

Brownfields Study Group

May 23, 2014
9:30 a.m. – 3:30 p.m.

Lyman F. Anderson Agriculture & Conservation Center
(Dane County UW-Extension Office Building)
Room 121-A
5201 Oak Drive Madison, WI 53718

I. Welcome / Introductions / Agenda Repair

Attendees

Dave Misky	City of Milwaukee
Bruce Keyes	Foley & Lardner
John Stibal	City of West Allis
Eric Bott	WMC
Nancy Frank	UW-Milwaukee
Dan Kolberg	DNR
Josh Neudorfer	The Sigma Group
Jodie Peotter	True North Consultants
Scott Wilson	Ayres Associates
Christine Haag	DNR
Mark Thimke	Foley & Lardner
Michael Prager	DNR
Bill Scott	Gonzalez, Saggio & Harlan
Wendy Townsend	City of Green Bay
Darsi Foss	DNR
Mick Skwarok	DNR
Allen Davis	City of Oshkosh
Ben Gramling	16 th Street Community Health Center
Larry Kirch	City of La Crosse
Brynn Bemis	City of Madison
Chris Valcheff	True North Consultants
Michele Norman	DNR
D.J. Burns	Drake Consulting Group
Liz Evans	DHS
Barry Ashenfelter	DNR
Brian Hinrichs	Foth
Shelly Griswold	Fehr Graham
Andrew Savagian	DNR
Erin Gordon	DNR
Jenna Soyer	DNR
Sonya Rowe	DNR
Lanette Altenbach	AECOM
Donna Volk	AECOM

II. Purpose of the Meeting (Darsi Foss, R&R Bureau Director)

III. Economic Impact (Nancy Frank, Chairperson)

Conduct/commission an objective review of the economic impact of Wisconsin's brownfield program over time.

Group has met three times. Members decided to put together some information from secondary sources in other states and from brownfield case studies in Wisconsin to create a near-term working document for Study Group members to refer to. Goal: to communicate with some confidence about the economic impact and beyond (health and social). Nancy handed out a paper.

Group worked on defining the scope of the study. Developing a RFQ or RFP to tell the Study Group the methodology they would use. What are the high priority items? What are the low priority items?

Budget will drive decisions. The group recommends that final study be completed by an independent 3rd party.

How will study be funded? Group would like feedback on that topic. Potential help needed on the fundraising.

On page 4 of handout...this is Nancy's effort (mostly solo) to summarize some of the secondary research. Additionally, a grad student is writing a newsletter piece for the WI Chapter of the American Planning Association and will ask for case studies of brownfield cleanup and redevelopment projects.

Stibal: First-Ring Industrial Redevelopment Enterprise (FIRE) will donate \$5,000. Estimating the project could cost \$45,000-\$50,000.

Frank: A fiscal agent (statewide non-profit, etc.) to manage the funds is needed.

Stibal: WEDA might be that entity to manage the funds.

Keyes: Suggested a member of MVP (Menomonee Valley Partners) on the committee.

Examples for the study from former VPLE and SAG sites. Soyer pointed out some possible data gaps in that source.

Art: Suggested the company that is the state's insurance broker (Aon) as a possible study donor.

Timing of the RFP? Next meeting will focus on finalizing the information piece that will be available later this year. The meeting after that, the work will begin on developing the RFP.

Foss: Will check with EPA for use of some Brownfields money to help toward the study.

IV. Local Government (John Stibal & Sam Tobias, Co-Chairs)

1. Clarify the administrative process counties and cities may use to cancel delinquent taxes under s. 75.365, Stats. instead of using s. 75.105/75.106, Stats., which were developed more for use by private parties.

Type of Recommendation: Administrative

Kolberg: In some cases, counties have been asking cities to use 75.105/106 processes to acquire tax delinquent brownfields. Sections 75.105/106, Wis. Stats., originally created for private entities, not for municipalities. Are there statutory ways available to allow negotiated agreements between counties and municipalities? The group is looking at a model agreement to help facilitate discussions and agreements.

Antaramian: How about allowing municipalities the ability to take the property itself w/o going through the county, to "...cut out the middle man."

Stibal: I like the idea, but counties may miss the revenue.

2. Allow counties to assign judgment of a tax deed without taking title.

Type of Recommendation: Statutory

No Discussion

3. Allow negotiated sale in lieu of bidding for tax delinquent properties.

Type of Recommendation: Statutory

No Discussion

4. Clarify definitions in ss. 66.0119, 75.06, and 75.377, Stats. to prevent environmental pollution, public health threats, waste and blight.

Type of Recommendation: Statutory

No discussion

5. Investigation by exempt LGUs prior to redevelopment, based on planned land use.

Type of Recommendation: Administrative

Reducing the health risk associated with some brownfields that LGU might acquire. Might require some intense outreach to educate the LGU instead of creating some new enforcement. Hence educational and outreach and administrative versus other alternatives.

Kolberg: Cannot stress this enough: LGUs really need to get DNR involved at the start.

Foss: Explained background on LGU exemption and how process works when LGU wants to use a property (e.g., for a park) instead of selling it for private development or putting it in inventory for future use. LGU only needs to address direct contact and if an enclosed building is involved, assess for vapor threats. Not groundwater, etc.

Stibal: Will take Issue 5 back to the group and rework it based on today's comments and suggestions.

V. Liability (Mark Thimke, Chairperson)

1. Create a private cost recovery statute.

Type of Recommendation: Statutory

Harrington: Is there a way to provide an incentive to people who are reluctant to redevelop?

Jason Scott: WEDC sometimes gets calls when an operating business needs to do cleanup if they discover contamination, but they are not redeveloping the site or expanding the business. Enacting something like this could be "business-friendly," to help make it easy for businesses to clean up old contamination.

2. RP access to neighboring property.

Type of Recommendation: Statutory & Administrative

Sometimes this comes up when assessing vapor intrusion pathway off-site. Negotiating access agreements can be difficult. Where do you go from there? Recourse is court warrant, etc. from DNR. This can hold up the process. Group is looking at standard access agreements, etc.

Foss: Real estate disclosure may be part of the reason why people don't want to comply or install a mitigation system.

Liz Evans: If there's a real VI problem, could you offer a mitigation system w/o even sampling?

3. Delete s. 292.35, Stats.

Type of Recommendation: Statutory

Unanimous support for deleting the umpire process.

4. Provide environmental-related incentives to locate businesses on brownfields.

Type of Recommendation: Statutory

No Discussion

5. Recommend improvements to Voluntary Party Liability Exemption (s. 292.15, Stats.).

Type of Recommendation: Administrative

No Discussion

6. Resolve lender exemption issues.

Type of Recommendation: Administrative & Statutory

No Discussion

7. Applicability of the Off-site Liability Exemption (s. 292.13 Stats.) to vapor intrusion.

Type of Recommendation: Statutory

Question: Anything about private party lawsuits?

Thimke: Under discussion and consideration.

8. Under funded, single-purpose LLC and other tools used to shield parties from liability.

Type of Recommendation: None at this time

Don't want to restrict legitimate use of LLC tools, but how do you reign in this sort of use? Will discuss further in the subgroup.

VI. Contaminated Sediment (Mark Thimke)

1. Three different DNR bureaus have jurisdiction on contaminated sediment cleanups. The BSG supports DNR efforts to clarify the roles and responsibilities of the RR, Water and Waste programs.

Type of Recommendation: Administrative

Each bureau may be looking at issue differently. Need DNR programs to come together and clarify the roles and responsibilities.

Antaramian: Look at how to handle dredging in harbors, etc. RR and Water need to figure out how to handle wetland contamination.

Thimke: Promote DNR clarity and integration.

2. Request that DNR clarify definitions of sediment and soil, and resolve any discrepancies between definitions to provide certainty and consistency in demarcation of sediment and soil.

Type of Recommendation: Administrative

No Discussion

3. Develop a clear process for upland redevelopment to occur before sediment remediation is completed.

Type of Recommendation: Administrative

No Discussion

4. Support DNR efforts to develop sediment cleanup standards to provide certainty and consistency.

Type of Recommendation: Regulatory

No Discussion

5. Support DNR efforts to develop a clear, streamlined process for management of sediment spoils in locations other than a licensed landfill.

Type of Recommendation: Administrative

No Discussion

6. Request that DNR address the issues associated with RR GIS Registry and case closure at sediment sites.

Type of Recommendation: Administrative

No Discussion

7. Support the DNR's efforts to modify s. 292.12 Stats. to address sediment cleanups with continuing obligations.

Type of Recommendation: Statutory

No Discussion

8. Request that DNR and BCPL clarify limitations on leasing authority for submerged lands in public trust waters. (i.e. Can BCPL issue a lease for a contaminated sediment cap?) .

Type of Recommendation: Administrative

No Discussion

9. Clarify how Wisconsin property laws regarding riparian ownership and control impact sediment investigations, cleanups and continuing obligations.

Type of Recommendation: Administrative

No Discussion

10. Request that DNR provide guidance to address soil/groundwater vs. sediment sampling in wetlands and smaller aquatic environments.

Type of Recommendation: Administrative

No Discussion

11. Modify VPLE law (s. 292.15, Stats.) to provide a clear path for sediment cleanups to qualify for VPLE to encourage a better and faster sediment cleanup.

Type of Recommendation: Administrative

No Discussion

Lunch

VII. Financial (John Antaramian, Chairperson)

1. Support DNR's efforts to strengthen and stabilize the Environmental Management Account.

Type of Recommendation: Statutory & Administrative

Recommended sending around the fiscal bureau report to the BSG.

2. Establish a new, multipurpose project-based brownfields grant fund managed by DNR.

Type of Recommendation: Statutory & Administrative

What's been successful elsewhere? WEDC covers a lot of bases, but there are opportunities for more. This recommendation seeks to give agency latitude and discretion.

Keep it focused on brownfields and redevelopment.

Frank: What's the difference between what WEDC currently offers and this proposal? Especially with regards to the criteria for selection.

Antaramian: If a community comes in with a site, but no developer ready to go, they could qualify. Job creation is not part of the qualification. You have to clean up the property. WEDC appears to give preference to a developer with jobs on the line to qualify. Also...only available to LGU (could partner with private, but application comes from LGU).

Jason Scott: WEDC may not be opposed to projects where there ISN'T a developer in hand. 90 percent of their projects have a developer in hand, but not all. It's not always about job creation.

Scott Wilson: Complimentary to WEDC programs, right? Would there be a match program? And is there political will to find the money for this in the legislature?

Antaramian: BSG should make the argument and see what happens.

Soyer: The group has considered a biennium review of projects and the focus could change over time, based on needs, etc.

Frank: Consider this: a set of eligibility criteria. Then a sort of lottery as to what gets funded.

Jason Scott: It is becoming rare to do building rehab with WEDC grants.

Donna Volk: There is a gap in the eligibility for some projects through WEDC.

3. Property assessed remediation

Type of Recommendation: Statutory

No discussion

4. BCPL – State Trust Fund

Type of Recommendation: Statutory

Foss: This was done before with the federal revolving loan fund grant to Wisconsin managed as the Ready for Reuse Loan and Grant Program. There is some precedent here.

Antaramian: More study needed on this topic.

5. Brownfield cleanup tax credit

Type of Recommendation: Statutory & Administrative

6. Brownfield cleanup tax deduction

Type of Recommendation: Statutory

5 & 6 might not be worth the time to explore based on state interest / support.

7. TIFs and ER TIFs.

Type of Recommendation: Statutory

Some holes in TIFs when first created. ER TIFs to remedy some of that, but it didn't go far enough. Looking to close those now. Continued study and consideration.

Foss: We could send out a survey to people who have used them for some feedback.

Antaramian: Continue to look at this. Not doing away with it, just looking to improve it. Will keep timelines in consideration.

8. Special fund for VI and lead/asbestos abatement.

Type of Recommendation: Statutory

There are a variety of programs to deal with these to some degree, but no overarching state program. These are expensive to take care of and VI is going to be a big issue. This requires further consideration.

9. Handout from Bruce Keyes: For Financial Group consideration.

Business Improvement Districts (BIDs). Important funding mechanism for redevelopment. Now...the redevelopment area has changed. Proposing a simple amendment to the BID law. To allow for reshaping the BID district without dissolving it first, then redrawing. In Menomonee Valley...BID money is used a lot for marketing, etc. to increase/improve the redevelopment. In Menomonee Valley...the BID actually owns some structures. It is a "...potent redevelopment tool."

What's the brownfields connection? BID has helped drive the Menomonee Valley and 3rd Ward cleanup and redevelopment.

Finance Subgroup will take it up.

VIII. Technical (Scott Wilson & Karen Dettmer, Co-Chairs)

1. Background concentrations

Type of Recommendation: Statutory Administrative Regulatory Financial

Mixture of anthropogenic and atmospheric. EPA tried to sample some of this in the past. In Wisconsin, data skewed to urban areas and contaminated areas.

2. Vapor intrusion

Type of Recommendation: Administrative & Regulatory

What is a reportable “discharge?”

Foss: I suggest a listening session near the end of June, or so, on VI issues? Maybe come back to Dane County UWEX room for that, after the 21-day public review of the sub-slab sampling guidance document.

Thimke: Great uncertainty on this topic.

Keyes: Going forward...building codes to address (mitigation). This should be a “beyond DNR” effort to include other government groups, etc.

Foss: DNR and DHS...and the VIPI. Continue to work on this issue. We’re developing BMPs for communities. Rochester, NY is viewed as a model community for addressing VI. Municipalities and developers need to be partners on this issue.

Thimke: There is a need for communication tools

Foss: Model letters coming and there are new fact sheets.

3. Deed restrictions vs. GIS registry

Type of Recommendation: Administrative

Fassbender: DNR is currently working with EPA to have the GIS registry officially accepted as the alternative to deed restrictions for nearly all cases. Draft acceptance language is currently going through the approval process at EPA.

4. Ch. NR 718, WAC, and Low Hazardous Exemptions

Type of Recommendation: Administrative Regulatory Statutory

Fassbender: This guidance is close to being posted for public review.

Foss: Non-licensed facilities don’t keep/take records.

5. Urban agriculture

Type of Recommendation: Administrative & Regulatory

Gramling: Issue brief has it half right. And are those expectations correct? Are they the right ones to have of someone who wants to be safe on their site?

Liz Evans: During subgroup discussion, the question was raised about whether urban gardens is a brownfields issue? It's an important enough issue because the owner of a brownfield property might want to make property available for a community garden. It's a broad issue and need to work with other groups.

Misky: Thousands of vacant lots in Milwaukee. Don't know where backfill came from. City would be very judicious and cautious.

Foss: Consider that direct contact issues are different than uptake issues.

Broad support in the room for guidance on this issue. Worth the BSG's time to push this issue.

6. Presumptive remedies at historic sites

Type of Recommendation: Administrative & Regulatory

Prager: Gap in DNR authority to manage some of these. What needs to be done with regards to non-licensed landfills that are not part of remediation or going through the building on landfill process?

Keyes: Non-traditional sites and they're not just urban. This is not just a Madison isthmus issue.

Kolberg: Building on abandoned landfill sites – licensed or unlicensed – we have more than 10 years experience reviewing these already. We could capture a decade's worth of decisions to help develop this.

Thimke: How well do we track beneficial reuse and fill material. Land use changes over time. Do we track that?

Foss: Are you recommending that we track that in the GIS system? What legal authority is there to cap a site when there's no soil contamination? It's just in the fill material.

7. Management of PCB contaminated building materials

Type of Recommendation: Administrative

Thimke: Consider this: What's the building material and what's a NR 700 cleanup?

Foss: Recommend further discussion with Waste Program and with EPA. Get people together to resolve jurisdiction issues. Need clarity on this topic.

Foss: Consider providing the Waste program at the DNR with the same authority as in s. 292.55, Stats, to provide liability/technical assistance for a fee.

IX. Waterfront Revitalization (Dave Misky & Bruce Keyes, Co-Chairs)

Continuing Efforts

1. Sustainable Urban Waterfront Revitalization Team (SUWR Team)

Unanimous support for DNR to continue working with various agencies involved in Waterfront issues.

Public Trust Doctrine

1. An evaluation by DNR as to whether a public interest via the Public Trust Doctrine could affect a waterfront redevelopment project should be made as early in the project as feasible before significant investment of resources.

Type of Recommendation: Administrative

No discussion

Public Trust Doctrine

2. Help manage expectations for allowable future uses (i.e. “what can be put where”) on land with a public interest via the Public Trust Doctrine.

Type of Recommendation: Administrative

No discussion

Public Trust Doctrine

3. Provide documented assurance to waterfront project sponsors that DNR has made an evaluation of whether a public interest exists and whether DNR will take action to defend the public interest.

Type of Recommendation: Administrative

No discussion

Public Trust Doctrine

4. When considering a request to approve a bulkhead line or make a finding of public interest prior to the execution of a lease by the board of commissioners of public lands, DNR should follow a consistent, transparent, documented process.

Type of Recommendation: Administrative & Financial

No discussion

Public Trust Doctrine

5. Increase understanding of the Public Trust Doctrine, how it is applied and GIS resources.

Type of Recommendation: Administrative

Harrington: Given the challenges in this area, it's about the best you can do, and it's a good start. Early discussions with DNR are the way to go. Easier process with a city doing a public project, but it gets a lot trickier when it's a private development. Plaintiffs can bring suit even if DNR signs off on project. Support for putting the DNR's "opinion" on this out for a 30-day comment.

Thimke: Waterway classification clarity is needed.

Regulatory Process

1. Internal - Coordination and Clarification on Jurisdiction: Support DNR's efforts to develop a clear, transparent and big picture process for regulating and assisting waterfront projects, with set timelines and intra/interagency coordination.

Type of Recommendation: Administrative

No Discussion

Regulatory Process

2. External – Outreach and Communication: Encourage DNR to develop an outreach program to support waterfront project sponsors.

Type of Recommendation: Administrative & Financial

No discussion

Regulatory Process

3. Change the paradigm and give DNR the charge to be proactive on waterfront revitalization projects through legislative direction.

Type of Recommendation: Legislative & Financial

Keyes: Group could use some feedback here. Go with the New York model? Something more scaled back? NY is a comprehensive program.

Stibal: Go for it. Big problem. Try to tackle it in a comprehensive manner, like New York.

Foss: We're a state of waterfronts. Very few communities don't have a river or a lake associated with them.

Aging Infrastructure

1. Request that DNR provide clear, consistent direction regarding removal and/or replacement of seawalls or other structures.

Type of Recommendation: Administrative

No Discussion

Aging Infrastructure

2. Request that DNR examine how to accommodate natural coastal processes while protecting the public capital investment in breakwaters and wave

attenuation structures.

Type of Recommendation: Administrative & Financial

No discussion

Aging Infrastructure

3. Request that DNR explore ways to better coordinate with Army Corp of Engineers.

Type of Recommendation: Administrative

Thimke: There are a lot of old navigation channels. Could there be a recommendation to inspect old channels and decommission those that deserve it?

Keys: Would that be done legislatively? Would there be a wholesale inventory and updating of navigable channels?

Foss: Just DNR or other state agencies involved?

Keys: Other agencies that the issue touches on. DOA. DOT.

Foss: Suggest language change to reflect "state" and not just "DNR."

Aging Infrastructure

4. Request that DNR provide clarity on cross-program issues related to dams.

Type of Recommendation: Administrative

Keys: Should there be a meeting with DNR administration to go over these issues and the Big Picture issue of waterfront / DNR programs?

Foss: Yes, a meeting should be scheduled.

X. Next Steps

Subgroups will further develop recommendations / issue papers

Narrative write-ups due later this summer

DNR Staff will send around a Doodle poll for a next meeting and the next round of review

XI. Adjourn