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Connecticut brownfields gain priority status in 2009

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In the waning hours of the 2009 session of the Connecticut General Assembly, new brownfield programs were given considerable attention. Passed initially by the House of Representatives and later amended by the Senate, House Bill 6097 was the final product of a four year long effort by the legislature to develop programs to ease, streamline and stimulate brownfield redevelopment in Connecticut. And, now some very new programs await the governor's signature.

For the past four years, the legislature has promoted programs that shield municipalities who often are burdened with brownfields and the resulting potential liabilities. It also tackled and reformed statutory and administrative impediments. And, it looked to create programs whereby innocent purchasers and developers could acquire brownfields and be shielded from certain liabilities that often posed obstacles to development. Although further in-depth analysis will be required in the wake of prior initiatives, HB 6097 clearly punctuates all such initiatives with three significant reforms.

Municipal Relief. HB 6097 continues to extend certain immunities from liability to municipalities upon property investigation, foreclosure or the exercise of eminent domain. Specifically, too, these types of actions by municipalities are now exempt under the Connecticut Transfer Act and, quite significantly, the subsequent transfer by the municipality is similarly exempt from the Transfer Act.

The bill also broadens the definition of municipality to include municipal economic development agencies and entities, and certain types of nonprofit economic development corporations. Not only are Transfer Act exemptions provided, but these entities are statutorily considered innocent parties and not liable for claims initiated by third parties (including the Connecticut Department of Environmental Protection (DEP) for conditions pre-existing or existing on the brownfield property as of the date of acquisition or control provided, however, that the "municipality" did not establish, cause or contribute to the pollution. And, if pollution is exacerbated by the municipality's actions, it is only responsible for remediating contamination exacerbated by its negligent or reckless activities.

Flood Plain Development. Many Connecticut brownfields were once thriving mills located along rivers and streams. Prior to HB 6097, such sites were precluded from receiving state agency funding absent a burdensome certification process that included determining whether the redevelopment "promotes long term non-intensive floodplain uses". Now, with 6097, brownfield redevelopment is exempt from these certification requirements if the state funding agency demonstrates to DEP that the property is undergoing remediation, the redevelopment is limited to the areas of the property where historical mill uses occurred, any "critical activity" is above the 500 year flood plain elevation and complies with the National Flood Insurance Program.

Abandoned Brownfield Cleanup Program. A crowning achievement for brownfield redevelopment in Connecticut is the establishment of this program. To qualify, a person and a property must be "eligible" as determined by the Commissioner of Economic and Community Development. An

"eligible person" intends to acquire title to such property for purposes of redevelopment, did not establish or create the pollution, is not affiliated with the responsible party nor is obligated by law to remediate the pollution. An "eligible property" is a brownfield that has been unused or significantly underused since October 1, 1999 and its redevelopment has a regional or municipal economic development benefit. Further, eligibility requires that the responsible party is indeterminable, no longer in existence, or unable to perform the necessary remediation.

Upon such designation, provided the eligible person thereafter investigates and remediates the property under the voluntary remediation program, the eligible person "shall not be responsible for investigating or remediating any pollution or source of pollution that has emanated from such property prior to such person taking title to such property." In other words, the eligible person does not have to chase and clean-up contamination that has migrated off-site to other properties, rivers, or streams.

Conclusion. Brownfield redevelopment is a priority for Connecticut. Lead by the Commerce Committee co-chairs Jeffrey Berger (Waterbury) and Gary LeBeau (East Hartford), significant reforms have been enacted in each of the past four years. And, Governor Rell has similarly prioritized brownfield redevelopment. Clearly, Connecticut is developing more accessible programs to stimulate economic development, restore properties to beneficial reuse and remove the liability barrier. More can certainly be done and the programs further refined ... but Connecticut is on its way.

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