

**OSHTEMO CHARTER TOWNSHIP
DOWNTOWN DEVELOPMENT AUTHORITY
BOARD OF DIRECTORS**

MINUTES OF A MEETING HELD SEPTEMBER 15, 2022

The Oshtemo Charter Township Downtown Development Authority (DDA) Board of Directors held a regular meeting at the Oshtemo Community Center, on Thursday, September 15, 2022. The meeting was called to order at approximately 12:15 p.m.

Members Present: Themis Corakis, Treasurer, Libby Heiny-Cogswell, Stephen Dallas, Rich MacDonald, Vice Chair, Ryan Wieber, Secretary and Ryan Winfield.

Members absent: Grant Taylor, Chair, Bill Cekola, and Dick Skalski.

Also present: Iris Lubbert, Planning Director, Anna Horner, Director of Public Works, Thomas Wheat from Prein & Newhof, Barney Naylor from Naylor Landscaping, Martha Coash, Assistant Secretary and one guest.

Agenda

Vice Chairperson MacDonald chaired the meeting in Chairperson Taylor's absence. He asked if there were any corrections or additions to the agenda.

Ms. Lubbert asked that item 7 (Holiday Décor) be considered before item 6 (Discussion of Potential Atlantic Avenue Extension Project) and that a closed session be held for part of the Atlantic Avenue Extension Project item in order to discuss strategy.

Vice Chairperson MacDonald asked for a motion.

Mr. Wieber made a motion to approve the agenda with the changes requested. Mr. Corakis seconded the motion. The motion carried unanimously.

Approval of Minutes: July 19, 2022

Vice Chairperson MacDonald asked if there were additions or corrections to the Minutes of July 21, 2022. Hearing none, he asked for a motion.

Mr. Wieber made a motion to approve the Minutes of the Meeting of July 19, 2022 as presented. Mr. Winfield seconded the motion. The motion carried unanimously.

Public Comment on Non-Agenda Items

There were no comments.

Treasurer's Report: June - July 2022 (unaudited)

Ms. Lubbert presented the June - July 2022 Treasurer's Report, explaining that \$162.68 was returned from this cycle. Total interest collected was \$1,170.13. Total property tax revenue collected was \$218,099.81.

Expenditures from this cycle total \$32,334.84 and included \$20,000 earnest money for the Atlantic Avenue expansion project property purchase, \$3450 for a property appraisal, a banner swap, landscaping fees, general operating expenditures, and engineering work for the north side of the Stadium Drive sidewalk project.

The remaining balance for the year is \$332,831.

Vice Chair MacDonald asked if there were any property tax appeals.

Ms. Heiny-Cogswell said some are pending, but none in within the DDA boundary.

Mr. Wieber made a motion to approve the Treasurer's Report for June - July, 2022 as presented. Vice Chair MacDonald seconded the motion. The motion carried unanimously.

Holiday Decor

Ms. Lubbert provided Naylor Landscaping's 2022 proposal for holiday decoration of the 9th and Stadium corner park for consideration.

Mr. Barney Naylor of Naylor Landscaping noted over the last five years the cost for holiday décor at 9th and Stadium corner park was under \$5,000 as budgeted by the DDA Board. Instead of the contract for just the upcoming holiday season, he proposed a three year contract for 2022 – 2024 at \$5,493 per year, noting increased costs to his business due to inflation. In addition, he purchased a 14 foot commercial grade artificial tree at a cost of \$9,000 for use there as the 12 foot tree from the past three years was no longer serviceable. It will be larger in height and diameter than in the past, and should last for 20 years.

With the larger tree and significant growth in the other trees in the park to be lit, more lights will be needed to cover the trees, also increasing costs.

Mr. Corakis requested the lights be kept on all night during the holidays.

Mr. Naylor indicated there is a problem with internal timers, but that most often when they responded to the lights being off it was due to someone having unplugged them.

The Vice Chair asked that Township maintenance look into the internal timer problem. He was in support of the three year contract, noting the only reason that might vary is if the land were sold, which is not in the DDA's plans at this time.

Mr. Corakis asked that multi-colored lights on the large tree be considered rather than all white lights.

Vice Chair MacDonald made a motion to approve an updated contract with Naylor Landscaping to decorate the 9th and Stadium corner park as proposed, for a three year period (2021 - 2023) at a cost of \$5,493.00 per year minus the balance of \$470 for 2021. Mr. Winfield seconded the motion. The motion carried unanimously.

Mr. Naylor noted he would provide the updated three year contract as approved.

Discussion of Potential Atlantic Avenue Extension Project

Ms. Lubbert reported, based on direction given during past DDA closed sessions, the property acquisition subcommittee negotiated and entered into a purchase agreement for the property located at 6227 Stadium Drive. The DDA has 180 days, until December 21, 2022, to conduct property inspection and other due diligence to determine if the DDA wishes to close.

Vice Chair MacDonald also reviewed the negotiations process with the property owner and how the purchase price was determined and accepted.

Ms. Lubbert, Ms. Horner, and Vice Chair MacDonald discussed why the Township's Master Plan is important to be able to grow the community as desired and that success is based on the transportation network. They provided the pros and cons/risks associated with purchasing the property in order to achieve development and traffic safety goals. They described how those achievements could affect future development. Township officials are stewards and need to look at the big picture for the future and to plan for projects like this.

A timetable for proceeding if the purchase of the property is approved would include:

- 2022: Budget, Inspection, due diligence phase (currently in)
- 2023: Traffic Study which would be used to apply for construction grants
- 2024: Grants received
- 2025: Build

The public, including businesses and residents, would be involved utilizing public meetings, open houses etc. to be sure they are kept informed.

The assumptions for funding/repayment were that the total land purchase will cost \$1,200,000 and the cost to issue the Installment Purchase Contract (“IPC”) will be \$25,000. \$300,000 was deducted as the DDA indicated they could contribute that amount to come up with an IPC of \$925,000. The DDA would be able to meet the Debt Service Requirements based on the assumptions described.

Also discussed was the plan recommended for funding by Mark Nettleton of Bendzinski & Co., bonding experts, as the one that would be the quickest, cleanest, and that would provide the lowest rate that would be possible to get. As the DDA is not authorized to acquire property using an Act 99 IPA, the recommended plan would involve having the Township Board acquire the property and leasing it to the DDA. The *Schedule of Debt Service Requirements* and the *Schedule of Projected Revenues, Expenditures, Debt Service Requirements and Coverage* from Bendzinski & Co. were provided to the group.

Mr. Wheat of Prein & Newhof, explained the necessary environmental survey being undertaken as part of due diligence. He indicated phase one has been completed on the property. It was determined there was once an orchard on the property and thus a potential for arsenic in the soil. In addition there is a fuel oil fill tube near the building that may be connected to an old underground storage tank.

He said if there had been nothing found, the phase one study would have been completed and filed with the state. Since the two items were found, it is necessary to move to phase two, which involves testing and investigating for contamination. (Cost of \$2,500) If nothing is found in phase two, the study will end there.

If something is found, an Assessment Baseline (\$2,000) would need to be done as well as Due Care Plan so contamination is not made worse (\$1,800), so the worst case scenario for study costs would be \$6,300.

Vice Chair MacDonald felt it was reasonable to share the results of phase one with the seller. Additional conversation will be needed if further problems are found. If it is declared a brown field, assistance for clean up funding may be a possibility.

It will likely take 2 weeks to determine if a Due Care plan is needed; if it is needed it will require 6-7 weeks to complete in a worst case scenario.

Ms. Lubbert said in order to expedite timing, a formal motion is needed to authorize Mr. MacDonald to move ahead with Prein & Newhof as outlined. The funds are available and do not require a budget amendment.

Vice Chair MacDonald asked that the relevant related documents be appended to the minutes.

The Vice Chair made a motion to authorize the real estate committee to move ahead with the steps as outlined with Prein & Newhof for environmental testing of the property located at 6227 Stadium Drive, not to exceed \$7,500. Mr. Winfield seconded the motion. The motion carried unanimously.

Project Updates

A. Stadium Drive Sidewalks

i. North Side

Mr. Wheat of Prein & Newhof provided an update of the sidewalk project for the north side of Stadium Drive, indicating it has been completed.

Mr. Corakis said there are still a few things to be addressed: removal of filter fabric from storm drains and 2x4s from a curb, reversal of the church parking lot exit door, clean-up of wood chips from tree removal and places where not enough soil was provided resulting in big dips.

A copy of the punch list will be distributed to address the outstanding items and get the project completed.

ii. South Side

It was noted the DDA had decided to delay work on the south sidewalk until 2023. The design is partially done, the route laid out but not the grading. The west side of 9th Street is designed. More clarity is expected once a survey is complete.

CLOSED SESSION

The Vice Chair made a motion to move to closed session to discuss property acquisition strategy. Mr. Wieber seconded the motion. The motion carried unanimously.

The meeting moved to closed session at 1:26 p.m.

The Vice Chair made a motion to return to open session. Mr. Corakis seconded the motion. The motion carried unanimously.

The meeting returned to open session at 1:45 p.m.

The Vice Chair made a motion to authorize the real estate committee and Ms. Lubbert to discuss financing the property acquisition, subject to the alternative ideas and concepts discussed during the closed session and costs incurred of finance/bond professionals. Mr. Winfield seconded the motion. The motion carried unanimously.

It was agreed that when the property acquisition proposal goes to the Township Board, all DDA members should be present or submit a letter of endorsement.

As members needed to leave, Ms. Lubbert indicated discussion of the CIP would require a special meeting which she will schedule after determining members' availability.

Other Items

There were no other items to consider.

Announcements and Adjournment

With no further business to consider, Vice Chairperson MacDonald adjourned the meeting at approximately 1:48 p.m.

Oshtemo Charter Township
Downtown Development Authority

Minutes Prepared: September 16, 2022

Minutes Approved: September 29, 2022

Executive Summary

Prein&Newhof conducted a Phase I Environmental Site Assessment on 6227 Stadium Drive, Oshtemo Township, Kalamazoo County, Michigan, (hereinafter, the “Property”) for the benefit of Oshtemo Downtown Development Authority. The Property contains an approximately 1,815 square foot single family residence with a detached garage, and two kennel structures on approximately 5.8 acres.

The history of the Property has been documented back to 1938 when aerial photographs show the Property with an orchard on the west side. The concern about previous orchard uses at properties is that lead-arsenate pesticide was known to have been applied on orchards and other fruit vines during that time; therefore, the potential for lead and arsenic to be in the soil layers at the Property from the former orchard is listed as a *recognized environmental condition*. The Property was then redeveloped in 1949 with the residence and then one or two years later the smaller dog kennel was constructed. The larger dog kennel was constructed in 1952. The detached two-stall garage was constructed in 1982-83 timeframe. The residence originally had a water well and a septic system and the large dog kennel had a septic system. Later the residence was connected to the municipal water supply and the septic systems were connected to the sanitary sewer when it became available.

The Property was not identified as a site of known or suspected environmental contamination on the environmental database search. The identified sites within the ASTM search area are not expected to have a direct environmental impact on the Property.

During the site reconnaissance at the Property on September 12, 2022, a residence for Ms. Mary Kinney and the Happytails Kennel were located at the Property. Evidence of the septic systems and the disconnected water well were observed. Additionally, a potential fill port to a UST for home heating oil was observed adjacent to the south side of the breezeway. It was likely used for heating oil storage as the original fuel for the residence, although Ms. Kinney said that she had no knowledge of any past heating oil use at the residence. With the evidence of the UST likely still in the ground but no longer in use, the heating oil tank at the Property is considered a *recognized environmental condition*. When USTs are no longer in use, they shall be removed with closure sampling to verify the condition of the soil or groundwater.

We have performed a Phase I Environmental Site Assessment that follows the general scope and limitations of ASTM Practice E1527-05/13 of 6227 Stadium Drive, Oshtemo Township, Kalamazoo

County, Michigan, *the Property*. This assessment has revealed no evidence of *recognized environmental conditions* in connection with the Property, except for the following:

- Previous orchard on the Property
- Evidence of a heating oil UST at the Property

7 FINDINGS, OPINIONS, & CONCLUSIONS

The purpose of this section is to present our findings with respect to the Property, provide our opinion of the findings with respect to *recognized environmental conditions*, and then list the *recognized environmental conditions* in the conclusions.

7.1 Findings

This assessment has revealed the following findings with respect to *recognized environmental conditions* in connection with the Property.

- Previous orchard on the Property
- Evidence of a heating oil UST at the Property
- Two residential septic systems no longer in use
- Water well no longer in use

7.2 Opinions

The purpose of this report was to identify *recognized environmental conditions* associated with the Property. Therefore, the findings are evaluated in light of this goal, which is to satisfy the “all appropriate inquiry” requirement.

- **Previous orchard on the Property:** The 1938 aerial photograph shows an orchard on the west side of the Property. The 1955 aerial photograph appears to show remnant features of the orchard and it was redeveloped with the residence and kennel by that time. The concern about previous orchard uses at properties is that lead-arsenate pesticide was known to have been applied on orchards and other fruit vines during that time and up to the late 1970’s or possibly into the 1980’s. This type of pesticide was not common on other types of agricultural crops. This type of pesticide has been evaluated in other orchard areas and soil has been identified with elevated levels of lead and or arsenic. The past use of the Property as an orchard is considered a *recognized environmental condition* and further testing of lead and arsenic in the upper soil layers is recommended.
- **Evidence of a heating oil UST at the Property:** the fill port observed adjacent to the south side of the breezeway is likely associated with a UST used for heating oil storage as the

original fuel for the residence. Heating oil is petroleum that can be released into the subsurface environment if it is not properly stored in the UST. With the evidence of the UST likely still in the ground but no longer in use, the heating oil tank at the Property is considered a *recognized environmental condition*. When USTs are no longer in use, they shall be removed with closure sampling to verify the condition of the soil or groundwater.

- **Two residential septic systems no longer in use:** Septic systems can be pathway for environmental contamination to enter the soil or groundwater, if they are used for industrial wastes or retail wastewater that includes waste liquids that are not appropriate for a septic system. Two septic systems were used at the Property prior to connection with municipal sanitary sewer. The residences septic system has a cover to the south of the residence. A cover for the septic system for the large kennel is located to the north of the kennel building. Residential septic systems are not expected to produce contamination that requires further investigation. It appears that both septic systems at the Property were used for residential-type wastewater from the upstairs living quarters and from the dog kennel building; therefore, the septic systems at the Property were not elevated to a *recognized environmental condition*.
- **Water well no longer in use:** the water well observed in the “well room” in the basement of the residence did not have any well record available to determine the depth or date of installation. It was disconnected and no longer in use. A residential water well is not a *recognized environmental condition*, although it will be required to be sealed and abandoned in the future to close the potential pathway for contaminants to travel from the surface to the water table and groundwater.

7.3 Conclusions

We have performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E1527-05/13 of 6227 Stadium Drive, Oshtemo Township, Kalamazoo County, Michigan, *the Property*. Any exceptions to, or deletions from, this practice are described in this report. This assessment has revealed no evidence of *recognized environmental conditions* in connection with the Property, except for the following:

- Previous orchard on the Property
- Evidence of a heating oil UST at the Property



INQUIRY #: 7096006.8

YEAR: 1955

— = 500'





INQUIRY #: 7096006.8

YEAR: 1938

— = 500'





Looking north at the residence and breezeway.



Closeup view of potential fill port.

The remaining portions intentionally left blank.

September 14, 2022
2220939

Via email to ilubbert@oshtemo.org

Ms. Iris Lubbert, AICP
Planning Director and DDA Staff
Oshtemo Charter Township
7275 W. Main Street
Kalamazoo MI 49009

Re: Proposal for Phase II Environmental Services
6227 Stadium Drive, Kalamazoo, MI

Dear Ms. Lubbert:

Prein&Newhof is pleased to present this proposal and agreement update to perform environmental services on 6227 Stadium Drive, Kalamazoo, MI (herein after the “Property”). The Phase I Environmental Site Assessment for the Property has identified two *recognized environmental condition* (REC) associated with the previous orchard on the Property and evidence of a heating oil UST located on the Property.

This proposal provides a scope of work to sample and test the soil associated with the previous orchard at the Property. The area with evidence of a heating oil UST will be investigated and if it is determined that a UST is located on the Property, we will collect soil samples from the base of the tank. If it is concluded that a home heating oil UST is located at the Property, it should be removed with closure sampling; however, this can occur during building demolition which is considered to be the most cost effective for the project because it will be easier at that time to access the area.

If the tank needs to be emptied, it will be emptied by a tank professional company before it is removed from the ground and the tank may require cleaning before removal. As the removal proceeds, the tank should be inspected for pipes that may also need to be removed. The scope of this proposal does not include the emptying, cleaning, removal or disposal of the tank.

A site assessment will be performed including securing soil samples from beneath the ends of the tank after it is removed. A soil sample will be collected from the area where piping enters the residence. The samples will be collected for laboratory analytical testing of the following volatile organic compounds (VOCs) benzene, toluene, ethylbenzene, and xylenes (BTEX) and trimethylbenzenes (TMBs), and polynuclear aromatic (PNA) compounds.

If it appears a release of product occurred (dark stains in the soil, soils that smell oily or like gas, an oily sheen on water in the excavation), we recommend that the homeowner or their designated representative report it to the Michigan’s EGLE Remediation and Redevelopment Division. At that time, we would recommend removal of the contaminated soil and transporting it to a landfill. Confirmation samples would be collected after the excavation occurred to verify an adequate amount of soil removal. If there is a release requiring additional soil removal and verification sampling, we would provide a supplemental agreement for this work.

REGULATORY FRAMEWORK

When a Phase I Environmental Site Assessment (ESA) establishes that *recognized environmental conditions* are present at a site, a Phase II investigation is required to determine if

contaminant concentrations within the soil or groundwater exceed Part 201 Generic Residential Cleanup Criteria (GRCC). If the concentrations of contaminants do not exceed Part 201 GRCC, we would prepare a Phase II Environmental Site Assessment to document your due diligence. If the concentrations of contaminants are found to exceed these criteria, the property would be classified as a “facility” under Part 201, and we would recommend that a Baseline Environmental Assessment (BEA) be performed within 45 days after purchase, occupancy, or foreclosure (whichever is first) to provide the new owner protection against clean-up liability under Part 201. At that time, a Documentation of Due Care Compliance (DDCC) may also be required to prevent exacerbation of contaminants found at the site.

SCOPE OF ADDED SERVICES

To investigate the RECs identified above, we recommend the following scope of services:

1. Phase II Environmental Investigation

- a) **Incremental Sampling in the former orchard areas:** The former orchard areas of the Property will be sampled as a decision unit for incremental sampling (IS) soil verification sampling. We will use the Trimble to locate the decision unit areas for sampling. We estimate that two IS samples will be collected from the former orchard areas – one decision unit associated with the front yard areas and one decision unit from the backyard area. The soil samples will be tested for lead and arsenic. In addition, lead soil fractions will be tested if lead concentrations exceed 75 mg/Kg.
- b) **Evidence of a heating oil UST:** The potential UST will be investigated by confirming a UST is located on the Property by opening the fill pipe and attempting to measure if product is in the tank and to measure the depth of the tank. If a UST is confirmed at the Property, then we will attempt to determine the orientation of the tank for the placement of soil borings. We will advance two soil borings by hand at the ends of the tank to obtain soil samples from the bottom of the tank at either end. The samples will be collected for laboratory analytical testing of the following volatile organic compounds (VOCs) benzene, toluene, ethylbenzene, and xylenes (BTEX) and trimethylbenzenes (TMBs), and polynuclear aromatic (PNA) compounds. We have planned for two soil samples for this portion of the investigation. The soil in each soil boring will be described in the field on soil boring logs.

2. Phase II ESA or BEA Report

If the detected concentrations do not exceed Part 201 GRCC, then we will complete a Phase II ESA which will document our work. A BEA will not be prepared and a DDCC report described below will not be prepared.

If any concentrations in the laboratory analytical results exceed Part 201 GRCC, which would mean that the Property is a “Facility” under Part 201, as defined in Section 20101(1)(o) of Part 201 of the Natural Resources and Environmental Protection Act (NREPA), P.A. 451 of 1994, as amended, we will prepare a BEA report, and a separate Phase II ESA report will not be prepared. The Phase 2 results including sampling descriptions and location maps, soil boring logs, summary tables, analytical results will be included in the BEA report.

The BEA report will be suitable for submission to Michigan’s Department of Environment, Great Lakes, and Energy (EGLE). The BEA will describe the results and the sampling methodologies such that a separate Phase II ESA report will not be included in the BEA report

or separately prepared. We will submit the BEA after you have a chance to review and sign the BEA submittal form.

3. Documentation of Due Care Compliance

If a BEA report is prepared that shows the compounds that exceed Part 201 GRCC, we will also prepare a DDCC report based on the requirements of Section 20107a. The DDCC report will outline measures of due care actions for owners and operators of contaminated properties to take in order to ensure that the existing contamination at the property does not cause unacceptable risks and is not exacerbated such as during the case of redeveloping the Property.

All owners and operators of a facility, even if you are not liable for the contamination, have “due care” obligations. A new owner needs to take measures to prevent unacceptable exposures to hazardous substances. With certain exceptions, an owner or operator of a facility shall do all of the following with respect to contamination existing at the facility:

- a) Not worsen the existing contamination.
- b) Prevent unacceptable human exposure and reduce fire and explosion hazards to allow for the intended use of the facility that is protective of the public health and safety.
- c) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party.
- d) Provide notification to EGLE and others,
- e) Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct response activities at the property.
- f) Comply with any land use or resource use restrictions established or relied on in connection with the response activities.
- g) Not impede the effectiveness or integrity of any land use or resource use restriction.

Due care requirements apply to non-liable parties and liable parties alike, and these requirements are not related to the owner or operator’s liability for the contaminants. The Due Care analysis would be summarized in a report that can be used to show compliance with Section 20107a of Part 201.

If samples show the potential for vapor intrusion, soil gas sampling may be needed to evaluate any associated risks. Soil gas sampling is not included in this phase of work but may be required for the DDCC requirements.

Please note that this proposal does not include any remediation should it be required for the future use of the Property.

PROFESSIONAL FEES

Based on the scope of services outlined herein, we anticipate a not to exceed price of \$6,300 based on the following professional fees:

Phase II Sampling/Testing	\$2,500
Phase II ESA OR BEA	\$2,000
DDCC (if Facility)	\$1,800

Although not included in the scope of our services, we estimate that the cost of emptying, cleaning, removing and disposing of the UST would be on the order of \$5,000.

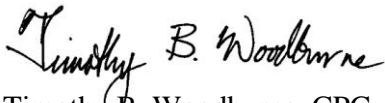
SCHEDULE

We will plan to schedule sampling the areas described within two weeks of agreement approval. The sampling is expected to be completed in one day. The laboratory results should be completed in approximately two weeks from collecting the samples. On this basis, we could provide verbal results approximately two weeks after sampling. Our written report could be provided approximately two to three weeks thereafter. As stated above, if a BEA report is prepared, the DDCC report will be completed after the BEA report. As stated above, if there is a UST, we recommend that it be removed from the ground at the time of building demolition.

We would be happy to discuss alternate delivery schedules with you should you desire.

Sincerely,

Prein&Newof



Timothy B. Woodburne, CPG



Christopher J. Cruickshank, P.E.

Attachment – Proposed Soil Boring Location Plan

Accepted for: Oshtemo Downtown Development Authority

Signature: _____

Title: _____

Printed Name: _____

Date: _____