



S&W Redevelopment's scrap yard brownfield site in Syracuse, NY.

The Challenges and Opportunities of Brownfield Redevelopment

by *David W. Stoner*

There are a large number of contaminated and under-utilized sites not producing an economic benefit in New York State. Even though the challenges of brownfields are many, the private sector has made real headway through the environmental and economic maze of redeveloping such sites.

A prime player has been Stearns and Wheler Environmental Engineers and Scientists which for years has investigated and helped to clean up hazardous waste sites and leaking underground storage tanks for its many clients. Eight years ago, it spawned a specialty affiliate called S&W Redevelopment of North America, LLC, whose mission is to acquire, clean up and redevelop contaminated properties, and to assist others to do the same. S&W Redevelopment is now, arguably, the most

active single brownfield redeveloper in New York State. It had the first site accepted into the NYS Brownfield Cleanup Program (BCP) and was one of the first to obtain a Certificate of Completion (COC) for a brownfield site in New York. S&W Redevelopment has brownfield projects in various stages of completion across the state.

The arduous process to achieving successful cleanups has yielded many lessons.

Complications to Redevelopment

The NYS Department of Environmental Conservation (DEC) defines a brownfield site as "any real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a contaminant."

The concern about brownfields derives from potential cost and liability related to

contamination of property. In the extreme case, issues of site contamination become concerns for potential owners of property due to costs related to clean up and the potential for impact to third parties from off-site migration of contamination. These apprehensions have resulted in many properties, particularly those with a history of industrial use, being abandoned or at the very least not being used to their highest potential. Many developers will not risk the time, expense and uncertainty related to developing contaminated or even potentially contaminated property. It is usually easier, faster, and cheaper to develop on land that has no stigma tied to past use.

Perhaps the best measure of "complication" for any site as a brownfield is the attitude that lenders have about loaning money on sites with potential contamination. All

lenders require a Phase I Environmental Report to be completed for properties with commercial or industrial histories to determine whether it is likely contamination is present. A Phase II investigation is necessary if the Phase I indicates that contamination may be present based on past use. Based on Phase II results, lenders are looking for an environmental “clean bill of health.” The ultimate complication to redevelopment is the presence of contamination on a property such that a lending institution is not comfortable making a loan on the property until the contamination is cleaned up in an appropriate fashion.

It is often the case that residual contamination on a property is not regulated under a specific state or federal program. Spills from petroleum or chemical storage tanks are specifically regulated and there is a regulatory program that controls the clean-up process. It is much more common to find levels of contamination on urban properties that are not expressly regulated but with concentrations of concern to buyers and lenders in an unmitigated state. Not until 2003 did New York State have a statutory program, the Brownfield Cleanup Program, that allows applicants to clean up brownfield sites with an official approval at the end of the remedial process. More about the program appears later in this article.

Brownfields as Real Estate Deals

Many individuals who come from the realm of environmental science and engineering view brownfields simply as another opportunity to apply investigation and remediation skills learned under the NYS

Superfund Program. While these skills are important, they are a small part of the brownfield equation.

In its simplest terms, a brownfield project is a real estate development project with an environmental twist. The cost of investigation and cleanup is a project cost that often is poorly defined and, therefore, a daunting complication to a developer. In extreme examples, the cost of investigation and remediation, or cleanup, exceeds the clean market value of the property, a condition we label as economically “upside down.” In certain areas of New York State, such as New York City, the property values are so high that the cost of site investigation and remediation is a minor element of cost for a property and project that may be valued at hundreds of millions or billions of dollars.

When people ask what it takes to complete a successful brownfield project, S&W Redevelopment responds that there are two ways to complete one successfully. A facetious first response: get more for the property than you spend. The second way is to spend less on remediation than you get. While that is a weak attempt at humor, it is 100 percent true. People who have failed in the brownfield redevelopment business do so because they lose track of this fundamental requirement.

Other important rules are these:

1. The end use must be defined – either there needs to be a defined end user or a high probability of an end use that will sustain a certain value for the property when clean.
2. The transfer value of the property from the previous owner to the redeveloper must be discounted for the risk and cost

of cleanup.

3. The planning process must include contingencies for bad things to happen. Everything takes longer and costs more than expected.
4. Do not get emotionally involved with potential projects. Be able to walk away from projects that do not make business sense – and most do not.
5. Prepare for a lengthy process. It takes years to complete a brownfield project.
6. Think creatively. The problems that manifest themselves sometimes have solutions that are not obvious.
7. Real estate is all about location. The location must make sense for its intended use.

The New York State Program

In 2003, after years of failed attempts, the state legislature passed and the governor approved a Brownfield Cleanup Program (BCP). As a compromise bill, it had elements that appealed to various constituencies, some of which help and some of which hinder the redevelopment process.

Notable Program Assets

The BCP establishes a more predictable process and when soil clean-up objectives are approved (currently in draft form), they will make it that much easier to complete the appropriate planning for a project.

The tax benefits for an approved BCP site are very attractive. In simplified terms, the tax benefits fall into three categories.

Site Cleanup Benefit: Depending upon the site location, ownership and the level of cleanup, this benefit ranges between 10 and 22 percent. It is a *refundable* New York State



PCBs were discovered at this scrap yard cleanup. The nuts and bolts of cleaning up this soil are shown here.

tax benefit that applies to the taxpayer who has incurred the cost and received a Certificate of Completion. If, for example, the applicable percentage is 10 percent and the cost for site cleanup is \$1 million, then the tax benefit is \$100,000. If, for example, the owner is an individual and the benefit exceeds the taxpayer's state tax liability for the year, then the difference is refunded to the taxpayer.

Real Property Tax Benefit: This operates much like the Empire Zone tax benefit but is tied to the number of employees employed by the end user of the property. It constitutes a refund of real estate taxes and takes effect at 25 employees and reaches 100 percent at 100 employees. For sites in an Empire Zone, the site owner must opt for the brownfield real property tax benefit or the Empire Zone benefit, but not both.

Tangible Property Benefit: This is the 800-pound gorilla of brownfield tax benefits. The same percentage applies as for the remediation-related benefit; again, the percentage is based on the location, the level of cleanup and the type of taxpayer, from 10 to 22 percent. For sites that complete remediation under a Brownfield Cleanup Agreement (BCA) and receive a COC and then place depreciable assets in service after the COC is issued, the tax benefit is the applicable percentage multiplied by the cost of the depreciable assets. For example, if the applicable percentage is 10 percent and the property owner builds a \$10 million building on the property, then the refundable tax credit is \$1 million. Again, as with the first example, if the benefit exceeds the taxpayer's state income tax liability for the year, the difference is refundable.

*The process of
completing brownfield
projects can be
beneficial for just
about everyone
involved if the risks
are offset by
project economics
that make sense.*

Program Issues of Concern

Site Eligibility: The tangible property benefit has no cap on it and the state government realizes there are many projects that would apply to the BCP just to gain from the tangible property benefit. For example, S&W Redevelopment has a client who has completed site remediation under the BCP. They are likely to achieve the highest level of cleanup, or Track 1. The project also is located in an "Enzone," or a low income census track as defined in the statute, with the applicable percentage at 20 percent. The client is planning to build a structure on the cleaned up property worth at least \$300 million. Their tangible property benefit is worth \$60 million. The state has only budgeted about \$170 million per year for BCP tax benefits. A handful of big projects would use up that budget.

As a result, the state has started making it much more difficult for sites to be deemed eligible for the BCP. This stringency applies to sites large and small across the state and has a chilling effect on the desire of some to even consider applying for the program. The statute needs to be corrected so that it is not an unmitigated windfall for big projects, but is still a reasonable incentive for sites that are economically marginal.

Cost and Schedule: The steps in the program as defined in the statute are still numerous and overly complex. There are citizen participation elements in the program that make it virtually impossible to get from a BCA to a COC in less than two years. The NYSDEC leadership is working to re-educate staff to understand that it is possible to work cooperatively with applicants to finish the job right, but also complete the work as quickly and cost effectively as possible. Many DEC people understand this need and work to implement it. Unfortunately, there are those who treat these projects like superfund sites and literally demand that no stone remain unturned in the search for hidden problems. It will take some time to streamline the process.

The Challenge of "Upside Down" Properties

There are thousands of brownfields across New York State. This is in no small part due to the history of New York as the industrial juggernaut of the United States from the completion of the Erie Canal until the post-World War II years.

Some of these brownfields are tiny gas station sites, like the S&W Redevelopment-owned Liberty Street site in Onondaga County, which is less than one-eighth of an



Digging brought up buried solvents and a formidable example of paint waste.

acre. Some sites, such as a number of industrial parcels located in Erie County, include hundreds of acres of heavily contaminated land. In areas of downstate New York, and particularly in New York City, the property is worth millions of dollars an acre. The cost to clean up many of these sites is only a fraction of the value of the property and it is not hard for a developer to decide that it makes economic sense to proceed. In Upstate New York, urban property may be worth only thousands per acre. Even a two-acre site worth a few hundred thousand dollars in clean condition does not provide a lot of incentive to a developer to take on a major clean-up effort.

Problem Solving Approaches

Look for the highest and best use: Sometimes a particular end use translates into a significantly higher value than would be reflected in the assessed or appraised value.

Contributions from responsible parties: Some sites are so contaminated that they represent an on-going liability for the owners and others. The aerial photo (page 22) shows a scrap yard that S&W Redevelopment

acquired from the scrap yard dealers. As owners and operators, they were responsible for cleaning up a site that was about to be listed as a state superfund site. A contribution was negotiated from them that was much less than what they would have spent to complete the superfund program. We also sought and obtained contributions from three other responsible parties who helped to defray clean-up costs. The contamination caused by the scrap yard included PCBs (polychlorinated biphenyls) in soil as well as metals. Contamination caused by other responsible parties includes buried paint waste and solvents in groundwater (see photos).

This site is now cleaned up and awaiting a Certificate of Completion.

Unfortunately, there is a large universe of contaminated properties without responsible parties and with insufficient market value to justify the cost of cleanup. This is the biggest challenge in the arena of brownfields redevelopment for years to come.

Putting It All Together


The challenge of redeveloping brown-

fields in New York State can also be an opportunity. The risks of taking on contaminated sites are very real and can be expensive and time consuming. The process of completing brownfield projects can be beneficial for just about everyone involved if the risks are offset by project economics that make sense.

The State of New York is wise to look to the private sector to solve the brownfield challenge. The tax benefits go a long way toward inducing developers to pursue these projects. However, more needs to be done to drive redevelopment in areas where property values are modest.

David W. Stoner is president of S&W Redevelopment of North America, LLC. He can be contacted by e-mail at: dstoner@swredev.com.





CAMERON ENGINEERING & ASSOCIATES, LLP


"Celebrating Over 20 Years Of Engineering Excellence"

Planning / Environmental
Water/Wastewater
Site Development
Landscape Architecture
Civil / Transportation
Mechanical / Electrical
Security/CCTV

100 Sunnyside Boulevard, Suite 100
Woodbury, NY 11797
Tel (516) 827-4900
Fax (516) 827-4920

330 Fifth Avenue, Suite 1300
New York, NY 10001
Tel (212) 324-4000
Fax (212) 481-3274

www.cameronengineering.com



**ENR Ranked #1
Design Firm**

Planning & Design

Program Management

Construction Services

Environmental Engineering

Pollution Control

Water Resources

URS

Mack Centre II, Mack Centre Drive
Paramus, NJ 07652
201.262.7000

77 Goodell Street
Buffalo, NY 14203
716.856.5636