

Erasing Barriers: Environmental Liability Considerations

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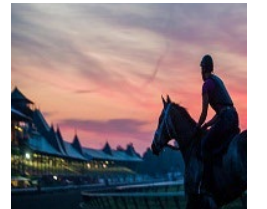
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Environmental Liability

You cannot have a “liability” without some form of “risk” attached to it. In the environmental/brownfield context, risk is many things:

- Sticky;
- Intractable;
- Applicable to the owner, and potentially, a site operator;
- Often difficult to assess/understand; and,
- Subject to change.

For quite some time, simply the specter of environmental risk was enough to stop the potential redevelopment of many sites.

Site Access/Control

Combining environmental liability concerns with site control/access issues has often been a major impediment to getting a site back into reuse even when a party is willing. Key problems include:

- A site with a defunct, bankrupt or absent property owner.
- Significant tax arrear liability and/or other legacy obligations.
- An owner not looking to “unearth” problems.
- Trusting historical records that may not tell the whole site story

There are ways to address these problems. But first . . .

Going In Eyes Wide Open

At the beginning of the process, it's important to understand the scope of the risk attributable to the site. This then allows a party to:

- Partner with knowledgeable resources to identify an approach to assess risk;
- Work with third-parties (e.g. municipalities) to potentially assist with providing resources to help scope out the nature of the risks;
- Identify risk mitigation opportunities applicable to the site in question; and,
- Determine risk tolerance.

Risk Mitigation Options

We have spent the whole time talking about risk – do you have potential solutions? YES

There are a lot of traditional and innovative ways to address risk:

- Get owners comfortable with the proposed process, whether through de-risking or incentivizing participation.
- Work with municipalities/public authorities to get you the information you need (including Phase II results), help facilitate title transfer, or provide liability protections for agreeing to redevelop the site.
- Leverage a robust capital stack, or work with educated financing parties, to help facilitate the process.
- Backstop with contractual protections.
- Be prepared.

It's not meant to be a one size fits all circumstance; think of it more as a buffet.

Questions?



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