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OVERCOMING OBSTACLES TO BROWNFIELD REDEVELOPMENT

Health & Environment Section - Brownfields Panel Workshop

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Overcoming Obstacles to Brownfields Redevelopment

Creating Opportunities for Success

- **Jeff Civins, Haynes and Boone, LLP, has provided a good overview of the underlying laws and liability issues**
- **Charlie Howland, USEPA Region III, has provided an overview of trends and developments within USEPA**
- **Mike Hunsucker, Hunsucker Goodstein, PC, has presented ideas on innovative financing**
- **Joe Weslock, Apex Companies**
  - **As the only non-counsel on the Panel, I will focus on major themes of overcoming obstacles to Brownfield redevelopment, using two award-winning case studies as a practical example.**

Overcoming Obstacles to Brownfields Redevelopment

Common Obstacles to Success

- Site Selection
- Cost
- Financing
- Stakeholder Buy-In

- Case Study of Two Successful Brownfield Projects to Illustrate These Criteria Individually and How they Interact with Each Other

Overcoming Obstacles to Brownfields Redevelopment

Site Selection - What is a Brownfield?

I know it when I see it (Justice Potter Stewart, 1964) (paraphrased)

- **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 (USEPA, GSA)**
- **Abandoned, idled or under-used real property where expansion or redevelopment is complicated by the presence *or potential presence* of environmental contamination (HUD)**
- **Land previously used for industrial purposes or some commercial uses (Wikipedia)**
- **A real estate transaction with environmental *personality* (National Brownfields Association)**
- **Most states have their own definition of a Brownfield.**
- **The potential or perception of environmental impairment is sufficient to classify a site as a Brownfield.**

Overcoming Obstacles to Brownfields Redevelopment

Site Selection

- **Targeted for redevelopment (somebody wants it!)**
  - **Brownfields is really about returning previously developed and underutilized properties to productive and beneficial use. Environmental impairment is only one obstacle to this goal.**
  - **It is not the magnitude or complexity of the environmental impairment that drives the success of a Brownfield redevelopment. Rather, it is the social-economic driver for the future use of the property.**
  - **Cannot be the subject of planned or on-going removal actions, listed or proposed for NPL listing, the subject of an administrative or court order under solid and hazardous waste laws, subject to corrective actions or closure requirements, or a Federal facility.**

Overcoming Obstacles to Brownfields Redevelopment

Site Selection

- **The Brownfield (the Site) should be part of something bigger than the site itself – part of a greenway or transportation hub, key neighborhood targeted for urban renewal, etc. Something that generates inertia and consensus towards the end goal.**

- **Complimentary & Strategic Goals**
  - **Economic / Market Development**
  - **Land Use Planning**
  - **Public-Private Partnerships (Economic Stimulation)**
  - **Workforce Training**
  - **Infrastructure Improvement**

Overcoming Obstacles to Brownfields Redevelopment

Cost - Opportunities for Significant Savings

- Integration of Remediation/Abatement into Redevelopment
  - Use Underground Garage Ventilation for Vapor Mitigation
  - Foundations & Parking Lots as Engineering Barriers

- Recognition of Future Use
  - Why Remediate to Residential Standards for Future Industrial Site

Overcoming Obstacles to Brownfields Redevelopment

Cost - Opportunities for Significant Savings

- Acknowledge that investigating and addressing environmental impairment at Brownfield Sites can be costly

- True Stakeholder Collaboration
  - Recognize there is a trade-off to most actions and a need for all to "bend"
  - Contract Types and Clauses
  - Certainty and Assumption of Liability vs. Cost
  - Technology vs. Cost vs. Time

- Facilitating Pathways for Private Funding
  - Breaking down Administrative Obstacles

Overcoming Obstacles to Brownfields Redevelopment

Financing - Typical Brownfield Financing Sources

- EPA Assessment Grants
- EPA Cleanup Grants
- EPA Revolving Loan Funds
- EPA and State Targeted Brownfields Assessments (TBA)
- EPA and DTSC Technical Assistance
- Tax Incentives for Privately-Funded Investigation/Remediation
- Federal/State Development Funding (DOT, Revitalization Act)
- PRP Contribution, Land Purchase, Insurance
- Others

Overcoming Obstacles to Brownfields Redevelopment

Brownfield Financing

- There is no 1 Single Approach that works for all Sites
- Usually Requires a Combination of Funding Sources
- The More Valuable the Site, Typically the More Options for Funding are Available
- As a Municipal Attorney, Don't Overlook Opportunities for Your Community to Make it Attractive for Private Businesses to Invest in Previously Developed Properties

Overcoming Obstacles to Brownfields Redevelopment

Community (Stakeholder) Buy-In

- **Extends Beyond Community Relations Plans and Beyond Participation of Tangential Stakeholders**
- **Each Brownfield Project Will Have a Core Stakeholder Group with at least somewhat Divergent Missions**
  - **Private Developer: Speed and Certainty**
  - **Planning Department: Congruence with Master Plan**
  - **Environmental Department: Certainty and Verification**
  - **Legal: FAR Compliance and Indemnification**
  - **Others in Your Communities**
  - **All: Maximum Guarantees at Minimum Price**
- **Opportunity where counsel can provide particular value to your community: the art of protecting your client's interest without creating inadvertent barriers to success.**

Overcoming Obstacles to Brownfields Redevelopment

Creating Opportunities for Success (Putting it All Together)

- No simple or single recipe for success
- Each community, each site is unique and the site history, redevelopment opportunity, and relationship among the stakeholders will require experience to bring the best set of tools to create a successful project.
- General Waste Main & River Yard Sites in Evansville, Indiana are case studies of how collective resources and tool were used to navigate to a successful, cost-effective remediation and redevelopment of two Brownfield Sites and achieve recognition for the community

Overcoming Obstacles to Brownfields Redevelopment

Creating Opportunities for Success – Case Study

General Waste Main Yard, Evansville, Indiana

- 4.5 Acres
- 100+ Years Industrial Use
- Haven for the Homeless
- Significant Visual Blight
- $24MM Original Cleanup Estimate
- Former Owner Bankrupt
- Extensive Lead, PCB and TPH Contamination
- City Desired Location as Centerpiece for New Greenway Park System







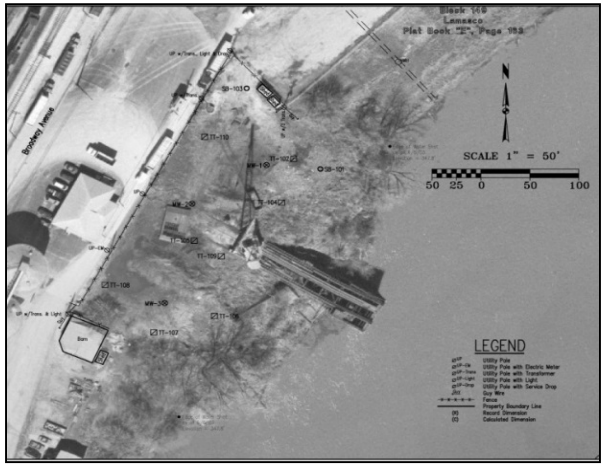
Overcoming Obstacles to Brownfields Redevelopment

Creating Opportunities for Success – Case Study

General Waste River Yard, Evansville, Indiana

- 2 Acres
- Former WWII-Era Navy Shipyard
- $10MM+ Cleanup Estimate
- Former Owner Bankrupt
- Extensive Lead, PCB and TPH Contamination
- Located in Heavy Riverfront Industrial Corridor
- Property Desirable for River Front Barge Access





Overcoming Obstacles to Brownfields Redevelopment

Creating Opportunities for Success – Case Studies - Site Selection

Targeted for redevelopment (somebody wants it!)

- **General Waste Main Yard**
  - **Location Needed as Anchor Trailhead for Park System Greenway**
  - **Economic & Community Development Driver**
  - **Consistent with Master Planning**

- **General Waste River Yard**
  - **Prime Location along River Front Industrial Corridor**
  - **Desired by Private Industry**

Overcoming Obstacles to Brownfields Redevelopment

Creating Opportunities for Success – Case Studies - Financing

Usually Requires a Combination of Funding Sources

- State Brownfield Site Assessment Grant
- Land Purchase
- DOT Greenway Grant
- PRP and Insurance Settlement

Overcoming Obstacles to Brownfields Redevelopment

Creating Opportunities for Success – Case Studies

Stakeholder Buy-In

The art of protecting your client's interest without creating inadvertent barriers to success

Start: City, Owner, Insurance Companies, PRPs, Future Land-Owners, Park District, Citizen Groups, Local Unions, Citizen Stakeholders had divergent objectives

End: Written letters of support from Mayor, Brownfields Coordinator, State Representative, Parks Department, DOT, even IDEM and the State Legislature for both Brownfield Projects

Kudos: Hunsucker Goodstein and Trustee Kathleen Lucas, of Bose McKinney & Evans

Overcoming Obstacles to Brownfields Redevelopment

Creating Opportunities for Success – Case Studies - Cost

Acknowledge that investigating and addressing environmental impairment at Brownfield Sites can be costly / True Stakeholder Collaboration

- **Achieved because the originally divergent stakeholders were able to work as a team, allowing creativity to develop a successful $4MM cleanup solution to the original $34MM+ environmental problems.**

Overcoming Obstacles to Brownfields Redevelopment

Creating Opportunities for Success – Case Studies

- Cost

Acknowledge that investigating and addressing environmental impairment at Brownfield Sites can be costly / True Stakeholder Collaboration

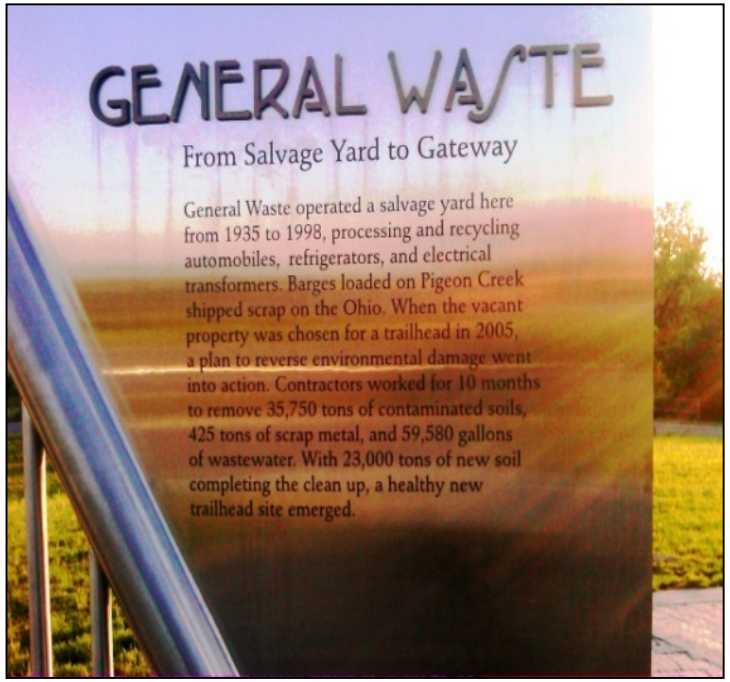
- **How Did the Team Save $30MM in Environmental Remediation Costs?**
  - True Collaboration among Trust, Hunsucker Goodstein, City Officials and Apex
  - Remediation Contract Type
  - Creative subcontract negotiations
  - Eliminate Assumptions
  - Low cost, low-tech field methods
  - Knowledge and application of laws and guidance
  - Details, details, details…

Overcoming Obstacles to Brownfields Redevelopment

Creating Opportunities for Success – Case Studies

Creative Solutions Does not Mean Short Cuts or Added Risk to the Community

- All remediation performed under approval and oversight by the Indiana Department of Environmental Management
- Completion documented by a Certificate of Completion and issuance of a Covenant Not to Sue (state NFA equivalent)
- Remediation for each site performed under a lump sum contract with no change orders. Further secured with a performance bond and cost cap insurance policy



Overcoming Obstacles to Brownfields Redevelopment

Creating Opportunities for Success – Case Studies





Evansville Greenway and Remediation Trust Receives National Recognition for Environmental Remediation Project



State of Indiana

Indiana General Assembly

HOUSE CONCURRENT RESOLUTION NO. 25

Introduced by Representative Gail C. Riecken

Sponsored by Senator Vaneta G. Becker

Adopted by voice vote on February 20, 2012, during the Second Regular Session of the 117th General Assembly.

A HOUSE CONCURRENT RESOLUTION recognizing the Main Yard Site Remediation Project.

WHEREAS, The National Association of Environmental Professionals (NAEP) named the Main Yard Site Remediation Project as the recipient of its 2011 National Environmental Excellence Award in the category of Environmental Stewardship;

WHEREAS, The project transformed the 4.5 acre abandoned General Waste Products site that was plagued by environmental impacts caused by more than 150 years of heavily industrialized use into safe, beautiful public parks and productive commercial properties;

WHEREAS, The project was a joint effort by the City of Evansville, the Evansville Department of Parks and Recreation, the Evansville Department of Metropolitan Development, and other city agencies and officials, the Evansville Greenway and Remediation Trust, and Apex Companies, LLC, which performed the environmental remediation of the property under the Indiana Department of Environmental Management's Voluntary Remediation Program;

WHEREAS, Together with the River Yard Site Remediation Project, the Main Yard Site Remediation Project will protect cultural history on the Ohio River's banks by preserving a historic riverfront ship building facility used in the Normandy D-Day invasion of World War II and create an important transportation option that will allow for the possible use of river traffic to move freight and materials; and

WHEREAS, The Main Yard Site Remediation Project proves that with hard work, perseverance, and cooperation, even contaminated industrial areas can be transformed into beautiful, useful areas;

THEREFORE, *Be it resolved by the House of Representatives of the General Assembly of the State of Indiana, the Senate concurring:*

SECTION 1. That the Indiana General Assembly thanks the Main Yard Site Remediation Project for turning a contaminated industrial area into safe, beautiful public parks and productive commercial properties.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to the city of Evansville, the Evansville Department of Parks and Recreation, the Evansville Department of Metropolitan Development, the Evansville Greenway and Remediation Trust, and Apex Companies, LLC.

Gail C. Riecken
State Representative

Brian C. Bosma
State Representative

M. Caroline Spotts
Clerk of the House

Creative Solutions Can Promote Recognition for Your Clients

Overcoming Obstacles to Brownfields Redevelopment

Creating Opportunities for Success – Case Studies

<u>Creative Solutions Can Promote Recognition for Your Clients</u>

LOCAL: **"This [Main Yard] Site was Literally Turned from Trash into Treasure" Mayor Jonathan Weinzapfel, June 2011**

STATE: **House Resolution No. 25, February 20, 2012, Officially Recognized the City, City Parks Department, and Regional Metro Development Agency for these projects. Remediated and Redeveloped Main Yard Site featured in the State's Park System Publication**

NATIONAL: **Awarded 2011 National Environmental Excellence Award for Environmental Stewardship by the National Association of Environmental Professionals**

INTERNATIONAL: **City Hosted International Delegation from China in 2012 that Travelled to Evansville, Indiana to see the Project First-Hand as a Model for Successful Brownfield Redevelopment**

Overcoming Obstacles to Brownfields Redevelopment

Take-Aways: Creating a Path Towards Successful Brownfields Redevelopment

- **Site Selection**
  - **Focus on Properties with Redevelopment Value/Potential**
- **Financing**
  - **Most Sites Require a Mix of Creative Financing Solutions**
  - **Don't Overlook Motivating Private Sector Contribution**
- **Stakeholder Buy-In**
  - **Like Any Municipal Project, True Buy-In from Multiple Departments is Required**
  - **Finding a Consultant or Engineer that Knows Site Investigation & Remediation is Easy – Select and Work with One You Trust as a Partner**
- **Cost**
  - **Creative Solutions Does not Mean Short Cuts or Added Risk to the Community**

Additional Brownfield Success Case Studies are Available

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Thank You







