



Turn
Brownfields
Into Greenbacks
Using Property Tax
Reductions

By Randall L. Airst

A readily available, yet sorely underutilized, means of enhancing the cash flow of properties burdened with environmental contamination or compliance costs is property tax abatement. Rights of way are often burdened by a variety of environmental problems. The problems include physical contaminants, expensive and complex government regulation, and environmentally related stigma. Unfortunately, too many rights of way are taxed as though they were devoid of environmental problems.



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Right-of-way owners are the recipients are conflicting messages from different branches of government. Environmental and other regulators stand on one side of this equation. It is their job to enforce regulations designed to protect human health and the environment. Rights of way are governed by a broad array of statutes and regulation. The message from this branch of government is that the right-of-way holder or operator must remain in compliance. Rarely do regulators make the right-of-way holder feel that

it is the owner of valuable property. Quite the opposite is true.

Many right-of-way holders end up feeling that the right of way is a necessary evil. Ownership or other legal rights in the right of way must be retained so that the holder can continue to serve its customers. There is no mistaking the fact that the right-of-way holder and any operators must undertake substantial effort and expense to remain in compliance. Failure to do so can have serious consequences. As we all know, various environmental laws reduce the freedom property owners have. Environmental laws permit the government to come onto private property and clean up contamination if the owner or operator do not respond to government directives to do so.

An entirely different message often accompanies the property tax process. The underlying message from property tax assessors is that the right-of-way holder owns an attractive piece of real estate. Rarely is there any mention about the environmental considerations that burden the property and its owner.

The need for environmental oversight is not being disputed. What is objectionable is that the financial impact of various environmental factors goes largely unnoticed. Right-of-way owners are a progressive group and

have an excellent compliance record. Although they might disagree with some laws, they recognize the need to protect human health and the environment.

The need for environmental oversight is not being disputed. What is objectionable is that, legislative and constitutional provisions across the country are being ignored. These provisions require that real estate taxes be based on the market value of each taxable parcel. Despite this legal framework, the financial impact of various environmental factors goes largely unnoticed.

Securing Property Tax Relief for Contaminated Property

Property taxes are often one of the largest fixed expenditures confronting many real estate owners. Property taxes in our country are generally based on the “ad valorem” principle. Therefore, these taxes are calculated as a percentage of the fair market value (FMV) of each taxable parcel. Real estate owners are increasingly sensitive to property devaluation caused by environmental problems and they should insist that such impact be reflected in a proportional reduction in the distressed property’s ad valorem tax assessment. Landowners should



seek property tax adjustments to offset negative impacts on value due to stigma, expense, liability, and compliance costs.

In some recent cases, landowners have successfully challenged tax assessments of contaminated property. For example, in *Westling v. County of Mille Lacs*, 543 N.W. 2d 91 (Minn. 1996), the Minnesota Supreme Court found that the stigma discount for environmental contamination and the estimated cost of cleaning up a landowner's property resulted in a zero value for tax purposes, even though the 13-acre industrial site generated annual rents of \$114,000 and had an uncontaminated value of more than \$1 million. The *Westling* decision is the latest in a growing body of cases that establish a modern judicial trend to recognize the impact on value from contamination and other environmental factors.

Case Study: Property Tax Adjustment for Contaminated Industrial Site

The American Land Recycling Corporation was hired to evaluate the redevelopment potential of a contaminated industrial site. Situated on the property are two separate buildings. One building is a four story industrial facility. The other building houses a gas station, repair bays, and a propane distribution facility. The buildings and equipment at the site are old and in immediate need of repair. Several environmental problems were discovered at the site, including:

1. Compliance work that needs to be performed on the gas station so that it can continue to operate;
2. Contamination which had migrated onto the property from two adjoining properties;
3. Asbestos in the industrial building;
4. Leaks from an oil heating tank which had contaminated the soil; and
5. A leaking underground storage tank used to store petroleum for sale to retail customers and taxi fleets.

The gas station is affected by an additional problem. It is located beside a large transformer facility. Although

there is no evidence to suggest that the electromagnetic fields emitted from the facility harm the health of employees or customers at the station, the transformer facility creates a stigma that adversely affects the market value of the gas station property.

In order to generate additional cash flow for cleanup costs, the landowner sought a property tax adjustment. The owner was able to secure a property

tax reduction of over 50 percent during the initial appeal. These savings favorably impressed lenders who proceeded to finance cleanup efforts. The savings in property taxes ended up being significantly more than the interest payments on loans needed to cover cleanup costs. The property tax abatement permitted the owner to rehabilitate the property with funds that were not previously available to it.

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Golf Tournament

Friends of the Education Foundations will once again host a golf tournament in conjunction with the International Education Seminar. In Minneapolis, it will be held on the afternoon of Wednesday, July 1, 1998.

Proceeds from the tournament will be donated to the Education Foundations. "Friends" are seeking the support of companies, agencies and individuals to ensure another successful campaign. Opportunities for support include sponsorship, backing a hole-in-one contest and donating prize items.

Sponsors names will be displayed at the International Education Seminar as well as the tournament. Look for additional details in upcoming issues of Right of Way.

If you have questions or a lead on potential sponsors, contact Dennis Werkmeister at dwerkme@enron.com or (612) 877-1735.

Mark your calendar and shine up your clubs.

The Steps That American Land Recycling Follows In Pursuing Property Tax Reductions

1. Identify all of the environmental factors that affect the subject property. These include: a) regulatory requirements; b) contamination; c) stigma; and d) other environmental factors related to the property under examination.

2. Quantify the degree to which these environmental factors affect the fair market value of the subject property.

3. Examine the tax burden being imposed on the property. The tax burden will be based on the assessor's evaluation of the market value of the property. Ascertain whether there is any difference between the assessor's estimate of value and figure we have arrived at.

4. If there is a material difference between our respective figures, we arrange for a meeting with the assessor. During this meeting we will try and find out why there is such a big gap in our respective estimates of the fair market value of the subject property.

5. Assessors often overestimate a property's value because environmental factors have been ignored. In many cases, the assessor will not come over to your way of thinking, despite the existence of extensive evidence that the property's environmental problems affect its market value. When this occurs, you have to proceed to a formal hearing before an "administrative" body.

Conclusion

Property taxes constitute a large expense for right-of-way owners. This particular form of taxation is supposed to be based on the market value of each taxable parcel. There is a broad array of environmental factors that adversely affect the value of host properties. Due to no fault of their own (i.e., time and budgetary constraints) property tax assessors often overlook the existence of environmental factors when they estimate the market value of parcels they are responsible for. In

other instances, they underestimate the impact that environmental factors have on market value. The result is that many properties with environmental burdens are overassessed.

This situation is particularly burdensome for right-of-way owners. The sheer size of their real estate holdings means that overassessment creates an unnecessary financial drain for the company. Fortunately, a remedy exists. Right-of-way owners can attempt to reduce their assessments informally during discussions with assessors. If this route does not produce satisfactory results a formal appeal can be launched.

Is it worth the trouble? I think so, and here is why.

The savings that can result from a successful appeal can be substantial. These savings can multiply over time. You must also bear in mind that property taxes can only be appealed prospectively. Which means 1999 taxes must be appealed in 1998 or by a deadline imposed by the taxing authority early in 1999. Once the deadline has passed the taxes the opportunity to appeal that year's taxes is not longer available. Here's one final thought. These taxes are levied annually. Therefore, a reduction that can be sustained results in recurring savings.

With high compliance, cleanup and other costs don't you have a better use for the money? ■

Randall Airst is an attorney with the American Land Recycling Corporation in Exton, Pa., a firm that specializes in the revitalization of brownfield sites and sponsors conferences to aid professionals and corporations in their efforts to rehabilitate industrial properties. Mr. Airst is also the author of How to Avoid Environmental Liability: A Practical Guide for Real Estate Owners, Lenders and Professionals (2nd ed., 1996).

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