

# The Risk Continuum in Brownfield Transactions

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# Lifecycle of a Brownfield



# What brownfield practitioners need to know

- Risks and exposures change
- Different tools required to manage risk at different times
- Numerous stakeholders with different things at stake:
  - Seller                      -Buyer
  - Community                -Municipality
  - Investors                  -Others??

# Exposure Categories Associated with Brownfield Properties



Property Stage

Environmental and Regulatory

Financial

Reputational

Design and Construction

## Stage of Development and Associated Exposures

		IDLE	REDEVELOPMENT	HIGHEST USE
<b>Risks</b>	<b>Property Stage</b>			
	<b>Environmental and Regulatory</b>			
	<b>Financial</b>			
	<b>Reputational</b>			
	<b>Design and Construction</b>			

# IDLE BROWNFIELD PROPERTIES



## IDLE - Risk Management Tools and Resources

		<b>IDLE</b>	<b>TOOLS AND RESOURCES</b>
<b>Risks</b>	<b>Property State</b>	<ul style="list-style-type: none"> <li>-Uncontrolled Visitors</li> <li>-Vandalism/Crime</li> <li>-Nuisance</li> <li>-Eminent Domain</li> </ul>	<ul style="list-style-type: none"> <li>-On-Site Security</li> <li>-Perimeter Fencing</li> <li>-Neighborhood Watch Groups</li> <li>-Municipal Police and Fire</li> <li>-Engaged w/ Local/Regional Planners</li> </ul>
	<b>Environmental and Regulatory</b>	<ul style="list-style-type: none"> <li>-Unquantified or Unknown Contamination</li> <li>-Human Exposure</li> <li>-Migration of Contamination</li> <li>-Natural Resource Damage</li> <li>-Federal or State Order</li> </ul>	<ul style="list-style-type: none"> <li>-Environmental Assessment and Investigation</li> <li>-Interim Controls</li> </ul>
	<b>Financial</b>	<ul style="list-style-type: none"> <li>-Accounting Requirements (FASB)</li> <li>-On-going Taxes, Maintenance, etc.</li> <li>-Insurability</li> </ul>	<ul style="list-style-type: none"> <li>-A Good Accountant</li> <li>-A Good Broker</li> <li>-A Good Insurer</li> </ul>
	<b>Reputational</b>	<ul style="list-style-type: none"> <li>-Mothballing</li> <li>-Community Perception</li> <li>-Investor Perception</li> </ul>	<ul style="list-style-type: none"> <li>-Economic Development Corporation or Municipal Entity</li> <li>-Environmental Advisory Council</li> </ul>
	<b>Design and Construction</b>	N/A	N/A



# BROWNFIELD REDEVELOPMENT: RISKS AND REWARDS

# REDEVELOPMENT – Risk Management Tools and Resources

		REDEVELOPMENT	TOOLS AND RESOURCES
<b>Risks</b>	<b>Property State</b>	<ul style="list-style-type: none"> <li>-Earth Moving Activities</li> <li>-Infrastructure Improvements</li> <li>-Building Construction</li> <li>-Contractors and Subs</li> <li>-Site Safety</li> </ul>	<ul style="list-style-type: none"> <li>-Site Health &amp; Safety (OSHA)</li> <li>-Site Management</li> <li>-Professional E&amp;O and Contractors Insurance</li> </ul>
	<b>Environmental and Regulatory</b>	<ul style="list-style-type: none"> <li>-Regulatory Interface and Certainty</li> <li>-Assessment, Investigation and Remediation Costs</li> <li>-Unquantified or Unknown Contamination</li> <li>-Tort Liability</li> <li>-Historical or Archeological Significance</li> <li>-E&amp;S and Stormwater</li> <li>-Dust</li> </ul>	<ul style="list-style-type: none"> <li>-Act 2 – Release of Liability/MOA with EPA</li> <li>-Act 3 – Economic Development Agency, Fiduciary and Lender Environmental Liability Protection</li> <li>-Buyer-Seller Agreement</li> <li>-Pollution Legal Liability Insurance and/or Cost Cap Insurance</li> <li>-Historical Research/Clearance</li> <li>-E&amp;O Insurance (Environmental Consultants and Engineers)</li> </ul>
	<b>Financial</b>	<ul style="list-style-type: none"> <li>-Funding</li> <li>-Soft Costs</li> <li>-Cost Overruns</li> <li>-Missed Market Opportunities</li> <li>-Delivery of Project</li> </ul>	<ul style="list-style-type: none"> <li>-Federal and State Grants or Loans</li> <li>-Environmental Insurance “Endorsements”</li> <li>-Performance-Based Contracts, Bonds, Stipulated Damages Clauses</li> </ul>
	<b>Reputational</b>	<ul style="list-style-type: none"> <li>-Investor Support</li> <li>-Municipal Cooperation</li> <li>-Community Buy-In</li> <li>-Contractor/Developer Qualifications</li> </ul>	<ul style="list-style-type: none"> <li>-Economic Development Corporation or Municipal Entity</li> <li>-Design Charettes</li> <li>-Selection/Vetting Process</li> </ul>

# GETTING THE GREEN (\$\$)



FROM A BROWNFIELD  
PROPERTY

## HIGHEST USE – RISK MANAGEMENT TOOLS AND RESOURCES

		HIGHEST USE	TOOLS AND RESOURCES
<b>Risks</b>	<b>Property State</b>	<ul style="list-style-type: none"> <li>-Property Damage</li> <li>-Indemnity</li> </ul>	<ul style="list-style-type: none"> <li>-First Party Property and Inland Marine Coverage</li> <li>-Traditional Commercial Insurance (General Liability)</li> </ul>
	<b>Environmental and Regulatory</b>	<ul style="list-style-type: none"> <li>-Operation and Maintenance of Systems</li> <li>-Post Closure Obligations</li> <li>-Deed Restrictions</li> <li>-Tort Liability</li> <li>-Reopeners</li> <li>-New Environmental Conditions</li> <li>-Post Construction Management</li> </ul>	<ul style="list-style-type: none"> <li>-Act 2-Release of Liability/MOA with EPA</li> <li>-Act 3 - Economic Development Agency, Fiduciary and Lender Environmental Liability Protection</li> <li>-Escrow</li> <li>-Environmental Liability Insurance</li> <li>-UECA</li> <li>-Best Management Practices</li> </ul>
	<b>Financial</b>	<ul style="list-style-type: none"> <li>-Tenancy</li> <li>-Market Volatility</li> </ul>	<ul style="list-style-type: none"> <li>-Good Real Estate Broker</li> </ul>
	<b>Reputational</b>	<ul style="list-style-type: none"> <li>-Long Term Care</li> </ul>	<ul style="list-style-type: none"> <li>-Directors and Officers Insurance</li> </ul>
	<b>Design and Construction</b>	<ul style="list-style-type: none"> <li>-Construction Defect</li> <li>-Sustainability</li> <li>-Green Building Certification/Energy Use</li> </ul>	<ul style="list-style-type: none"> <li>-Insurance</li> <li>-Proper Planning</li> </ul>

**NEXT STEPS**

## Stage of Development and Associated Exposures

		IDLE	REDEVELOPMENT	HIGHEST USE
<b>Risks</b>	<b>Property State</b>	<ul style="list-style-type: none"> <li>-Uncontrolled Visitors</li> <li>-Vandalism/Crime</li> <li>-Nuisance</li> <li>-Eminent Domain</li> </ul>	<ul style="list-style-type: none"> <li>-Earth Moving Activities</li> <li>-Infrastructure Improvements</li> <li>-Building Construction</li> <li>-Contractors and Subs</li> <li>-Site Safety</li> </ul>	<ul style="list-style-type: none"> <li>-Property Damage</li> <li>-Indemnity</li> </ul>
	<b>Environmental and Regulatory</b>	<ul style="list-style-type: none"> <li>-Unquantified or Unknown Contamination</li> <li>-Human Exposure</li> <li>-Migration of Contamination</li> <li>-Natural Resource Damage</li> <li>-Federal or State Order</li> </ul>	<ul style="list-style-type: none"> <li>-Regulatory Interface and Certainty</li> <li>-Assessment, Investigation and Remediation Costs</li> <li>-Unquantified or Unknown Contamination</li> <li>-Tort Liability</li> <li>-Historical or Archaeological Significance</li> <li>-E&amp;S and Stormwater</li> <li>-Dust</li> </ul>	<ul style="list-style-type: none"> <li>-Operation and Maintenance of Systems</li> <li>-Post Closure Obligations</li> <li>-Deed Restrictions</li> <li>-Tort Liability</li> <li>-Reopeners</li> <li>-New Environmental Conditions</li> </ul>
	<b>Financial</b>	<ul style="list-style-type: none"> <li>-Accounting Requirements (FASB)</li> <li>-On-going Taxes, Maintenance, etc.</li> <li>-Insurability</li> </ul>	<ul style="list-style-type: none"> <li>-Funding</li> <li>-Soft Costs</li> <li>-Cost Overruns</li> <li>-Missed Market Opportunities</li> <li>-Delivery of Project</li> </ul>	<ul style="list-style-type: none"> <li>-Tenancy</li> <li>-Market Volatility</li> </ul>
	<b>Reputational</b>	<ul style="list-style-type: none"> <li>-Mothballing</li> <li>-Community Perception</li> <li>-Investor Perception</li> </ul>	<ul style="list-style-type: none"> <li>-Investor Support</li> <li>-Municipal Cooperation</li> <li>-Community Buy-In</li> <li>-Contractor/Developer Qualifications</li> </ul>	<ul style="list-style-type: none"> <li>-Long Term Care</li> </ul>
	<b>Design and Construction</b>	N/A	<ul style="list-style-type: none"> <li>-Partnerships</li> <li>-Integration</li> <li>-Execution</li> </ul>	<ul style="list-style-type: none"> <li>-Construction Defect</li> <li>-Sustainability</li> <li>-Building Certification (LEED, etc)</li> </ul>