Some Properties Serve Up an Unexpected Surprise

By Karen Vaughn

Location may drive the upside of a real estate development, but hidden environmental liabilities might be the downside. How do property owners protect themselves from potential environmental issues? Often the best locations near valuable infrastructure are ones that need to be redeveloped: great location, tired development. And by definition these properties had a former life that may have included contaminates getting into the soil.

Today more and more environmental issues play a role, especially when looking at property that has a long history of productive use. When there was a gas station, you know there were likely spills or leakage of oils, hydraulic fluids, even cleaning agents. However, it may not be as obvious that 10 years ago there was a dry cleaner or a florist with a fleet of delivery trucks parked and maintained behind the building.

Matt Sokolowski, an environmental specialist with Dawson Companies helps companies evaluate the viable impact environmental insurance can make on transactions in known or potential brownfield properties.

"A shopping center that appeared to just need a face life may need much more drastic alternations," Sokolowski says.

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Both Zinner & Co. and Dawson Companies work with real estate developers who have assets all around the United States. At Zinner, we have seen an increase in environmental issues, and in places that aren't obvious. Our relationship with Dawson Companies' insurance specialists has provided more in-depth due-diligence to our clients.

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Property investors need to have a clear strategy to address environmental risks, especially brownfield issues. There are more properties where potential environmental problems aren't known, where the use of the properties is more benign, and one may not suspect any problems.

Ongoing transactions in a developers' portfolio may require more scrutiny. It may be prudent to review insurance vehicles annually including possible protection against the risk of fire or liability to potential bodily injury.

State funds are often earmarked to help subsidize brownfield development. New insurance products have come on the market to help protect property owners against catastrophic claims and downsize risk.

The available funding and these insurance products make a lot of

real estate transactions possible where they weren't considered possible before.

A developer's master plan should include an investigation of appropriate environmental insurance vehicles such as:

Property tranfer liability coverage

Transfer liability coverage can be designed to meet specific needs of a transaction, such as protecting buyers, sellers or both parties and their lenders from unforeseen environmental liabilities.

Once a site is transferred, the "legacy" of environmental liabilities can come back or may stay with an entity for a long period and even indefinitely.

Think about it. The benefit of looking at a fixed premium amount for an extended policy year often outweighs the potential future cost of a paying or collecting on an environmental indemnification agreement.

Remediation guarantee insurance

Often referred to as stop loss or cost cap coverage, this insurance vehicle is designed to protect parties involved with medium to larger planned remediation projects such as brownfield development sites.

It provides a way to add certainty to an uncertain project.

Contractor pollution liability coverage

Contractors can have a variety of environmental exposures at a jobsite, on the road or back at their facility.

It's important to evaluate subcontractor agreements and determine that subcontractors are carrying appropriate coverage.

More owners are now requiring specific coverage in their bid specifications to fill these exposure gaps.

Pollution liability coverage

Most businesses have some degree of environmental exposure and this coverage provides a way to address the risk, which traditionally would be excluded under standard commercial insurance.

For example, a manufacturer using chemicals or government-regulated materials in their process, although in compliance with state and federal regulations, has a need to audit and evaluate its current insurance program to determine if proper coverage is in place.

Regardless of sound compliance management practices, companies can still incur third party claims and high dollar defense costs.

In any case, it is prudent to sit down and discuss the environmental issues that impact your business and evaluate them to determine what insurability options are available.

Developing a strategy using these insurance vehicles may require more extensive work but the rewards could be worth the effort.

An experienced, qualified consultant can provide an idea of the cost.

Begin by consulting your CPA who can recommend a reputable insurance company. P

Karen Vaughn, CPA, is manager, real estate with Zinner & Co. LLP. Dawson-Zinner Financial Services is a Joint Venture between the Dawson Companies and Zinner & Co. LLP. Dawson Companies is a diversified financial services company based in Rocky River. Zinner & Co., LLP is a CPA firm serving the leaders of closely held businesses.

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