

What Brownfields Can Do for You

How Some Developers are Spinning Environmental Contamination into Gold

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Generally speaking, Brownfields are contaminated properties. Whether the substance in the ground is oil, detergents, polychlorinated biphenyls, (PCBs,) or some other volatile organic compound (VOC) or contaminate, a Brownfield is generally considered an environmental headache.

Despite this, some developers are now searching for Brownfield sites to develop instead of running in the other direction as they once did.

Which begs the question — why?

As it turns out, the tide is slowly turning for the old mills, manufacturing plants, and dumping grounds that are commonplace in post-industrial cities and towns throughout New England. Indeed, with urban space at a premium, developers are forced to consider the reuse and redevelopment of these sites, many of which are contaminated.

To offset some of the expense associated with remediation of the environmental contamination associated with Brownfields development, the government has implemented subsidies for environmental assessment as well as cleanup. Indeed, the U. S. government authorizes up to \$250 million annually for Brownfields grants to private developers, and Massachusetts funnels up to \$30 million to its dedicated Brownfields fund.

What Is a Brownfield?

A Brownfield site is real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Brownfield sites are often abandoned industrial or commercial sites.

Prior to federal and state legislation, (the Small Business Liability Relief and Brownfields Revitalization Act and the Brownfields Act: Chapter 206 of the Acts of 1998, respectively) both developers and their lenders steered far clear of these contaminated sites. Developers feared that environmental cleanup costs would be substantial and would shrink the expected project profit margin.

Commercial lenders feared that, in the event of a foreclosure, the bank would be stuck with a contaminated property and substantial attendant cleanup costs. The financial incentives provided by the state and federal government have generally allayed these concerns and reinvented the business model.

What is the Government's Interest in Developing Contaminated Properties?

Quite simply, land is a finite resource; they are not making any more of it. Accordingly, local, state, and federal governments have placed increased scrutiny on new development projects, attempting to maximize the use of natural resources, reduce the demand placed upon municipal services, and ultimately reduce urban sprawl.

The ever-increasing interest in land-use management has been a catalyst for developers' consideration of recycling previously used and contaminated commercial and industrial sites. This is especially the case for those sites located in dense urban areas with access to major roads.

The federal government, the Commonwealth, and respective

municipalities each have a stake in the development of Brownfield sites. These long-forgotten or otherwise underutilized locations serve shared governmental objectives favoring revitalization. On an increasingly common basis, older abandoned and contaminated sites are being converted for residential, commercial, and mixed uses.

The community benefits to Brownfields development are not merely altruistic, but they are immediate and material. Development of underutilized or abandoned sites results in an increase in abutting property values, additions to the tax base, the creation of usable open space, the creation of jobs, and the intrinsic value derived from the reduction of blight.

What Are the Risks?

Intentionally investing in property that is known to be contaminated with oil and/or hazardous material could be compared to purchasing a swimming pool with a shark in it. That said, many Brownfields sites have reduced sales prices that take into consideration the potential environmental remediation costs. Conversely, other Brownfields sites are priced at the fair market value, as if the property was contaminant-free, with the seller contractually agreeing to pay all associated environmental cleanup costs.

In any event, environmental due diligence prior to a land purchase, as well as a thorough investigation and assessment by an environmental professional, is essential to making an informed decision about a particular site. In fact, the courts have recently determined that a buyer who had full knowledge about a site's contamination prior to the land pur-

chase, may not later bring an action against the seller for property damage claims relating to environmental conditions.

Financial and Legal Incentives

Given the liability for cleanup costs, the government continues to encourage Brownfields development by providing financial and legal incentives. Since 1994, the federal government alone has provided Brownfields funding to New England states in excess of \$107.9 million, over \$40.8 million of which has been devoted to Massachusetts projects.

The Mass. Brownfields Redevelopment Fund provides incentives of up to \$50,000 for site assessment and of up to \$500,000 for site cleanup. Moreover, remediation tax credits of between 25% and 50% are available, depending upon certain eligibility requirements and the proposed use of the site to be developed. Municipalities may also enter into agreements with purchasers for the abatement of owed taxes and the interest and penalties subject thereto.

In addition to financial incentives, the Commonwealth's Brownfields laws provide additional protections from liability. Certain tenants, property abutters, owners, operators, and secured lenders enjoy relief from liability so long as they meet certain criteria and perform certain requirements.

As discussed above, in addition to incentives provided by the Commonwealth of Massachusetts, the federal government, via the Environmental Protection Agency, (EPA), has invested substantially in Brownfields redevelopment. In fact, the EPA awards assessment

grants of up to \$200,000, and revolving loan funds of up to \$1 million to municipal and state governmental authorities to develop and implement strategic reuse applications for Brownfields sites. In addition, the EPA awards cleanup grants of up to \$200,000 to eligible parties to perform cleanup activities on these sites.

Success stories

There are several good examples of Brownfields development, including these:

- **Chicopee:** The site of the former Conway Bedding. With assessment funding through the EPA's pilot funding program, it was remediated of its oil and PCB contamination. The site was later sold to Benedict Broadcasting for the location of a \$5 million state-of-the-art digital broadcasting system — home of TV Channel 22.
- **Western Massachusetts:** Pioneer Valley communities have certainly seen the benefits of Brownfields funding. In fact, per EPA records, the town of West Springfield has received \$200,000 in EPA Brownfields funding for site assessment activities including those at the West Springfield Trade Center site; and the City of Springfield has received EPA Brownfields funding of \$200,000 for the Gemini Building, and a cleanup grant of \$200,000 for Hampden Color & Chemical.
- **Cambridge:** The gas plant operated by Cambridge Gas & Light Company. This 10-acre site was abandoned for more than 20 years due to significant subsurface contamination. After remediation costs in excess of \$25 million, the site is currently home to a mixed use community including the 350,000-square-foot, environmentally friendly Genzyme office building.
- **Somerville:** a 51,500-square-foot building was formerly occupied by the Hostess Bakery Company, then a mattress factory, and was later abandoned and left in disrepair. Soil and groundwater assessments revealed lead, petroleum, and barium contamination, with estimated cleanup costs of \$225,000. The \$14 million redevelopment project for the site by the Visiting Nurses Association

was aided by \$100,000 in cleanup-cost-overrun coverage, made possible, in part, as a result of a \$100,000 grant from the EPA to the City.

These examples and others clearly show that while there is a measure of risk involved with Brownfields development, there are also many solid opportunities for gain.❖

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