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Intersection of TOD and brownfield development: blueprint for success

One can scarcely pick up a newspaper these days without reading about transit-oriented developments, especially in Denver, which is home to FasTracks, one of the largest and most high-profile transit projects under way in the country.

TODs often are lauded as this decade's slimmed-down, sensible and sustainable alternative to the previous decade's sprawling and overly optimistic real estate developments. Brownfields – abandoned industrial or commercial properties where redevelopment is complicated by the presence or potential presence of hazardous substances, pollutants or contaminants that are located near existing (or future) public transit facilities – can present some of the most enticing and challenging sites for TODs. Given the recent nationwide focus on infrastructure projects to create jobs and stimulate economic growth in communities, marrying redevelopment of brownfields in the TOD context makes sense. This article discusses some of the challenges presented by brownfield TODs and provides some suggestions for surmounting those challenges.

The first step in assessing the viability for any potential brownfield TOD is to identify the potential actors involved and their roles. The owner of the brownfield is often the former user and will be interested in divesting itself of the brownfield while minimizing its liability. In some cases, a local government entity may be the owner of the property. Brownfield developers are real estate companies that specialize in remediating brownfields for a fee so that they can be reused for other purposes. Since most traditional, vertical real estate developers do not have the expertise to remediate brownfields themselves, brownfield TODs likely will involve a separate real estate developer with the know-how and financial resources to pick up where the brownfield developer left off and turn the remediated brownfield into a successful mixed-use product. However, creative developers are now combining both the remediation and development expertise to more effectively coordinate the remediation work with future development opportunities.

Once the actors and their roles are



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identified, the next step in assessing brownfield viability is to determine the extent of any remediation needed and how that remediation will be financed. Environmental contamination typically is assessed by having a qualified consultant complete an

environmental site analysis, which can include Phase I and Phase II elements consistent with applicable ASTM standards, followed by close coordination with the regulating body (like the Colorado Department of Public Health and Environment) to ensure approval for the type and scope of any necessary remediation. Since private lending for brownfield remediation is virtually nonexistent in the marketplace, the actors will need to arrange sufficient financing for any needed remediation from other sources, starting with the property owner or other parties responsible for the contamination. Depending upon the project, the vertical developer may be interested in contributing to the remediation costs. It is often the case that these financing sources will be insufficient to complete the necessary remediation, so government financing options should also be explored.

There are myriad government grants and funding available for brownfields redevelopment, including funds through the Environmental Protection Agency's Brownfields Area-Wide Planning Pilot Programs (the city and county of Denver is a recipient for the South Platte River brownfields area); EPA assessment grants (ranging from \$200,000 to \$1 million); EPA revolving loan funds (provides funding up to \$1 million for each eligible entity to capitalize a revolving loan fund providing subgrants to carry out assessment and/or cleanup for a community); cleanup grants (up to \$200,000 per site for cleanup activities); and job training grants (environmental training for low-income and minority residents from



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communities impacted by hazardous wastes). There is a detailed application process (with deadlines for submission) for each of the EPA grants and funding options.

Importantly, eligible entities for the EPA grants are limited to state, local and tribal governments, general purpose units of local government, quasigovernmental entities, regional council or redevelopment agencies or states and legislatures. As such, for private developers, partnering with government entities can be instrumental to obtain additional funding sources for brownfield TODs. Some examples of other government financing or streamlining that may be available for brownfield remediation are funds provided by other government agencies, urban renewal authorities, states (through Section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act), voluntary agreements between EPA and CDPHE focusing on reutilization and redevelopment of brownfields, and the U.S. Department of Housing and Urban Development Section 108 loan guarantees. Insurance protections, such as the purchase of private cost cap and pollution legal liability policies, are often used by any or all of the parties in the transaction to cap remediation costs and limit exposure to future environmental liabilities.

When determining the remediation necessary and how to pay for it, simultaneously the actors involved in a brownfield TOD should determine the end uses for the project and how construction for those uses will be financed. Gone are the "if-you-build-it-they-will-come" days when developers could entitle and build now and worry about fulfilling revenue projections later. Further, having a project located near a public transportation hub may increase the likelihood of market interest in the finished product but will not

guarantee it. Since many banks still are getting used to underwriting TODs, convincing them of the merits of a brownfield TOD adds to the already difficult challenge of obtaining financing for new commercial construction in this market. Therefore, planning for successful brownfield TODs will need to encompass a design for the end product that is inspirational enough to motivate community members and interest planning departments, based on current market realities and sound fundamentals in order to gain the confidence of lenders and practical enough to attract end users and generate cash quickly. This is especially important in the context of brownfields, where the intended use of a site will determine the most effective cleanup methods to achieve the required level of remediation.

Once actors are identified, remediation is understood and a plan for vertical development is in place, the next step should be cementing that overall plan among all of the actors, especially by integration of the brownfield developer's role with the vertical developer's role. Several prominent local brownfield redevelopments have faltered because they lacked a strong plan for vertical development supported by market fundamentals, end users, lenders and a financially sound and experienced developer. Gaining the cooperation and support of local governments is also crucial, since they can help build public support, help obtain financing and streamline the entitlement and construction process for the developers. Demonstrating a cohesive, integrated plan among the brownfield developer and the vertical developer, along with an exit strategy for lenders and equity partners, will maximize a brownfield TOD's chances of getting off the ground and being delivered according to plan.

These are just a few of the challenges and strategies for dealing with the challenges presented by brownfield TODs. While TODs may hold many of the answers for communities that are looking to marry their desire for smart growth with solutions for their transportation, housing and workforce needs, extra planning, preparation and caution are necessary where brownfields are involved.▲