



Issues With Repositioning Properties for Brownfield Redevelopment

Brownfield Redevelopment Series: Part 1

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Building on an urban or brownfield site typically involves unanticipated costs for assessment, remediation, infrastructure demolition, unstable soils, and multiple approvals. These are issues that must be considered in your proforma when repurposing a property. Fortunately, some of these unanticipated costs can be offset by local, state, and federal incentives, but this requires planning for the approval process. These incentives have proven to be essential to successful urban and brownfield redevelopment and have proven to be instrumental in assisting communities to attract redevelopment to challenging sites.

When looking to repurpose an urban or brownfield property, it should be assumed that the property is classified as either High Risk or Medium Risk. A High Risk property is a property that is known to be contaminated by one or more compounds above the Generic Residential Clean-up Criteria (GRCC) (also known as a Facility in Michigan); that historically included high risk uses, such as industrial, dry cleaner, or gas station; or that has the presence of non-natural fill soils. A Medium Risk property is any property in an urban area; any property that included medium risk uses, such as a small-scale auto repair, dental lab, photo shop, or some other commer-

cial uses; or any property with shallow groundwater.

It is important to consider that properties with prior industrial or commercial use, especially in urban areas, most likely come with some type of historical impact. Impacts can last a very long time, depending on the chemical, soil type, original concentration, and other factors, and can migrate through soils and groundwater. This is particularly true for businesses before 1980, which operated very differently, but can also apply to business that operated around the turn of the 20th century. In addition, uses on adjacent properties (up to 100ft from your property line) may have impacted your property. Either of these cases could trigger due care obligations on your property.

Residential development on these types of properties is challenging. Redevelopment of urban properties is always challenging. Obtaining EGLE approval for remedies and funding is challenging. Therefore, EGLE approval for residential redevelopment of a contaminated property is the most challenging scenario, requiring patience and additional costs. The first step is to obtain your own due diligence documents which provide statutory protection as an innocent landowner or bona-fide purchaser

(Phase I, Phase II, Remedial Action Plan, etc.). Reliance letters for former documents can be provided by the seller, but they are only applicable as of the date of the report. Phase I assessments conducted prior to 2013 may be insufficient because of changes in the standards, and the shelf life of most environmental assessment reports is one year. Environmental reports are specific to the time of purchase and the purchaser and have a specific schedule for completion and filing.

If you are required to obtain EGLE approval for a Documentation of Due Care Compliance, Certificate of Completion, or more likely a No Further Action Letter, you will have to go through EGLE review and approval at all stages. Surprising to many, this can occur if you are obtaining federal funding for your project or receiving state incentives from EGLE (for example school tax capture for Brownfield TIF or a CMI grant or loan). In these cases, the basic Due Diligence process has only changed slightly, but the EGLE review of the due care process has significantly changed, requiring more evaluation and reporting, and for properties that exceed the vapor screening criteria, a year or more of pre-approval sampling (acute compounds require more sampling), and a year of post construction monitoring will be required to determine seasonal fluctuations.

In summary, meeting Due Care Obligations is the responsibility of every property owner in order to prevent adverse impacts to human health from known contamination. In cases where there is a documented risk to human health, implementing the proper engineering, administrative or institutional controls, or conducting remediation, are essential. However, where risks are estimated or assumed, implementing controls can be difficult because the definition of acceptable performance can keep changing based on new data, new research, or new approaches. Because of the uncertainty of both the assessment and EGLE review and approval, all projects that require a Response Activity Plan, Documentation of

Due Care Compliance, Certificate of Completion, No Further Action Letter, or state incentives, will need to schedule at least one year for assessment and review before approval for design.

For more information, please contact ASTI Environmental at 810-225-2800 or visit us at www.asti-env.com.

In the next article of our Brownfields series, Solutions for Repurposing Properties for Brownfield Redevelopment, we will discuss different solutions for mitigating these Redevelopment challenges.



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