

Brownfield Redevelopment CPI

Liability Issues

John V. Byl

Members

- ▶ Edward Eickhoff, International Council of Shopping Centers
 - ▶ Jeffrey Furton, Michigan Bankers Association
 - ▶ Bhushan Modi, Michigan Association of Environmental Professionals
 - ▶ Grant Trigger, RACER Trust
 - ▶ Anne Couture, MDEQ
 - ▶ Carrie Geyer, MDEQ
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Charge

- ▶ Whether to use grant, loan and Act 381 funds to benefit a party that was not responsible for an activity causing a release, but may be technically liable

Liability Issues

- ▶ Currently there are limitations on the use of grant, loan and Act 381 TIF funds when there is a liable party.
 - Act 381 and Part 196 specifically state that the funds are not to be used to benefit a “liable” party.
- ▶ There have been instances when a party acquired a property for development and the party was technically liable because of a faulty BEA or failure to submit the BEA on a timely basis.
- ▶ There are other instances when an owner is technically liable because of stricter liability, such as corrective action sites under RCRA/Part 111, and PCB contamination under TSCA.

Liability Issues

- ▶ Recommend that grant, loan and Act 381 funds be available to benefit a party that is not responsible for the contamination, regardless of their technical statutory liability.
- ▶ What funding should occur under these programs if a liable party exists? The group recommended prioritizing how funds are made available when a liable party exists.
 - If developer is responsible for an activity causing a release, no funding would be available.

Liability Issues

- If seller is responsible for an activity causing release, due diligence and due care activities of the purchaser/developer would be eligible for grant, loan and Act 381 funding, but additional response activities that would be the obligation of the seller would not be eligible.
- If a viable party exists that is responsible for the activity causing the release, but that party is neither the seller nor the developer, due diligence and due care activities would be eligible for grant/loan/381 funds, and additional response activities would be eligible for loan and Act 381 funds, but not grant funds.
- ▶ This does not change the liability status of the parties involved under applicable State and Federal law. Rather it creates flexibility on access to funding under these programs.

Questions & Answers

Thank you!

John V. Byl

Chair, Michigan Chapter of the NBA

Warner Norcross & Judd LLP

111 Lyon Street NW, Grand Rapids, MI 49503

jbyl@wnj.com