

Green on brownfields? There's always more to learn



By Phyllis E. Bross

The National Brownfield Association (NBA) promotes the responsible redevelopment and productive reuse of underutilized properties that are contaminated or suspected of being contaminated.

Getting technical

One important way in which the NBA fosters the cleanup, transfer and economically feasible reuse of brownfields is through its “Technical Assistance Training” initiative. Using grant funds provided by the U.S. Environmental Protection Agency, NBA’s New Jersey chapter — for which I’m legal chairwoman — gathers interested municipal officials together from time to time to study the brownfield redevelopment process, available brownfield funding and ways to market brownfields for acquisition. By teaching towns techniques to attract redevelopers and also exposing redevelopers’ common redevelopment concerns to towns, these abandoned and idle properties can get the attention they need, redevelopers can turn a profit and municipalities (and counties) can rightfully boast about a clean environment and a healthy economic picture.

Several municipalities and the Camden Redevelopment Agency recently participated in a brownfield technical assistance training program in Camden. A successful private redeveloper presented an outline of the training topics and an expert in environmental investigation and cleanup was available to field questions regarding cleanup requirements under

the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1, *et seq.* and State Technical Regulations, N.J.A.C. 7:26-E. I served as legal expert for the training. Among the session topics were: (a) state incentives for brownfields — such as investigation grants, cleanup cost reimbursement, liability defenses, covenants not to sue and cleanup finality; (b) effective municipal/citizen outreach; (c) long-term effectiveness of cleanups; (d) due diligence; (e) property valuation, and (f) innovative redevelopment deal structuring. The issue of eminent domain also was explored and pending bills in support of controlling condemnation following *Kelo v. City of New London*, 125 S. Ct. 2655 (2005) analyzed.

Successes. And failures.

As the session progressed, the “technical training” was transformed into an open exchange of success stories for the participating municipalities and an honest sharing about certain redevelopment projects that may have not worked out as hoped. Some municipalities discussed brownfield projects that had begun but failed, due to redeveloper’s inability or refusal to fund the necessary environmental investigation. That prompted discussions about eligibility for grants, pursuant to N.J.S.A. 58:10B-4 *et seq.*, to allow municipalities to assess and investigate contamination. Also raised was the notion of clustering several sites into “Brownfield Development Areas” in order for municipalities to become eligible for

state cleanup money as well. Many participating municipalities focused heavily on the environmental liability associated with taking title to a contaminated site, resulting in a lively exploration of liability limitation, or at least avoidance, through statutory innocent purchaser defenses to cleanup liability such as those at N.J.S.A. 58:10-23.11.g.d. and N.J.S.A. 58:23.11f22, where redevelopers and local government can be immune from natural resource damage liability.

The covenant not to sue at N.J.S.A. 58:10B-13.1 in the Brownfield Act was explored as an effective vehicle to securing a measure of cleanup finality assurance which, when coupled with contractual indemnification clauses and effective insurance products, can help redevelopers forecast when their remediation obligations may cease.

Never too smart to learn

The NBA Brownfield Technical Training session lasted almost a full day. Even those towns joining the session

already sophisticated about contamination issues and brownfields learned something new, whether about liability, marketing or property valuation. Towns already vastly experienced in addressing citizens' concerns and the redevelopment process learned about the use of grants to boost a project and ways to keep redevelopers at the table. At the end of the day it was clear there always is something more to learn and teach about brownfields.

In an ever-changing arena of redevelopment policies and ideas, creating an atmosphere for municipalities to meet and share what has or has not worked in their communities and to become educated about brownfields from the redeveloper perspective, really can make a difference. Having a consultant on-hand to define investigation and cleanup requirements and a brownfields attorney to place it all in legal focus equates to a training where local governments can capitalize on the experience of their trainers and better ensure successful future projects.

Brainstorming in this open fashion can result in informed and improved methods to spur success, thereby making responsible brownfield redevelopment in New Jersey a reality. ©



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