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.

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

The concerns about brownfields derive 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 offsite migration of contamination. These apprehensions have resulted in major 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 potential-ly 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 “complicata- tion” for any site as a brownfield is the atti- tude 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 deter- mine 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 comfort- able making a loan on the property until the contamination is cleaned up in an appropriate fashion.

It is often the case that residual contamina- tion 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 reg- ulatory 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 reme- diation 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 investiga- tion 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 cer- tain areas of New York State, such as New York City, the property values are so high that the cost of site investigation and reme- diation is a minor element of cost for a prop- erty and project that may be valued at hun- dreds of millions or billions of dollars.

When people ask what it takes to com- plete a successful brownfield project, S&W Redevelopment responds that there are two ways to complete one successfully. A face- tious first response: get more for the proper- ty than you spend. The second way is to spend less on remediation than you get. While that is a sleek 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 fundamen- tal 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 con- tingencies 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 man- ifest 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 ele- ments that appealed to various constitu- encies, 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 cleanup 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.

continued on page 24
The Challenges and Opportunities of Brownfield Redevelopment

by David W. Stoner

T

here are a large number of con-

stained 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 head-

way through the environmental and eco-

nomic maze of redeveloping such sites.

A prime player has been Stearns and

Wheeler 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,

which has no stigma tied to past use.

Perhaps the best measure of “complica-
tions to Redevelopment” for any site as a brownfield is the atti-

tion” for any site as a brownfield is the atti-

tion” for any site as a brownfield is the atti-

tion” for any site as a brownfield is the atti-

tion” for any site as a brownfield is the atti-

tion” for any site as a brownfield is the atti-

tion” for any site as a brownfield is the atti-

tion” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the atti-

ation” for any site as a brownfield is the at-
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.

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 unnecessarily high hurdle for big projects, but still is a reasonable incentive for sites that are economically marginal.

Cable Percentage: The cable percentage is based on the location, the level of remediation-related benefit; again, the percentage 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.

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 benefits; 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.

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

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

The tangible property benefit has no cap on it and the state government requires there are many projects that would apply to the BCP just to gain from the tangible property benefit. It is likely to achieve the highest level of cleanup, but work cooperatively with applicants to complete the job right, but also complete the work as quickly and cost effectively as possible. Many DEC people understand this need and are offsets by the reduction in the assessed or appraised value. A particular end use translates into a significant benefits that applies to the taxpayer who realizes there are many projects that would make sense.

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. Many of these brownfields are tiny gas stations, like the S&W Redevelopment-owned Liberty Street site in Onondaga County, which is less than one-eighth of an 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 cleanup 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. Brownfields 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 done to drive redevelopment in areas where property values are modest.