



## **Cleaning up and building on Brownfields benefits the real estate industry**

November 26, 2007 - Spotlights

Sustainable development applies not only to green buildings, but also the sites they're constructed on. As the supply of undeveloped land diminishes, government and developers are finding more ways to re-use sites, including Brownfields that may have contamination issues. Cleaning up and building on Brownfields can be a complicated process, but it benefits the real estate industry by bringing underutilized properties back on the market, and it supports the principles of sustainable development by conserving resources and removing unsafe, unattractive blights from the landscape. In April, 2007 New York City published *plANYC* identifying its commitment to a more environmentally friendly city and what needs to be accomplished over the next 25 years to clean NYC up. Elements of *plANYC* include Brownfield initiatives to create a more efficient and faster cleanup program. The *plANYC* initiatives will correspond to NYS guidelines and tap into state resources. The city will look to the state to encourage the release of community-based redevelopment grants to reform Brownfield Opportunity Area (BOA) programs and pass on new incentives for cleanup.

New York State's current Brownfields regulations offer big incentives to redevelop these sites, including liability protection and tax credits. While these incentives can be very attractive to developers - in some cases the tax incentives can exceed the entire cost of the cleanup. However, entering a formal Brownfield Cleanup Agreement (BCA) is not always the best choice for every site. Depending on a project's budget, time frame, and community outlook, working under a state or local spill program could make more sense. But for some sites, a BCA offers the most comprehensive and cost-effective approach for Brownfield redevelopment.

Another issue for projects considering using the BCP is whether the project will be accepted into the program by the NYS Department of Environmental Conservation (NYSDEC). Because of the lucrative financial incentives and their attractiveness to developers, the NYSDEC has raised the bar for entry into the program. Issues affecting eligibility include how contaminated a site is, the public benefits of the project, and whether the remediation issues really affect development. In many cases, the NYSDEC is limiting what sites get in or only accepting a portion of the site into the program. This thereby reduces the tax credits available to the developer.

Time is the biggest issue with a Brownfield Cleanup Agreement. AKRF, Inc., an environmental, engineering, and planning consulting firm, is directing two of the largest Brownfield projects being successfully implemented in New York City: the AvalonBay Communities residential development at Queens West, and the Muss mixed-use development on the Flushing waterfront. While a remediation plan can be approved and implemented in a few months under some other programs, it can take more than a year under a formal BCA.

Another concern for developers is whether the NYSDEC will have the funds in the future to pay out the tax credits afforded by the BCP. In comparison to the number of BCP projects in the pipeline,

only a limited amount of the available tax credits have been paid out. With the typical tax credits being in the range of 10 to 12% of both the remediation and development costs (and a maximum tax credit of 22%), there is concern that the tax credit provisions may be unsustainable and could be reduced in the future.

For the Muss Flushing property, which was formerly used for electric transformer storage and repairs, it took AKRF five years to fully evaluate the site, create a remediation plan, negotiate with NYSDEC, and conduct public outreach. The site's cleanup is now complete, and by 2009 it will be redeveloped by Muss with a \$600 million retail and residential complex. This is a perfect example of a site that could remain a blight on the neighborhood without the Brownfields program. It was a complicated cleanup job and it took a long time. But it will be worth the wait to see this project revitalize the waterfront and the local economy.

Community relations are also important when working under a BCA, which requires formal public review. Communities are often concerned about risks that could occur while the cleanup is underway and additional outreach in the form of public meetings or consultation with neighborhood organizations may be necessary to make sure their issues are addressed. Though potentially time-consuming, this helps developers build trust and acceptance with the community.

For the AvalonBay site at Queens West, odors were a major concern to the surrounding neighborhood, which includes a school, a daycare center, and residences. To address this issue, remediation work was conducted under a tent nearly the size of a football field in order to maintain good quality of life for neighbors. Respecting the neighborhood is always a good choice for developers. With the Brownfields program, it's a question of whether it makes sense to go through a more exhaustive public and regulatory review process. NYSDEC was very cooperative in working with AvalonBay and AKRF to approve the remediation plan in an expedited manner; approval was granted in less than a year after the investigation was initiated in early 2005.

Because New York State's Brownfield program is relatively new, regulators, developers, and consultants like AKRF are learning on their feet. Each BCA is negotiated individually with NYSDEC, so no two Brownfield projects are alike. Also, even though the law was signed in 2003, the long time frames for planning and approval mean that major BCAs like Muss' Flushing and AvalonBay's Queens West sites are only now being implemented. When deciding whether to do cleanup under a BCA or some other program, developers and their advisors need to think carefully about whether the substantial incentives of a BCA are worth the trade offs. This requires a clear understanding of the site's condition, familiarity with the regulations, and the ability to move a project through the public and regulatory approval processes.

For complicated sites that will hold their value during a longer planning and remediation process, a BCA can give developers a safe and profitable route for redevelopment. The success of the Brownfield program stems from its recognition that developers can be powerful agents for positive change, and makes them partners in environmental cleanup.

Marc Godick, LEP, is the vice president of AKRF, Inc., New York, N.Y.