

BROWNFIELDS REDEVELOPMENT IN OHIO

**Dayton Bar Association
Environmental Law Update - Seminar #075
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What are Brownfields?

- Ohio definition:

Abandoned or underutilized properties, including but not limited to industrial and commercial facilities, where redevelopment or expansion may be complicated by possible environmental contamination (real or perceived).

- Federal definition:

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.

- Examples:

Abandoned gas stations, factories, mills, foundries, junkyards, dumps, mine-scarred lands, and other under-utilized or abandoned properties.



The case for Brownfields Redevelopment

- Brownfield properties are often abandoned:
 - with owners no longer maintaining the property or paying taxes;
 - attract vandalism and illegal dumping, which further degrades the environment;
 - negatively affect the community image; and
 - potentially put human health at risk.
- Productively reusing brownfields:
 - increases the tax base;
 - cleans up the environment;
 - reduces suburban sprawl;
 - encourages urban revitalization;
 - reduces the cost of constructing new infrastructure;
 - creates jobs for the surrounding community.

Brownfields Redevelopment Five Step Process

- 1) Determine intended use of redeveloped site
- 2) Determine extent of site contamination
- 3) Determine cleanup options
- 4) Secure private and public funding
- 5) Redevelopment of the site

Determine Intended Use

- Intended use should be compatible with surrounding neighborhood and the land use development plan in that area of the community.
- Cleanup standards depend on the intended use.
 - Industrial
 - Commercial
 - Residential
- Proposed tenant for redeveloped site may have its own cleanup requirements to consider.

Determine Extent of Contamination

- Phase I Environmental Site Assessment (“ESA”)
 - Review of all available records
 - Physical inspection of the site
 - Interviews with people familiar with the site’s history of use
 - Determine if there is the potential for the presence of contamination
 - If a potential for contamination is found, proceed with Phase II ESA
- Phase II ESA
 - Sampling of soil, soil vapor, groundwater, surface water and/or sediment to determine
 - the extent of contamination
 - the types and probable sources of contamination
 - Determine the level of risk to humans and the environment associated with the measured contamination
 - Determine whether contamination must be cleaned up

Determine Extent of Contamination

- All Appropriate Inquiry (“AAI”) Rule – 40 CFR 312
 - A prospective purchaser is exempted from federal Superfund liability for those environmental issues that are identified by a pre-purchase ESA that is compliant with the AAI Rule.
 - Most lenders require an AAI compliant Phase I ESA before they will lend money for the purchase or cleanup of potentially contaminated property.
 - AAI compliant ESA must be completed within a year prior to taking ownership of the property.
 - Must be performed by a qualified environmental professional.
 - Cost range varies according to the size and complexity of the site.
 - Phase I ESA (\$3 to \$8 thousand)
 - Phase II ESA (\$10 to \$50 thousand)
 - Does not include asbestos, lead-based paints, mold, and radon.

Determine Cleanup Options

- Cleanup may be necessary if:
 - the Phase II ESA shows that contamination exceeds state and/or federal screening levels; or
 - a risk assessment indicates that a potential risk to human health or the environment exists.
- Purpose of the cleanup
 - Prevent exposure to the contamination by future users of the site; and
 - Stop a release of contamination into the environment.
- Institutional Controls
 - If the cleanup does not remove or sufficiently reduce the contamination at the property to the required standard, institutional controls (“IC”) may be required as part of the cleanup.
 - ICs are legally enforceable restrictions, conditions, or controls that limit or prevent the use of the property, ground water, or surface water so that future exposure to contamination can be prevented or minimized.
 - ICs “run with the land” and are enforceable against subsequent owners.

Cleanup Technologies

- Soil, Soil Vapor, Sediment & Sludge
 - Excavation with offsite disposal
 - Containment (landfill cap, impervious pavement)
 - Biological treatment (bioventing, biopiles, bioinjection, phytoremediation)
 - Chemical treatment (oxidation, extraction, solidification, soil vapor extraction)
 - Thermal treatment (incineration, hot gas decontamination, desorption)
- Surface Water & Groundwater
 - Pump and treat with offsite disposal
 - Containment (construct physical barriers, deep well injection)
 - Biological treatment (wetlands, bioreactors, natural attenuation, phytoremediation)
 - Chemical treatment (adsorption/adsorption, air sparging, air stripping, oxidation)

Federal Funding

- US Environmental Protection Agency (EPA)
 - Brownfields Program
 - Provides grants and revolving loan funds
 - Covers assessments and cleanups
 - \$200,000 maximum award per project
 - Only non-profit government authorities are eligible, but they may partner with private entities
 - 20% private money match required
 - Technical Assistance to Brownfields (TAB)
 - Part of USEPA Brownfields Initiative
 - Helps communities clean and redevelop contaminated properties
 - Purpose is to create better jobs, increase tax base, improve neighborhoods, and enhance the quality of life

Federal Funding

- US Department of Housing & Urban Development (HUD)
 - Provides block grants and competitive awards for revitalizing entitlement communities
 - Low income or distressed areas
 - Programs
 - Community Development Block Grant Program (CDBG)
 - Section 108 Loan Guarantee Program
 - Brownfields Economic Development Initiative
 - Home Investment Partnership Program
 - Empowerment Zones & Enterprise Communities Initiative
 - Lead-Based Paint Hazard Control Grant Program

Federal Funding

- US Department of Agriculture (USDA)
 - Forest Service (FS)
 - Technical assistance for projects in selected areas
 - Financial assistance for sustainable redevelopment and reuse projects
 - Rural Development Agency (RDA)
 - Grants, loans and loan guarantees for a variety of business, commercial and industrial projects in small towns and rural areas
 - Supports installation and improvement of infrastructure needed to support economic development (sewers, firehouses)
- US Depart. of Commerce, Economic Dev. Admin. (EDA)
 - EDA funds infrastructure enhancements in designated redevelopment areas that serve industry and commerce
 - Grants, loan funds, and guarantees to stimulate private development.

Ohio Assistance Programs

- Ohio Environmental Protection Agency (Ohio EPA)
 - Site Assessment and Brownfields Revitalization (SABR)
 - First contact for local governments seeking assistance with brownfields assessment and cleanup
 - Directs local governments, developers and owners to the funding programs that best suit their situations
 - Voluntary Action Program (VAP)
 - Provides owners with a mechanism for voluntary environmental assessment and cleanup leading to a liability release from the State of Ohio
 - VAP staff may provide technical assistance to any volunteer, and to local governments at no cost
 - Division of Environmental and Financial Assistance (DEFA)
 - Financial and technical assistance for projects designed to improve the quality of Ohio's rivers, streams, lakes and other water resources
 - Planning, design and construction assistance available

Ohio Assistance Programs

- Ohio Department of Development (ODOD)
 - Clean Ohio Fund (COF)
 - Funded from \$200 million bond issue
 - Grants made to local governments for use in public or private projects
 - Clean Hands Affidavit – party who contaminated the property may not have ownership interest in the redevelopment
 - Clean Ohio Revitalization Fund (CORF)
 - Property acquisition, demolition, remediation
 - Grants capped at \$3 million per project
 - 25% private money match required
 - Clean Ohio Assistance Fund (COAF)
 - Phase I and Phase II ESAs, asbestos surveys, demolition and remediation
 - Grants capped at \$750,000 per project
 - No private money match

Clean Ohio Revitalization Fund (CORF) – Dayton Area Projects

- Round 1
 - Dayton GH&R foundry (Select Tool) \$2.0 million
 - Springfield D&H facility \$1.9 million
- Round 2
 - Dayton GM Delphi - Harrison (Tech Town I) \$3.0 million
 - Middletown Aeronca project \$3.0 million
 - Piqua Ft. Piqua Hotel \$1.4 million
 - Springfield Greenawalt/Trenor Complex \$1.8 million
- Round 3
 - Dayton Tech Town II \$3.0 million
 - Dayton University of Dayton – Riverfront \$2.5 million
 - Greenville Corning Glass facility \$2.0 million
 - Springfield SW Downtown Urban Renewal \$0.9 million
- Round 4
 - Dayton University of Dayton – REDI \$3.0 million
 - Middletown Middletown Regional Hospital \$1.8 million
 - Springfield International Lagonda Assembly Plant \$2.2 million

Ohio Assistance Programs

- Ohio Department of Development (ODOD)
 - Brownfield Revolving Loan Fund (RLF)
 - Funded from USEPA grant
 - Below-market interest rate loans for remediation costs
 - Loan amounts capped at \$2 million per project
 - Ten year payback period
 - 10%-20% could be forgivable
 - \$1 million is jointly administered with the Bureau of Underground Storage Tank Regulations (BUSTR) to be used at former gas stations
 - 20% private money match required

Ohio Assistance Programs

- Ohio Department of Development (ODOD)
 - Job Ready Sites Program (JRS)
 - Funded from \$2 billion public works and economic development bond package that includes \$150 million in bond proceeds to be issued from 2005-2012.
 - Grants capped at \$5 million
 - May be used for acquisition of real property, building expansion, remodeling, renovations, modernization, remediation, infrastructure improvements, planning and site feasibility determination
 - Competitive program geared to projects without known end users
 - Creating properties ready for new business for mega manufacturing, manufacturing, research & development, and smart office uses
 - Priority is to create “shovel ready” sites for future development.
 - 25% private money match required

Ohio Assistance Programs

- Ohio Department of Development (ODOD)
 - Industrial Site Improvement Fund (ISIF)
 - Assistance to geographically and economically disadvantaged counties
 - Expansion and modernization of buildings, remediation of contaminated property, and completion of other infrastructure improvements
 - Grants capped at \$750,000
 - 25% private money match required
 - Tax credit programs
 - Enterprise Zone & Community Investment Area tax credits

Ohio Assistance Programs

- Other state funds/programs to consider for brownfields or supporting infrastructure improvements:
 - Ohio EPA Field Technical Assistance (Ohio EPA completes field sampling plan and Phase II assessments)
 - OWDA Brownfield Program: Construction Loans
 - ODOD Urban Redevelopment Loan
 - 166 Direct Loan
 - 166 Regional Loan
 - Ohio Enterprise Bond Fund
 - Pioneer Rural Loan
 - Innovation Ohio Loan Fund Program
 - OPWC State Capital Improvement Program
 - OPWC Local Transportation Improvement Program

Redevelopment Issues

- How will deed restrictions affect end use?
- Will potential developers or prospective owners require investigation and cleanup to a higher standard than required by law?
- What role will local, state and/or federal environmental staff have during the redevelopment stage?
- How should the property be marketed?

Rookwood Commons, Hamilton County

(before)



Rookwood Commons, Hamilton County

(after)



Springfield Cancer Center, Springfield

(before)



Springfield Cancer Center, Springfield

(after)



Columbus Auto Parts, Columbus

(before)



Columbus Auto Parts, Columbus

(after)



FORMER NIVISON-WEISKOPF FACILITY READING, OHIO 2007 JRS GRANT RECIPIENT

Original facility built in 1903.

Added to multiple times until 1970's

Formerly used to manufacture boxes for use by adjoining glass bottle manufacturing plant.

Facility partially condemned (1903 portions), partially used as auto repair and parts facility, partially used as pallet manufacturer.

Facility under-utilized since 1980's.





ODOD JOB READY SITES (JRS) GRANT

- Application completed in July 2006.
- Grant awarded in December 2006.
- Grant agreement between City and ODOD negotiated and signed in March 2007.
- City acquires property in mid 2007.
- Demolition bid RFP posted November 2007
- Demolition scheduled to begin January 2008.
- Project scheduled to be completed by December 2009.

(36 months from award)

ENVIRONMENTAL CONCERNS

- Three ~8,000-gallon heating oil USTs.
- Three ASTs in basement of 1903 building.
- Regulated asbestos containing materials throughout facility.
- Area of free product on groundwater between building and adjacent railroad tracks.
- Unidentified drums in former manufacturing building.
- Heavy staining of concrete throughout auto service bay.











PLANS UNDER JRS GRANT

Abate regulated asbestos containing materials throughout facility.

Close three ~8,000-gallon heating oil USTs and sample in accordance with BUSTR protocols even though tanks not regulated.

Close three ASTs in basement of 1903 building.

Characterize and dispose of drums in former manufacturing building.

Sample areas of stained concrete throughout facility prior to on-site re-use or off-site disposal.

Remediate area of free product on groundwater between building and adjacent railroad tracks, as well as any additional areas of soil and/or groundwater impact identified during demolition.

Leave site shovel ready upon completion of activities.