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TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	APPLICATION FOR BROWNFIELD INCENTIVES BY: RYGAR PROPERTIES INC. 100 FULLARTON ST., 475-501 TALBOT ST., AND 93-95 DUFFERIN AVE. MEETING ON APRIL 24, 2017

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning and City Planner, the following actions be taken with respect to the brownfield incentive application from Rygar Properties Inc. ("Rygar") relating to the property located at 100 Fullarton St., 475-501 Talbot St., and 93-95 Dufferin Ave:

- (a) A total expenditure of up to \$2,735,007 in municipal brownfield financial incentives **BE APPROVED** and allocated under the following two programs in the Community Improvement Plan (CIP) for Brownfield Incentives:
 - i) Provide a rebate equivalent to 50% of the Development Charges that are required to be paid by Rygar on the commercial component of the project;
 - ii) Provide tax increment equivalent grants on the municipal component of property taxes for up to three years post development of each phase of the project.

IT BEING NOTED THAT no grants will be provided until the work is completed and receipts are obtained showing the actual cost of the remediation work.

- (b) The Civic Administration **BE DIRECTED** to process the brownfield incentive application to provide for eligibility for tax increment equivalent grants for up to three years for each phase of the development project under the Brownfields CIP and up to the full 10 year term of the Rehabilitation and Redevelopment Tax Grant Program of the Downtown CIP for each phase of the project.

- (c) The applicant **BE REQUIRED** to enter into an agreement with the City of London outlining the relevant terms and conditions for the incentives that have been approved by Council under the Brownfield CIP;

IT BEING NOTED THAT the maximum value of brownfield incentives provided by the City of London will not exceed the total value of eligible remediation costs incurred by the property owner.

IT BEING FURTHER NOTED THAT the agreement between the City of London and Rygar will be transferable and binding on any subsequent property owner(s).

PREVIOUS REPORTS PERTINENT TO THIS MATTER

March 27, 2017 Planning and Environment Committee Report – Application for Brownfield Incentives by Rygar Properties Inc. re properties located at 100 Fullarton Street, 475-501 Talbot Street and 93-95 Dufferin Avenue

BACKGROUND

The Community Improvement Plan (CIP) for Brownfield Incentives was adopted by Council on

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February 20, 2006 and approved by the Province, with modifications, on November 21, 2006.

The purpose of the Brownfield Incentives CIP is to remove or reduce the obstacles that hinder brownfield remediation and redevelopment. The incentive programs in the Brownfield CIP assist property owners with reducing limitations and obstacles that may compromise the redevelopment potential of a brownfield site so that redevelopment viability is more comparable with a greenfield site. In other words, to help “level the playing field”.

The financial incentive programs are used to evaluate contaminated properties and encourage the private sector to invest in those properties. There are four incentive programs to encourage the investigation, remediation, and redevelopment of brownfield sites in the City of London: the Contamination Assessment Study Grant Program assists property owners in conducting Phase II Environmental Site Assessments and is capped at \$10,000 per property. Municipal Council approval is not required for the Study Grant Program. The remaining three programs: Property Tax Assistance, Development Charge Rebate, and Tax Increment Equivalent Grants require Municipal Council approval, may be significant in terms of financial assistance, are considered individually based on the evaluation of a business case from the applicant, and the availability of program funding.

March 27, 2017 Planning and Environment Committee

The brownfield incentive application from Rygar was heard at the March 27, 2017 Planning and Environment Committee. At that meeting, a discussion on what constitutes eligible remediation expenses occurred resulting in the following recommendation being brought forward to Municipal Council.

Municipal Council at its session held on April 4, 2017 resolved:

That, the Brownfield Incentive application and Business Case submission from Rygar Properties Inc., relating to the properties located at 100 Fullarton Street, 475-501 Talbot Street, and 93-95 Dufferin Avenue, BE REFERRED to Civic Administration for further consultation with the applicant on the business case for the brownfield incentives program, to refine the costs of remediation to exclude the costs, particularly for excavation, removal and disposal of soil, that would be incurred if the property was a clean site and not a brownfield site.

Site Remediation Investigations

Under Provincial Regulation, it is mandatory that a Record of Site Condition (RSC) be filed with the Ministry of Environment and Climate Change, to confirm that the site is ‘clean’ and that the property meets the applicable site condition standard for the intended use.

Five Phase II Environmental Site Assessments (ESA) were prepared for Rygar by Exp Services Inc., which confirmed the presence of several potential contaminants on the site from previous industrial and commercial uses including: petroleum hydrocarbon, poly aromatic hydrocarbons (PAHs) impacted soil and the presence of metals that exceeds Ministry of the Environment and Climate Change soil, groundwater, and sediment standards. Site investigations were conducted including the installation of boreholes and a groundwater monitoring well. Petroleum impact was identified in the soil sample recovered from a depth of about five metres. The impact was identified at the northeast portion of the property in the vicinity of an abandoned underground storage tank. The presence of contaminants were identified under the existing asphalt parking lot and concrete slab of the building foundations.

Based on the findings of the Phase II ESA reports, it can be confirmed that the Rygar site constitutes a brownfield under the CIP definition and that the remediation of identified contaminants must be undertaken in accordance with Provincial Regulation 153/04 (as amended) before the site can be redeveloped for a residential use.

An RSC cannot be filed with the Ministry of the Environment and Climate Change until such time as the required remediation has been undertaken and the condition of the site confirmed as meeting relevant Provincial standards. The Record of Site Condition must be submitted to the City and acknowledged by the Ministry of the Environment and Climate Change prior to

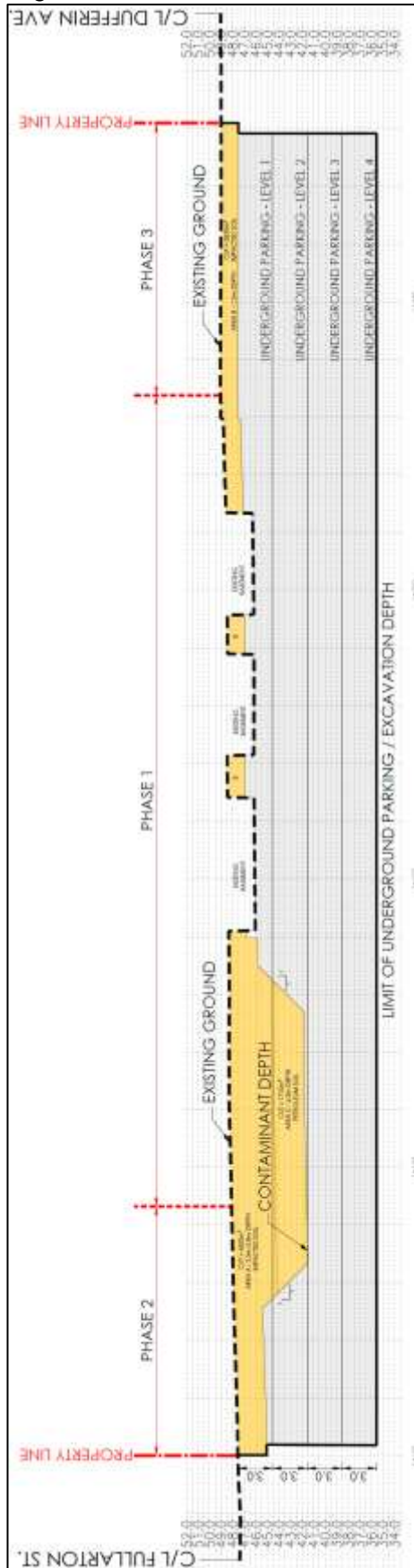
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commencing the residential development and the funding be released under the Tax Increment Equivalent Grant Program.

Figure 1 is a site section between Fullarton Street and Dufferin Avenue that has been developed to help visualize and to help avoid confusion on how much contaminated soil is to be removed versus the depth of the underground parking structure that will need to be excavated:

Figure 1



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All the soil which needs to be removed for the underground parking structure is not contaminated. The Brownfield CIP only pays grants for the impacted contaminated soil. Grants will not be paid for the removal of soil below the impacted soil. The applicant has not applied for grants related to excavating the non-contaminated soils.

BROWNFIELD CIP ELIGIBLE CRITERIA

CIP Eligibility Requirements

Eligibility requirements for each brownfield incentive program are outlined in the CIP. Council may consider providing any one incentive or combination of incentives based on the relevant CIP eligibility requirements and merits of each application; however, under the Brownfield incentive programs the cumulative amount of funding that may be provided through the Property Tax Assistance Program, Tax Increment Equivalent Grant Program, and Development Charge Rebate Program cannot exceed the eligible site remediation costs for the subject property.

In addition to the general requirements in Section 2 of the CIP, specific eligibility requirements apply to the three programs. Each application is evaluated on a case-by-case basis to consider the public and economic benefit of providing one or more incentive(s) to a property.

Eligible remediation costs that are identified in the CIP include 100% of the costs associated with building demolitions, site remediation, rehabilitation of any existing structures, and environmental insurance premiums during the remediation phase. Within the Brownfield CIP, the notion of splitting out the the excavation, removal, and disposal of contaminated soil versus a comparable amount of clean soil or the incremental cost difference between removing an equivalent amount of contaminated soil versus removing clean soil is not contemplated.

If the application is endorsed by Municipal Council, an agreement is required between the City and the property owner, outlining the terms and conditions that apply to the approved incentive(s). The agreement between the City and the property owner is registered on title and remains in effect until all requirements of the CIP have been satisfied. Upon completion of the site remediation work, the property owner must provide the City with documentation to confirm that the required work has been undertaken in a satisfactory manner and paid for.

Previous Brownfield CIP Applications

Five previous Brownfield CIP incentive applications have been approved by Municipal Council:

- 570 Nelson Street (Nelson Park Inc.) – Approved February 5, 2008 for up to \$200,000. A total grant of \$161,192 was paid on October 17, 2008
- 704-738 King Street and 380-382 Lyle Street (Medallion Properties Inc.) – Approved February 24, 2009 for up to \$567,095. A total grant of \$361,790 was paid to the applicant on February 23, 2015.
- 726-748 Dundas Street (Terrasan 744 Dundas Street Limited) – Approved October 6, 2009 for up to \$124,341. Due to the applicant’s bankruptcy, the grant was never paid.
- 585 Waterloo Street (2386225 Ontario Ltd.) – Approved December 9, 2015 for up to \$275,000. A grant has yet to be paid as the site has not been remediated.
- 27 Centre Street (Escalade Property Corp.) – Approved May 4, 2016 for up to \$169,500. Site remediation has finished and a Record of Site Condition was filed with the Province on April 4, 2017. A grant for \$169,500 will be issued to the applicant in April 2017.

Two of the applications (Medallion and Terrasan) included the cost for building demolition and removal of hazardous materials from the buildings to be demolished in their business case submissions. While building demolition and removal of hazardous materials may be approved as an eligible remediation cost under the Brownfield CIP, in both those instances, staff determined that the building demolition component would have to be undertaken whether or not the site is a brownfield. Also, the removal of the hazardous materials associated with the demolition could be

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considered a normal cost of business. As a result, for those two applications, the requested remediation expense was reduced to remove the cost of building demolition and hazardous materials removal.

For the five previous brownfield applications, contaminated soil that was required to be excavated, removed, and disposed of was considered an eligible remediation cost under the Brownfield CIP, even if that soil was located where underground parking, building foundations, and/or basements would be constructed. The Brownfield CIP’s eligible expenses do not address the incremental cost difference between removing contaminated soil versus removing an equivalent amount of clean soil as a normal cost of business.

BROWNFIELD CIP EVALUATION CRITERIA

Financial incentives under the Brownfield CIP are not as-of-right but evaluated on a case-by-case basis, to consider the need for remediation, and the public and economic benefit of providing one or more incentives to a property. Incentives under the Brownfield CIP are specifically applied only to eligible site remediation costs as defined in the CIP and the maximum of all grants and tax assistance for eligible brownfield properties cannot exceed the cost of remediating the property. Criteria in the Brownfield CIP provide that approval of the incentive(s) may be recommended where:

- a) The landowner/applicant has not contributed to the site contamination;
- b) There are not outstanding property taxes, municipal orders or by-law infractions on the subject property;
- c) All relevant supporting documentation and reports (for example, ESA’s Remedial Action Plans, Risk Assessments) have been provided to the City;
- d) Financially supporting the proposal is considered to be both cost-effective for the City and in the public interest;
- e) The incentives are considered necessary to make the remediation and redevelopment on the subject property feasible;
- f) The amount of available and budgeted municipal funding is sufficient to cover the cumulative cost of all incentives that have been approved; and
- g) Municipal Council deems that the costs associated with providing the program incentives are outweighed by the cumulative benefits of providing the incentive(s).

The City is not under any obligation to approve Brownfield incentives for a particular property and each application is evaluated on a case-by-case basis. While Municipal Council makes a decision on the maximum grant amount before the work is completed, the grant is only paid after the work is completed and the actual cost of the work is determined through the provision of receipts.

Business Case Submission (Appendix “A”)

The business case submission from Rygar attached as Appendix “A” includes a detailed estimate of site remediation costs based on the findings of the Phase II ESAs. The costs that were identified in the business case submission as potentially being eligible for incentives under the Brownfield CIP are summarized below:

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Table 1 – Site Remediation Work and Estimated Costs for Rygar Project	
Site Remediation Associated Works	Estimated Cost
Removal of heavy metal and PAH impacted soil from Area A (to a depth of 2.5 m and 3.8 m within the petroleum impacted area and Area B (to a depth of 1.5 m)	\$1,745,289
Boundary Soils Retention - removal of petroleum impacted soil to an approximate depth of 6.5 m to property limits on the west boundary and east boundary	\$420,000
Removal and disposal of additional petroleum impacted soil between 3.8 m to approximately 6.5 m.	\$280,098
Removal of underground storage tank	\$38,220
Environmental consultant fees and associated laboratory fees	\$251,400
Total Estimated Cost	\$2,735,007

The above table contains estimated remediation costs. To reiterate, upon completion of the site remediation work, the property owner must provide the City with documentation to confirm that the required work has been undertaken in a satisfactory manner and paid for. Proof of remediation and payment is also required.

The Rygar submission states that based on the known environmental condition of the site and estimate of potential remediation costs, incentives are required under the Brownfield CIP in order to make the development feasible. Rygar have also indicated that other sources of funding are linked to receiving this grant from the City. A request was made for funding from the Development Charge Rebate Program and the Tax Increment Equivalent Grant Program of the Brownfield CIP to cover environmental remediation costs associated with the project.

Evaluation of Rygar Application and Business Case

The Rygar application and Business Case submission were circulated and reviewed by staff. The Rygar application and business case submission has confirmed that the site constitutes a brownfield under the definition in the CIP and that under existing Provincial legislation, the proposed residential development project cannot proceed until such time as site remediation has been undertaken and a Record of Site Condition has been filed in accordance with the relevant provisions under the *Environmental Protection Act*.

Since the Brownfield incentives involve the expenditure of public funds, Municipal Council should be satisfied that the public and economic benefits associated with the Rygar project will outweigh any costs incurred by the City. Several attributes that have been identified, are as follows:

1. Remediation of a site that was previously contaminated through a variety of industrial and commercial uses and does not meet current Provincial regulatory standards for residential development;
2. The proposal constitutes infill development on a fully serviced site;
3. The development will include 652 residential units, providing new accommodations in the area and contributing to the ongoing revitalization of the Downtown through:
 - a) Increasing Downtown foot traffic;
 - b) Providing additional “eyes on the street” and an increased presence at night;
 - c) Helping support rapid-transit ridership;
 - d) Delivering on Municipal Council’s Downtown Plan;
 - e) Promoting Downtown residential neighbourhood development;
 - f) Supporting business development.
4. The development will eventually generate significant tax revenues over and above the grants that are provided for it under either the Downtown CIP and Brownfield CIP (estimated at \$1.4 million annually at completion);

Further, in evaluating applications, the Brownfield CIP programs note that approval of the incentive(s) may be recommended where:

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- a) The landowner/applicant has not contributed to the site contamination;
 - According to the provided business case, Rygar Properties Inc. did not contribute to any contamination since purchasing the site. Staff agree that the landowner/applicant has not contributed to the previously contaminated site.

- b) There are not outstanding property taxes, municipal orders or by-law infractions on the subject property;
 - This requirement is normally confirmed prior to issuing a grant. If there are any outstanding property taxes, municipal orders, or by-law infractions on the property, staff asks the applicant to clear the outstanding issue(s) prior to the grant cheque being requested.

- c) All relevant supporting documentation and reports (i.e. ESA's, Remedial Actions Plans, Risk Assessments) have been provided to the City;
 - All documents and reports have been provided to the City.

- d) Financially supporting the proposal is considered to be both cost-effective for the City and in the public interest;
 - The magnitude of the incentive ask is outweighed by the benefits provided by the project including the increase in taxes and its contribution to the continued revitalization of the Downtown.

- e) The incentives are considered necessary to make the remediation and redevelopment of the subject property feasible;
 - Staff are not party to Rygar's financial proforma for the project and must rely on the submitted Business Case to help determine if the incentives are necessary to make the project feasible. In this instance, the estimated remediation cost is \$2,735,007, which can be considered a significant sum of money to spend to ensure the site is developable for residential uses;
 - It should be emphasised that for Rygar to receive the majority of the remediation costs back as grants, the first two phases of the project would have to be built;
 - Rygar has indicated that other sources of financing maybe linked to the receipt of this grant from the City.

- f) The amount of available and budgeted municipal funding is sufficient to cover the cumulative cost of all incentives that have been approved;
 - In reviewing site specific applications for Brownfield incentives it is important to consider the implications that potential expenditures will have on overall program funding. The funding for brownfield remediation under the Brownfield CIP comes from an annual allocation of Federal Gas Tax of \$350,000 which is maintained in the Federal Gas Tax Reserve Fund. The balance in this allocation includes the estimated remediation costs of \$2,735,007 over the projected nine years of Brownfield grant payments (2017 to 2025);
 - Other applications for Brownfield incentives will be received in 2017 (including the former McCormick factory at 1156 Dundas Street). These applications are incorporated into the allocation as they arise.

- g) Municipal Council deems that the costs associated with providing the program incentives are outweighed by the cumulative benefits of providing the incentive(s).

Lastly, Brownfield incentive applications satisfy the Growing Our Economy Strategic Area of Focus in the *Strategic Plan for the City of London 2015 – 2019*. Within the Growing our Economy Strategic Area of Focus, brownfield remediation supports the Urban Regeneration strategies of using Community Improvement Plans to coordinate City and private investment to meet both local and City-wide priorities, as well as investing more in brownfield remediation.

As noted above, Staff believe the grant represents a strong investment to facilitate brownfield development, tax revenue growth, downtown viability, and economic use of the site.

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BROWNFIELD GRANT APPROVALS AND MUNICIPAL COUNCIL’S ENQUIRY

Unlike the financial incentive programs authorized in other Community Improvement Plans, the Brownfield CIP incentives require Municipal Council approval. As noted in the previous sections, each application is considered on a case by case basis to consider the public and economic benefit of providing one or more incentive(s) to a property owner. Further, in evaluating applications, approval of the incentive(s) may be recommended where Municipal Council deems that the costs associated with providing the program incentives are outweighed by the cumulative benefits of providing the incentive(s). In this instance, Rygar applied for two financial incentives programs under the Brownfield CIP to cover the estimated remediation costs of \$2,735,007. Municipal Council could approve either program, one program, or neither program. As well, Municipal Council could alter the amount of approved incentive funding if they determine a different amount of funding outweighs the cumulative benefits of providing the incentive(s).

At the March 27, 2017 Planning and Environment Committee meeting, the Committee raised concerns about the removal of contaminated soil if that soil was going to be removed anyway for the construction of the underground parking garage. There was a discussion at that meeting about using an incremental cost (the cost difference between removing contaminated soil versus removing an equivalent amount of clean soil). As previously noted in this report, the Brownfield CIP does not address the incremental cost difference between removing contaminated soil versus removing clean soil. Furthermore, in the previous five applications to the program such a distinction was not made.

Further, there was also a discussion on the tipping, trucking, and excavation fees presented in the applicant’s business case versus the fees used by the City.

The remainder of this report addresses Municipal Council’s enquiry in detail.

RESPONSE FROM RYGAR (APPENDIX “B” & “C”)

In response to Municipal Council’s enquiry and the previous PEC report being referred back to the Civic Administration, Rygar has provided Planning Services staff with the information on removing an equivalent amount of clean soil from the site versus removing the contaminated soil. As already noted, Rygar is not applying for costs relating to excavation of any soils that are not contaminated.

Rygar has indicated to Planning Services staff that with respect to the incremental cost proposition, their understanding of the theoretical proposition is that:

- “The only increased costs of remediating a cubic meter of contaminated soil over non-contaminated soil would be the type of truck used (MOE approved), the tipping fees to dispose of the soil at a MOE approved land fill site, and the additional trucking cost (if any) to travel to a land fill site versus dumping closer to the excavated site. The cost to the developer of trucking and excavation are the same.”

Rygar has indicated that in practice this is not the case. This comparison method does not take into consideration the marketplace for clean fill. Clean fill can be disposed of for a nominal trucking cost, often at no cost to the fill owner or at a profit to the fill owner. According to Rygar, clean fill can be used:

- At sites requiring clean fill to bring grades up to a desired level;
- For construction projects needing fill for new roads, parking lots, or support for structural improvements or additions, such as bridges, roads, or culvert support;
- At sites needing to fill areas where contaminated soil has been removed; or
- For structural fill at sites that may have poor soil conditions such as under basements in new subdivisions where existing soil conditions cannot support the buildings.

Rygar has provided some specific examples of when this has occurred in London, indicating the Medallion development where excavated soil went to a municipal infrastructure project.

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In summary, Rygar has indicated that the theoretical assumption that the cost of removing contaminated soil is the same as removing clean soil, except for tipping, test and engineering supervision is incorrect.

Rygar has also expressed concerns about the “but for” test. The “but for” test is: Would a site have been remediated and developed, but for the contribution of incentives.

Rygar’s concerns with the “but for” test include:

- Providing the incentive to a project that would only proceed if it receives the incentive, supports marginal projects that perhaps should not be built in the first place, and turns the incentive program into a “bail out” program;
- Requiring a “but for” test discriminates against wealthier developers because even though the circumstances may be the same for two developments, or even more deserving for one development, the wealthy developer could not claim they did not have the resources to pay for the remediation cost;
- Determining if a project required the incentive to proceed, the developer would presumably have to make public the financial business case for the development, making public, confidential and competitive information;
- Limiting the ability to receive Green Municipal Fund (GMF) loans. The Green Municipal Fund (GMF) provides financial loans for brownfield sites that have received incentives under a municipal CIP. Contaminated sites are extremely difficult to finance with conventional lenders. Therefore, the GMF financing can be an integral part to finance a project. Even though a project is economically viable, it may require the financing from the GMF to get past the contamination clean up stage of the project;
- Using the “but for” test would have not qualified the Medallion project in Old East Village for brownfield incentives. Medallion was approved for \$567,095 in brownfield incentives. This is not an insignificant amount of money, but not large as a percentage of the entire development;
- Applying one standard to one developer and not to another creates a bad optics to the development community and the public. It compromises the integrity of the process and leaves the public wondering why one party is treated better (or worse) than the other party.

Staff maintain that the “but for” test is a relevant test for considering how the contribution of municipal financial incentives address the ‘feasibility gap’ that needs to be bridged to achieve development. Staff are of the opinion that the “but for” test has been met for this application, but also recognize that without access to the applicant’s proforma for the project it adds difficulty in determining if the incentives are necessary to make the remediation and redevelopment of the subject property feasible.

REFINED REMEDIATION COSTS

Based on the April 4, 2017 Municipal Council resolution, the following section refines the cost of remediation.

Tipping Fees

In the business case Rygar has indicated a \$35/tonne brownfield waste tipping fee. Based on the estimated 25,966.5 tonnes of contaminated soil, this equals a total tipping fee of \$908,827.50.

The City’s tipping fee at the W12A landfill is \$31/tonne for brownfield waste. Based on the estimated 25,966.5 tonnes of contaminated soil, this equals a total tipping fee of \$804,961.50.

The difference between using a \$35/tonne tipping fee and a \$31/tonne tipping fee is \$103,866.

Rygar has provided some justification on the fees used in its business case. A \$35/tonne tipping fee in the business case is based on the following:

- The City’s W12A is not a large landfill site and cannot guarantee to take all the 25,967

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tonnes of contaminated material. This site can also limit the amount of contaminated material (tonne) accepted per day. Based on Rygar’s construction schedule and the W12A ability to receive its contaminated material they have included the \$4/tonne contingency;

- The business case has also included the possibility of using a private landfill site GFL in Dorchester, Ontario, where tipping fees are \$35/tonne;
- Additional cost related to seepage of water will increase the bulk unit weight of the soil being removed;
- A contingency is also built into Rygar’s \$35/tonne tipping fee that a small amount of hazardous material will not be accepted by W12A and will have to be taken to GFL site at a tipping fee of \$260/tonne.

As a result of the additional information provided by Rygar, staff believe the \$35/tonne tipping fee is appropriate.

Further, once the remediation work is completed, receipts are required from Rygar to determine the actual cost of the remediation work including the tipping fees.

Excavation and Trucking Fees

In its business case Rygar has indicated a \$30/tonne brownfield waste tipping fee. Based on the estimated 25,966.5 tonnes of contaminated soil, this equals a total tipping fee of \$778,995.

Staff have calculated a \$21/tonne tipping fee for clean soil based on a site servicing project where space is constrained and soil removal is slower. Based on the estimated 25,966.5 tonnes of contaminated soil, this equals a total tipping fee of \$545,296.50. However, Staff caution that the \$21/tonne excavation and trucking fee is not comparable as it does not take into consideration all the brownfield site factors built into the \$30/tonne excavation and trucking fee provided by Rygar and its environmental consultant.

Further, Rygar has provided some justification on the fees used in the business case. A \$30/tonne excavation and trucking fee in the business case is based on the following:

- Delays as related to on-site testing;
- Delays as related to underground storage tank removal;
- Delays as related to off-site Lab testing (one to two days);
- Delays in testing the groundwater in the excavation for the petroleum impacted soils;
- Additional cost related to seepage of water will increase the bulk unit weight of the soil being removed;
- MOECC license hauler required;
- Trucking to GFL landfill site in Dorchester, Ontario;
- Cost related to site location in downtown core.

As a result of the additional information provided by Rygar, staff believe the \$30/tonne excavation and trucking fee is appropriate.

Again, receipts are required from Rygar to determine the actual cost of the remediation work including the excavation and trucking fee.

CONCLUSION

Staff are recommending that the requested amount of \$2,735,007 in brownfield financial incentives be approved by Municipal Council for the following reasons:

- 1) The Brownfield CIP program requirements make no distinction between the excavation, removal, and disposal of contaminated soil versus a comparable amount of clean soil or the incremental cost difference between removing contaminated soil versus removing an equivalent amount of clean soil;
- 2) The previous five approved Brownfield CIP applications did not separate out the costs for removing the equivalent amount of clean soil;

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- 3) Clean soil is often removed from a site at a marginal cost, no cost, or for a profit to the property owner;
- 4) The \$35/tonne tipping fee assumptions are reasonable given Rygar's additional provided information and its environment consultant's expert opinion;
- 5) The actual tipping fees paid for the disposal of the contaminated soil will need to be demonstrated and proof provided to the City before any grants are paid;
- 6) The \$30/tonne excavation and trucking fee assumptions are reasonable given Rygar's additional provided information and its environment consultant's expert opinion;
- 7) The actual excavation and trucking fees for removing the contaminated soil needs to be demonstrated and proof provided to the City before any grants are paid.

PREPARED BY:	SUBMITTED BY:
GRAHAM BAILEY, MCIP, RPP URBAN REGENERATION	JIM YANCHULA, MCIP, RPP MANAGER, URBAN REGENERATION
RECOMMENDED BY:	
JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER	

April 13, 2017

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Attached: Appendix "A" – Business Case Submission
 Appendix "B" – April 7, 2017 Letter from Rygar Properties Inc.
 Appendix "C" – Email from exp Services Inc.

Agenda Item # Page #

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Appendix "A" – Business Case Submission

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Appendix “B” – April 7, 2017 Letter from Rygar Properties Inc.

Rygar Properties Inc.

April 7, 2017

Mr. John Fleming

Managing Director of Planning and City Planner

City of London, Planning Department

206 Dundas Street

London, ON

Dear Mr. Fleming

Re: Fullarton Dufferin Talbot Development

At the council meeting of April 5, 2017, the planning committee recommendation was referred back to staff to consult with Rygar Properties to determine the incremental cost of removing clean soil from the site versus removing the contaminated soil.

Remediation Costs

With respect to the incremental cost proposition, my understanding of the theoretical proposition, as stated in the March 27 PEC meeting, is that:

- The only increased cost of remediating a cubic meter of contaminated soil over non-contaminated soil would be the type of truck used (MOE approved), the tipping fees to dispose of the soil at a MOE approved land fill site, and the additional trucking cost (if any) to travel to a land fill site versus dumping closer to the excavated site. The cost to the developer of trucking and excavation are the same.

In practice this is not the case. While contaminated fill is a major liability to a landowner, clean fill is not. Clean fill can be used:

- at sites requiring clean fill to bring grades up to a desired level
- construction projects needing fill for new roads, parking lots, or support for structural improvements or additions such as bridges roads or culvert support
- sites needing to fill areas where contaminated soil has been removed or,

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Rygar Properties Inc.

- used for structural fill at sites that may have poor soil conditions such as under basements in new subdivisions where existing soil conditions cannot support the buildings

The attached email from EXP Services provides examples of situations where this has taken place. They are summarized in the table below.

Use of Clean Fill Table		
Property	Use of excess fill	Cost to owner of fill
Bingman Creek Storm Water Management Ponds	Contaminated soil disposed of at MOE approved facility. Excess clean fill sold to developer	Owner sold fill to neighbouring developer
London Convention Centre	Contaminated soil disposed of at MOE approved facility. Excess soil removed to another site and gravel pit utilizing routine trucking process	Conventional trucking process
King and Lyle Streets Development	Contaminated soil disposed of at MOE approved facility. Excess soil was trucked to the Hale Street and Trafalgar Road round about.	Nominal trucking cost of 3.7 km
Beaufort Street	Contaminated soil disposed of at MOE approved facility. Excess soil removed to another site for site grading	No cost to owner
Fanshawe Park Road and Hyde Park Road	Excess fill in subdivision was sold to new commercial development in the same area	Profit to fill owner

The reality is that there is a marketplace for clean fill where it can be disposed of for:

- Nominal trucking cost
- No cost to the fill owner, or
- A profit to the owner of the fill.

The theoretical assumption that the cost of removing contaminated soil is the same as removing clean soil, except for tipping, testing and engineering supervision is incorrect.

Rygar Properties was asked to provide a comparative cost of removing the contaminated soil versus removing the same soil assuming it were not contaminated, using the same removal methods. This request ignores the market conditions noted above, however the comparison is provided in the Stantec chart attached.

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Planner: G. Bailey

Rygar Properties Inc.

"But for Test"

Another contentious and incorrect issue was raised, being the ***"But For Test"***.

There is no mention of a *"But For"* test in the by-law, however it has been suggested that this is, the, or one of, the standards of measurement for the eligibility of a project under the incentive program.

For this incentive program, applying a *"but for"* test would be inappropriate and counter intuitive for the following reasons"

- Providing the incentive to a project that would only proceed if it receives the incentive, supports marginal projects that perhaps should not be built in the first place, and turns the incentive program into a "bail out" program.
- Requiring a *"but for"* test discriminates against wealthier developers because even though the circumstances may be the same for 2 developments, or even more deserving for one development, the wealthy developer could not claim they didn't have the resources to pay for the remediation cost.
- The smaller the amount of contamination on a site the more disadvantaged the developer is versus a large contamination. By example the Medallion development was initially 600 apartment units (now grown to 900 units) and the approved contamination cost was \$567,095. Not an insignificant amount of money but not large as a percentage of the entire development. Using the *"but for"* test, Medallion would not have qualified for the incentive.
- To determine if a project required the incentive to proceed, the developer would presumably have to make public the financial business case for the development, making public, confidential and competitive information.
- The bylaw recognizes on page 19 the existence of the GREEN MUNICIPAL FUND PROGRAM, that provides financial loans for brownfield sites that have received incentives under a municipal CIP. Contaminated sites are extremely difficult to finance with conventional lenders. Therefore, the GMF financing can be an integral part to financing of a project. So, even though a project is economically very viable, it may require the financing from the GMF to get past the contamination clean up stage of the project. Without the CIP incentives, the project would not qualify for the GMF funding.
- Finally, applying one standard to one developer and not to another creates a very bad optic to the development community and the public. It compromises the integrity of the process and leaves the public wondering why one party is treated better (or worse) than the other party.

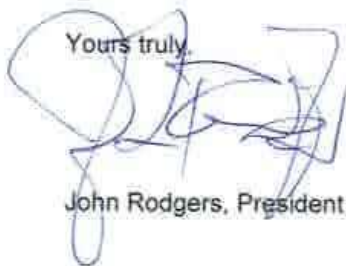
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Planner: G. Bailey

Rygar Properties Inc.

In summary, the proposed method of calculating the remediation costs is incorrect and ignores the realities of the marketplace and accepted practices of site remediation, and should be rejected.

The premise of the "**but for test**" is not recognized in the bylaw, is prejudicial and harmful to developers, public perceptions, and the incentive program, and should also be rejected as a measurement for qualifying for the incentive program.

Yours truly,

John Rodgers, President



Planner: G. Bailey

Appendix “C” – Email from exp Services Inc.

4/7/2017

Schoolelink Mail - RE: Letter to John Fleming



John Rodgers <john@rygarproperties.com>

RE: Letter to John Fleming

1 message

Bolei Chiu <Bolei.Chiu@exp.com>
 To: John Rodgers <john@rygarproperties.com>, Brian Blackwell <brian.blackwell@stantec.com>
 Cc: Scott Aziz <Scott.Aziz@exp.com>

6 April 2017 at 14:36

Hi John,

The key cost for the contaminated soil removal is the tipping charge at the landfill. The landfill will require a MOECC licensed hauler to transport the waste to the landfill as per O.Reg 558. The procedure for accepting waste is very stringent which includes a regiment of analyses for bulk composition and the leachate quality as required by the landfill license and the regulations. The procedures for trucking “clean” soil and contaminated waste are not comparable. For conventional trucking the unit cost can be as low as \$2 to \$3 per tonne. The tipping cost with license haulage is in the range of \$50 to \$65 per tonne. For clean soil, the material can go to another project as fill or to a gravel pit for rehabilitation purpose. Many contractors will truck in construction material such as structural fill and truck back the removed clean soil to the gravel pit. In many instances, developers of the receiving sites will compensate for the clean soil. It is not uncommon to pay \$3 to \$7 per tonne to receive clean fill. Clean soil can be valuable to developers for the cut and fill operations in site development.

These are the example projects we were involved in the London area. No specific name was mentioned to protect the interest of our clients.

1. Dingman Creek SWMP 2015-2016 – The excess clean soil was removed from the excavation of the ponds to two development sites. Both sites are at south London. My understanding is that the impacted soil at the Dingman site was handled separately prior to the mass excavation for the ponds. Exp was not involved in the cleanup phase at the SWMP but was involved at the receiving sites. Once the clean soil arrives at the receiving site, further testing was completed by exp to verify that no impacted soil was transported. The developer at the receiving sites paid for the clean fill.
2. London Convention Centre – The site was contaminated with lead. The contaminated soil was removed and transported to a specialized landfill facility west of London. The process was strictly monitored by MOE. All waste was transported under a manifested system. Licensed hauler and excavator were retained to perform the remediation. All workers involved followed the cleanup protocols from MOE and MOL. The remediation was required prior to the actual construction. The mass excavation continued to remove the excess soil to the underground parking levels. The clean soil was removed to another site and a gravel pit utilizing routine trucking process.

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4/7/2017

Schoolelink Mail - RE: Letter to John Fleming

3. King and Lyle Streets Development – This site required a Record of Site Condition to proceed to a residential development. A significant quantity about 3,000 tonnes of lead contaminated soil was removed to the City of London landfill. The remediation followed the MOE protocol and was documented. The owner hired licensed contractor and hauler to remove the contaminated soil. The clean soil from the mass excavation went to another site at Hale Street with conventional trucking methodology.
4. Beaufort Street Site – A Record of Site Condition was required for this site for the development. A total of 8,000 m³ of impacted soil was removed to a local commercial landfill for disposal using licensed hauler and cleanup crew. Structural fill, sand and gravel, was imported to fill the excavation. The balance of surplus fill was removed to another development for site grading use.
5. Fanshawe Park Road East Development – The site is located at an old gravel pit. Unsuitable soil and impacted material were removed and handled by licensed contractors for disposal. Approximately 7,000 m³ of clean fill was sold and transported to a commercial developer at west London.

Regards,

Bo Chiu | exp

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