

Nichols Hills

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RECYCLING CITIES

By **Mary Ellen Ternes**



Mary Ellen Ternes

When evaluating whether to make a purchase and then considering ways to preserve its value, eventually reuse it and then ultimately recycle it, did you ever realize that some of us are actually going through this same exercise for cities? Or, rather, downtown areas that have been scarred by prior industrial or commercial operations? The same conservation concepts we embrace in recycling and minimizing waste generation are at the heart of a program called “Brownfields,” dedicated to helping recycle land previously impacted by industrial or commercial use. Brownfields lets us clean it up, dust it off and reuse it as industrial property or repurpose it as beautiful public or commercial space.

Some of us are making careers of this process, thanks to a huge change in law several years ago; law which had been preventing this development for about 20 years. The statutory culprit was the Comprehensive Environmental Response, Compensation and Liability Act of 1980, which we call “Superfund.” You may remember the phrase “Superfund Site” from the 1980s, and names of places like Love Canal – and in Oklahoma, Hardage/Criner and more recently Tar Creek. Created to clean up the very worst contaminated properties, Superfund imposes liability of the very toughest kind: strict, joint, several, perpetual and retroactive. To non-lawyers, that means no escape (arguably, of course, just in case you are a lawyer), and you don’t even have to see it coming.

To clean up properties, Superfund works pretty well. Some of the very worst Superfund sites have been turned into golf courses. But it might have worked too well: because of Superfund, nobody wanted to buy property that had been used before. Old manufacturing operations, abandoned mining claims, old commercial buildings with underground gasoline and heating oil storage tanks, asbestos insulation and lead-based paint – all common and even expected conditions from prior use – were being abandoned. Instead of redeveloping previously used property, called “brownfields,” developers only wanted to utilize pristine, unused “greenfields.”

It’s no wonder. Even now, despite its enactment 30 years ago, Superfund is one of those statutes that still elicits reactions of shock and disbelief, along with angry cries of “It’s not fair!” from the recipient of a notice letter. All this recipient had to do was unwittingly inherit liability of a former company which had owned or operated a Superfund site, or which sent wastes to a Superfund site, even if it was property the recipient had never heard of.

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Fear of possible “chemical contamination,” and even of the perception of contamination, prevented reinvestment in impacted urban areas, which contributed significantly to “urban blight” – the phenomenon when densely packed, congested urban areas contain shockingly vast, remarkably desolate areas of abandoned industrial buildings and oceans of broken concrete, piping and scrap metal. Many of these urban scars were once viable businesses that could not be sold, and the owners simply walked away due to the take-no-prisoners Superfund liability. And this was true even of sites in key locations with recognized historical significance; few people wanted to purchase these properties for fear of exposing themselves to Superfund’s unforgiving liability scheme.

To address this problem, in January 2002, President George W. Bush signed into law amendments to Superfund called the Small Business Liability Relief and Brownfields Revitalization Act, or simply “Brownfields.” Brownfields provides a number of exceptions to Superfund liability, as well as financial incentives to purchase and redevelop contaminated properties.

Since these Brownfields amendments were passed, redeveloping commercial and industrial property is much easier. City centers have benefited tremendously, including our own. For years, Oklahoma City’s landmark Skirvin Hotel was a sad, empty reminder of its former glory days. Closed in 1988 despite its uniquely elegant construction, location in the heart of downtown and listing on the National Register of Historic Places, it remained vacant and abandoned for almost 15 years. In 2000, Oklahoma City initiated plans to restore the Skirvin, and soon found a partner in Brownfields. Brownfields funds were used to address the friable asbestos insulation, lead-based paint and all the other previously “state-of-the-art” but now outdated construction materials that had been preferred in expensive buildings like the Skirvin. And look at the results today. Isn’t recycling a wonderful thing?

Appropriately, the Oklahoma Department of Environmental Quality is hosting the upcoming Oklahoma 2010 Brownfields Conference at the Skirvin Hilton on April 28 and 29. Developers, realtors, investors, property owners, bankers, environmental professionals, architects, planners – everyone’s invited to learn all about Brownfields opportunities and recycling cities! ■

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BE INFORMED

To read about the amazing Skirvin resurrection with Brownfields, see

www.epa.gov/region6/6sf/pdffiles/skirvinokcsuccess2007.pdf

To learn about the U.S. EPA’s Brownfields Program, see

www.epa.gov/brownfields/basic_info.htm

To learn about Oklahoma’s Brownfields Program, see

www.deq.state.ok.us/lpdnew/brownindex.html

To read about the Oklahoma 2010 Brownfields Conference, see www.oklahomabrownfields.com