City has a reasonable objection not to. Further, the Developer or subsequent assignee is solely responsible for any and all shortfalls experienced by insufficient tax capture.

SJG/mlh

RESOLUTION NO. 01-2024

**RESOLUTION APPROVING CONSENT AND CLARIFICATION AGREEMENT WITH
SOUTHWIND RESTAURANTS, LLC**

WHEREAS, the Owosso Brownfield Redevelopment Authority received a draft agreement with Southwind Restaurants, LLC to add “shortfall loan payments” to the reimbursable expenses paid by the Qdoba brownfield tax capture; and

WHEREAS, the City of Owosso and Southwind signed a DEQ loan agreement in October 2015 that requires Southwind to assume all responsibility for said shortfall payments resulting from insufficient tax capture per the brownfield plan.

NOW THEREFORE BE IT RESOLVED by the Brownfield Redevelopment Authority of the City of Owosso, Shiawassee County, Michigan that:

- FIRST: The Owosso Brownfield Redevelopment Authority recommends to the Owosso City Council that the Consent and Clarification Agreement be approved allowing a transfer of ownership and that shortfall payments be reimbursed with the ongoing tax capture.



DATE: June 11, 2024
 TO: Owosso Brownfield Redevelopment Authority
 FROM: Brad Barrett, Finance Director
 SUBJECT: FYE 6-30-2024 Developer Reimbursement Balances and Payments (revised)

The Finance Department has calculated the following developer reimbursement balances and payments for the fiscal year ending 6-30-2024 for review, confirmation and approval based on brownfield redevelopment authority approved agreements:

OBRA 12	Woodward Loft		
Developer Payment	133141.75	Due to Developer Balance	1181425.82
OBRA 22	123 N Washington		
Developer Payment	0.00	Due to Developer Balance	402995
OBRA 23	Shiawassee County Land Bank		
		Advance from Sewer Fund	51351*
*actual amount will be booked as of 6-30-2024 once invoices are received.			
OBRA 13	Weisner Building		
Developer Payment	0.00	Due to Developer Balance	276010
OBRA 15	Armory Building		
Developer Payment	42710.18	Due to Developer Balance	144905.64
DDA payment	32058.83		
OBRA 17	Cargill		
Advancement Payment	167998.20 (P&I)	General Fund Adv Balance	1225077.54
OBRA 9	Robbins Loft		
No DUE TO DEVELOPER booked because no receipts have been received			
OBRA 16	Qdoba		
EGLE Loan Payment	28171 (P&I)	EGLE Loan Balance	185878.31
OBRA 20	J & H Oil		
Developer Payment	49978	Due to Developer Balance	291009.53
OBRA 3	Tial		
Advancement Payment	19391.28 (P)	RLF Adv. Balance	38772.85

RESOLUTION

A RESOLUTION OF THE OWOSSO BROWNFIELD REDEVELOPMENT AUTHORITY TO APPROVE DEVELOPER REIMBURSEMENT BALANCES AND PAYMENTS FOR THE FISCAL YEAR ENDING JUNE 30, 2024

WHEREAS, the Owosso Brownfield Redevelopment Authority (OBRA) has undertaken multiple redevelopment projects within the City of Owosso under various approved agreements; and

WHEREAS, the Finance Department has reviewed and calculated the developer reimbursement balances and payments for the fiscal year ending June 30, 2024; and

WHEREAS, the details of these calculations are provided for confirmation and approval by the OBRA.

NOW, THEREFORE, BE IT RESOLVED by the Owosso Brownfield Redevelopment Authority that developer reimbursements and balances for FY 2023-2024 be approved as follows:

1. **OBRA 12 - Woodward Loft**
 - Developer Payment: \$133,141.75
 - Due to Developer Balance: \$1,181,425.82
2. **OBRA 22 - 123 N Washington**
 - Developer Payment: \$0.00
 - Due to Developer Balance: \$402,995.00
3. **OBRA 23 - Shiawassee County Land Bank**
 - Advance from Sewer Fund: \$51,351.00 (actual amount will be booked as of June 30, 2024, once invoices are received)
4. **OBRA 13 - Wesener Building**
 - Developer Payment: \$0.00
 - Due to Developer Balance: \$276,010.00
5. **OBRA 15 - Armory Building**
 - Developer Payment: \$42,710.18
 - Due to Developer Balance: \$144,905.64
 - DDA Payment: \$32,058.83
6. **OBRA 17 - Cargill**
 - Advancement Payment: \$167,998.20 (Principal & Interest)
 - General Fund Advance Balance: \$1,225,077.54
7. **OBRA 9 - Robbins Loft**
 - No Due to Developer booked because no receipts have been received.
8. **OBRA 16 - Qdoba**
 - EGLE Loan Payment: \$28,171.00 (Principal & Interest)
 - EGLE Loan Balance: \$185,878.31
9. **OBRA 20 - J & H Oil**
 - Developer Payment: \$49,978.00
 - Due to Developer Balance: \$291,009.53
10. **OBRA 3 - Tial**
 - Advancement Payment: \$19,391.28 (Principal)
 - RLF Advance Balance: \$38,772.85

BE IT FURTHER RESOLVED, that the Owosso Brownfield Redevelopment Authority hereby approves the aforementioned balances and payments for the fiscal year ending June 30, 2024.

Adopted this 27th day of June, 2024.

Susan Osika

Chairperson, Owosso Brownfield Redevelopment Authority

Moved: _____

Supported: _____



MEMORANDUM

301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ WWW.CI.OWOSSO.MI.US

DATE: June 21, 2024
TO: Owosso Brownfield Authority
FROM: Nathan Henne: City Manager

SUBJECT: Transfer of Brownfield Tax Incentives and Reimbursements from Owosso Armory, LLC to The Armory Owosso, LLC on BRA #15: Armory

RECOMMENDATION: Approve the resolution to authorize the transfer of all brownfield tax incentives and reimbursements associated with the property at 215 N. Water Street from Owosso Armory, LLC to The Armory Owosso, LLC, contingent upon specific conditions being met.

BACKGROUND: The City of Owosso has established a Brownfield Redevelopment Authority (the "Authority") to oversee and guide the redevelopment of brownfield sites within the city. The Authority has implemented a tax increment financing (TIF) plan to capture tax increments generated from the increased property values resulting from redevelopment projects.

The Armory Owosso, LLC, buyer of the property located at 215 N. Water Street, have requested the transfer of brownfield tax incentives and reimbursements from Owosso Armory, LLC (seller). This transfer aligns with the goals of the Authority to encourage redevelopment and investment in brownfield sites. The Armory Owosso, LLC has agreed to assume all responsibilities and obligations under the existing brownfield plan and reimbursement agreement originally held by Owosso Armory, LLC.

The transfer is contingent upon the following conditions:

1. The Armory Owosso, LLC must agree to comply with all terms and conditions of the existing brownfield plan and reimbursement agreement.
2. The Armory Owosso, LLC must provide a written agreement to assume all responsibilities and obligations under the existing brownfield plan and reimbursement agreement.
3. The transfer must be approved by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) if required.

FISCAL IMPACTS: There are no direct fiscal impacts associated with this transfer of rights authorization.

FIRST AMENDMENT TO PURCHASE AGREEMENT

This addendum to the Purchase Agreement executed January 16th, 2024 between Owosso Armory, LLC (Seller) and Woodworth Investments, LLC (Buyer) for the property located in the City of Owosso, MI, 48867 commonly known as 201 & 215 N. Water St.

It is hereby understood and agreed that the undersigned Buyer and Seller are to amend the Purchase Agreement described above, as follows:

Whereas; *Purchaser* shall be amended to The Armory Owosso, LLC

Whereas; in accordance with paragraph 5, Seller hereby approves the tax incentives currently being received by the Seller from the City of Owosso and/or any other government entity being transferred and given to the Purchaser going forward from closing. All other contingencies have been satisfied.

Whereas; Paragraph 8 shall be amended to reflect a closing no later than June 30th, 2024 and no tax proration reimbursement will be given to the Seller by the Purchaser.

All other terms and conditions of the Purchase Agreement shall remain the same.

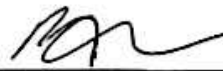
Seller: Charlene Hebetkussen.
Laura Archer

By: Charlene Hebetkussen, Chairperson
Name: Laura Archer, Vice Chairperson

Its:

Date: 6/20/24

Purchaser: The Armory Owosso, LLC

By: 

Randy Woodworth, Member

Date: June 20, 2024

**RESOLUTION TO AUTHORIZE TRANSFER OF BROWNFIELD TAX INCENTIVES AND
REIMBURSEMENTS FROM OWOSSO ARMORY, LLC TO THE ARMORY OWOSSO, LLC ON BRA
#15: ARMORY**

WHEREAS, the City of Owosso has established a Brownfield Redevelopment Authority (the "Authority") to oversee and guide the redevelopment of brownfield sites within the city; and

WHEREAS, the Authority has implemented a tax increment financing (TIF) plan to capture tax increments generated from the increased property values resulting from redevelopment projects; and

WHEREAS, Owosso Armory, LLC, the current owners of the property located at 215 N. Water Street (the "Property"), have requested the transfer of brownfield tax incentives and reimbursements to The Armory Owosso, LLC, the buyer; and

WHEREAS, the transfer of these incentives and reimbursements is consistent with the goals of the Authority to encourage redevelopment and investment in brownfield sites; and

WHEREAS, The Armory Owosso, LLC has agreed to assume all responsibilities and obligations under the existing brownfield plan and reimbursement agreement originally held by Owosso Armory, LLC;

NOW, THEREFORE, BE IT RESOLVED by the Owosso Brownfield Redevelopment Authority that the Authority hereby authorizes the transfer of all brownfield tax incentives and reimbursements associated with the Property from Owosso Armory, LLC to The Armory Owosso, LLC, contingent upon the following conditions:

1. The Armory Owosso, LLC must agree to comply with all terms and conditions of the existing brownfield plan and reimbursement agreement.
2. The Armory Owosso, LLC must provide a written agreement to assume all responsibilities and obligations under the existing brownfield plan and reimbursement agreement.
3. The transfer must be approved by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) – if required.

BE IT FURTHER RESOLVED that the Chair of the Owosso Brownfield Redevelopment Authority is authorized to execute any and all documents necessary to effectuate the transfer of the brownfield tax incentives and reimbursements to The Armory Owosso, LLC.

Adopted this 27th day of June, 2024.

Susan Osika

Chairperson, Owosso Brownfield Redevelopment Authority

Moved: _____

Supported: _____



MEMORANDUM

301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ WWW.CI.OWOSSO.MI.US

DATE: June 21, 2024
TO: Owosso Brownfield Authority
FROM: Nathan Henne: City Manager
SUBJECT: BRA Meeting Schedule

RECOMMENDATION:

Approve the resolution to establish quarterly meetings for the Owosso Brownfield Redevelopment Authority for the remainder of 2024 and throughout 2025.

BACKGROUND:

The Owosso Brownfield Redevelopment Authority recognizes the importance of regular meetings to effectively oversee and guide redevelopment projects. Quarterly meetings will provide timely opportunities for review and decision-making, ensuring that projects remain on track and issues are addressed promptly. Establishing a regular schedule for meetings will also facilitate planning and attendance for all members.

The proposed schedule for the quarterly meetings is as follows for 2024:

- October 10, 2024 – 8AM in Council Chambers

For 2025:

- January 9, 2025 - 8AM in Council Chambers
- April 10, 2025 - 8AM in Council Chambers
- June 12, 2025 - 8AM in Council Chambers
- October 9, 2025 - 8AM in Council Chambers

These dates ensure that meetings are spaced evenly throughout the year, allowing for comprehensive updates and discussions on ongoing and upcoming projects.

FISCAL IMPACTS:

There are no direct fiscal impacts associated with the establishment of a regular meeting schedule. However, regular meetings may contribute to more effective management and oversight of redevelopment projects, potentially leading to better financial outcomes for the Authority and the City.

**RESOLUTION TO ESTABLISH MEETING SCHEDULE FOR OWOSSO
BROWNFIELD AUTHORITY**

WHEREAS, the Owosso Brownfield Redevelopment Authority recognizes the need for regular meetings to effectively oversee and guide redevelopment projects; and

WHEREAS, quarterly meetings will provide timely opportunities for review and decision-making; and

WHEREAS, establishing a regular schedule for meetings will facilitate planning and attendance for all members;

NOW, THEREFORE, BE IT RESOLVED by the Owosso Brownfield Redevelopment Authority that the Authority shall hold quarterly meetings on the second Thursday of the month at Owosso City Hall in Council Chambers. The meeting dates shall be as follows:

- October 10, 2024
- January 9, 2025
- April 10, 2025
- June 12, 2025
- October 9, 2025

Adopted this 27th day of June, 2024.

Susan Osika

Chairperson, Owosso Brownfield Redevelopment Authority

Moved: _____

Supported: _____