

RECOUP ENVIRONMENTAL DAMAGES THROUGH OUTDOOR MEDIA

BY RANDALL L. AIRST, ESQ., LL.M.

There are approximately 650,000 brownfield properties in the United States. The term brownfield does not encompass those properties which are heavily polluted and which may qualify for inclusion in federal or state superfund programs. Brownfield properties are saddled with more moderate environmental problems. In some instances those environmental problems have as much to do with perception as they do with reality. At other properties, the perception is accurate and the property does harbor environmental problems.

Countless properties fall squarely within the brownfield classification. Over the years many properties cease to be used for their intended purpose, and cannot be reused in strict conformity with their zoning designation. This situation is far from uncommon and presents the property owner with a complex problem: control of a brownfield site that produces no income, but nonetheless will require significant expenditures. These expenditures begin with remediation costs, but certainly do not end there. Insurance, security and other costs represent only a few of the recurring expenses which property owners must confront at obsolete brownfield properties.

If your organization owns a brownfield property near a major highway, this article may provide you with the means to remediate your property and return it to productive use by generating revenues that can be used to defray remediation costs. Outdoor media can be used to remediate and rehabilitate right of way properties that would otherwise lay fallow. For purposes of this article, the term outdoor media should not be understood to include only the standardized billboards found at the side of major highways across parts of the country. The term also includes spectaculars (oversized outdoor advertising), which because of careful planning do not adversely affect the aesthetics of host communities.

Revenues generated via outdoor media will encourage property owners to remediate sooner rather than later. Right of way owners oversee significant tracts of property. A percentage of these tracts suffer

from some degree of environmental degradation.¹ Timely attention to environmental concerns not only protects the environment, it also makes sound economic sense. Proactive and responsible stewardship will not go unnoticed. Environmental information is being scrutinized more rigorously along with other components of securities filings. Removing environmental risks can also eliminate or reduce the threat of both statutory and tort litigation.

The subject of American Land Recycling'sSM (ALR) case study was originally discussed in the May/June 2002 edition of *right of way* Magazine. So far as we know, this case is one of first impression. ALR's



Careful not to touch the walls. Asbestos-covered material can be seen in the center of the photo. Mold is on the floor.

petition for zoning relief is predicated (in part) on the environmental problems which plague the subject property. Timely attention to the property's problems would have reduced their impact. The property served as the site of a steampower plant between 1927 and 1987. It was sold in 1987 and thereafter was only operated once. In 1993 a vandal broke in and while attempting to steal metal to sell for a few dollars, he released fuel from a storage tank. The leak resulted in litigation by the regional rail authority against the owner as well as

against the original owner. In essence, one right of way owner sued two other right of way owners. [Author's Note: Litigation was filed by SEPTA against both PECO and Trigen. The case was settled in 1997 and the prothonotary has since discarded the contents of the file. None of the companies involved were willing to provide ALR with additional details. The asbestos at the site has been well known for decade. In 1994, a variance was granted allowing the asbestos to remain sealed in the building.]

While the litigation was settled, the problem is as yet unresolved and the site remains on the Pennsylvania's Storage Tank Release Sites List. Asbestos, which could have been abated more easily now falls from pipes and in many locations has mold growing on it. Photos indicate that the asbestos was in much better condition 15 years ago. Contractors have indicated that abatement would have been less costly



The building envelope is deteriorating. Water pours in when it rains. This has contributed to the growth of mold.

to deal with at that time. Photos further indicate that there was no mold problem 15 years ago. Mold is now a hot topic and this problem will have to be addressed, possibly at great expense.

Of course, not every right of way can be used for outdoor media. Nor would this be desirable. Outdoor media use represents an alternative use for appropriate properties. Many brownfield properties can be reused in strict conformity with the zoning code and do not require the assistance of outdoor media. However, many of the 650,000 brownfield properties are upside down properties. That is, they will cost more to revitalize than their post-remediation value. Not surprisingly, a certain percentage of brownfield properties are located near major thoroughfares. This opens up the possibility that outdoor media can: 1) serve as a reuse of the property; and 2) fund other uses which would not be feasible without income from outdoor media. The cost to rehabilitate ALR's case study property is estimated between \$11,191,013.00 to \$12,309,013.00.² The per-square-foot rehabilitation costs would make this industrial building (located in Philadelphia) more expensive than the top eight (Class "A") office buildings to trade hands in the city in 2002. Rehabilitation without the assistance of outdoor media would result in a permanent cash flow deficit. Eventually, outdoor media may make reuse of the interior of the building possible. Without outdoor media this would simply not be possible as the costs required to rehabilitate the building are simply too high in relation to post-rehabilitation rents and market value.

Many properties serve a useful function and are then removed from that use for a variety of reasons. Right of way properties are particularly susceptible to obsolescence. They may have been acquired through condemnation proceedings and their configuration may have been tailored to fit a particular purpose.

Outside of this purpose the size and dimension of the property may not lend itself to a permitted reuse. Even a traditional acquisition is often structured so that the right of way purchaser can deploy the site for a specific use. Over time the use may no longer be viable. When this occurs, the customized parcel of property may not be suitable for any of the purposes permitted as a matter of right pursuant to the parcel's zoning classification.

It is not only the size and shape of land which may stand as an impediment to reuse. In many instances the structure on the land was designed to serve a particular purpose and cannot be conceivably converted to any other permitted use.

ALR's case study involves a former steam plant. The plant was never a building in the traditional sense of the word. It is a collection of equipment which is surrounded by a "skin" of bricks. The center of the building remained

hollow in order to accommodate the steam equipment. The installation of new floors will cost millions of dollars. Removal of the steam equipment and asbestos represent additional costs that will have to be incurred before the interior of the building can be reused. This building served its utility owner well for many decades. However, the building's unique physical traits do not lend themselves to cost effective conversion to any other permitted use. The problems are not minor.

"Without federal, state and city impetus and incentives we believe that this site will continue to languish as an eyesore and deterrent to the redevelopment of this area as it has for the last decade," said Andrew Toy, Philadelphia's former brownfield coordinator, in 1999.

This site has one asset and only one asset: visibility from a major highway. In order to utilize the building's visibility, ALR is seeking variance relief allowing 11,187 square feet of outdoor advertising – the minimum variance relief necessary to grapple with the many problems posed by this site.

A property's zoning designation and the jurisdiction's comprehensive plan govern the use of individual properties. When a property cannot be used for any permitted purpose the possibility of relief must be examined. Variance relief allows a property to be used in a manner not sanctioned under the zoning code.

Of course, the end of a property's value does not relieve the owner of its obligations, including those obligations imposed under federal, state and local environmental laws. Nor does it preclude the possibility of common law causes of action such as nuisance or trespass. These are just two reasons why property owners must examine every possible method of returning obsolete properties to

productive use. In some instances outdoor advertising will provide the only way of returning a property to productive use.

Environmental problems cannot and should not be kept quiet. As discussed above, public corporations are required to disclose a broad array of information, including that related to contaminated properties. Community and local political leaders discharge their obligations through careful scrutiny of brownfield properties.

The volume and severity of problems can increase as the distance between the right of way and residential properties shrinks. Many property owners find themselves in closer proximity to more neighbors than when they first acquired a property. This situation has become more common as suburban sprawl and greater urban density become increasingly prevalent, resulting in newer homes closer to older and more established industrial areas.

Fortunately, many obsolete right of way properties are located adjacent or in close proximity to busy highways. Under the appropriate circumstances, these right of way properties can be used for outdoor advertising displays. The income generated can be instrumental in addressing environmental (as well as other) problems.

DETERMINING THE SITE'S ENVIRONMENTAL PROBLEMS

Of course, problems cannot be addressed before they are identified. Functionally obsolete properties must be subjected to careful investigation, which will identify the existence and scope of environmental problems.

Once the property's environmental problems have been identified, the owner can evaluate reuse options. As discussed above, property reuse options are often limited. The physical traits that allowed the property to be utilized successfully do not necessarily facilitate reuse in strict conformity with the property's zoning designation.

Property owners are entitled to utilize their properties in a meaningful and practicable manner. The terms meaningful and practicable are relative terms and must be interpreted within the context of various factors including the size of the property and the severity of the problems afflicting it. Properties which cannot be used in a meaningful or practicable way under the zoning code may be candidates for variance relief. This is just one reason that a thorough evaluation of the property and its condition is imperative.

EVALUATING THE SITE IN RELATION TO VARIANCE REQUIREMENTS

After evaluating the environmental and regulatory status of its

property, the owner can proceed prudently and decide whether outdoor advertising is appropriate. Before making this determination, the owner must review the provisions of the zoning code in general and the property's zoning classification in particular.

The zoning code may permit outdoor advertising as a matter of right. The chances of this occurring are decreasing as the imposition of restrictive sign controls is becoming more prevalent. Increasingly, property owners will have to secure some type of zoning relief in order to erect outdoor advertising. A zoning variance can provide relief for a property owner whose property cannot be used in strict conformity with its zoning designation.

Local laws differ across the United States. However, in many jurisdictions a property owner will not be able to immediately apply for a zoning variance. Before embarking on the process, the owner must be familiar with the obstacles to overcome before outdoor advertising can be erected at the site.

- The owner's attorney should ascertain whether or not outdoor



Don't track mold on the street. Mold covers parts of the asbestos remaining on the pipes while forming a goopy mix on the floor.

advertising is permitted as a matter of right. Both the attorney and engineer should know the ways in which the application exceeds the use and dimensions permitted as a matter of right.

- The application will typically include a site plan. This plan should include a matrix identifying the code requirements and each portion of the application which exceeds those requirements.
- The first barrier is often the need to secure refusals before proceeding with an appeal to the zoning board of adjustment or its equivalent.
- The owner will initially be required to apply for a permit to use

the property for outdoor advertising. This application will result in one or more refusals. A refusal will be issued for each portion of the application that exceeds that which is expressly permitted by the zoning code.

The zoning process is not inexpensive. Before embarking on this process the owner will have to select one of several alternative means of proceeding: 1) the owner can choose to shoulder the up front costs which must be borne before variance relief is secured; or 2) the owner can lease or sell its property to an organization which will underwrite the costs which are part and parcel of the variance process. These costs include an attorney to handle the appeal to the zoning board of adjustment.

The lawyer is generally responsible for quarterbacking the team needed to proceed with a zoning variance. The lawyer will also try to ascertain the chances of success. The property and proposed signage will be examined within the context of prevailing laws and regulations. In addition, the attorney will also be needed to handle any appeals stemming from the zoning board's decision. If the company loses, but believes that it is entitled to zoning relief, it can appeal to a trial court and typically to at least one appellate court. Many variance requests for outdoor media are hotly contested. Those seeking a variance often confront opposition. These opponents or "protestants" are, as a rule, zoning savvy. The opposition is sometimes local. In other instances single issue groups have made it their mission to fight outdoor media variance cases. These groups often have access to pro bono legal help (or are well funded) and have the wherewithal to appeal adverse decisions through every available level of appellate review.

Various other experts will be required. This includes an engineer or architect. Either of these experts can prepare the site plan which is often required. If the outdoor advertising is being attached to an existing building within the right of way a structural engineer will be needed to ensure that the building is structurally sound and can withstand the additional load imposed by the signage. There are many other issues which will have to be addressed through expert opinion.

In many instances the property owner will decide not to undertake responsibility for the application and all that this entails. The owner will contract with an outside organization. This organization will use either a combination of in-house or third party professionals while pursuing variance relief. The outside organization will assume the risk that variance relief will be denied. Of course, right of way owners will be familiar with the broad range of alternatives (and permutations) which they can employ to

transfer various categories and degrees of property interests to the company handling the variance process. The transferee (organization) bears the financial risk of failure, beginning with the unrecoverable expenses that will result from a failed zoning application.

Of course, right of way companies are real estate experts and will be able to structure deals with an almost infinite variety of permutations. The first step is to carefully evaluate the property in relation to the prevailing law. There is no point in gearing up for a long and expensive zoning process if the property simply does not meet the prevailing criteria established in either the zoning code or case law.

Variance applications for outdoor advertising are often hotly contested. The initial determination will come at the zoning board level. Typically, the zoning board decision can be appealed as a matter of right through two different levels of courts. The company will have to respond to any appeals in order to protect the variance

relief provided by the zoning board. Of course, appeal rights run both ways. A company which is unsuccessful at the zoning board level can appeal the decision. Decisions are not easy to overturn as courts provide a great deal of deference to zoning boards. For example, under Pennsylvania law (when the trial court does not hear additional evidence), the decision of the zoning board will not be overturned unless the board committed an abuse of discretion or an error of law.

The zoning process for outdoor media can be quite expensive. Professional costs can mount as lawyers, engineers, traffic experts and other professionals are retained to address the criteria required to be met before variance relief can be granted. Right of way companies often shift the risk to an outside firm willing to shoulder the risks in exchange for a fair return to the owner.

ALR President Susan L. Stann said this can be particularly beneficial when the outside firm is also capable of handling the environmental problems at the site. This allows the company to relieve itself of environmental liability. In contracting for the purchase of the case study property, ALR chose to proceed with environmental responsibilities and variance relief bundled together. Protection against future liability can be secured with the indemnity and duty to defend protection provided by an insurance carrier such as American International Group, Inc. (AIG).

Documentation of the property's environmental problems should be a part of the zoning process. The zoning board will be interested in any environmental problems relevant to the issue of "unnecessary hardship." Variance relief is often contingent on establishing unnecessary hardship. In many jurisdictions, one



Look at the bright side. At least we don't have to worry about visitors taking the silver. First, there are no visitors. Second, the silver lining covers still more asbestos.

means of establishing unnecessary hardship is to prove that the property can only be conformed to a permitted use at a prohibitive expense. Significant environmental expenses must often be borne before a brownfield can be reused. These expenses can rise to the level where they are prohibitive without zoning relief. These expenses must be thoroughly documented for the zoning board.

Outdoor media can be used to generate a source of revenue for the remediation of the property. The case study property is filled with asbestos. Entry is only possible with the proper protective gear including a respirator. The outdoor media (for which ALR is requesting variance relief) can be applied to the building before the asbestos is abated. Consequently, funds can be generated for the responsible management and eventual abatement of the asbestos.

Zoning boards will want some assurance that the abatement will occur. This can be done through what is termed a proviso letter. Those parties which are seeking zoning relief often provide a letter to the zoning board. The letter includes terms which the applicant will agree to abide by if variance relief is granted.

Careful site screening and analysis can ensure that owners only pursue variance relief at appropriate sites. Generally, if the zoning does not allow outdoor advertising as a matter of right the applicant must introduce documentary evidence and testimony which establish unnecessary hardship. The standard for establishing hardship is not uniform across the country. However, in many jurisdictions, the criteria for ascertaining hardship are based on whether the variance being sought is dimensional or use in nature. Dimensional variances involve relatively minor adjustments in proportion and/or size in situations where the proposed use is permitted. Use variances are more difficult to secure because the zoning board must vote to permit a use which the local legislature has prohibited.

If outdoor media is not permitted, a use variance will often be required. Use variances are often granted when the property in question satisfies any one of three criteria (Many obsolete right of way properties fall into one or more these three categories):

- 1) The physical features of the property are such that it cannot be used for a permitted purpose; or
- 2) The property can be conformed for a permitted use only by incurring a prohibitive expense; or
- 3) The property has no value for any purpose permitted by the zoning ordinance.

In its February 2000 report, "Recycling America's Land," the United States Conference of Mayors lists lack of funding as the No.1 impediment to brownfield redevelopment. Neither remediation nor redevelopment can occur before a site is properly characterized. The report lists Environmental Assessments as the

No.3 impediment to brownfield redevelopment. Environmental Assessments are investigations used to characterize the environmental issues which affect a property. They do not typically provide budgetary figures for the responsible management and remediation of these areas of concern. Once environmental (and other) barriers to reuse have been identified, the cost required to overcome those barriers must be determined. The identification of costs will determine whether variance relief is appropriate because the property can be conformed for a permitted use only at a prohibitive expense. The expenses required to reuse the property for outdoor media will also help the owner formulate its negotiating stance with the contractor, lessee or purchaser. These costs will be particularly helpful to owners who are packaging remediation problems and reuse opportunities to a third party willing to shoulder the environmental risks as well as reuse opportunities.

The due diligence process will help the owner determine whether to remediate the property or to sell the property in an "as is" condition with the purchaser being required to engage in responsible remediation activities. Part of this decision will rest on the tax implications of the transaction.

TAXING ISSUES

The issue of deducting versus capitalizing costs must be addressed with respect to a broad array of environmental outlays. Remediation

and related costs are subject to two distinct methods of income tax treatment. The first method of tax treatment allows the taxpayer to deduct the remediation expense in the year in which it is incurred. Costs qualifying as a deduction may be used to reduce the income earned during the year the funds were spent. The second means of treating remediation costs is to capitalize them. Costs which are capitalized are added to a property's basis. A property's basis is divided into different categories and depreciated over the period of time ordered by the tax code. Remediation expenses are generally depreciated over 37.5 years. The after tax cash flow will look dramatically different when costs are deducted instead of being capitalized.

Many taxpayers purchase polluted property and then incur remediation costs.³ These taxpayers will add remediation costs to their original purchase price or their basis. Under these circumstances, the taxpayer receives little or no tax relief for remediation costs. Consequently, there will be very little difference in pre-tax and post-tax cash flow. Therefore, the taxpayer receives an annual tax savings of about 1 percent of the cost of the remediation per year.

The initial capital for cleanup cost is added to a property's basis. As the taxpayer takes depreciation deductions, the basis is reduced.



Going to the birds. The floor is littered with bird droppings.



Room with a view. Semi-circles of asbestos are stacked along the floor while asbestos-covered pipes are visible in other parts of the room.

When the property is sold, the remaining basis is subtracted from the sales price to calculate the owner's profit.

For purposes of this tax discussion, we will presume a combined federal and state tax rate of 40 percent. This rate is not uncommon for corporations engaged in right of way activities. The company which is able to deduct remediation costs will therefore be paying 60 percent of the actual costs, on an after tax basis. Taxpayers who must capitalize remediation costs add to their cost or basis, and are then able to depreciate their basis at those rates stipulated by the IRS.

Taxpayers who are unable to deduct remediation costs will experience an adverse impact to their after tax cash flow. For example, remediation costs of \$1 million will cost the taxpayer precisely that amount. However, the \$1 million in profits which paid for the remediation will be taxed at the same 40 percent rate. Therefore, the taxpayer will be required to pay \$400,000 in taxes but will not have the use of the \$1 million. The taxpayer will have to generate post-remediation income or capital appreciation (on a present value basis) of \$1,666,667 to break even for every \$1,000,000 in remediation costs. Any reliance on appreciation can result in liquidity problems.⁴

RELIEF IS SPELLED V-A-R-I-A-N-C-E

Zoning codes are created with broad plans in mind. They are not designed, nor could they, account for each property's unique circumstances. Variance relief exists to provide each property with an opportunity to be used productively. In many instances the economics of remediation simply will not work unless zoning relief is available.⁵ Despite recent increases in public funding, property owners must utilize all tools available to revitalize their brownfields. One tool is the right to seek variance relief when specifically

enumerated (in the jurisdiction's zoning code and prevailing case law) circumstances exist. Even those who typically oppose billboards may have to admit that outdoor media is better than contamination, said John Kilpatrick, Ph.D., of Mundy Associates.

"No matter what the proposed reuse, there will always be some opposition to brownfield revitalization. Even if you're giving away chocolate candy they'll say it's bad for teeth," said Kilpatrick, whose firm specializes in contaminated property valuation.

ANGELS IN THE OUTDOORS: THE HALO EFFECT

When asked whether outdoor media could mitigate stigma, Kilpatrick said outdoor media can provide some use for otherwise superfluous property, and this reuse would positively affect nearby uncontaminated properties. Kilpatrick used the term "halo effect" to describe this positive impact. To examine this effect let's assume that the contaminated property is surrounded by non-contaminated properties. Many non-contaminated properties experience the "proximity stigma" because of their proximity to a contaminated property, a negative externality. Reusing a contaminated property for outdoor media can help mitigate the adverse perception which often accompanies brownfield properties. By mitigating the impact of the contaminated property, you mitigate damage to nearby properties. *[Author's Note: I believe that the intensity and reach of the halo will only increase as funds from the outdoor media are used to effect substantive changes to the environmental condition of the contaminated property.]*

The halo effect may be particularly important in mitigating the stigma emanating from sites whose use and or history make them readily identifiable with environmental problems. Power plants are just one use which is sometimes identified (rightly or wrongly) with environmental problems. The power plant in the case study

represents a site which is readily identified with environmental problems. This results partly from the use, but more prevalently from the history of the site. The mere installation of a wall wrap can begin to shift public perception. Even before remediation occurs, the appearance of a blighted building can be improved through the use of attractive outdoor media.

ALR discussed the proposed signage with several neighbors that had been living in the shadow of a shuttered power plant for approximately 16 years. These neighbors know that the building is contaminated with asbestos, and many witnessed the removal of substantial quantities of polychlorinated biphenyls (PCBs). Some building owners and business lessees agreed that the proposed signage represents an aesthetic improvement over the blighted appearance of the property. (Aesthetics is an argument that is often used by those opposing outdoor media.) However, neighbors, who own and lease 38 nearby properties, do not believe that this argument is valid at the case study property. They believe that the proposed signage represents an improvement over the blighted industrial landscape they have been subjected to for more than 15 years.

The current owner (with whom ALR entered into an agreement to purchase the property) has no intention of remediating the site or of making any improvements of any kind. He purchased the property speculating that a new baseball stadium would be located nearby. The stadium will be located elsewhere and the seller has not spent a single dollar on the property.

Kilpatrick had never worked on a case where outdoor media was used to mitigate stigma damages or to fund remediation. Outdoor media companies and brownfield professionals we spoke with mentioned the same thing. This may be a test case. While outdoor media may not have historically been used to revitalize brownfield properties, it has been used to boost local economies. Paul Prejza, a principal in Sussman/Prejza & Company,⁶ said outdoor media is used to spur revitalization. Two examples of this phenomenon are Times Square and Hollywood Boulevard. While these areas were not contaminated, they were certainly experiencing trying times and many informed observers believe that outdoor media helped them successfully confront strong challenges to their vitality.

Times Square was blighted and widely considered to be so. Very few office users or national retailers were interested in a Times Square presence. Sunset strip was more upscale but things were not well planned. Recently, Prejza worked closely with the Hollywood Entertainment District (HED), Community Redevelopment Agency, and key business owners to create the signing criteria for the HED.

Sussman/Prejza is sensitive to aesthetic issues. Aesthetic considerations were taken into account from the outset. Financial considerations were also examined. The income from outdoor advertising, especially from the mega signs, can be substantial. In the HED, outdoor advertising can bring in \$10,000 to \$30,000 per month, per sign face. Some buildings have multiple signs. This can provide an owner with as much as \$100,000 per month from

outdoor advertising, thereby altering a properties' pro forma. Prejza believes that signs can allow regulators to extract a better development from a site. Better developments include aesthetic enhancements such as attractively integrating the project (including signage) with the building as well as the surrounding neighborhood.

In Los Angeles it is illegal to have "tall walls" (large outdoor media) on the side of buildings, said Prejza. In considering the signing criteria for the HED, he noted that various buildings had blank windowless walls. These walls resulted from the demolition of individual buildings which has been attached to other structures. From an aesthetic perspective, "an interesting ad is better than a blank wall." Prejza said.

Prejza's opinion mirrors ALR's findings at the case study property. There, many neighbors said outdoor advertising looks better than a blighted industrial landscape. Tall walls first gained prominence in Los Angeles during the 1984 Olympics. Nike painted prominent athletes onto the sides of buildings. Although Reebok was an official sponsor, Nike gained great exposure from the oversized photos of prominent sports figures wearing Nike shoes. When done well outdoor advertising can be an aesthetic plus. Prejza believes that outdoor advertising in Hollywood will be transformed into architecture. The signing criteria (yet to be enacted into law) allow blank surfaces to be covered with tall walls.

According to Prejza, many blighted buildings can benefit from the installation of appropriate outdoor media. Without outdoor media some revitalization projects will simply not get done, particularly projects in blighted or depressed areas.

Brownfield properties are not homogeneous. One of the basic tenets of real estate law is that each property is unique. This is particularly true of contaminated properties. Not only is the property unique, but environmental problems serve as a further differentiation. Many brownfield properties are so valuable that their environmental problems are minor in comparison with their market value and potential. These properties will be developed. The environmental problems at these properties are just one more obstacle that a developer must overcome. Other brownfields are marginal. Once environmental problems are taken into account, the post-remediation market value is on par with or only marginally higher than development costs. Lastly, there are upside down properties. These are properties where the post-remediation market value is materially less than the cost to cure. This last category of property can often benefit from the impetus outdoor advertising can provide.

Outdoor advertising can change the scale and quality of the project, Prejza said. In the HED, the additional cash flow available from outdoor advertising can make traditional (e.g., office, retail and residential) but marginal projects feasible. The same principal can apply to upside down brownfield properties. In fact, the additional income from outdoor media will be more important to brownfield revitalization. This is attributable to the substantial downside which often accompanies brownfield revitalization.



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WHAT WILL THE NEIGHBORS THINK?

Community

Not all members of the neighboring community will embrace outdoor media as a means of funding remediation and mitigating stigma. The right of way owner must bring the community into the zoning process. Zoning boards place great stock in community views of proposals to loosen the constraints imposed by the zoning code.

The planning commission will be able to identify who the community groups are. These are typically non-profit organizations dedicated to local community issues. A presentation should be made to these groups. Numerous brownfields will be located in areas with a strong industrial base. In all areas, but perhaps these in particular, it is important to pay close attention to the needs of the entire community. Many members of the community may not share the position of the local community group. Approach property and business owners to ascertain their position on your proposal.

In many jurisdictions, support from the community comes in two forms. The first is a letter or affidavit expressing outright support for the project. Support can also come in the form of non-opposition. In preparing for our zoning hearing ALR secured support and non-opposition from owners of many neighboring properties.

The vast majority of support documentation indicates ownership and comes from organizations whose activities are focused in the immediate vicinity of the case study property. The principals of many of these organizations spend their working lives in the area surrounding this brownfield site. Together, our supporters (as well as those not opposed) have tens of millions of dollars invested in this area.

These organizations are experienced and prudent in the determination of what will and will not adversely impact property values, and their ability to use their properties as permitted under the laws. Many of our supporters have been fixtures in the community for decades. They have been subjected to the obsolete steam plant for "too long." They agree that the building currently has a "blighted appearance and a negative stigma." One major supporter, for example, is international in the scope of its activities and has had its headquarters in the subject area for more than five decades spanning two generations of family ownership and control.

ALR's supporters do not believe that the use of non-accessory signs/outdoor media will have a negative impact on the health, safety and welfare of the surrounding community.

Some of the neighborhood supporters have included illustrative, handwritten personal comments and observations. These include:

- "The signage will be a tremendous enhancement that is good for the neighborhood."
- "...in my opinion [ALR has] put together a solid business plan to rid our community of a health hazard that concerns us all."

These properties represented tens of millions of dollars of investment in the community. Furthermore, many of these property owners had invested in the community for years and actually work in the buildings they owned. Consequently, they will see the proposed signage (assuming that the requested zoning relief is granted) on a daily basis.

Different communities will have different views about outdoor media. Different members of the same community will often have widely divergent views about the same proposal.

Elected Representatives

The community also speaks through elected representatives. Depending on the size of the proposed outdoor signage this can include local, state and in some instances federal representatives. Right of way companies should discuss their plans for outdoor advertising with the appropriate elected official(s).

Local Environmental Officials

Local environmental officials fulfill an important role in brownfield revitalization. Furthermore, they are often knowledgeable about and enjoy a good rapport with local community groups. Local environmental officials can help educate these groups and their members about a site's environmental problems and the cost to cure them.

All of this must seem like a lot of work. It is. However, the work need not be performed by the property owner. Instead the owner can shift the work and financial risk to a third party. ALR views its current zoning application as a test case. Although the variance process involves a lot of work, ALR continues to try turning a blighted brownfield into a productive asset to the community. It is worth the effort.

SUMMARY

Many brownfield properties cannot be put to a practicable, meaningful, productive or profitable use. Without variance relief from strict conformity with the zoning code many of these properties will pose ongoing threats to their host communities. Outdoor advertising represents a means of using these properties productively and generating funds to pay for remediation. ❖

On June 11, 2003, Airst appeared for a Special Hearing before the Philadelphia Zoning Board of Adjustment to seek variance relief for the case study property. The allotted time was not sufficient to accommodate the large volume of evidence. The chairman decided to continue the case to ensure all of the evidence and witness could be heard. For more information visit www.americanlandrecycling.com or email rlairst@americanlandrecycling.com.



Come on in. A site walk indicated that this former power plant has absolutely nothing going for it, not even a door that closes.

- ¹ "Recycling America's Land: A National Report on Brownfield's Redevelopment," The United States Conference of Mayors Report, February 2000. Page 9: "The survey this year inquired about rail yards and rail properties. A total of 93 cities reported that they include rail properties with their brownfield estimates, with 78 cities estimating they had a total of 5,555 acres of land that were once associated with rail activities."
- ² "Brownfield Rehabilitation Cost Report (for 411-419 No. 9th Street, Philadelphia, PA)," American Land Recycling (Philadelphia) Corporation, June 11, 2003; ZBA Calendar No. 03-0119.
- ³ In Pennsylvania between 1995 and 2002 over 1,100 sites have gone through the voluntary cleanup program (Act 2). This does not include all of those sites at which buyer's performed some degree of remediation but did not take the property through the states VCP or voluntary cleanup program.
- ⁴ Alan S. Doris, Esq., a partner in the law firm of Squire Sanders & Dempsey. Doris was formerly the chairman of the American Bar Association's Tax Cost Recovery Committee and has an active tax litigation practice.
- ⁵ John A. Kilpatrick, Ph.D., of Mundy Associates, a leader in solving complex real estate problems for the past three decades. Their principal areas of specialization include contaminated property valuation, particularly litigation-related.
- ⁶ Sussman/Prejza & Company is a design firm producing environmental and urban graphics. The firm's activities range from the design of the 1984 Los Angeles Olympic Games to seminal-way finding programs for Walt Disney World and the City of Philadelphia to graphic identity for the City of Santa Monica.