

When Liabilities Become Assets: Investigating Brownfields Redevelopment and Its
Correlation to Economic and Environmental Sustainable Development

Elizabeth A. Steen

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I. Introduction

A joint effort by the EPA, Congress, and the Clinton Administration to eliminate brownfields was declared “a rare occurrence in Washington” on a broadcast interview on the National Public Radio in August of 1997.¹ The alliance between these three disparate, often clashing, entities underlined the universality of the concern over the importance of brownfield redevelopment to help revitalize cities affected by urban sprawl. Initially under the aegis of the EPA, the Brownfields Economic Redevelopment Program has given rise to several other federally sponsored and locally supported programs. The goal of these programs has been to generate economic, social, and environmental improvements for communities containing abandoned, underused, and often contaminated, commercial and industrial properties, or brownfields. By offering developers and urban planners financial incentives to redevelop blighted areas, the use of new land or greenspace is minimized. With the successful redevelopment of the Dallas and Knoxville brownfields, this sustainable initiative has become a palpable reality. In Memphis, however, success remains elusive, as evidenced by the dubious results of Memphis’ Peabody Place.

¹ Application, EPA’s Brownfields Economic Redevelopment Program; History of the Environmental Protection Agency; OA/ID 23877, Environmental Protection Agency, Clinton Administration History Project, William Clinton Presidential Library.

The Environmental Protection Agency defines a brownfield as “a property on which expansion, redevelopment, or reuse may be complicated by the presence, or perceived presence, of contamination.”² Although this definition is accurate, it is rather limiting, as a brownfield can also be defined as a site whose redevelopment may be hindered by “poor location, old and obsolete infrastructure, or other less tangible factors.”³ Brownfields may be dilapidated buildings, dumping grounds, gas stations, auto body shops, or mining sites.⁴ These properties become brownfields due to any number of factors. Occasionally, it is a lack of initiative or an inability on the part of a proprietor to sell the contaminated property, “mothball[ing] it, [and] thus undermining the local tax base,” or the property is vacant and thus “invite[s] arson, illegal dumping, and vandalism.”⁵ But mostly brownfields are created because the owner does not adequately maintain the site, indirectly creating repercussions for the entire community that surrounds it. If one property has unaddressed contamination, it erodes not only its own property value and but also those of adjacent sites. If they become too neglected, they deter investors and real estate developers leery of the extensive liability associated with maintaining a polluted site. When sites are virtually abandoned, cities begin to lose

² “Anatomy of Brownfields Redevelopment: Brownfields Solutions Series,” The United States Environmental Protection Agency, http://www.epa.gov/brownfields/anat_bf.htm (accessed 6 July 2009).

³ Todd S. Davis, *Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property*, 2nd ed. (American Bar Association, 2002), 5.

⁴ Nancy A. Mangone, *Brownfields Redevelopment: A Practitioner’s Guide to EPA’s “All Appropriate Inquiries” Rule*, in LexisNexis Academic, <http://www.lexisnexis.com/us/lnacademic/delivery/> (accessed 6 July 2009).

⁵ Davis, 6.

property tax generated revenues, as other businesses move away. And without taxes, public services slowly start to disappear, and eventually unemployment rises.⁶

After World War II, the American landscape was permanently altered by those moving out of urban environments into suburban areas in pursuit of the American dream. People departed city-centers in search of larger lawns, quieter neighborhoods, and better education. With this seemingly innocent shift in location, environmental and economic concerns increased. Green spaces disappeared, and those left in urban areas experienced both the rises in crime and unemployment that resulted from dissipating businesses and a decreasing number of middle-class residents.⁷ Low-income citizens remained in cities because they lacked the funds to move away.

A real effort to address these escalating environmental concerns began during the Clinton presidency. The creation of the President's Council on Sustainable Development focused on gathering federal, environmental, and corporate leaders to develop strategies that would focus on "environmental challenges in ways that promote[d] continued prosperity, social equity, and a high quality of life."⁸ In a report to Congress in 1993, the same year the Council was launched, the EPA announced what it believed to be the basic tenets of sustainable development. Sustainable development is a long-term planning and policy effort to dictate actions that would reinforce the interdependence of our economy

⁶ Ibid, 6-7.

⁷ Government Printing Office Book, *Building Livable Communities: Sustaining Prosperity, Improving Quality of Life, Building A Sense of Community*; Revised June 2000; History of the Environmental Protection Agency-"Livable Communities" Initiative; OA/ ID 101206, Environmental Protection Agency, Clinton Administration History Project, William Clinton Presidential Library.

⁸ Packet, CEQ; History of the Environmental Protection Agency; OA/ ID 23877, Environmental Protection Agency, Clinton Administration History Project, William Clinton Presidential Library.

and our environment, and requires new and integrative approaches to solving economic, social, and environmental objectives.⁹ According to the EPA's definition, redeveloping brownfields constitutes a type of sustainable development because it is a type of development that "meets the needs of the present without compromising the ability of future generations to meet their own needs."¹⁰ Brownfields redevelopment is community renewal at its best because "it is a movement that begins with civic dialogue and leads to public action."¹¹ Therefore with the support of the local community and federal aid, sustainable development can be created in any city, but only if it is "rooted in the culture, the values, the interests and the priorities of the people concerned."¹²

II. The Historical Background of the Brownfields Redevelopment Program

In 1980, the Environmental Protection Agency's Superfund Program, otherwise known as CERCLA or Comprehensive Environmental Response, Compensation, and Liability Act of 1980¹³ was created to clean up the nation's uncontrolled, abandoned, and accidentally contaminated hazardous waste sites, which endangered both the environment and overall public health.¹⁴ The project intended to protect the public from paying the

⁹ Government Printing Office Book, *Sustainable America: A New Consensus for the Prosperity, Opportunity, and a Healthy Environment for the Future*; 1996; *Sustainable America: A New Consensus*; OA/ ID 101976, President's Council on Sustainable Development, William Clinton Presidential Library.

¹⁰ Publication, *Sustainable Developments*; December 1994; *Sustainable Developments: Draft National Goals, Indicators, and Policy Themes Go Out for Public Comment*; OA/ ID 101977, President's Council on Sustainable Development, William Clinton Presidential Library.

¹¹ *Building Livable Communities*, 15.

¹² *Sustainable America*, 54.

¹³ *Revitalizing Contaminated Sites: Addressing Liability Concerns* (EPA Publications, May 2008), 5.

¹⁴ *Frequent Questions*, The U.S. Environmental Protection Agency, <http://epa.custhelp.com/cgi-bin/epa.cfg/php/enduser/> (accessed 17 July 2009).

environmental and financial burdens caused by abusive business practices. By obtaining revenue through taxes on the manufacture and import of chemicals and petroleum to support CERCLA, Congress made those who caused the pollution responsible.¹⁵ Even though CERCLA protected society from the threats waste sites pose to human health, safety, and the environment, it was not as environmentally infallible as initially hoped. In the case of brownfields, CERCLA had actually hindered sustainable development because it did not allow for the redevelopment of those brownfields with little to no contamination that could be easily removed from the NPL. The problem was situated in CERCLA's liability provisions, which instead of encouraging development, inhibited it.¹⁶ Eventually in response to this weakness in their program, the EPA began reforms of the Superfund Program in 1993, attempting to improve the efficiency of their original concept. They examined those policies that would be "detriments to sustainability," and made adjustments including, reassessing brownfields listed on the Superfund List, improving communication with federal, state, and local governments, and creating employment positions for those interested in brownfields redevelopment-related careers.¹⁷ The most important of these improvements was "removing over 30,000 sites from [National Priorities List] and awarding 227 Brownfield Pilot grants."¹⁸ And in January 1995, the Brownfields Action Agenda was created to encourage the safe cleanup and development of unused, often contaminated, industrial sites. Although the Superfund and Brownfields Programs targeted hazardous site cleanup, the Brownfields Program

¹⁵ *Revitalizing Contaminated Sites*, 5.

¹⁶ Davis, 7.

¹⁷ Application, 1.

¹⁸ Annual Report, Annual Report FY; 1998; History of the Environmental Protection Agency; OA/ ID 101207, Environmental Protection Agency, Clinton Administration History Project, William Clinton Presidential Library.

differed in that it addressed properties with “lesser levels of contamination or those being held back by stigma and uncertainties rather than verifiable problems.”¹⁹ As the Program continued to develop, it lost its association with Superfund liability and cleanup issues, and became an independent facet of the EPA.

Occasionally present in suburban areas, brownfields are typically found in urban environments with heavy industrial decline. They vary in size, and in the extent to which they need to be redeveloped. Most potential investors, already involved in community redevelopment or commercial real-estate, claim they search for properties that are still viable. Viable brownfields are those that have some environmental liability, but that “due to their [other] inherently positive market attributes may be economically redeveloped into productive assets.” Contrastingly, the brownfields with the highest levels of contamination are listed on the National Priorities List (or NPL), a facet of the CERCLA Program. The NPL or Superfund sites are major burdens on the Federal government, since they require a great deal of time, capital, and resources to control. In 1997, there were at least 1,250 of these properties nationwide.²⁰ Today, the NPL’s national total is much lower because “only about 8% of all brownfields are [even] considered for Superfund’s National Priorities List [...] with less than 1% actually placed.”²¹ Only those with the highest levels of contamination are kept on the NPL. Therefore, 99% of the list’s original brownfields properties will have no federal action taken on them and are

¹⁹ Application, 6.

²⁰ David, 5-6.

²¹ Sidney O. Dewberry and Lisa N. Rauenzahn, and Development Handbook, 3rd ed. Planning, Engineering, and Surveying (McGraw Hill Professional, 2008), 323.

developable. Consequently, the liabilities associated with brownfields have become less significant than they were once perceived to be.²²

Even though brownfields are becoming more enticing endeavors for developers, some still try to avoid the liabilities associated with brownfields completely by buying greenspaces, or open, undeveloped land.²³ Developers' hesitation to redevelop brownfields is understandable, given the associated risks. The demolition of a structure could reveal further contamination, adding to planning and construction costs.²⁴ Therefore, developers should know that before they redevelop or buy a site they need to make certain that they are not inheriting any Superfund liability with the property.²⁵ Redeveloping involves "formidable technical challenges [requiring] a deep understanding of insurance, grants and highly complex state and federal regulations and guidelines."²⁶ Therefore, developers must follow a procedural outline for the process of buying the site. Developed in 2006, the All Appropriate Inquires Rule endeavors to "limit the liability of certain current and future landowners of known and potentially contaminated pieces of property."²⁷ The outline criteria includes aspects such as hiring an Environmental Professional to help with the remediation process, providing site information to those

²² Dewberry and Rauenzahn, 323.

²³ Department of Health and Human Services, "Healthy Places Terminology," Centers for Disease Control and Prevention, <http://www.cdc.gov/healthyplaces/terminology.htm> (accessed 18 July 2009).

²⁴ David Biederman, *The Journal of Commerce: (Re)building for the Future (Port Construction, Redevelopment of Polluted Industrial Sites, in Brownfields)*, 11 June 2007, in General One File Infotrac: Gale Group, <http://find.galegroup.com/gtx/start.do?prodId=ITOF/> (accessed 6 July 2009).

²⁵ Mangone, 8.

²⁶ Biederman, 1.

²⁷ Mangone, 1.

who are in charge of site cleanup, and re-updating the Environmental Professional's Report on the hazardous content of the site before closing the deal on the property.²⁸

Even though there is still a stigma associated with brownfields, as undevelopable properties, the EPA has worked harder to combat this stigma by removing "30,000 lower risk sites from its Superfund inventory" and lessening the "liability for municipalities that had involuntarily acquired contaminated property."²⁹ With these efforts, the EPA hopes that interest will grow in finding new uses for brownfields. In 2002, President Bush signed the Small Business Liability Relief and Revitalization Act, thereby alleviating some liability associated with the brownfields investment process. This Act has engendered "tons of potential in brownfield development [...] more companies are taking it upon themselves to turn nonperforming liabilities into income generating assets."³⁰ Essentially with new federal and state economic incentives to redevelop brownfields, they are no longer labeled as liabilities on an owner's balance sheets, but rather can be redeveloped to become assets.

In 1993, The EPA created a Brownfields Pilot Program in response to large losses in manufacturing jobs nationwide. The Program distributes up to \$200,000 over two years to local governments, so they can inventory, assess, and cleanup the brownfields in their specific communities.³¹ The Pilots were meant to "remove regulatory barriers without sacrificing environmental protection, and facilitate community-based and

²⁸ Mangone, 8.

²⁹ Application, 8.

³⁰ Biederman, 2.

³¹ Michael R. Greenberg and Justin Hollander, "Scaling Up Promising Interventions: The Environmental Protection Agency's Pilot Program" (2006) <http://www.ajph.org/cgi/reprint/96/2/277.pdf> (accessed 31 July 2009).

coordinated input.”³² The EPA also considered the direct needs of the community, and the proposed long-term sustainability benefits the area would receive from redeveloping a brownfield, rather than a greenspace. Fostering community interest seemed to be the most important aspect of the Pilot Program because the EPA wanted citizens and local companies to become involved in the sustainable progress of their city. The first national pilot ever selected was in Cuyahoga County, Ohio. The community hoped to rehabilitate the Hauserman industrial site, and obtained \$3.2 million for renovations, generating over \$1 million in payroll taxes for the city, and creating at least 170 jobs.³³ With the success of their first Pilot, the EPA decided to continue the Program in the hope that similar success stories would follow.

Victory Park in Dallas is the largest EPA brownfields project in the country. Labeled as a “Brownfield Success Story” on the EPA’s website, the development has become the paradigm of a successfully redeveloped brownfield.³⁴ A thriving \$3 billion development, the site was formerly used for industrial purposes, which included an electric power plant, a garbage crematorium, a railroad maintenance facility, a packing house and a landfill. It was also contaminated by a surplus of chemicals and cancer-causing agents— asbestos, metals, pesticides, and hydrocarbons. In order to redevelop this site, a public/private partnership was formed between the City of Dallas and Ross Perot, Jr.’s Hillwood Development Corporation. The substantial site cleanup progressed over four years beginning in October 1997 with the demolition of 45 structures, the treatment

³² Davis, 46.

³³ Ibid.

³⁴ Brownfields and Land Revitalization, “Brownfields Pilot Success Story Locations,” The Environmental Protection Agency <http://www.epa.gov/brownfields/sslocat.htm#reg6> (accessed 24 July 2009).

of 15 million gallons of groundwater, and the recycling of 47,000 cubic yards of concrete. As of 2009, the new development encompassed 75-acres of shopping, entertainment, office space, and restaurants.³⁵ Among the attractions is the American Airlines Center, a multi-functional sports and entertainment arena that is home to the NBA's Dallas Mavericks and the NHL's Dallas Stars, and hosts concerts by well-known artists such as Dave Matthews and Justin Timberlake.³⁶ Another development, the upscale W Dallas Victory Hotel and Residences caters to international visitors and local residents by offering hotel suites, retail shopping, and a Bliss Spa. The redevelopment also included a significant environmental element. All of their electricity is purchased from providers of 100% renewable energy and 1,000 trees were planted on location.³⁷ Overall, the long-term effects of this project have been the increased revitalization of Dallas' West End District, the generation of about \$1 billion annually in revenue, as well as the creation of 11,000 jobs.³⁸ Victory Park was awarded the EPA's most prestigious honor, the Phoenix Award.³⁹ The success of this Dallas project has encouraged other struggling cities to redevelop brownfields.

³⁵ "Victory Park- Dallas, Texas: Brownfields to Greenfields" (April 2007), The Environmental Protection Agency, <http://www.epa.gov/earth1r6/6sf/pdf/victoryparksuccess2007.pdf> (accessed 21 July 2009).

³⁶ "A Look Back," The American Airlines Center, <http://www.americanairlinescenter.com/about-aacenter/alookback.php> (accessed 24 July 2009).

³⁷ David S. Jones and Harold D. Hunt, "V for Victory: Development Transforms Industrial Wastelands" (October 2008), Texas A&M University, <http://recenter.tamu.edu/pdf/1877.pdf> (accessed 25 July 2009).

³⁸ Victory Park, 2.

³⁹ Jones and Hunt, 1.

Similar results were achieved in Knoxville, Tennessee, when a Brownfields Pilot was awarded to develop the Center City Business Neighborhood.⁴⁰ In an attempt to redevelop the inner city, the city of Knoxville created the Business Neighborhood with a “green” theme.⁴¹ This means that the once decaying Norfolk Southern rail yard⁴² will only allow sustainable, recycling and reuse businesses in that portion of the neighborhood, among them are Knoxville Recycled Fibers and Shamrock Organics.⁴³ Sysco Food Services, which opened a distribution center, is also one of the environmentally friendly businesses that is located at the Business Park. The facility will eventually service a broad scope of customers living in Tennessee, North Carolina, Virginia, among others.⁴⁴ The company will bring over 250 jobs and \$14 million annually in wages to Knoxville, and indirectly a total of \$24.1 million to the economy.⁴⁵

The Brownfields Pilot selection process is competitive. The budget for expenditures is limited, so only up to 100 Brownfields Assessment Pilots, 70 Brownfields Cleanup Revolving Loan Fund Pilots, and 10 Brownfields Job Training Pilots are awarded each fiscal year. In 2000, the entire annual budget for the EPA’s Brownfields

⁴⁰ National Center for Environmental Publications (NSCEP), “National Brownfields Assessment Pilot: Knoxville, TN” (May 1997), The Environmental Protection Agency, <http://nepis.epa.gov/> (accessed 25 July 2009).b

⁴¹ “Sustainable Redevelopment of Brownfields-Fostering Economic Development and Protecting the Environment,” The Environmental Protection Agency, <http://epa.gov/brownfields/success/sustainable.pdf> (accessed 24 July 2009).

⁴² “I-275/ North Central Street Corridor Study 2007,” http://archive.knoxmpc.org/plans/corridor/i275_study.pdf (accessed 24 July 2009).

⁴³ Sustainable Redevelopment of Brownfields, 2.

⁴⁴ Brandon Lowe, “All Systems go for Sysco” (2 April 2008), Knoxville News, <http://www.knoxnews.com/news/2008/apr/02/all-systems-go-for-sysco/> (accessed 25 July 2009).

⁴⁵ Brandon Lowe, “Sysco’s Investment in Knox Figures to be a Mutually Beneficial Arrangement” (20 April 2008), Knoxville News, <http://74.125.47.132/search?q=cache:aJyyIcVuzRcJ:www.knoxnews.com/news/2008/apr/20/feeding-off-each-other/> (accessed 24 July 2009).

Program came from the Federal government to support four types of Pilot Programs. The first type, the Brownfields Assessment Pilots allot \$200,000 to developers to initiate long-term environmental assessments at sites. Brownfields Cleanup Revolving Loan Fund Pilots are revolving loans of up to \$500,000 that support community cleanup of properties that will be used for sustainable purposes. Brownfields Job Training Pilots give up to \$200,000 to community colleges to “recruit and train students from disadvantaged communities.”⁴⁶ And lastly, The Voluntary Cleanup Program helps communities to create their own sustainable programs.⁴⁷ The Brownfields Program is unconventional in its methods for redevelopment because it is unlike the typical Federal approach, in which the government usually has a continual presence in the project. Instead, the EPA’s main objective is to encourage states and communities to help themselves, using small amounts of seed money to spur them to action.⁴⁸ By giving the communities limited funds, it encourages them to seek out private investors to fund the project’s goals. Since the Program only allots \$200,000 of federal grant money for each project, it is crucial that the communities be proactive in using their grant efficiently. The seed money is predominately used to coordinate the site’s initial environmental assessment.

The United States’ Environmental Protection Agency acknowledges the multilateral effort that is necessary to support the redevelopment of brownfield sites. Therefore, there must be cooperation at the federal, state, and local levels. Since brownfield redevelopment addresses a variety of different national, economic and social

⁴⁶ Application, 12.

⁴⁷ Ibid.

⁴⁸ Ibid, 1.

concerns, the EPA has sought interaction among various Federal departments. The agencies currently involved in the Brownfields Program include the Department of Commerce, the Department of the Treasury, the Department of Housing and Urban Development, and the Department of Labor.⁴⁹ The first federal agency to make a partnership with EPA was the Department of Commerce's Economic Development Administration (EDA). Their partnership consists of the EPA focusing on the environmental components of a project, while the EDA supports the economic side of them. Specifically, the EDA 'creat[es] an environment in which the private sector is more willing to invest its capital in brownfield projects that enhance job creation and overall community revitalization.'⁵⁰ The U.S. Department of Housing and Urban Development has their own competitive grant program called the Brownfields Economic Development Initiative. However when compared to the EPA, the EDA's initiative has a greater emphasis on increasing the economic opportunities of persons of low and moderate income.⁵¹ Naturally, the Department of Labor focuses on implementing employment opportunities. They work through their respective national and regional offices to expand environmental job training and curriculum development of community colleges located near Brownfields Pilot communities.⁵²

States are also encouraged to foster redevelopment in their cities. Federal departments give funding directly to the states to allot to needy counties, so they can

⁴⁹ Davis, 47.

⁵⁰ Economic Development Administration, "Brownfields Redevelopment," U.S. Department of Commerce, <http://www.eda.gov/Research/> (accessed 6 July 2009).

⁵¹ Community Planning and Development Offices, "Brownfields Economic Development Initiative (BEDI)," United States Department of Housing and Urban Development, <http://www.hud.gov/offices/cpd/economicdevelopment/programs/bedi/index.cfm> (accessed 25 July 2009).

⁵² Davis, 47.

begin environmental cleanup of their brownfields.⁵³ States also offer economic incentives to encourage sustainable development, which differ from state to state. Illinois offers loans of up to \$10 million, Indiana offers tax abatements for brownfield zone development and Tennessee offers funds for dry-cleaning of sites.⁵⁴ Some counties use tax abatements, legislation that reduces property taxes in order to attract new investments.⁵⁵

Finally, the EPA concluded that the best way to counteract the negative effects of brownfields was through local involvement. With a brownfield's redevelopment, "it is safe to assume that the interests of business will always be represented," therefore it is essential that community leaders, citizens, and municipalities be present to offer their opinions about what is best for the local area.⁵⁶ Local citizens and businesses should be involved in the redevelopment of brownfields to facilitate the success of their city. By encouraging new businesses to develop properties on these previously neglected sites, they will create opportunity for local job employment, even long-term careers.⁵⁷ Because this requires all levels of government involvement and support, it is the "essence of reinventing government, bridging the abyss between the smallest community redevelopment organizations and the largest government agencies [...making them reevaluate] how their policies affect communities, businesses, and individuals."⁵⁸

⁵³ Davis, 183.

⁵⁴ Biederman, 1.

⁵⁵ Roger W. Caves, *Exploring Urban America: An Introductory Reader* (Thousand Oaks: Sage Publication, Inc., 1995), 147.

⁵⁶ Davis, 189.

⁵⁷ *Ibid*, 185-6.

⁵⁸ Application, 2.

There are many economic benefits to redeveloping a property. Brownfields are “prime real estate development opportunities,” and the location, urban address/zip code of brownfields can be an incentive for a developer.⁵⁹ Other incentives include tax credits for building materials and tax abatements.⁶⁰ A tax credit is a credit given to an individual or company that “lowers the amount of income tax owed by a tax payer.”⁶¹ A tax abatement occurs when a city or county “agree[s] to reduce taxes owed or exempt property owners from paying property taxes for a period of time in order to spur economic development.”⁶² Funding is available to support the projects from both public and private sources, and insurance to cover the liabilities of purchasing the area. A buyer needs insurance if he is going to invest in one of the brownfields, as “insurance policies can reduce the unforeseen risks of brownfields redevelopment.”⁶³

II. The Process

The process of redeveloping a brownfield site is rather complex, as there are many incentives and drawbacks to undertaking this type of project. Initially, the redevelopment of a property might seem like a very financially practical venture. However, impediments to the redevelopment process include unclear environmental laws like CERCLA, high investment costs, easier alternative spaces for development such as greenfields, and some public resistance to the projects.⁶⁴ Public resistance often occurs

⁵⁹ Jana J. Madsen, *Brownfields: Attractive, Prime development Opportunities*, in General One File Infotrac: Gale Group, <http://find.galegroup.com/gtx/retrieve.do?contentSet=IAC> (accessed 6 July 2009).

⁶⁰ Biederman 2.

⁶¹ Anatomy, 7.

⁶² Ibid.

⁶³ Madsen, 1.

⁶⁴ Davis, 9.

when a community association's ideas for the project in its neighborhood contradicts those of the developer.⁶⁵ Greenfields are too frequently chosen over brownfields because "greenfield communities can offer financial incentives, such as low-cost financing."⁶⁶ However, if a developer chooses to consider a brownfield property he has to ensure that he can generate a profit from their endeavor, particularly because "what is fueling the interest in brownfields redevelopment [...] is pure economics."⁶⁷ The developer is in the pre-development or foundational stage of the entire process. The developer is "conducting due diligence."⁶⁸ By assessing the extent of contamination at the site, selecting the future use for the site, and identifying potential investors, the developer is constructing a plan of action. The assessment of the brownfield can have some financial components, but it is mainly environmentally driven. Detecting the presence of contamination is imperative in determining a site's appropriate reuse. The first measure taken is the Phase I environmental assessment. The most basic type of assessment, it is used to calculate the type of hazardous material and its extent and its location on the property. If the assessment reveals a lot of contamination, a Phase II assessment is completed to test the pollution and to design a remedial action plan.⁶⁹

Without federal and state-given grants in the pre-development stage, the Brownfields Program lacks initiative. The grants are the fundamental component that assist communities. Although there is limited funding available, there are four types of EPA grants available to alleviate a part of the costs in redevelopment: Brownfields

⁶⁵ Davis, 11-12.

⁶⁶ Ibid, 12.

⁶⁷ Davis, 4.

⁶⁸ Anatomy, 2.

⁶⁹ Ibid, 3.

Assessment Grants, Brownfields Revolving Loan Fund Grants, Brownfields Job Training Grants, and Brownfields Cleanup Grants.⁷⁰

In addition to the EPA, the Department of Housing and Urban Development and the Department of Health and Human Services also provide grant funding. However, each federal department differs in its specific application requirements for grants. Other money for offsetting development costs can be obtained from private land companies, or qualifying for federally-offered tax abatements and tax incentives. Essentially, the government assumes that it will not lose money because if the development is successful, then “the community tax base will grow at a rate, and to a size, that more than offsets the loss of taxes due to the abatement.”⁷¹

Obtaining financial support for the different stages of development is vital if the development of the property is to continue at a consistent rate. The extent of funding which a particular brownfield might need depends on the size and use of the brownfield, and the type of redevelopment scenario. There are three types of funding scenarios. With private redevelopment, the developer is responsible for the financing, although some public funding can be obtained for the initial environmental assessment. Public funding for private redevelopment is often obtained through federal grants. Once the cleanup is complete and has met state requirements, the property is ready for the next stage of development.

⁷⁰ Brownfields and Lands Revitalization, “About Brownfields” (30 September 2008), The United States’ Environmental Protection Agency, <http://epa.gov/brownfields/about.htm> (accessed 6 July 2009).

⁷¹ “Tax Abatements,” Hazardous Substance Research Centers: South & Southwest, <http://www.hsrb-ssw.org/finance.html> (accessed 16 July 2009).

The composition of a public-private-led redevelopment partnership consists of “one public-sector entity and one private-sector organization to combine resources and efforts to accomplish a common goal.”⁷² The public side is usually the instigator of the project, providing funding for the first environmental assessments, and the private sector supervises both the pre-development and subsequent development steps. The public-private sector collaboration scenario is the most commonly pursued brownfield redevelopment strategy since financial burdens are split between different parties.

Public-led redevelopment is typically organized by municipalities, who will oversee the entire cleanup process, and obtain funding for the brownfield project from either federal or state-offered grants. Once the pre-development stage is completed, the municipalities will then choose either to retain the property for local use, constructing public works like schools and parks, or sell it to a real-estate developer.⁷³ Eventually though, the intended purpose of the brownfield is contingent upon the developer and development scenario, whether privately, public-privately, or publicly developed. In most public-led redevelopment, the community has the most input, whereas in private-led development, the developer will make the major decisions. Ultimately, the most important goal for the brownfield is to achieve the “highest and best use” of the property, meaning that a market analysis will “evaluate local and regional economic and real estate conditions and characterize the [brownfield’s] market demand.”⁷⁴

When the pre-development stage is completed, developers must still pursue three other key stages involved in the brownfields process. They are “securing the deal,”

⁷² Anatomy, 5.

⁷³ Ibid, 6.

⁷⁴ Anatomy, 3.

“cleanup and development,” and “property management.”⁷⁵ The second step or “securing the deal” for the developer involves purchasing the property and negotiating every nuanced aspect of the contract with the current owner. The contract must detail the extent of the developer’s and owner’s permanent legal responsibilities. When the legal documents have been signed and exchanged, the formal commitment is made.⁷⁶ Since the site’s contract is settled and the exchange of property and liability is agreed upon, the developer must secure financing. Unlike the pre-development stage, identifying sources for support is not enough. The developer needs assurance that his financial backers will have a long-term role in the brownfield’s redevelopment. To guarantee this, non-profit organizations and trusts are created to manage the finances, and continuously find new investors to support the developer’s vision.

With a design for reuse and a contract of ownership, the developer will begin the actual property development. The EPA must approve all construction details and intended land use to review the developer’s inclusion of environmentally-safe green building techniques. Once approved, the cleanup of dangerous materials will include the areas where the contamination is located, whether in the soil, surface or ground water.⁷⁷ It is imperative that the cleanup is completed according to a planned timeline because the longer the project takes to complete the higher the overall cost. The cleanup is only deemed complete with the developer’s receipt of a No Further Action Letter, an “affirmation that a site adequately protects human health and the environment for the

⁷⁵ Ibid, 2.

⁷⁶ Ibid, 4.

⁷⁷ Anatomy, 3-4.

intended use of the site.”⁷⁸ When the outline for construction has been projected, the developer must pursue his intentions for the design.

In order to be considered sustainable and to be supported by the EPA, the design of the building must involve the application of green elements. In the United States, a building’s construction, operation, and maintenance is the cause of “thirty percent of greenhouse gas emissions and sixty-five percent of electricity consumption.”⁷⁹ Therefore, it is crucial, in order to prevent further environmental damage, that regulations be established to govern the entire construction process. By following a practice called green remediation, developers will strive to incorporate construction options that will “maximize the net environmental benefit of cleanup actions.”⁸⁰ Environmentally-safe options include minimizing the amount of fresh water used during building, reducing air emissions by avoiding heavy machinery with high fuel consumption, limiting waste by recycling construction materials, and avoiding the disturbance of land and ecosystems at the site.⁸¹ Even the selection of a brownfield site is important because a building’s location near public transportation can reduce auto emissions. The predominant benefit of a green building is environmental, but there are economic advantages too. The EPA often

⁷⁸ “No Further Action Letters in Risk-Based Corrective Actions by Chet Clarke, Texas Natural Resource Conservation Commission,” The United States’ Environmental Protection Agency, <http://www.epa.gov/OUST/rbdrm/nfalettr.htm> (accessed 16 July 2009).

⁷⁹ Amy L. Edwards, *When Brown Meets Green: Integrating Sustainable Development Principles Into Brownfield Redevelopment Projects*, in Wilson OmniFile: Widener Law Journal, http://vnweb.hwwilsonweb.com/hww/results/results_single_fulltext.jhtml (accessed 6 July 2009).

⁸⁰ Edwards, 1.

⁸¹ Edwards, 2-3.

supplements these projects with funding, offsetting a developer's costs, and reduce long-term emissions lessen ecological liability and the "strain on local infrastructure."⁸²

With the conclusion of the building process, a formal opening will signify to the public the progressive intentions of all those involved in a brownfield's redevelopment, namely the developer's economically and environmentally sustainable vision, the public and private investors willingness to be guinea pigs to a relatively new federal program, and the community's articulation of what is beneficial for their city. However, the opening is not the last step. But rather, it is the property's use, maintenance, and long-term management that completes a brownfield's redevelopment. Owners must maintain "the financial aspects, physical plant, community relations, and any long-term environmental issues associated with the property."⁸³

In order to become more effective, the program proactively attempts to target and eliminate its shortcomings. For example, one of its weaknesses is that the amount of money spent on cleanup often exceeds the EPA's assessment grant for the specific project. Government assessment grants are usually around \$50,000, and funds for cleanup usually cost in the millions of dollars. Recently, the EPA targeted this issue by creating the Brownfields Cleanup Revolving Loan Fund. The Fund donates up to \$500,000 to cities for brownfield cleanup, and it works cyclically by replenishing the overall fund

⁸² Edwards, 4.

⁸³ Anatomy, 4.

with the repaid loans from borrowers, making that money available for other new brownfield developers.⁸⁴

An annual meeting, the National Brownfields Conference, is held to ensure that the Program will grow and develop. Because of this conference, interest has grown in brownfields redevelopment, and the number of attendees has increased over the past four years from 850 to 2,300 people.⁸⁵ The Conference is designed to “give investors, developers, property owners, Pilot representatives, and municipalities the chance to exchange their successes and replicate experiences.”⁸⁶ In order to ensure the program’s longevity, Vice-President Al Gore announced the creation of a Brownfield’s National Partnership Action Agenda. BNPAAG guarantees the government’s future support of the Brownfields Project by implementing federal support at the state and community level.⁸⁷

In 1995, the EPA formed an agreement with the Institute for Responsible Management to analyze the results and measure the success of the Brownfields Assessment Pilots nationally.⁸⁸ The results can be measured in three ways. Firstly, IRM quantifies the overall number of sites that have been assessed and decontaminated, 4,200 rural and urban properties. They concluded that the high number of redeveloped properties means that this program has benefited “more than 66 million residents or 25 percent of the American public.” Secondly, the number of jobs, produced from the

⁸⁴ Brownfields and Lands Revitalization, “Revolving Loan Fund Pilot/ Grants,” The United States Environmental Protection Agency, <http://epa.gov/brownfields/rlflst.htm> (accessed 16 July 2009).

⁸⁵ Application, 8.

⁸⁶ Ibid, 9.

⁸⁷ “Brownfields National Partnership Action Agenda (1997),” The United States Environmental Protection Agency, <http://epa.gov/swerosps/bf/97aa.htm> (accessed 17 July 2009).

⁸⁸ Application, 8.

cleanup, construction, and management of brownfields and those produced from the Brownfields Job Training Pilots, have stimulated the local economy. Lastly, the amount of funding amassed per site is evidence of national and local interest in these projects.⁸⁹

Brownfields highlight the need for environmental justice because most people who bear the environmental burdens created by these sites are those in low-income neighborhoods. The target population this endeavor hopes to rehabilitate is “the blighted communities of racial and ethnic minorities and low-income citizens.”⁹⁰ This demographic is partially why Memphis was such a good candidate for brownfield redevelopment. According to the 2000 U.S. Census, Memphis’ population is 62 percent African American and the Median income is \$35,181, almost \$25,000 below the national average.⁹¹

III. Why Memphis?

In Memphis, the greatest amount of suburban development occurred in the 1950s, when suburban growth was estimated to be ten times that of the growth of American cities.⁹² Moving to the periphery of the city was now easier than ever, as the government financially supported the middle class’ move by backing their mortgages in “low-risk [development] areas,” or “low-density, white areas.”⁹³ To many whites, the image of the once prosperous city had become adulterated, blemished by industrialization, and situated

⁸⁹ Application, 3-4.

⁹⁰ Ibid, 4.

⁹¹ “Memphis, Tennessee,” Municipal Net Guide, <http://www.muninetguide.com/states/tennessee/municipality/Memphis.php> (accessed 6 July 2009).

⁹² Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York and Oxford: Oxford University Press, 1985), 238.

⁹³ Anthony Flint, *This Land* (Baltimore: The Johns Hopkins University Press, 2006), 33.

in both racial instability and economic corruption. As people and businesses continued to leave cities, urban infrastructure deteriorated, and the city tax-base diminished.⁹⁴

Inversely, suburban neighborhoods lured prospective homeowners with features like home affordability, security, and good schools.⁹⁵ Whites' movement to suburbia to escape the negative aspects of urban life became known as "white flight."⁹⁶ As the name directly implies, this was a movement only enjoyed by white Americans; black Americans were still confined by the social and economic restraints of segregation, underemployment, and inferior education.⁹⁷ They remained in the cities, as whites escaped them, and became subject to all the unfortunate consequences of deteriorating city infrastructure.

White flight was situated in racial prejudice and classism. It began out of the middle-class' resistance to a growing influx of minorities to cities during World War II, whose presence exerted pressure on an already stressed wartime housing market.⁹⁸ Many whites found the high amount of racial integration in cities to be unacceptable, and responded by enacting restrictions that aimed to segregate areas of downtown. Over time,

⁹⁴ Flint, 35.

⁹⁵ Ibid, 48.

⁹⁶ Eric Bickford, "White Flight: The Effect of Minority Presence of Post World War II Suburbanization," University of California-Berkeley, <http://74.125.113.132/search?q=cache:kw0NlafPOCMJ:eh.net/Clio/Publications/flight.shtml> (accessed 27 July 2009).

⁹⁷ Jackson, 133.

⁹⁸ William H. Frey, *Central City White Flight: Racial and Nonracial Causes* (June 1979), in JSTOR Reference Library: American Sociological Review, <http://www.jstor.org/stable/2094885> (accessed 27 July 2009).

the white's exclusion of blacks failed, and the attraction of new housing options seemed like a viable opportunity for their out-migration.⁹⁹

The majority of the white flight from Memphis occurred in the 1950s through the 1970s. The white population gradually exited the city over the next three decades, dropping from 60.8 percent in 1970 to 34.4 percent in 2000.¹⁰⁰ Even in 2009, a study on national diversity showed that nothing has changed, "only in Detroit do black residents live more isolated from white residents than in the Memphis metropolitan area."¹⁰¹ Local government tried to combat white flight by encouraging assimilation through bussing. It was a technique that the city employed to equalize the uneven distribution of black students to white students in county schools, over 70 percent of which were white.¹⁰² However, the efforts to desegregate schools and neighborhoods were not entirely effective. An assistant superintendent for Pupil Services, Johnnie B. Watson, articulated that based on the housing patterns in Memphis, he does not see an end to desegregation bussing.¹⁰³

⁹⁹ *White Flight*, in the Credo Reference Library, http://www.credoreference.com/entry/abcurban/white_flight (accessed 27 July 2009).

¹⁰⁰ Shea Stewart, "What White Flight?" (18 September 2007), <http://sync.arkansasonline.com/news/2007/sep/18/what-white-flight/> (accessed 26 July 2009).

¹⁰¹ James W. Brosnan et al., "Races Staying 'Isolated' in Memphis, Study Says," *The Commercial Appeal*, <http://web.commercialappeal.com/newgo/special/census/040501/5race.htm#top> (accessed 27 July 2009).

¹⁰² Shirley Downing and Jimmie Covington, "Increased Busing Held Unlikely Under Merger," *The Commercial Appeal*, 1990, in Memphis and Shelby County Room, Memphis Public Library & Information Center, 1.

¹⁰³ "Bussing Remains Lively Issue," *The Memphis Commercial Appeal*, 2 January 1983, in Memphis and Shelby County Room, Memphis Public Library & Information Center, 1.

Two Memphis suburbs, in particular, show the effects of white flight and school integration, Frayser and Whitehaven. Separated from Memphis by the Wolf River, Frayser initially had a poor public image compared to the rest of Memphis. According to one local resident, Joan Raymen, “when the sun shines on Memphis, people think it’s still snowing in Frayser.”¹⁰⁴ Even though it originally had a predominately white population, Frayser is now about 73% African-American.¹⁰⁵ Similarly, Whitehaven was predominately white, before its late 1960s integration and its eventual conversion to a mostly African-American neighborhood.¹⁰⁶ During the transition, the Whitehaven Community Association president, Dr. Patty Calvert, commented on many white homeowners’ fears that “Whitehaven [was] experiencing a too-fast influx of black homeowners” and that property values would decrease if the area were integrated.¹⁰⁷ And by 1988, the integration of many more black families was the catalyst that increased white flight from the area.¹⁰⁸

Racial segregation is only one of the negative effects of suburbanization. The development of neighborhoods outside the city has led to the creation of urban sprawl, among other factors such as rural deterioration, health problems, social inequity, and

¹⁰⁴ Anne B. McDonald, “Frayser Festival Aims To Change Area’s Image,” *The Commercial Appeal*, 18 September 1982, in Memphis and Shelby County Room, Memphis Public Library & Information Center, 1.

¹⁰⁵ “38127 Zip Code Profile” (2009)

<http://www.neighborhoodlink.com/zip/38127#people> (accessed 7 August 2009).

¹⁰⁶ John Semien, “Residents of Bluebird Estates Enjoy Quiet, Worry About Image,” *The Commercial Appeal*, in Memphis and Shelby County Room, Memphis Public Library & Information Center, 2.

¹⁰⁷ Charles Thornton, “Memphis White Haven Community Association,” *The Commercial Appeal*, 15 July 1978, in Memphis and Shelby County Room, Memphis Public Library & Information Center, 1.

¹⁰⁸ Jill Johnson Piper, “Whitehaven Residents Battle Misconceptions,” *The Commercial Appeal*, 24 March 1988, in Memphis and Shelby County Room, Memphis Public Library & Information Center, 1.

economic disparity. New suburban development constantly encroaches upon untouched greenspace. When this greenspace is used for business development, it is frequently used for large commercial retail purposes like strip malls and chain restaurants. However, the superfluous nature of these stores causes them to become outdated quickly, and new ones built nearby easily replace them. In 2002, there was estimated to be over 4,000 dead malls nationally, which is the equivalent of over half a billion square feet of unused retail space.¹⁰⁹ The development of greenspaces has become a continuous cycle of destruction, as local governments encourage businesses with tax incentives to move out of antiquated, unfashionable stores into newer developments just down the road.¹¹⁰

Additionally because suburban neighborhoods are on the outskirts of downtown, commuting is necessary for suburban residents to get to their work places. The transportation costs of fuel, insurance, and lost time are all collateral damage. A report from the U.S. Census recorded that vehicle upkeep alone costs most Americans 18 percent of their family income each year. Water clarity has become another issue. Pollution builds up on hard surfaces like roofs and roads over time and drains into storm sewers when it rains. The toxins in the water come at citizens' expense, as 133 billion gallons of water are wasted because they are tainted with pollutants.¹¹¹

The EPA in particular has created the Brownfields Economic Redevelopment Program in particular to help decrease urban sprawl, "low-density development that disperses the population over the widest possible area, with rigidly separated functions—

¹⁰⁹ Flint, 55.

¹¹⁰ Ibid, 59.

¹¹¹ Flint, 52-54.

homes, shops, and workplaces—connected by limited-access roadways.”¹¹² EPA’s goal to decrease current and new sprawl and increase urban renewal has encouraged other federal departments to be involved in the process. The amount of EPA funding available is limited, so its federal partnerships are essential in order to effectively treat as many brownfields as possible and open them up for redevelopment. With 1,000,000 brownfields in the United States alone, the advantages resulting from redevelopment are more than just economic growth. The benefits are the revitalization of ignored communities, a decreasing pressure to develop greenfields, the improvement of social and environmental justice issues, the reduction of environmental risks on public health, and “smart growth” development.¹¹³ The civic movement called “smart growth” refers to a series of policies that state and regional planners employ to deter growth from the greenspace to areas already developed. It is an effort to prevent urban sprawl by maintaining and controlling new and existing development, and supporting the redevelopment of downtown areas, older suburbs, and current residential communities.

The EPA selected Memphis as one of the 27 funded pilots in 1997. The Pilot Program was intended to provide local municipalities, as well as the EPA, with a general idea of how successful this program might be in Shelby County. However in order to effectively ensure the successful implementation of the project, and Shelby County’s future ability to “limit sprawl through reuse of urban industrial properties,” the EPA prompted the development of a non-profit business called the Memphis Brownfields

¹¹² Ibid, 47.

¹¹³ G. Christopher Wedding and Douglas Crawford-Brown, “Measuring Site-Level Success in Brownfield Redevelopments: A Focus On Sustainability and Green Building” (October 2007), *Journal of Environmental Management*, <http://www.sciencedirect.com/> (accessed 27 July 2009).

Restoration Corporation or MBRC.¹¹⁴ The MBRC's objectives include "tak[ing] ownership of abandoned, tax-delinquent industrial properties, conduct[ing] environmental assessments, secur[ing] funds for environmental remediation, undertak[ing] reuse and redevelopment planning, and sponsor[ing] a series of educational forums on brownfields."¹¹⁵ Thus, the MBRC became the principal agent through which any type of future brownfield redevelopment in Memphis would materialize.

Downtown Memphis has had inconsistent economic and social stability since its establishment in 1819. The city gained prominence, as well as overall prosperity, in the middle of the 19th century with the implementation of a navy yard and the Memphis Charleston Railroad. These industrial developments gave Memphis a market for trade, particularly with its newly established "connection to the Atlantic coast."¹¹⁶ As goods like cotton were transported and traded along the Mississippi River, downtown's Front Street quickly became the city's main business center. With the end of the Civil War and the Union Army's establishment of a freedman's camp in Memphis, the city's population grew, as thousands of new black residents migrated to the area, making Memphis the sixth largest city in the United States. The black population continued to rise, and Beale Street became the center of the black community. However by the early 20th century, most whites had left the downtown area to settle in the suburbs. In an effort to bring white residents back, local politicians ineffectually addressed some of the crime and gambling taking place in downtown and around Beale Street. Between 1940 and 1960,

¹¹⁴ "National Brownfields Assessment Pilot: Memphis, TN," The Environmental Protection Agency, <http://nepis.epa.gov/Exe/ZyNET.exe/> (accessed 6 July 2009).

¹¹⁵ National Brownfields Assessment Pilot, 2.

¹¹⁶ "History of Downtown Memphis," Center City Commission, http://www.downtownmemphis.com/domain/about/about_history.asp (accessed 8 July 2009).

the city-wide improvements included an expressway, St. Jude Children's Research Hospital, Stax Records, and the creation of the Memphis National Airport. However the attempts at new city infrastructure and development did not last long, the assassination of Dr. Martin Luther King, Jr. exacerbated all the social issues that Memphis was hoping to ameliorate. After numerous riots incited at the height of the Civil Rights Movement, downtown "had fallen victim to neglect; buildings on virtually every block were vacant; the once-vibrant Beale Street had been boarded up; and the South's grand hotel, the Peabody, had closed."¹¹⁷ In the 1970s, Memphis was diminished by "a deserted city center and scores of empty lots."¹¹⁸

The establishment of the Memphis Center City Commission in 1977 was the city's attempt at solving its problems. The Commission was a 20-member board created "to direct the comprehensive redevelopment of the central business district and act as an official partner between local government and private business in downtown revitalization." Another organization that developed was Memphis Heritage Incorporated, which restored "architecturally and historically significant buildings and neighborhoods."¹¹⁹ The hope was that it would bring new businesses and restore old ones.

In July 1975, the commercial and industrial real estate developer, Jack Belz bought the abandoned Peabody Hotel from the county for \$75,000 and then invested \$24

¹¹⁷ History of Downtown Memphis, 1.

¹¹⁸ Beverly G. Bond and Janann Sherman, *Memphis: In Black and White*, (Charleston: Arcadia Publishing, 2003), 143.

¹¹⁹ Bond and Sherman, 143.

million in its redevelopment to save it from dilapidation.¹²⁰ After six years, the hotel's opening became the beginning of an attempt at a downtown revitalization effort. To effect even more development, Mr. Belz purchased eight downtown blocks to establish a shopping, professional, cultural, and residential area in conjunction with the Peabody. The new development, Peabody Place, consisted of rehabilitated buildings that the city hoped would become "the focal point of the downtown Memphis Renaissance."¹²¹

Even though it was scheduled to debut in 2001, the vision behind Peabody Place had been conceived more than a decade prior. When the Peabody Hotel was completed, it was still completely surrounded by a economically depressed area.¹²² In an effort to revitalize Memphis' lost downtown, he envisioned the construction of new housing, retail shops, and restaurants to attract both local consumers and promote national tourism. And while many community leaders shared his view of reinventing downtown Memphis, many federal and local authorities seemed hesitant about Peabody Place. The process for raising funds for the project began in 1983 when Mr. Belz applied for a federal grant from the U.S. Department of Housing and Urban Development (HUD) to support his project.¹²³ However, over the next three years, Peabody Place would be denied federal support and HUD's Urban Development Action Grant eight times.¹²⁴ The UDAG project

¹²⁰ Ibid, 144.

¹²¹ Robert Sandreth, "Peabody Place: Memphis, TN" (26 February 2008) http://www.deadmalls.com/malls/peabody_place.html (accessed 10 July 2009).

¹²² Deborah M. Clubb, "Old Lame-Duck Hotel Gives Flight to Urban Dream," *The Commercial Appeal*, 8 July 2001, in Memphis and Shelby County Room, Memphis Public Library & Information Center, A1.

¹²³ "Peabody Place Aid Still In Waiting Line at Federal Agency," 31 March 1984, in Memphis and Shelby County Room, Memphis Public Library & Information Center, B4.

¹²⁴ Mary Deibel, "Peabody Place Grant Bid Passed Over Eighth Time," *The Commercial Appeal*, 30 January 1986, in Memphis and Shelby County Room, Memphis Public Library & Information Center, B5.

grants work by leveraging private capital in support of distressed communities' rebuilding projects to help low and medium income residents by generating jobs.¹²⁵ Several setbacks in the application process slowed down the proposal's acceptance, including a bias in the law that favors distressed cities in the North and Midwest that possess substantial amounts of pre-1940 housing."¹²⁶ In order to address this issue, two Tennessee senators, Howard Baker and Jim Sasser, met with the Secretary of HUD, Samuel Pierce, to protest the ineffective progress the application had made at the Federal level. After the meeting, Senator Sasser articulated that despite HUD's best efforts to treat all cities fairly, "the distribution of the grants shows that HUD continues to discriminate against Southern states in this important program."¹²⁷ Finally two years later in 1986, the city of Memphis received a \$9.7 million Urban Development Action Grant.¹²⁸ HUD's chief requirement was that construction for Belz' new project must begin by October 1, 1989.¹²⁹ Initially, Belz estimated that Peabody Place was a \$167 million project that would be divided into two stages, but by 1988, the project's cost was estimated to be closer to \$209 million. Because Belz Enterprises only invested \$10 million of its company's equity into the project, he was required to seek other private financing options. A loan from Wells Fargo Bank of San Francisco coupled with \$170

¹²⁵ Beth Walter Honadle, *Federal Aid and Economic Development in Nonmetropolitan Communities: The UDAG Program*, in JSTOR, <http://www.jstor.org/> (accessed 17 July 2009).

¹²⁶ "Northern 'Bias' Knocks Out Peabody Place," *The Commercial Appeal*, 2 October 1984, in Memphis and Shelby County Room, Memphis Public Library & Information Center, 1.

¹²⁷ "Northern," 1.

¹²⁸ John Branston, "Big Project is Moving, Belz Reports," 26 August 1987, in Memphis and Shelby County Room, Memphis Public Library & Information Center, B7.

¹²⁹ Louis Graham and Jerome Obermark, "Grant Pushes Peabody Place Nearer Reality," 30 September 1988, in Memphis and Shelby County Room, Memphis Public Library & Information Center, A1.

million in tax-free bonds from the Center City Revenue Finance Corporation became the largest sources of contribution to the development.¹³⁰

Locally, there had also been criticism that not enough people could be lured downtown to bring profits to the 300,000 square foot facility¹³¹ and that there was too much risk in building a mall downtown when the majority of the affluent population lived in the suburbs.¹³² The 1999 demographic statistics of the area show that approximately 956,933 citizens lived more than a 30-minute drive from Peabody Place.¹³³ However, Belz insisted that “downtown's viability [was] crucial to the city's economic future.”¹³⁴

When Peabody Place finally did come to fruition in 2001, public excoriation of Belz's choice to include various imprudent, extravagant additions to the Peabody project was evident. For example, Belz wanted to connect the Peabody Place Retail and Entertainment Center and the Peabody Hotel to the parking garage via pedestrian skybridges.¹³⁵ Not only had these skybridges failed in other large metropolitan areas, but there was evidence suggesting that they had impeded the success of street-level retail stores.¹³⁶ The local opponents of these new green glass bridges were members of the Center City Commission's Design Review Board. They hypothesized that the bridges

¹³⁰ Graham and Obermark, A1.

¹³¹ David Flaum, “Center Living Up to The Hype,” 1 December 2002, in Memphis and Shelby County Room, Memphis Public Library & Information Center, A1.

¹³² *In The Nation: Memphis; To Round Out a Downtown Revival, The 300,000- Sp. Ft. Peabody Place*, in Gale Onefile Infotrac: The New York Times, <http://find.galegroup.com/gtx/> (accessed 25 July 2009).

¹³³ “Peabody Place: Union & 2nd St, Memphis, TN,” (Demographic Statistics, Sites USA, September 2009), in Memphis and Shelby County Room, Memphis Public Library & Information Center, 2.

¹³⁴ Clubb, A1.

¹³⁵ *Ibid*, A1.

¹³⁶ Clubb, A2.

would hurt foot traffic, where the majority of downtown growth was believed to be, and the bridges would block downtown views. Belz's rejoinder was that the skybridges offered a sense of security to his consumers. Additionally, Belz wanted to place a jumbotron above Peabody Place between Second and Third Street,¹³⁷ and a giant 20-foot duck atop the 15-story Peabody Place Tower.¹³⁸ There was even concern about one of the vendors in the Entertainment Center, Muvico Theater. Called "the largest and most lavish movie theater in the Mid-South,"¹³⁹ it comprised 3 levels, 22 screens, and 250 employees.¹⁴⁰ Unlike its newest location downtown, the Memphis-based theater company, Malco, had previously only built in suburban areas, and when first asked to become a merchant at Peabody Place, denied the offer because of this factor.¹⁴¹ They had had no other development of this size and type in a completely urban area, so the theater was not guaranteed success. However amidst all the disapproval and delays, Jack Belz "cajoled, threatened and inspired public officials, bureaucrats and bankers into seeing things his way."¹⁴²

Following Peabody Place's opening, safety became an issue. The Retail and Entertainment facility had to implement a dress code to deter the misbehavior and nuisances caused by an overabundance of teens and perceived gang members that

¹³⁷ Wayne Risher, "City To Get Jumbotron; Imagine Times Square," *The Commercial Appeal*, 5 December 2002, in Memphis and Shelby County Room, Memphis Public Library & Information Center, B1.

¹³⁸ Jerome Obermark, "Duck Lands to Top Out Peabody Tower Toady," *The Commercial Appeal*, 31 January 1997, in Memphis and Shelby County Room, Memphis Public Library & Information Center, B5.

¹³⁹ John Beifuss, "Multistory Muvico Touts 22 Theaters, Food, Child Care," 8 June 2001, in Memphis and Shelby County Room, Memphis Public Library & Information Center, E1.

¹⁴⁰ Beifuss, E7.

¹⁴¹ *Ibid*, E3.

¹⁴² Clubb, A1.

frequented the site. The dress code banned stocking caps, excessively baggy clothing, clothing with profanity, and headbands.¹⁴³ Partially due to the number of teens, numerous adults declined to revisit the center.¹⁴⁴ At the Muvico Theater, one adult stated that, “teenagers and children talk, yell and throw food at the screen and each other.”¹⁴⁵ Another thought that, “the mall and theater can be a scary place on weekends.”¹⁴⁶ Moreover, crime was also a deterrent at the restaurant/sports bar, Jillian’s, where unscrupulous people and minors, loitered. When it started to affect the business’ potential customers, Jillian’s was forced to implement a \$5 cover charge to drive away non-spenders.¹⁴⁷ To confront many businesses’ similar concerns, security was heightened with Memphis police officers, not just rented guards. The possibility of even implementing “a special entertainment district police unit” for the area was considered.¹⁴⁸ However due to perceived lack of security, customer turnout was less than expected.

Peabody Place struggled from its opening. The mall had few visitors on weekdays and weeknights, and had to make up for it on the weekends.¹⁴⁹ With generic stores such as Gap and Ann Taylor,¹⁵⁰ Peabody Place did not house unique businesses that would attract the upper and middle class consumers from the surrounding suburbs. These

¹⁴³ Bill Dries and Yolanda Jones, “Peabody Place Fashion Gang Enforces Rules,” 14 March 2003, in Memphis and Shelby County Room, Memphis Public Library & Information Center, A1.

¹⁴⁴ Flaum, A1.

¹⁴⁵ Linda A. Moore, “Peabody Place Officials Insist It’s Safe,” 12 February 2003, in Memphis and Shelby County Room, Memphis Public Library & Information Center, C1.

¹⁴⁶ Moore, C1.

¹⁴⁷ Flaum, G3.

¹⁴⁸ Moore, C2.

¹⁴⁹ David Flaum, “Peabody Place May Try Suites,” *The Commercial Appeal*, 8 March 2008, in Memphis and Shelby County Room, Memphis Public Library & Information Center,

¹⁵⁰ Sandreth, 1.

residents did not want to commute to downtown when they had the same retail shopping and dining restaurants closer to their homes in Germantown, Midtown, and Cordova. Taking 20 years to develop and over \$209 million in public and private funds, Peabody Place is still undergoing renovation. Belz hopes to expand the Peabody Hotel by transforming the top two floors of the Entertainment Center into luxury suites.¹⁵¹ With more stores closing at Peabody Place, Belz is looking to add different types of stores, including outlets, to the mall.¹⁵²

In comparison to the success of the Dallas and Knoxville brownfields, the Memphis brownfield development, Peabody Place, has not been successful. While a tremendous effort and energy went into the project, the development did not materialize as hoped. It was also unclear why Belz had not applied for an EPA Pilot Grant, which proved the crucial component behind the success of the Dallas and Knoxville brownfields. Perhaps, he did not want to include costly green building components into Peabody Place, and perceived his other option, the Urban Development Action Grants, to be a quicker alternative to receiving Federal funding because they are awarded every three months versus the EPA's annual allotments.¹⁵³ Additionally, HUD grants required both fewer prerequisites and long-term federal involvement for a project than the EPA Pilot Grant Program did, and Belz wanted to retain more personal control over his vision. Despite Peabody Place's inadequacies, an important ancillary effect it brought to Memphis was a renewed sense of optimism. Belz hoped to enliven downtown by encouraging local tourism and commercial progress. He wanted to make his project the

¹⁵¹ Flaum, B1.

¹⁵² Flaum, A2.

¹⁵³ "Belz Request For Funding Is Rejected," 31 January 1985, in Memphis and Shelby County Room, Memphis Public Library & Information Center, B1.

center of a unified downtown.¹⁵⁴ And in a sense, he did accomplish this goal, as \$2 billion in additional public and private investment has been contributed to the revitalization of downtown Memphis, particularly with the creation of two major sport stadiums, the Fed Ex Forum, home of the NBA Memphis Grizzlies, and Auto Zone Park, home of the AAA Memphis Redbirds.¹⁵⁵ According to one definition of brownfields redevelopment, a successful brownfield project is one that “works to bring new life to an area.”¹⁵⁶ Therefore even though Peabody Place was only partially successful, its redevelopment has encouraged the revitalization of Memphis’ downtown area since the 1980s and spurred the development of other brownfields in the community, thus indirectly keeping its commitment to sustainable development and urban revitalization.

IV. National Significance and Conclusion

Brownfields have become a significant national issue not only because they are a ubiquitous detriment to environmental stability—“188 cities reported having [...] brownfield sites”¹⁵⁷—but also because they waste communities’ resources by costing billions in tax dollars for management, cleanup, and in the perceived ongoing financial, environmental, and legal liabilities associated with investing in these properties.¹⁵⁸

However, the government is actively working with the EPA and various other federal

¹⁵⁴ “Peabody Place. Downtown is where it’s at,” Belz Enterprises, <http://www.belz.com/shopping/peabodyplace.aspx> (accessed 17 July 2009).

¹⁵⁵ Desiree French, “Jack A. Belz” (2005) <http://74.125.47.132/search?q=cache:QuKFniDI-MwJ:commerce.uli.org> (accessed 2 August 2009).

¹⁵⁶ Anatomy, 1.

¹⁵⁷ Fields of Brown: United States Conference of Mayors Report on Brownfields Redevelopment,” 1 May 2008, in Gale Onefile Infotrac, <http://find.galegroup.com/gtx/printdoc.doc> (accessed 6 July 2009).

¹⁵⁸ Davis, 6.

departments to alleviate some of this liability for owners and potential investors, thereby increasing both the value and the actual number of grants allocated for brownfield assessment and cleanup planning. Currently, over 883 assessment grants and 238 cleanup grants, totaling some \$225 million, have been nationally awarded,¹⁵⁹ making the redevelopment of these sites not only possible, but practical.¹⁶⁰ While reclaiming brownfields has been deemed effective in mitigating the effects of suburban sprawl, there is still much to be done. Despite this, the potential inherent in brownfields redevelopment industry presents a tremendous economic opportunity, most notably in employment and investment. Federal and state-offered economic incentives could encourage interested commercial and industrial real estate developers to explore and speculate in these propitious areas—for example, the Environmental Protection Agency’s Brownfields Economic Redevelopment Program offers communities a viable solution to urban dilapidation. Brownfields redevelopment could revitalize post-industrial communities, enrich citizen interest in both environmental and community planning, and support the local economy by bringing in new businesses. Nationally, it is an environmentally-friendly, economical, and sustainable solution to the adverse consequences of suburban expansion.

¹⁵⁹ Biederman, 1.

¹⁶⁰ Madsen, 1.

