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Resources, tools available to reduce brownfield redevelopment risks

By MARK J. PERKINS

According to the United States Environmental Protection Agency, brownfields are defined as abandoned, idled, or under-used industrial and commercial sites where expansion or redevelopment is complicated by real or perceived contamination.

The EPA estimates that more than 500,000 sites in the U.S. qualify for brownfield status. Ohio, with its industrial legacy, has more than its share.

The unfortunate part of the "brownfields" label is that attention is instinctively focused on pollution problems rather than on the potential for redevelopment.

Except for the uncertainty associated with contamination, brownfields often possess favorable characteristics that are relevant to any real estate transaction: location, established infrastructure, favorable zoning, proximity to work forces, site improvements and below market rates.

The risk vs. reward equation readily applies to brownfield real estate transactions. The good news for entrepreneurs is that many resources and tools are available to effectively reduce risk without a proportionate loss in rewards.

The tools are effective because they address driving economic objectives presented by uncertain environmental conditions.

A few examples of the resources and tools available include:

- State laws providing "safe harbors." The Ohio EPA's Voluntary Action Program has established investigation and remediation criteria that may ultimately provide an applicant with a covenant not to sue from the state that is transferable to future owners of the site. Prospective Purchaser Agreements that are designed to limit or eliminate environmental liability may be available to potential owners of contaminated sites from state or federal regulatory agencies.

- Grants and low-interest loans: The recent passage of Ohio State Issue 1 has created the Environmental Conservation and Preservation Fund. One part of this fund allocates \$200 million over four years toward revitalization efforts for qualified commercial property with environmental challenges. The Ohio Water Development Authority can provide low interest loans. Various local communities have developed local funding programs to create redevelopment incentives. The USEPA Brownfield Economic Development Initiative provides assessment pilot grants. HUD Empowerment Zones and Enterprise

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Communities are receiving special treatment and incentives.

- Tax incentives: Ohio has created a franchise or income tax credit to help offset the cost of site assessment and cleanup. Qualified Settlement Trusts may be used to accelerate the expensing of cleanup costs. Communities offer a variety of creative tax incentives to competitively promote redevelopment.

- Cleanup standards based upon planned reuse: Practical cleanup standards based upon environmentally sound reasoning have significantly reduced remediation costs. The ability to incorporate institutional controls such as a deed restriction prohibiting potable wells and engineering controls such as effectively capping a site with a parking lot have also created appropriate cleanup efforts while controlling costs.

- Specialized insurance programs: The competitive environmental insurance market can provide coverage that is highly adaptable to individual circumstances with affordable premiums.

Not only do these policies provide an excellent tool to quantify environmental risks in dollar terms, they serve as an effective cost control mechanism against the required investigation and remediation efforts.

- Cleanup expense recovery from latent third-parties: An often overlooked source of funds to pay for remediation and possible liability costs are original contributors to the sites contamination. Previous property owners, neighbors, manufacturers of faulty products, as well as their historical insurance providers, are examples of cost recovery sources. Settlement negotiations with these parties can be enhanced through the resolution that site remediation and redevelopment can bring.

- Comprehensive contractor bid/selection criteria: In addition to project-specific qualification and capacity criteria, including certain incentives and penalties while contracting with environmental service providers can effectively control costs and transfer some risks. One example of this is to solicit fixed price bids as an option to time and material quotes.

- Advancements in remediation technologies: The art and science of remediation continues to develop. Effective alternatives to the "dig and dump" method of remediation have significantly reduced costs and provide reliable cleanup results.

More important than the broad spectrum of resources and tools that are available is how they are integrated into the broader real estate marketing plan. Understanding the various stakeholders' driving motivations, tolerance for risk, capacity to support contractual rights and obligations, public and political relations, relative negotiating strength and regulatory enforcement dynamics is critical to the process.

Developing and implementing a strategic approach to address these issues, rather than a reactionary problem-solving method, will lead to an economically justified and environmentally sound redevelopment effort.

It is incumbent upon the real estate broker to assist each client through this strategic approach in order to effectively package a property for sale or prepare an offer to purchase. The timely and comprehensive incorporation of these tools and resources into the process significantly enhances the broker's ability to bring ready, willing and able parties to the negotiating table. The client's negotiating position is strengthened. The determination of highest and best use can be more reliably ascertained. Due diligence and development costs are controlled and the transaction timeline is accelerated.

First and foremost, real estate transactions are driven by economic justification. Managing the environmental component is just one part of this economic justification. Brownfield projects, with their inherent environmental risk and reward relationship, amplify the importance of demonstrating economic justification. Using a strategic approach to integrate available tools and resources into the process will minimize obstacles and maximize opportunities.

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