



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

CONNECTICUT AND
SUBURBAN NEW YORK CHAPTER

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As Chair of the Public Affairs Committee of The Connecticut and Suburban NY Chapter of NAIOP, Commercial Real Estate Development Association, and on behalf of our chapter President Brian Brennan, I write to comment on Raised Bill 6526, An Act Concerning Brownfield Remediation and Development as an Economic Driver. NAIOP supports this bill but with critical deletions to subsection 17(b), removing restrictions on the number and types of brownfields that can take advantage of the program.

Our chapter members, owners and developers of and investors in commercial, industrial, and mixed use properties, are keenly aware of the burden imposed on Connecticut by contaminated properties that are lying boarded up, idle, or under-utilized. Public resources to clean up these sites are increasingly scarce and, if not cleaned up and redeveloped, these sites pose a threat to the public's health and the environment. As these sites lie unremediated and idle, opportunity is lost for job creation and enlargement of the tax base. ***Private sector developers are ready and willing to step in to clean up and redevelop these Connecticut properties at their own expense as they have in other states.*** We view these sites through the lens of fundamental real estate "basics": if they make economic sense as clean properties they generally make sense as remediated properties. Cleaning them up will "level the playing field" for these sites with competing "Greenfield" properties, and will result in job creation and increases to the tax base. ***The liability system in Connecticut, however, has prevented developers from remediation and redevelopment of contaminated properties: it is not only cumbersome administratively, it imposes liabilities on innocent purchasers for conditions they did not create and saddles them with unending liability.***

With the changes I mention below, Section 17 of Raised Bill 6526 would remove these impediments to brownfield development in Connecticut. Specifically, and most fundamentally, this section would allow brownfield developers to take ownership of these sites and assume liability only to the extent of cleaning up the property itself -- while being released from the obligation to "chase" any possible off-site contamination. The developer would retain the obligation currently in place under state law to report to the Department of Environmental Protection any significant environmental hazard found to be migrating off-site. Further, those taking advantage of this program by taking ownership of brownfields that meet the definition of an "establishment" under the Connecticut Transfer Act, would not be required to enter the Transfer Act Program. Finally, upon approval of the remediation, DEP would be required to issue a "Notice of Completion of Remedy / No Further Action" letter, providing a critical end point to the process and releasing the developer from further state liability with respect to approved cleanup conducted under the program.

Regrettably, the vast majority of the beneficial impacts of this section would be defeated by portions of subsection (b) of section 17 which impose limitations and subjective uncertainties into the program that would continue to put Connecticut at a disadvantage as a place to conduct brownfield redevelopment, relative to other states. This clause contradicts the spirit of the rest of the section that reflects the philosophy that cleaning up any brownfield, no matter what size or location, positively advances the environment and the economy, and should be enthusiastically encouraged, not restrained. As a further constraint, a second clause in subsection (b) would limit the program to 20 properties per year. These limitations will prejudice smaller brownfield sites and impose a “beauty contest” based on subjective factors for even the larger sites: the kind of speculative and time-consuming contest that drives developers to less risky projects.

NAIOP urges our state legislators to support Raised Bill 6526 with removal of the restraints imposed in subsection 17(b).

NAIOP and Brownfields:

With about 15,000 members, and comprised of owners, investors, and developers of commercial, industrial, and mixed use real estate, NAIOP Commercial Real Estate Development Association is the nation’s largest commercial real estate trade organization. In my professional life I am a partner in the Stamford, Connecticut office of Wiggin and Dana LLP where I lead the firm’s climate change and sustainable development practice and my practice encompasses advising clients on the remediation and redevelopment of contaminated properties. In his business life our chapter President Brian Brennan serves as Director of Equity Investments for Allianz of America, a holding company located in Westport, Connecticut which provides investment services to insurance affiliates of the Allianz Group of North America.

NAIOP has a strong and committed interest in advancing the principals of environmentally sustainable development throughout the nation, and has played an important role in advancing the responsible remediation and redevelopment of Brownfield properties. For example, NAIOP was a leader in advocating enactment of the 2002 Small Business Liability Relief and Brownfields Revitalization Act that provided for liability relief from the federal “Superfund” law (otherwise known as the Comprehensive Environmental Remediation, Compensation, and Liability Act, or CERCLA) for innocent landowners and bona fide prospective purchasers. I acted as the NAIOP national organization’s representative on the 25 member committee appointed by the U.S. Environmental Protection Agency that negotiated EPA’s “all appropriate inquiry” (AAI) regulations. These regulations govern the investigatory diligence efforts such innocent landowners and bona fide prospective purchasers of contaminated properties must undertake to obtain protection from CERCLA liability.

If you have any questions in this regard, please contact me at, 203 363-7670, btrilling@wiggin.com