



## CONFIDENTIAL MEMORANDUM

To: City Manager, Mayor, Council, and City Attorney

From: Beth Ernat, Director of Community and Economic Development

Subject: Water Street Environmental

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### SUMMARY & BACKGROUND:

The City of Ypsilanti has been acquiring and remediating land known as the Water Street Development Area ("Water Street") for over 20 years. During the past 20 years the City has employed three different environmental contractors, Traverse Group, ETC Environmental, and AKT Peerless. City bonds have been used for remediation activity and a \$3 million loan from CDBG. The majority of records are located in City Hall.

Whenever a commercial or industrial property is purchased in Michigan it requires a Baseline Environmental Assessment (BEA) to be conducted and filed with MDEQ. Additionally, any environmental activity conducted on such a parcel must be filed and recorded with MDEQ.

In the late 1990s the Traverse Group created an environmental map of the Water Street parcel to identify environmental response activities and known contaminants. Activities continued passed this date. ECT provided and supervised response activity from the CDBG loan until 2009. Around 2009 AKT Peerless was hired by the City to provide oversight on the Brownfield Plan.

As part of Herman and Kittle's application to MSHDA for a loan for the Riverwalk Commons development they were asked to provide environmental conditions, BEA, and proposed response activities. HK's independent environmental consultant provided information to MSHDA without consulting with the City or our environmental consultant. They provided to MSHDA the old map created by the Traverse Group that was created well before much of the remediation had occurred.

When the City was notified of MSHDA's concerns with the conditions shown on the map, we proactively expanded AKT's services to have them update the environmental map. AKT used the data on file with the City to compile a map of all of the recorded BEA's, Phase I studies, Phase II studies and environmental responses. Several soil borings have been taken throughout the years to reveal known contaminants left from the landfill and industrial facilities previously located on the site.

Additionally, in order to approve the sites and Brownfield TIF usage, a Documentation of Due Care and Compliance (DDCC) plan needed to be created for the site. This was also requested by MSHDA for HK. AKT was again asked to prepare this document as it was related to the Brownfield.

At this point the AKT with the City reached out to MDEQ and MSHDA to find out what they would want to see as part of this Plan. MSHDA was less than receptive of the City providing this documentation. However, under the advice of MDEQ and other factors with the Brownfield it was more prudent for the City's consultant to create the plan as it would extend to all parcels on the Water Street site and would create less for other developments in the future.

The City submitted the draft DDCC to MSHDA at the beginning of September and asked for comments before a final plan would be submitted to DEQ for approval and recording.

On 10/23, an email was sent to the City, several officials at MSHDA, HK and AKT Peerless from Daniel Lince, Environmental Manager at MSHDA. The email included an attachment with a cover letter from PM Environmental and a review by Hemp, Matthews and Associates.

The review by Hemp, Matthews and Associates was very fair and what we were expecting from a review. We knew additional information would be required and expected to provide this information. In fact, we had previously asked HK's environmental to provide some of the documentation and studies that were requested in the report.

The email from Mr. Lince at MSHDA is not supportive. This email has been reviewed by AKT Peerless and their opinion is the email is very overreaching. They have proposed that they would be able to provide the information requested by Hemp, Matthews and Associates and are confident the DDCC would be approved by the MDEQ. MSHDA is not bound to MDEQ standards and is free to create their own standards as they are a lender.

On 10/27, HK requested a meeting on-site at Water Street with Dan Lince from MSHDA and me. This meeting was also attended by Council Member Anne Brown as representative from Representative Rutledge's office. The meeting was very contentious and Mr. Lince stated that he was not interested in more information and believed that the information provided was not representative of the true state of the property. He stated he was not prepared to approve this property for loan committee based on these beliefs. His main solution is to change the site. However, no assurance was given that if the site changed he would not have further findings.

Staff is working with HK on possible solutions. The issues expressed by Mr. Lince in his email are detrimental to the Water Street parcel with or without development. Without a strong background or understanding of environmental law or procedures in the State of Michigan, the email sent to the City could lead to a bit of panic or uncertainty.

I have asked AKT Peerless to attend our council meeting on Tuesday to discuss or answer any questions that may come from this communication.

I am available and willing to answer any questions this weekend up to the meeting on Tuesday. I am providing this summary in advance as I have heard rumors surrounding this information already. I feel it is important to be aware of the findings and create a plan to address this.

Mr. Barr has reached out to an environmental attorney for a complete review.

The DDCC is available in my office for review. It is too large to email and is in multiple files so I am unable to link at this time. I am working to get the file linked by Monday.

ATTACHMENTS: MSHDA EMAIL and Hemp, Matthews Associates Report  
Below email from Daniel Lince, dated 10/23/15

All:

Below is a comprehensive overview of the environmental review/NEPA issues MSHDA has identified for Riverwalk Commons.

Attached is the health risk evaluation MSHDA requested be conducted of the Riverwalk Commons development (3.1 acres, aka "subject parcel") and the associated surrounding property, the Water Street Redevelopment Area (WSRA). For context, the WSRA is a 38-acre, vacant brownfield that would surround Riverwalk Commons for a significant distance in all directions. Hamp, Mathews, and Associates (HMA) was subcontracted through PM Environmental (PME) to conduct the analyses. Both firms provided concurring opinions. The information provided for this evaluation consisted of the draft DDCC report, historical data and figures, and supporting documentation submitted by the City of Ypsilanti's consultant, AKT Peerless, for the WSRA, and reports submitted by the developer's consultant, ASTI, for the subject parcels, including Phase I, Phase II, due care and conceptual site model reports. Soils and groundwater within the WSRA remain contaminated from over one-hundred years of industrial and commercial use with PCBs, PNA's, VOCs, and several metals, including lead, arsenic, cadmium, and mercury above DEQ Part 201's generic residential cleanup criteria (GRCC).

HMA's risk evaluation report and PME's subsequent review support a cautious approach to the redevelopment of the WSRA, citing, most particularly, the inability to reliably estimate the health risk to future residents. This inability stems from several open questions regarding existing contamination within the WSRA. Solutions presented to these problems include additional soil sampling to increase confidence in the contamination situation and with that the ability to reliably estimate health risks and acceptable due care measures (Incremental Sampling methodology seems well suited to this task), the installation of exposure barriers/covers, and reliably restricting access of residents to the off-property WSRA brownfield site.

## **Issues:**

### **PCB and Lead Removal Areas**

Two soil removal areas—a six-acre PCB Removal Area and the north-adjointing lead removal area—appear to have no verifying documentation to support their having been completed, such as manifests, soil volumes, photographs, fill documentation, VSR results, etc. AKT's draft DDCC, seems to accept the completion of this remediation as part of the basis for their analyses (AKT Peerless, DRAFT-Ypsilanti Water Street DDCC Text, Section 3.1; Figures 2-6). Contradicting this is a February 4, 2015, Brownfield Plan available from the City of Ypsilanti's website, and also prepared by AKT Peerless for the Washtenaw County Brownfield Redevelopment Authority where, in Attachment C "Remaining Areas of Contamination," the same removal areas are identified as having remaining PCB and lead contamination remaining, albeit the PCB contamination (0'-4' BGS) is noted as being below DEQ GRCC. But if these areas

had truly had soil remediated down to 4' BGS, it is unclear why any contamination should exist. As a corollary, it is also unclear how it can be stated that the PCB contamination that does (somehow) remain in the PCB removal area is below DEQ GRCC, as stated in Attachment C, if the removal action cannot be verified and the samples prior to removal showed results exceeding those standards.

*Such contradictions contribute to the general lack of confidence regarding the contamination situation within the WSRA. Additional evidence will be required for MSHDA to consider the remediation of these areas as more than supposition.*

### **Contamination boundaries**

Clearly delineated areas are depicted on many of the maps and figures of all reports. These purport to show boundaries of areas where specific contamination of any significance begins and ends. Confidence in these boundaries is key toward estimating risk and choosing the best due care measures. There are indications that the contamination concerns cannot be so neatly defined in an area as large and with as many decades of industrial use as the WSRA. The confidence of these boundaries is called into question by both recent and historical sampling. For example, the 2014 Phase II sampling conducted by ASTI on the Riverwalk Commons Parcel, which is outside of any denoted "PCB area", found PCB contamination above direct contact criteria. One sample (42 ppm @ SB-1) exceeded MDEQ GRCC (4 ppm) by over tenfold and TSCA "high density" standards (1 ppm) by fortyfold. A second sample from this same data set (SB-6) also exceeded both standards. Looking through the historical dataset, there are detections of PCBs above GRCC and/or TSCA high density at locations east of the subject parcel (29-7B (33 ppm) and 29-8B (1.6 ppm)), which are well outside of the areas delineated "PCB areas". This demonstrates significant contamination outside designated boundaries. Going the other way, where contaminants are found within what is stated as a removal area for that same contaminant, 2014 sampling showed soil lead concentrations exceeding DC GRCC by several times in the western portion of the subject parcel, which appears to overlap the reported lead removal area.

*Such discrepancies may indicate a wider distribution of contaminants than is currently considered. Additional sampling would answer this concern. Incremental Sampling methodology appears well suited here. Also see note on TSCA vs Part 111/201 standards, below.*

### **Fugitive dust**

Fugitive dust concerns, whereby disturbed contaminated soil becomes airborne and transported offsite, remain a significant challenge here. The city's draft DDCC does not address fugitive dust directly, but calls for maintaining vegetative cover, which is not uniform, and for the use of erosion controls when soil is disturbed. The draft DDCC may also be considering fugitive dust when it makes the repeated statement that all necessary due care becomes the responsibility of future owners. While perhaps true, this is unspecific and would rely on future entities with unknown experience and intent to execute a critical function in keeping Riverwalk Commons safe.

If the WSRA enjoys the future development that is hoped for over the next few years, it is fair to say that the area will be an active construction and remediation zone, on and off for the next several years. So, it is not a far-fetched scenario to imagine children from Riverwalk Commons playing outside their homes, downwind and only yards from where a building foundation is being dug in the known PCB or TCE area, a roadway is constructed through the old foundry property, pipes are being laid, and contaminated soil is being characterized for disposal. Any successful plan will need a plan that fully contemplates and accounts for such a scenario, and asks if that is actually possible; a plan whose requirements would be imposed on any future owners of WSRA property close enough to impact the Riverwalk Commons site. As all these events are foreseeable and reasonable, the proper place for that plan would seem to be the DDCC.

Perhaps most significantly, the location of the proposed site, toward the southern-middle of the WSRA, closest to the area of remaining (denoted) PCB and lead contamination, greatly exacerbates the fugitive dust concern. It may, in fact, not be possible to satisfactorily address fugitive dust concerns such as is described in the paragraph above in the current location. A safer approach would be to develop first around the north and western perimeters, particularly the west, and work inward, instead of placing units of your most sensitive population before all else and in the center, nearest the highest areas of contamination.

*MSHDA requests that the Riverwalk Commons site be moved north, closer to Michigan Avenue, and as far west, to get ahead of prevailing winds, as feasible within the WSRA. In addition, the city's DDCC must include an adequate soil management plan whose requirements will be mandatory for future purchasers of property that may impact the Riverwalk Commons site, regardless of where it is eventually sited.*

#### **TSCA, Part 111/RCRA, or Part 201 authorities**

PCB contamination may invoke differing authorities. HMA's report and PME's review indicate that the PCB contamination within the WSRA appears to most correctly fall under the provisions of TSCA, though elements of Part 111/RCRA and Part 201 may also apply. The report recommends that the owner of the property employ a "Coordinated Approval" process, as described in the report handouts.

*MSHDA is asking that the city obtain a written opinion from DEQ regarding the applicability of TSCA or Part 111/201 authorities as they apply to the PCB contamination at the WSRA.*

#### **Access restrictions**

The current draft of the city's DDCC, which provides for no fencing, seems more geared to an occasional visitor to the WSRA property (i.e., TSCA low-occupancy criteria) than a year-round resident (TSCA high occupancy criteria). While the current DDCC may be perfectly adequate for occasional public access,

the exposure profile of an occasional pedestrian differs greatly from that of the full time residents, many of them children, that can be expected at Riverwalk Commons. Without greater confidence in the contamination characterization, as described, restricting off-site access to the WSRA is prudent. Fencing the development would still allow adults and older children to “walk around” and thereby access the WSRA, while still providing a prudent barrier to small children, who are more susceptible to contamination, likely to play in the dirt, not wash their hands, ingest, etc.

Section 7a(c) of Part 201, requires the owner or operator of contaminated property to “Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.” It is entirely foreseeable that the residents of Riverwalk Commons will leave their homes to explore and play in the large, vacant land surrounding them (or that workers constructing a walking path, building foundation, or detention pond might disturb contaminated soil).

*MSHDA recommends a fence to restrict off-site access be a part of the Riverwalk Commons project. In addition, a dedicated 1 to 2 acre park or play area with a clean soil cap and maintained ground cover, adjoining Riverwalk Commons and provided by the city within the fenced area, should be considered as a means to provide a reliably safe, outdoor environment for children to play. This would alleviate some of the recreational use and play otherwise anticipated in the surrounding brownfield.*

### **Detention Pond**

AKT's DDCC makes no mention of the detention pond planned southwest of the development. As it is anticipated that third-parties, such as workers, might necessarily come into contact with contamination in the creation of such a pond, the DDCC should account for it and any other ongoing or proposed activities associated with site development.

### **Plastics waste**

Significant mounds of what appears to be waste from an industrial process involving the thermal or chemical processing of plastics were identified by MSHDA staff during September 2015 site visit. The debris piles are located just south, or perhaps on, the subject property. Neither the AKT or ASTI DDCC's make mention of this waste or address the concerns.

*The implications of plastic processing onsite regarding the possible unique contaminants associated with that process may need further exploration. Investigations of historical documents regarding the origin and nature of this industrial waste should be undertaken by the city.*

### **On-site DDCC**

The due care measures described in ASTI's DDCC for the actual Riverwalk Parcel appear adequate to protect potential residents from exposures to contaminants in soil, vapor, and groundwater. This is accomplished through a

variety of barrier, institutional, and engineering controls, including the installation of a vapor intrusion system. The challenges to mitigating onsite exposures, where building, asphalt, and landscaping all but cover the entire area and a vapor intrusion system is proposed, are considerably less complex than those off-site.

### **Noise**

NEPA requires MSHDA to consider all significant noise sources when federal funds are requested, as they are here. With future development and infrastructure construction anticipated over the next several years in and around Riverwalk Commons, a plan to minimize impacts of noise will need to be developed and proposed as part of the NEPA review.

### **Environmental Justice**

NEPA (under 24 CFR Part 58.5(j)) requires MSHDA, as a federal Responsible Entity, to clear all projects of the provisions of Environmental Justice. In short, to *“determine if the proposed site... suffers from disproportionate adverse health and environmental effects relative to the community at large. If the project... has the potential for new or continued disproportionately high and adverse human health and environmental effects on minority or low-income populations, the environmental review must consider mitigation or avoidance of adverse impacts from the project to the extent practicable”* (HUD OIG Report 2008; HUD Frequently Asked Environmental Questions, May 2002). That said, a combination of factors allows most contaminated sites to meet Environmental Justice requirements. First, the site has been adequately characterized. This allows the risk from various exposure pathways to be reliably estimated, and appropriate due care selected. Second, any contaminated properties around the subject parcel are typically developed, and so exposures can be controlled. This combination enables the Responsible Entity to certify with confidence that Environmental Justice has been satisfied.

The situation at Riverwalk Commons, where risks cannot be reliably estimated due to the incomplete characterization and the area surrounding the proposed site is a contaminated brownfield that is fully anticipated to be active with construction and redevelopment over the next several years, intractable off-site exposure issues such as fugitive dust and direct contact become bona fide Environmental Justice concerns that will need specific answers. The Environmental Justice language cites “avoidance” as one of the strategies to be considered in avoiding adverse impacts. This speaks to MSHDA’s request for the site to be relocated more north and west on the subject property, but may also be interpreted by HUD itself, as meaning alternate locations in and around the City of Ypsilanti that have fewer environmental issues.

The Environmental Justice portion of the NEPA report for federal funding, for Riverwalk Commons, will need to

### **Summary**

MSHDA has a long history of successfully partnering on the redevelopment of brownfield properties and creating safe, affordable housing situations where

none had existed prior. The Riverwalk Commons proposal is unique in the challenges presented because it is a development proposed as an island of developed land within a large tract of undeveloped, vacant brownfield with industrial contaminants, including PCBs, PNA's, chromium, and lead. For such a proposal to be successful and move forward, will require an active and invested approach from all parties, particularly the owner of the surrounding brownfield.

Without confidence in the characterization, it is difficult to approve the Riverwalk Development as planned. HMA's Health Risk Evaluation and our own review of the data do not support a conclusions that the city's draft DDCC is adequate. The report draws wide-ranging conclusions about risk from a dataset that was largely not designed for assessing exposure. The available historical dataset was, understandably, more geared toward answering questions of extent, fate, and transport, and so many samples are taken from quite deep below ground. With few actual shallow-soil samples, and a large part of the area not systematically sampled, questions regarding direct contact have been loosely surmised. MSHDA strongly recommends additional sampling using Incremental Sampling methodology of shallow soils be done to address this uncertainty.

Of greater complexity still is the potential for fugitive dust concerns. This would be a concern of not only contaminated shallow soils, but also deeper contaminated soils, which would be disturbed, tracked, transported, characterized, and removed during construction. The potential negative outcome of families complaining of dust and having that dust tested and shown positive for contamination

#### Options/Recommendations

- 1) **Relocate the proposed site as far north and west as possible.** This moves the site away from the areas of most (indicated) PCB and lead contamination, improve marketing, and increases the chances that Riverwalk Commons is upwind of any future development. The problem of fugitive dust is particularly intractable in the current location.
- 2) **Restrict access to off-site properties.** Insufficient data exists to reliably estimate the health risk to future residents. As a result, a fence to prevent easy access to the off-site property, particularly by smaller children, is required.
- 3) **Redraft the off-site DDCC** – The current draft of the city's DDCC does not adequately account for, or imagine, all the reasonably foreseeable actions by third parties.
- 4) **Fugitive Dust** – a rigorous soil management plan to address the issue of contaminated soils being disturbed by workers, tracked, and becoming airborne must be included. Compliance with the plan must be made a condition upon any future owners of property where redevelopment activities could potentially impact the eventual Riverwalk Commons site, anticipating the dispersive action of winds, machinery, and other actions involving the soil.
- 5) **Additional data**, employing Incremental Sampling methods, particularly of shallow soils, would provide much needed clarity and confidence, despite perhaps having to re-draw the contamination maps.
- 6) **A 1 to 2 acre park** with a clean soil cap, adjoining the Riverwalk Commons site at its eventual location would provide a safe play area for development children to play. The only city parks within easy walking distance of the WSRA appear to be to the north, across Michigan Avenue, or



to the south, across the Huron River, neither of which appear from aerial photos to contain a play area or seem likely parent-approved destinations for small children.

I hope the enclosed information is helpful and defines both the concerns and opportunities for Riverwalk Commons. MSHDA is available to hear comments and have further discussions on how to move the proposal forward.

Daniel Lince  
Environmental Manager  
Michigan State Housing Development Authority  
Ph 517.335.0183  
[www.michigan.gov/mshda](http://www.michigan.gov/mshda)