

NAVIGATING BROWNFIELD RECOMMENDATIONS FOR PURSUING URBAN COMMERCIAL PROPERTIES

LIABILITY

INDIANAPOLIS BROWNFIELDS

Brownfields are abandoned or underused properties where real or perceived environmental contamination creates major barriers to redevelopment. Many of these sites represent prime opportunities for development, but go overlooked due to their environmental complications. Fortunately, there are safeguards for purchasing a property without being held liable for its past contamination, making almost any property a possibility for redevelopment.

THE LAW

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was established to clean up—and hold polluters responsible for—contaminated properties. The passage of CERCLA and subsequent legislation created rules for who is liable to pay for environmental remediation. These criteria are critical for purchasing any property with past uses that could have led to hazardous substance pollution.

RESPONSIBILITY

Under CERCLA, liability for contaminated properties applies to anyone who:

- Currently owns or operates the property

- Owned or operated the property at the time of disposal of hazardous substances;
- Arranged for hazardous substances to be disposed of or transported to the site for disposal; or
- Transported hazardous substances to the site.

This means that the present owner or operator of a property can be held liable for the cost of cleaning it up even if they did not commit the pollution.

To prevent being held financially responsible for clean up, a prospective property owner must establish before taking possession that they did not cause or contribute to the contamination found at the site.

AVOID LIABILITY

Prospective purchasers can protect themselves from liability by conducting **All Appropriate Inquiries**, or AAI. AAI starts with a Phase I Environmental Site Assessment from an environmental professional. A Phase I determines the prior uses and ownership of a property and assesses the property for any indication of releases or threatened releases of hazardous substances therein. To be qualified to carry out this assessment, practitioners must meet certain requirements in education, licensing, and/or years of experience. There are a number of environmental firms who regularly perform these Phase I assessments.



PURCHASING A POLLUTED PROPERTY

Even if the Phase I indicates that there have been releases of hazardous substances on the property, a prospective purchaser may acquire the property free from liability. The purchasers must not be responsible for the pollution or affiliated with a potentially responsible party, and they must continue to comply with EPA regulations after purchasing the property. These regulations include providing notice of and stopping any new hazardous pollution and complying with all authorities in the operation of the property.

INSURANCE COST RECOVERY

A property owner who has conducted AAI and continues to comply with EPA regulations can pursue those responsible for the pollution for the cost of cleaning the property. If the polluting party is still viable or available, they can



Workers install green infrastructure at a former brownfield site

be pursued directly. If not, however, **property owners can pursue the responsible party's original insurance company for coverage from their plan.**

Recovering costs from insurance companies is particularly viable in Indiana. In fact, the Indiana Code allows for the recovery of not only the remediation costs, but also the costs of investigation and attorney's fees. In past cases, insurers have been found liable for cleanup costs even in situations where the policies were decades old.

FIND OUT MORE...

Indianapolis partners within the Fostering Commercial Urban Strategies (FOCUS) program and the Reconnecting to Our Waterways (ROW) Initiative have come together to promote the use of cost recovery strategies as a tool for redevelopment of vacant and blighted parcels along targeted waterways and commercial districts. This Cost Recovery Pilot will help property owners use cost recovery tactics to move blighted and under-utilized properties into redevelopment. All partners are providing funding, staffing and advocacy support towards the goals of this project.

RECONNECTING TO OUR WATERWAYS is a city-wide collaborative engaging people and businesses in transforming Indianapolis waterways into community assets. For more information: OurWaterways.org | email: info@OurWaterways.org

FOSTERING COMMERCIAL URBAN STRATEGIES (FOCUS) :: The former Winona Hospital redevelopment project benefited from the Indianapolis Neighborhood Brownfield Initiative is a partnership between Local Initiatives Support Corporation, the Indy Chamber and the City of Indianapolis that exists to jumpstart commercial development in urban neighborhoods. For more information: liscindianapolis.org | email: rmcintosh@lisc.org



REDEVELOPING BLIGHTED PROPERTIES *through* INSURANCE RECOVERY

OVERVIEW

Indianapolis partners within the Local Initiatives Support Corporation's Fostering Commercial Urban Strategies (FOCUS) program and the Reconnecting to Our Waterways (ROW) Initiative have come together to promote the use of insurance recovery strategies as a tool for redevelopment of vacant and blighted parcels along targeted waterways and commercial districts.

WHAT IS INSURANCE RECOVERY?

Businesses often dissolve and leave contaminated properties. One of the most effective tools for dealing with abandoned, environmentally contaminated sites is known as "insurance cost recovery." Once the contamination is discovered by the new property owner, a claim may be filed against the polluting business's comprehensive general liability insurance policies. Insurers have been found liable for the cleanup costs even in cases where the policies were decades old.

Indiana is particularly favorable for insurance cost recovery cases. In fact, the Indiana Code allows for the recovery of not only the remediation costs, but also the costs of investigation and attorney's fees. The Indiana Supreme Court strengthened the ability

to recover these costs by finding that the "pollution exclusion clauses" in most insurance policies are too vague to protect the insurance companies from liability. Together, these rulings make it possible to clean up the legacy of industrial contamination that remains long after the polluter has vanished.

APPLYING THE CONCEPT TO INDIANAPOLIS NEIGHBORHOODS

Neighborhoods involved with FOCUS and ROW will work together to: 1) identify target parcels, 2) educate property owners on clean-up options, and 3) implement insurance recovery tactics to move blighted and underperforming properties into redevelopment.

THE PARTNERS

ROW is a city-wide collaborative engaging people and businesses in transforming Indianapolis waterways into community assets. The FOCUS program is a partnership between LISC, the Indy Chamber and the City of Indianapolis that exists to jumpstart commercial development in urban neighborhoods. All partners are providing funding, staffing and advocacy support towards the goals of this pilot project.

