

# Environmental Due Diligence, Issues, and Liability in Property Transactions

*and some financial assistance for brownfield site redevelopment*

**Mel Pins – Iowa DNR**



# Environmental Due Diligence, Issues, and Liability in Property Transactions

- What is Required? What is Not?
- Groundwater Hazard Statement
- Phase I / II Environmental Site Assessments
- Follow-up for Cleanup
- Brownfield Redevelopment Resources



# Environmental Due Diligence, Issues, and Liability in Property Transactions

- Iowa Law does not require environmental site assessments (ESAs) prior to a property transfer
- Only requirement is ‘groundwater hazard statement’
- Purchasers, attorneys, lenders often want environmental assessments to ensure site is “clean” prior to purchase and to limit their environmental liability and risk



# Groundwater Hazard Statement Changes

- Only required environmental review during property transaction in Iowa Law
- Disclose known wells, solid waste, hazardous waste, underground storage tanks, private burials, and septic systems.
- “Best of My Knowledge”
- Filed with all Declaration of Value Property Transfers



# Groundwater Hazard Statement Changes

- July 1, 2022 Law Changes
- Groundwater Hazard Statement only filed with warranty deed if known conditions are present
- If no known conditions, general language in transfer deed
- DNR will not tell you if you need to disclose
- DNR has developed a 'checklist' guidance document for evaluating potential environmental conditions



**New  
Groundwater  
Hazard  
Statement**  
*(reference on  
deed when no  
known  
conditions)*

Prepared by/return to: [REDACTED] Des Moines, IA 50311; 515-205-2158  
Address Tax Statements: [REDACTED] Des Moines, IA 50315

GENERAL WARRANTY DEED

For the consideration of One Dollar(s) (\$1.00) and other valuable consideration,

[REDACTED],  
an Iowa nonprofit corporation ("Grantor")

does hereby convey to

[REDACTED]  
an Iowa limited liability company ("Grantee")

the real estate in Polk County, Iowa described as follows:

Lot 16 in Block 22 in [REDACTED], an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa ("Real Estate").

Subject only to the easements, covenants, and restrictions of record.

Grantor does hereby covenant with Grantee, and successors in interest, that Grantor holds the Real Estate by title in fee simple; that Grantor has good and lawful authority to sell and convey the Real Estate; that the Real Estate is free and clear of all liens and encumbrances except as may be above stated; and Grantor covenants to warrant and defend the Real Estate against the lawful claims of all persons except as may be above stated. The undersigned hereby relinquishes all rights of dower, homestead, and distributive share in and to the Real Estate.

There is no known private burial site, well, solid waste disposal site, underground storage tank, hazardous waste, or private sewage disposal system on the Real Estate as described in Iowa Code §558.69, and therefore the transaction is exempt from the requirement to submit a Groundwater Hazard Statement.

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, according to the context.

# New Groundwater Hazard Statement *(known conditions)*



## GROUNDWATER HAZARD STATEMENT

ATTACHMENT #1

### NOTICE OF WASTE DISPOSAL SITE

**a. Solid Waste Disposal (check one)**

- There is a solid waste disposal site on this property, but no notice has been received from the Department of Natural Resources that the site is deemed to be potentially hazardous.
- There is a solid waste disposal site on this property which has been deemed to be potentially hazardous by the Department of Natural Resources. The location(s) of the site(s) is stated below or on an attached separate sheet, as necessary.

**b. Hazardous Wastes (check one)**

- There is hazardous waste on this property and it is being managed in accordance with Department of Natural Resources rules.
- There is hazardous waste on this property and the appropriate response or remediation actions, or the need therefore, have not yet been determined.

Further descriptive information:

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**I HEREBY DECLARE THAT I HAVE REVIEWED THE INSTRUCTIONS FOR THIS FORM AND THAT THE INFORMATION STATED ABOVE IS TRUE AND CORRECT.**

Signature: \_\_\_\_\_ Telephone No.: \_\_\_\_\_  
(Transferor or Agent)

# Pre-Purchase Environmental Site Assessments – Phase I

- Non-invasive assessment of site conditions on and nearby property
- Visual inspection of property
- Review of environmental records for site/area
- Research into past uses/activities at site/area
- Evaluation of all data to determine if there are “recognized environmental conditions” (RECs) that could be cause for concern
- Use ASTM standard E1527-21
- Not likely to cause any liability concerns for current owner
- If further investigation of RECs is warranted, a Phase II is usually recommended





# Pre-Purchase Environmental Site Assessments

## – Phase II

- Phase II is actual soil, groundwater, or indoor air vapor sampling
- Used to confirm if contamination actually there
- Phase II leads to questions of “What do these results mean?”
- Regulatory Review: Can open unintended consequences
- Must report Phase II findings if hazardous condition evident
- No liability for prospective purchaser
- May be partial liability for current owner



# Directives for Further Assessment & Cleanup –

- DNR may direct current owner or responsible party to conduct further assessment for ‘nature and extent’
- DNR may direct owner/RP to conduct remediation or mitigation if they caused or have exacerbated the issue
- DNR may also state “as is - no further action warranted at this time”
- No warranties for future use or liability protections for others



# Voluntary Cleanup Program & Liability Warranty

## – *Iowa Land Recycling Program (LRP)*

- Current owner, buyer, or non-responsible party may enroll a contaminated site into the LRP
- Enrollee conducts full assessment, risk review, and implements DNR approved remedial or mitigation actions
- Enrollee obtains ‘use designation’ certification from DNR for residential or non-residential use goals
- Completion certificate, and any environmental covenants recorded on deed
- Liability protection transferable to future owners



# ***Iowa DNR Brownfield Redevelopment Program - What is a brownfield:***

- Former industrial/commercial properties
- Abandoned or continually available for sale/lease
- Site has a “reputation” that it is contaminated (*often not warranted*)
- Issues of asbestos materials, buried tanks, waste disposal, etc. causes lack of interest in purchase, liability concerns
- Brownfields are a “syndrome” rather than a regulatory determination





# Iowa DNR Brownfield Redevelopment Program (for non-profits and local governments)

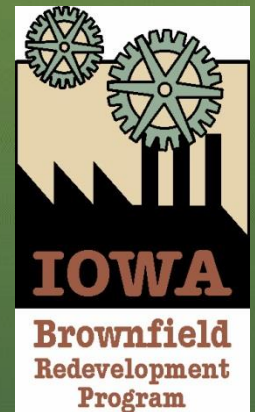
- Consultation on Environmental Issues/Liability at Brownfield Sites
- Technical and Financial Assistance for Site Assessments / Cleanup (up to \$25K for assessment and 75% of cleanup up to \$25K)
- Identify additional partner resources and assistance available
- Help the Community Move Brownfield Sites from Obstacles, into Opportunities!
- Funded from an EPA Grant that IDNR Receives



# What Is Required of the Community?

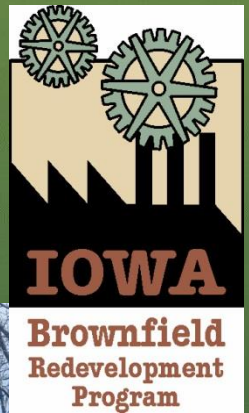
Communities should identify a key brownfield site they wish to acquire and redevelop with at least one of the following reuse options:

- 1) resale for redevelopment, and creation of tax base and jobs;
- 2) a public reuse of the site of significant value to the community (e.g. - new library); or
- 3) creation of improved greenspace, recreational use, or natural habitat restoration



# Brownfield Redevelopment Success Stories: *Turning Obstacles into Opportunities*

2022 – Varsity Theater, Des Moines (Polk Co.)

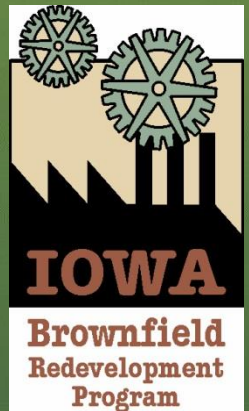


Last single-screen movie theater in Des Moines closed (1938-2018)



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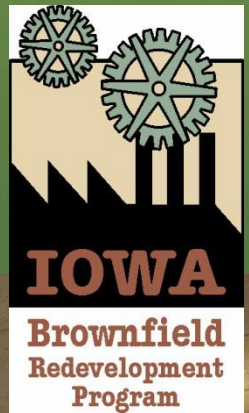
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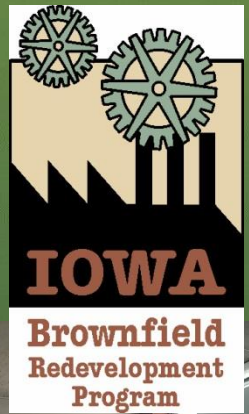
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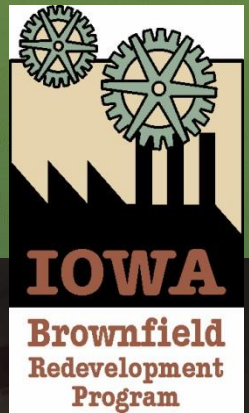
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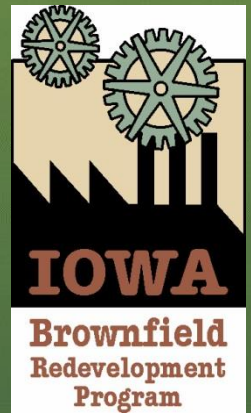
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- \$65,000 estimated cost remove asbestos materials
- DNR assisted with Phase I ESA and asbestos abatement grant (\$28,500)

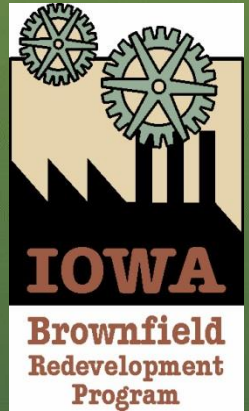
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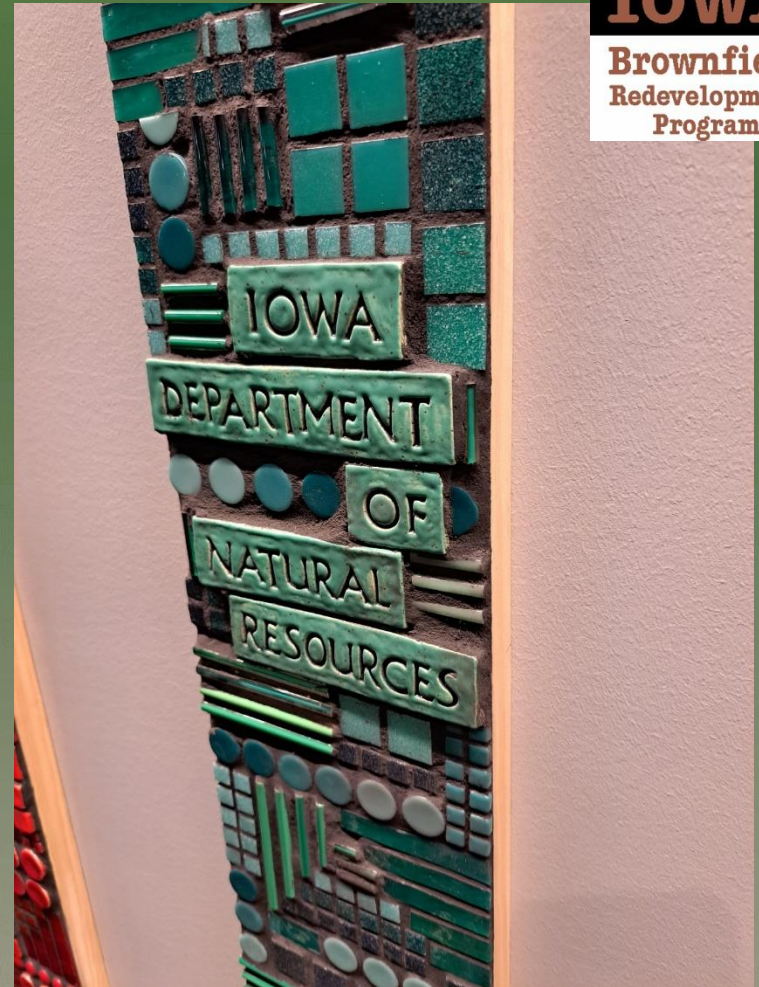
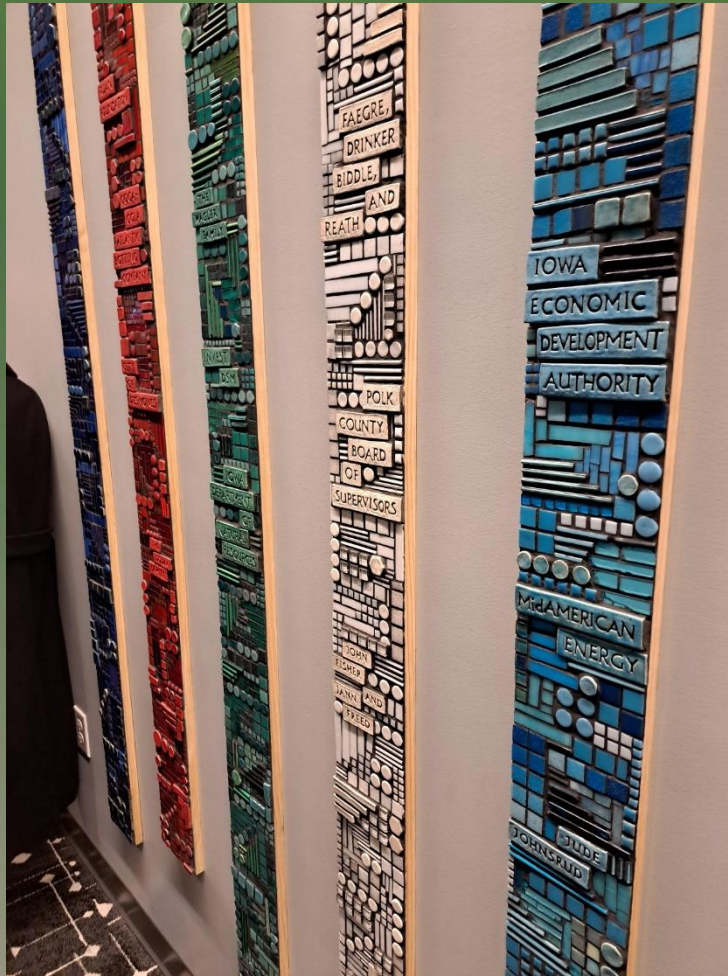
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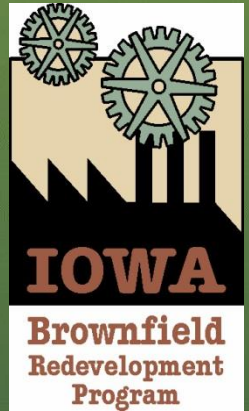
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**Partnering! Confidence! Success!**

# Iowa Economic Development Authority

## - *Redevelopment Tax Credit for Grayfield / Brownfields*

- Reimbursable Tax Credit for Site Redevelopment Expenses, up to \$1.5 million! – for private & non-profit developers
- Targeted to sites sitting latent, vacant, abandoned, where conditions have dissuaded others
- \$15M available annually – apply end of August, approvals/contract by January 1st
- Eligible Expenses can include purchase, engineering/design, renovation, and new constructions
- 30 months to complete and claim tax credit from date of award contract

# Iowa Economic Development Authority

## - *Redevelopment Tax Credit for Grayfields*

- ‘Grayfields’ – vacant, underutilized, empty
- 12% tax credit



# Iowa Economic Development Authority

## - *Redevelopment Tax Credit for Brownfields*

- ‘Brownfields’ – vacant, underutilized, empty AND environmental assessment, cleanup, or abatement cost challenges that are significant
- 24% tax credit (*not just for environmental costs, but applied to all redevelopment costs*)



# Iowa Economic Development Authority

## - *Redevelopment Tax Credit for Grayfields / Brownfields*

- Applications are reviewed/scored by Advisory Committee – Recommendations for award to IEDA Executive Board
- Grayfield or Brownfield – Challenges should be Clear!
- Applicants should demonstrate:
  - Financial need
  - Capability/feasibility
  - Quality/character of project



Warrior Hotel, Sioux City - \$1M award

# Questions? Projects? Scenarios?

*For environmental regulatory inquiries, or to discuss a community-led brownfield redevelopment project where we can assist:*

**Mel Pins**

**Brownfield Program / Contaminated Sites Section**

**Iowa Department of Natural Resources**

**515-729-4616**

***mel.pins@dnr.iowa.gov***

