

Evaluating the Chicago Brownfields Initiative: The Effects of City-Initiated Brownfield Redevelopment on Surrounding Communities

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I. INTRODUCTION

¶1 During the late 1970s and early 1980s, increasing public awareness about environmental issues prompted a flurry of congressional activity directed at cleaning and protecting the environment.¹ One of the pieces of legislation passed during this period was the Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as Superfund or CERCLA.² CERCLA, which is administered by the United States Environmental Protection Agency (U.S. EPA), established stringent standards for the type of cleanup required at contaminated properties and made a wide range of parties liable for the cost of remediation at those sites.³ Under the CERCLA liability scheme, former, current, and future owners or operators of property may be held responsible for cleaning the site,⁴ and this liability adheres to the party regardless of whether they caused the contamination.⁵ While CERCLA provided the government with a powerful set of tools for remediating contaminated property, it resulted in other, less desirable consequences as well. CERCLA's wide net of liability, in combination with the potential for extremely high cleanup costs, resulted in thousands of contaminated sites across the country languishing in disuse for fear of the costs they carried with them.⁶ These sites became known as brownfields. The costs of continued disuse of these sites could be immense. Such inactive, unutilized properties not only result in environmental and human health problems, loss of tax revenue, and the overuse of greenfields (undeveloped suburban land), but also contribute to the growing problem of inner-city blight—brownfields are linked to increased crime rates, foster a pervasive sense of poverty and hopelessness, and serve as a conspicuous symbol of the decline of the urban, poor, and minority neighborhoods in which they are concentrated.⁷

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¹ Gabriel A. Espinosa, *Building on Brownfields: A Catalyst for Neighborhood Revitalization*, 11 VILL. ENVTL. L.J. 1, 6-7 (2000).

² Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767 (codified as amended at 42 U.S.C. §§ 9601-9675 (2000)).

³ Shari Shapiro, *The Effectiveness of Pennsylvania's Act 2: Are Good Mechanisms Enough?*, 24 TEMP. J. SCI. TECH. & ENVTL. L. 441, 445 (2005). The remediation, or cleanup, of such sites consists of decontaminating the land by reducing the volume, toxicity, or mobility of hazardous substances. ROBERT V. PERCIVAL ET AL., ENVIRONMENTAL REGULATION: LAW SCIENCE, AND POLICY 224-26 (2003).

⁴ Emily A. Green, *The Rustbelt and the Revitalization of Detroit: A Commentary and Criticism of Michigan Brownfield Legislation*, 5 J.L. SOC'Y 571, 578 (2004).

⁵ Espinosa, *supra* note 1, at 7.

⁶ Shapiro, *supra* note 3, at 446-47 (noting that the cost of remediation may be far higher than the value of the land, causing landowners to set aside the land for future use or virtually abandon their properties).

⁷ Joel B. Eisen, *Brownfields of Dreams?: Challenges and Limits of Voluntary Cleanup Programs and*

¶2 In response to this unintended consequence of CERCLA, both the federal government and state governments enacted legislation to encourage the remediation and redevelopment of brownfields. The federal response was in the form of amendments to CERCLA that lower cleanup standards in some cases, provide liability protection for certain parties, and provide financial and tax-based incentives to municipalities and developers to reuse brownfields in targeted areas.⁸ States have in turn passed their own brownfields legislation to attract developers to brownfields and to take advantage of federal funding. Such state programs, which are coordinated and administered by state-level environmental agencies such as the Illinois Environmental Protection Agency (IEPA), work within the framework of CERCLA, as well as supplement this federal legislation. Common features of state brownfields legislation include a voluntary, streamlined permitting and remediation process with risk-based cleanup standards and state oversight, a requirement for some level of public participation in the process, and technical and financial incentives to proceed with redevelopment.⁹ While the core of the legislation surrounding brownfields is at the federal or state level, it is largely up to private developers or municipalities to take advantage of the programs and incentives created by this legislation. Within this public-private scheme, local governments and community organizations must play a key role in redevelopment projects that the private sector alone would not pursue because of the questionable return on their investment.¹⁰

¶3 The City of Chicago has taken an active role in such redevelopment projects by creating its own Chicago Brownfields Initiative. The Chicago Brownfields Initiative was established in 1993 and is based on the premise that in many cases, public resources are necessary to return brownfield sites to productive use.¹¹ Through a process of acquiring, cleaning, and coordinating the redevelopment of brownfields, Chicago claims to have succeeded in reversing the urban blight associated with brownfields by transforming them into industrial facilities, green space, affordable housing, and technical and manufacturing centers in some of the City's most challenging areas and economically disadvantaged neighborhoods.¹²

¶4 Chicago's Brownfields Initiative (the "Initiative") has completed or is in the process of completing over 40 site-remediation and redevelopment projects, and the general consensus appears to be that the Initiative has successfully spurred redevelopment and reuse of sites that otherwise would have sat vacant and unproductive.¹³ An examination

Incentives, 1996 U. ILL. L. REV. 883, 894-95 (1996).

⁸ *Id.* at 987-88.

⁹ *Id.* at 915-21.

¹⁰ Illinois Brownfields Initiative, Frequently Asked Questions, Bureau of Land, <http://www.epa.state.il.us/land/brownfields/faq.html> (last visited Aug. 6, 2008) (stating that unlike private businesses, local governments are responsible for promoting the health and well being of their communities, and they play a key role in redevelopment projects that the private sector would not undertake on its own).

¹¹ Chicago Brownfields Initiative, <http://egov.cityofchicago.org> (follow "City Departments" hyperlink, then follow "Environment" hyperlink, then follow "Brownfields Initiative" hyperlink, then follow "Success Stories" hyperlink, then follow "Chicago Brownfields Initiative: Recycling Our Past, Investing in Our Future" hyperlink) (last visited Aug. 6, 2008); *see also* About the Brownfields Initiative, <http://egov.cityofchicago.org> (follow "City Departments" hyperlink, then follow "Environment" hyperlink, then follow "Initiatives & Programs" hyperlink, then follow "Brownfields Initiative" hyperlink) (last visited Aug. 6, 2008).

¹² Chicago Brownfields Initiative, *supra* note 11, at 1.

¹³ Telephone Interviews with Mike Charles, Brownfields Coordinator, Illinois Environmental Protection

of the program's results indicates that Chicago's Brownfields Initiative has created and retained jobs, objectively increased the quality of life in surrounding communities, provided housing stock, prompted some additional investment, increased nearby property values, improved environmental health and safety, and provided valuable services to communities.

¶5 However, enthusiasm regarding these successes must be tempered by a series of more critical questions. Do the jobs, services, and amenities created at brownfield sites actually benefit the communities in which they are placed? Is redevelopment causing gentrification and pushing out the original community? Is the community's reaction even being measured? Are the technical and institutional controls put in place to protect environmental and human health sufficient? Do lowered cleanup standards lock sites into one type of use that may not always serve the needs of the community? In sum, has the Chicago Brownfields Initiative made the leap from redevelopment to actually alleviating economic and social problems?

¶6 This Comment seeks to examine whether and why (or why not) Chicago has succeeded in its goal of improving the City's environmental and economic health and thereby positively affecting the communities in which brownfield redevelopment has occurred. It begins with a description of federal, state, and local brownfields programs and then moves on to explore the many successes and the potential downfalls of Chicago's Brownfields Initiative, the reasons behind them, and the opportunities for improvement of the program.

II. THE LEGISLATIVE BACKGROUND OF BROWNFIELDS

A. *The Unintended Consequences of CERCLA*

¶7 Congress enacted CERCLA on December 11, 1980 with the dual intentions of cleaning the environmental contamination caused by hundreds of years of hazardous waste pollution and preventing future contamination.¹⁴ While it has been altered and amended numerous times, CERCLA's basic structure remains largely intact today and can be described as a combination of four basic sections. First, CERCLA provides for a federal right to gather information on the environmental status of land or entities as well as outlines a procedure for gathering such information.¹⁵ Second, CERCLA grants governmental authority to clean up hazardous contamination.¹⁶ Third, it establishes a funding mechanism to pay for such government cleanups, dubbed the Superfund,¹⁷ and fourth, it sets up a liability scheme to hold parties associated with contaminated land responsible for the costs of cleanup.¹⁸ Unfortunately, despite the good intentions and extensive planning behind CERCLA, over the course of the next decade it became apparent that the structure of this groundbreaking piece of environmental legislation resulted in a second set of social and environmental problems across the country.¹⁹

Agency (Oct. 3, 2006), Dave Graham, Environmental Engineer, City of Chicago Department of the Environment (Oct. 11, 2006), Keith Harley, Director, Chicago Environmental Law Clinic (Sept. 27, 2006), and James Van der Kloot, Region V Brownfields Coordinator, U.S. EPA (Oct. 10, 2006).

¹⁴ Shapiro, *supra* note 3, at 441.

¹⁵ PERCIVAL ET AL., *supra* note 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Shapiro, *supra* note 3, at 443.

¹⁹ *Id.*

¶8 The section of CERCLA that has proved the most controversial is its broad liability scheme.²⁰ Under CERCLA, the federal government has the authority to (1) sue potentially responsible parties upon discovery of contamination and force them to clean or pay for the cleanup, or (2) remediate a property and then sue potentially responsible parties for reimbursement of the cleanup costs.²¹ The potentially responsible parties (PRPs) under the CERCLA liability scheme include (1) owners of the land at the time the contamination occurred, (2) operators of the contaminating facility, (3) generators of the waste that caused the contamination, (4) parties that arranged for the contaminant's disposal at or transport to the land, and (5) current owners of the land and operators of facilities thereon.²² CERCLA's liability is joint and several and traditional causation requirements are relaxed so that each of these PRPs, regardless of whether they actually caused the contamination, can be held liable for the entire cost of cleanup at a CERCLA site.²³ These cleanup expenses can be immense. The remediation of properties contaminated with hazardous waste is complex and costly, and the cost of the cleanup is often more than the value of the land.²⁴

¶9 CERCLA's broad definition of PRPs and strict cleanup standards, combined with the high cost of remediation, substantially deterred the development of any land that even seemed as though it might harbor some form of contamination.²⁵ Current owners of such properties are often either unable to afford the environmental cleanup or concerned that even if they undertake some remediation, they may still be liable for additional claims by the U.S. EPA because an owner-initiated cleanup of a site does not guarantee freedom from government action with respect to the site. The owner-initiated cleanup must meet the strict standards for CERCLA remediation, and if it does not, additional cleanup may be required.²⁶ Consequently, owners may fear that undertaking a cleanup will draw attention to a site and result in an extended and expensive remediation process beyond what they initially planned. Further, potential purchasers and developers fear that if they acquire property and later discover the land is contaminated, they will assume all of the responsibility for cleaning the pre-existing contamination.²⁷ There is also a well-founded fear of liability on the part of lenders that prevents the extension of loans on such properties.²⁸ Thus, CERCLA had the unfortunate consequence of actually discouraging cleanup and redevelopment of many potentially contaminated properties, causing owners to "virtually abandon" these properties, leaving them dormant and unproductive.²⁹

¶10 These mothballed sites are termed "brownfields" and are defined by the U.S. EPA as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant."³⁰ The sites are, most commonly, abandoned industrial facilities,

²⁰ *Id.* at 445.

²¹ *Id.* at 444.

²² PERCIVAL ET AL., *supra* note 3, at 224-26.

²³ *Id.*

²⁴ Shapiro, *supra* note 3, at 446.

²⁵ Eisen, *supra* note 7, at 899.

²⁶ Shapiro, *supra* note 3, at 446.

²⁷ Eisen, *supra* note 7, at 901.

²⁸ *Id.* at 911 (stating that recent cases have found that "sufficiently involved" lenders may be liable for CERCLA cleanup costs).

²⁹ Shapiro, *supra* note 3, at 447.

³⁰ Small Business Liability Relief and Brownfields Revitalization Act, 42 U.S.C. § 9601(39)(A) (2000).

warehouses, and other commercial properties such as former gas stations and dry cleaners.³¹ Brownfields tend to be concentrated in older, predominantly minority and low-income neighborhoods from which manufacturers and businesses have fled and in which market forces will not prompt redevelopment.³² Such neighborhoods are faced with numerous social and economic issues, and empty and unproductive brownfields carry with them a host of problems that contribute to an overall condition typically described as blight.³³

¶11 The list of ways in which brownfields harm a neighborhood is extensive. The depressed marketability of the real estate discourages redevelopment that would provide jobs and services for area residents.³⁴ The sites are potential sources of health problems and drinking water contamination.³⁵ The vacant properties are breeding grounds for crime, venues for drug use, and sites for illegal dumping.³⁶ Cities are deprived of the property tax revenues that productive use of the land would provide, lessening the pool of funds available to provide services and education to citizens.³⁷ The sites are unattractive, discourage investment in surrounding properties, and contribute to an insidious bleakness in the neighborhood.³⁸ While many of these costs are not easily quantified, they are real, and they are potentially quite large.³⁹

B. Responses to the Brownfields Problem

¶12 In order to address this costly unintended consequence of CERCLA, both the federal government and the states have enacted legislation to encourage the remediation and redevelopment of brownfields.⁴⁰ At the federal level, Congress amended CERCLA in 2002 to extend protections from liability to prospective purchasers of certain sites, to relieve some small business owners from CERCLA liability, and to increase funding for state and local programs for the assessment and remediation of brownfields.⁴¹ Additionally, the U.S. EPA now enters into agreements with states to ensure that they

³¹ NAT'L ENVTL. POLICY INST., BEYOND BROWNFIELDS: IDLE LAND, SUBURBAN SPRAWL, AND THE LAW 6 (1995).

³² Eisen, *supra* note 7, at 910-15. There are fewer brownfields in "better" areas of cities because (1) businesses tend not to leave such areas in the first place, and (2) it is often worth a developer's effort to undertake a cleanup and redevelopment in an area of the city that will eventually yield a return on his or her investment.

³³ Christopher De Sousa, Residential Development Activity on Urban Brownfields in Milwaukee and Chicago: An Examination of Redevelopment Trends, Developer Perceptions, and Future Projects 8 (2006) (working paper, Dep't of Geography, Brownfields Research Consortium, Ctr. for Econ. Dev., Univ. Wis.-Milwaukee). Though the concept of blight does not have a single, universally-accepted definition; high crime rates, turnover in residency and commercial occupancy, drug trafficking, and overall unkempt buildings are often the characteristics associated with blighted areas. Sarah Sparks, Note, *Deteriorated vs. Deteriorating: The Void-For-Vagueness Doctrine and Blight Takings* *Norwood v. Horney*, 75 U. CIN. L. REV. 1769, 1788 (2007).

³⁴ Eisen, *supra* note 7, at 910-15.

³⁵ Eisen, *supra* note 7, at 895 n.41 (citing CHARLES BARTSCH & ELIZABETH COLLATON, NORTHEAST-MIDWEST, INST., COMING CLEAN FOR ECONOMIC DEVELOPMENT 1, 2 (1996)).

³⁶ Eisen, *supra* note 7, at 895.

³⁷ Douglas A. McWilliams, *Environmental Justice and Industrial Redevelopment: Economics and Equality in Urban Revitalization*, 21 ECOLOGY L.Q. 705, 717 (1994).

³⁸ Eisen, *supra* note 7, at 894-95.

³⁹ *Id.* at 894.

⁴⁰ *Id.* at 914-15.

⁴¹ Green, *supra* note 4, at 579.

will not pursue CERCLA cleanup actions on properties remediated under state voluntary cleanup programs.⁴² The states, in turn, have passed their own legislation to attract developers to brownfields and to take advantage of federal incentives for brownfield redevelopment.⁴³ Most state programs have a common set of components. States attempt to avoid the excessive costs and delays associated with brownfield redevelopment by streamlining and making more flexible the permitting and remediation process.⁴⁴ The programs often provide incentives to voluntarily assess and clean contaminated sites and give guarantees of liability protection once cleanup is completed.⁴⁵ The stated purpose of both state and federal brownfields legislation is to encourage environmental and economic improvement in order to alleviate the negative effects of brownfields.⁴⁶ There is fairly widespread consensus that the legislation is capable of achieving this goal if effectively implemented.⁴⁷

¶13 Illinois's brownfields program, created in 1995, includes versions of each of the typical components of state brownfields programs.⁴⁸ The core of the Illinois brownfields scheme is the voluntary Site Remediation Program (SRP). Parties enter the program by allowing their site to be evaluated by the IEPA and preparing a site remediation plan to be approved by the IEPA.⁴⁹ Upon approval of a site remediation plan, the site qualifies for a variety of financial assistance programs, including grants, loans, and tax credits, to cover the costs of assessment and remediation.⁵⁰ Sites in the voluntary SRP are then remediated under the Tiered Approach to Corrective Action (TACO) which allows sites to be cleaned to differing degrees depending upon the intended future use.⁵¹ Once the cleanup is completed, the IEPA issues a No Further Remediation letter (NFR letter) for the property, which releases the program participant from future liability and contains the

⁴² Eisen, *supra* note 7, at 987.

⁴³ Green, *supra* note 4, at 581.

⁴⁴ *Id.* at 580-81.

⁴⁵ *Id.*

⁴⁶ See U.S. EPA, *Brownfields Cleanup and Redevelopment: About Brownfields* (2006), <http://epa.gov/brownfields/about.htm> (last visited Aug. 6, 2008) (noting that the EPA's Brownfields Program is designed to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to safely clean and sustainably reuse brownfields); see also Georgette C. Poindexter, *Addressing Morality in Urban Brownfield Redevelopment: Using Stakeholder Theory to Craft Legal Process*, 15 VA. ENVTL. L.J. 37, 51 (1995) (commenting that according to the EPA, the purpose of the brownfields program is to provide a common sense way to redevelop contaminated land, create jobs, and stimulate economic development through environmental cleanup); Illinois Brownfields Initiative, *Frequently Asked Questions*, *supra* note 10 (explaining that the problems that the Illinois Brownfields Initiative is intended to address include potential harm to human health and the environment, reduced local employment opportunities and tax revenue, limited economic growth and development, vandalism, dumping and other illegal activity, lowering of surrounding property values, neighborhood deterioration, and urban sprawl); see *supra* notes 35-40 and accompanying text for a list of the negative effects of brownfields.

⁴⁷ Jennifer Felten, *Brownfield Redevelopment 1995-2005: An Environmental Justice Success Story?*, 40 REAL PROP. PROB. & TR. J. 679, 695 (2006); see also Telephone Interviews with Keith Harley, Mike Charles, & Dave Graham, *supra* note 13.

⁴⁸ CHARLES BARTSCH & RACHEL DEANE, NORTHEAST-MIDWEST INSTITUTE, *BROWNFIELDS "STATE OF THE STATES": AN END-OF-SESSION REVIEW OF INITIATIVES AND PROGRAM IMPACTS IN THE 50 STATES* 31-32 (2001).

⁴⁹ De Sousa, *supra* note 33, at 11; see also Telephone Interview with Mike Charles, *supra* note 13 (noting that the IEPA provides extensive guidance and technical assistance to participants during the SRP process).

⁵⁰ De Sousa, *supra* note 33, at 11.

⁵¹ About the Brownfields Initiative, *supra* note 11; Illinois Brownfields Initiative, *Frequently Asked Questions*, *supra* note 10.

terms and conditions for the future use of the property.⁵² Illinois is able to provide such protection from CERCLA liability because the state has entered into the Superfund Memorandum of Agreement with the U.S. EPA stating that the U.S. EPA will not generally pursue legal action with respect to sites cleaned voluntarily under the Illinois SRP.⁵³

C. *The Implementation of Brownfields Legislation*

¶14 All of the state and federal legislation discussed thus far provides only a framework for the redevelopment of brownfields. These legislative programs provide options and incentives that other entities—usually private redevelopers, community groups, non-profits, or municipalities—may use in order to proceed with actual site redevelopment. In fact, because most states have very similar brownfields legislation and programs, disparities in results are often due to differences in how the state and federal schemes are utilized by developers and other participants in the programs.⁵⁴

¶15 State and federal brownfields programs enabled many of the more favorably located brownfields to be developed by private for-profit developers.⁵⁵ At these sites, developers are confident that even with the slightly higher than average transactional costs associated with brownfields redevelopment, they will get an adequate return on their investment.⁵⁶ However, there are other brownfields that the free market-oriented private sector is less likely to remediate. Badly contaminated sites and sites in economically depressed areas fall into this category.⁵⁷ Often, it is up to local governments to promote and play a key role in these brownfields redevelopment projects.⁵⁸

III. THE CITY OF CHICAGO AND BROWNFIELD REDEVELOPMENT

¶16 The City of Chicago has taken on a number of these less desirable brownfields and returned them to productive use by taking advantage of state and federal incentives and using City and private resources to facilitate redevelopment.⁵⁹ These redevelopment projects are coordinated by the City under the Chicago Brownfields Initiative. The Initiative was established in 1993 and is the combined effort of the Department of the Environment, the Mayor's Office, the Department of Planning and Development, the Department of Buildings, and the Department of Law.⁶⁰ City employees in both the Department of the Environment and the Department of Planning and Development are dedicated exclusively to the Brownfields Initiative and its execution.⁶¹ The stated purpose of the Chicago Brownfields Initiative is two-fold: (1) to link environmental restoration with economic development by cleaning and redeveloping brownfields, and

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Sarah W. Rubenstein, *CERCLA's Contribution to the Federal Brownfields Problem: A Proposal for Federal Reform*, 4 U. CHI. L. SCH. ROUNDTABLE 149, 164 (1996-1997).

⁵⁵ Telephone Interview with Mike Charles, *supra* note 13.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Illinois Brownfields Initiative, Frequently Asked Questions, *supra* note 10 (indicating that municipalities, unlike private actors, have an obligation to promote and protect the health and well-being of their communities).

⁵⁹ Telephone Interviews with Mike Charles, Dave Graham & Keith Harley, *supra* note 13.

⁶⁰ Chicago Brownfields Initiative, *supra* note 11, at 1.

⁶¹ Telephone Interview with Dave Graham, *supra* note 13.

(2) to improve policies that promote private redevelopment of brownfields in order to create jobs and generate tax revenue.⁶² Since its establishment, the Initiative has broadened its purview to include the creation of open spaces, housing, parking, and office spaces.⁶³ Chicago was considered one of the forerunners in the municipal brownfields movement,⁶⁴ and its efforts have been duplicated in a number of cities nationwide.⁶⁵

¶17 The remainder of this Comment provides an account of the policies and procedures the City of Chicago has used in its Brownfields Initiative and examines whether Chicago has succeeded in its goal of economic and environmental improvement to the benefit of the surrounding communities.

A. *The Chicago Brownfields Initiative: The Program and the Process*

¶18 The Chicago Brownfields Initiative is based on the premise that in many cases, public resources are necessary to overcome the barriers to brownfield redevelopment and return sites to productive uses.⁶⁶ In order to do so, the City designed a program to select, acquire, redevelop, and market brownfields across Chicago. The City focuses on sites with the best combination of environmental factors and redevelopment potential.⁶⁷ Site selection is thus based largely on two factors: (1) whether the contamination at the site is limited enough that it is economically feasible to remediate, and (2) whether the site has industrial, commercial or residential potential.⁶⁸ The first factor is usually evaluated via a preliminary assessment by the Chicago Department of the Environment and the second factor is evaluated by the Department of Planning and Development.⁶⁹ Once a site is selected, the City acquires the site through a negotiated purchase, lien foreclosure, or tax reactivation on the property.⁷⁰ The City then conducts a more detailed risk assessment to determine the environmental state of the acquired property and the site is enlisted in the IEPA's voluntary SRP.⁷¹ The IEPA designates cleanup standards for the site using the TACO approach⁷² and the site is then remediated to those specifications—hazardous materials at the site are either removed or dealt with via institutional and technical controls.⁷³ Upon completion of the cleanup, an NFR letter is issued for the site.⁷⁴

⁶² About the Brownfields Initiative, *supra* note 11.

⁶³ Chicago Brownfields Initiative, *supra* note 11, at 1.

⁶⁴ *Id.* at 3 (noting that Chicago participated in the EPA Regional Brownfields Pilot Program and was named an EPA Showcase Community); *see also* EPA Brownfields Assessment Pilot Fact Sheet, Chicago, IL, (2006), <http://www.epa.gov/brownfields/html-doc/chicago.htm> (last visited Aug. 6, 2008) (the City organized the Chicago Brownfields Forum in 1994, which was a meeting of 130 real estate developers, industrialists, bankers, lawyers, representatives from local, state and federal government agencies, environmental advocates, and community groups. Over the course of six months, the group developed a set of sixty-five recommendations for promoting brownfields redevelopment on a number of different levels.).

⁶⁵ Telephone Interviews with Mike Charles, Dave Graham & Keith Harley, *supra* note 13.

⁶⁶ About the Brownfields Initiative, *supra* note 11.

⁶⁷ *Id.*

⁶⁸ Chicago Brownfields Initiative, *supra* note 11, at 4.

⁶⁹ Telephone Interview with Dave Graham, *supra* note 13.

⁷⁰ Chicago Brownfields Initiative, *supra* note 11, at 4.

⁷¹ *Id.*

⁷² *See supra* note 51 and accompanying text.

⁷³ *Id.* Institutional controls define and limit the future uses of a site so that remaining contamination will not become a danger to human health. Technical controls are physical barriers, such as caps and covers, which allow some contamination to remain at the site as long as it is properly contained.

⁷⁴ *Id.*

¶19 Concurrent with the site selection, acquisition, and remediation process described above, the City works to construct a future plan for the site. This includes finding an interested developer or group of developers, identifying and coordinating a coalition of stakeholders, creating incentives and acquiring funding to make the redevelopment possible, and locating additional investors when necessary.⁷⁵ The construction of a redevelopment plan varies greatly from site to site. Funding mechanisms include federal and state brownfields grants, U.S. Housing and Urban Development loans, Section 108 funds, Tax Increment Funds (TIFs),⁷⁶ and City-issued bonds.⁷⁷ Developers and stakeholders consist of local companies, entrepreneurs, not-for-profit organizations, community groups, and large corporations.⁷⁸ Sites range in size from single lots to thousands of acres, and past uses range from rock crushing facilities to the location of the 1968 Democratic Convention.⁷⁹ Future uses include large factories, community centers, affordable and market rate housing, green spaces, parks, and job training facilities.⁸⁰ In light of this great variation, each brownfield redevelopment site is its own unique project, and the City plays an integral role in the cleanup and development processes at each Chicago Brownfields Initiative site. At these City-initiated projects, the City ultimately decides what comes out and what goes into a former brownfield site.

B. The Results

¶20 Since its establishment, the Chicago Brownfields Initiative has facilitated the redevelopment of over 13,000 acres of land at over 40 sites across the City.⁸¹ At each of these locations, the City has effectively remediated and redeveloped vacant sites into industrial, commercial, and residential properties.⁸² Redevelopment, however, is not done for its own sake—the ultimate goal of brownfields legislation and programs at every level is to improve environmental and economic conditions.⁸³ Each redeveloped brownfield should benefit the surrounding area and community by reducing environmental and health burdens, increasing economic opportunity, and encouraging neighborhood revitalization.⁸⁴

⁷⁵ NORMAN WALZER, ET AL., BROWNFIELDS CLEANUP AND REUSE IN ILLINOIS MUNICIPALITIES 90-95 (2004).

⁷⁶ Section 108 provides federally guaranteed loans for large economic development projects, public infrastructure, and housing, which may be used for site acquisition, infrastructure, site clearance and improvements, economic development activities, housing construction, and finance-related activities. Julianne Kurdila & Elise Rindfleisch, *Funding Opportunities for Brownfield Redevelopment*, 34 B.C. ENVTL. AFF. L. REV. 479, 485 (2007). Tax Increment Financing (TIF) is a method of facilitating development or redevelopment of a certain area by utilizing future property tax revenues—realized from taxes generated only from the TIF District—to pay for necessary public improvements. In the case of brownfield redevelopment, the tax revenues are usually applied to the cost of cleanup at the site. De Sousa, *supra* note 33, at 26, 34-35.

⁷⁷ De Sousa, *supra* note 33, at 11.

⁷⁸ Chicago Brownfields Initiative, *supra* note 11, at 2.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Telephone Interview with Dave Graham, *supra* note 13.

⁸² WALZER ET AL., *supra* note 75, at 87-88.

⁸³ *See supra* note 46.

⁸⁴ Espinosa, *supra* note 1, at 4; *see also* Todd S. Davis & Kevin D. Margolis, *Defining the Brownfields Problem*, in BROWNFIELDS: A COMPREHENSIVE GUIDE TO REDEVELOPING CONTAMINATED PROPERTY 3, 11 (1997) (emphasizing that remediation of brownfields must preserve and enhance the community's health, safety and environment), and NAT'L ENVTL. JUSTICE ADVISORY COUNCIL WASTE & FACILITY SITING

1. First, the Successes

¶21 The literature on brownfields redevelopment uses a number of measures to judge the success of a project or program. Though the potential rubrics are many, they can be distilled into a few basic measures which can be evaluated on a project by project basis: job creation and retention, housing development, improvements to quality of life/services and amenities provided to the community, encouragement of additional investment in the area, improvement in the environmental health and safety of the community, and benefits to local government due to increased tax revenues.⁸⁵ Chicago has achieved success in each of these areas.

i) *Job Creation and Retention*

¶22 The original focus of the Chicago Brownfields Initiative was industrial and economic redevelopment with the purpose of job creation, and the City actively recruited employers and manufacturers to occupy former brownfields.⁸⁶ While numbers vary greatly from project to project, brownfields in the Chicago area have created an average of 77 jobs and retained an average of 68 jobs per project, 76.2% of which reported higher wages than were paid under previous uses of the land.⁸⁷

¶23 Numerous examples demonstrate the success of the Initiative in this arena. At 445 North Sacramento Avenue, the City coordinated the transformation of the former Sacramento Crushing Company, which had deteriorated into a pile of debris, into the Chicago Center for Green Technology.⁸⁸ The Center created 38 jobs, and the redevelopment also saved 450 jobs at a neighboring company that was planning to leave Chicago.⁸⁹ The former International Amphitheater is now home to a new Aramark manufacturing and warehouse facility, which will retain 217 jobs and create an additional 90 jobs at the site.⁹⁰ An abandoned parcel at 927 South California Avenue—a site that was targeted for redevelopment by the Initiative due to the high surrounding unemployment rate and consequential available labor force⁹¹—became the California Avenue Business Park, creating between 400 and 600 new jobs.⁹² The list goes on—200 jobs created at the Gateway Park Industrial Complex,⁹³ 2000 jobs created and 2500 retained at ATA's Chicago Airline Training Center on South Cicero,⁹⁴ 550 jobs created and 450 retained at a new Solo manufacturing and distribution facility at 3333 East 87th

SUBCOMM., U.S. EPA, No. EPA 500-R-96-002, ENVIRONMENTAL JUSTICE, URBAN REVITALIZATION, AND BROWNFIELDS: THE SEARCH FOR AUTHENTIC SIGNS OF HOPE 7-8 (1996), *available at* http://www.epa.gov/compliance/resources/publications/ej/public_dialogue_brownfields_1296.pdf (last visited Aug. 6, 2008) (stating that economic development at brownfields must directly benefit members of the community).

⁸⁵ WALZER ET AL., *supra* note 75, at 12-14.

⁸⁶ About the Brownfields Initiative, *supra* note 11, at 2.

⁸⁷ WALZER ET AL., *supra* note 75, at 51-52 (these numbers are based on a sampling of sites as reported by the City of Chicago).

⁸⁸ Chicago Brownfields Initiative, *supra* note 11, at 6.

⁸⁹ *Id.* at 7.

⁹⁰ *Id.* at 22.

⁹¹ WALZER ET AL., *supra* note 75, at 96.

⁹² Chicago Brownfields Initiative, *supra* note 11, at 5.

⁹³ *Id.* at 9.

⁹⁴ *Id.* at 10.

Street,⁹⁵ 125 jobs created and 500 retained at the Vernon Steel Site,⁹⁶ 100 jobs created and 200 retained at the Blackstone Manufacturing site,⁹⁷ 14 jobs created and 150 retained at the Chicago Turnrite site,⁹⁸ 7 jobs created and 150 retained at the Chicago Dryer site,⁹⁹ and more. Even factoring in normal economic growth, the sheer number of jobs created by the Chicago Brownfields Initiative is impressive.

ii) *Residential Redevelopment*

¶24 While brownfields redevelopment, across the country and in Chicago, initially focused on industrial projects, attention is now being paid to residential development on these sites.¹⁰⁰ As of 2003, 25 publicly assisted residential brownfields projects had been undertaken in Chicago.¹⁰¹ These 25 projects produced a total of 4,853 units, around 2,000 of which were designated to be affordable.¹⁰² The City provided funding, Tax Increment Financing, reductions in land sale prices, assistance with cleanup costs, and substantial guidance to its residential brownfields projects.¹⁰³ The result has been both developer and consumer interest in the projects and the products.¹⁰⁴ Perhaps more importantly, Chicago's brownfield redevelopment has gone beyond "cherry picking" the best properties in the best locales.¹⁰⁵ City government has successfully promoted development in areas where few developers would have otherwise ventured.¹⁰⁶ Chicago's programs and incentives have also succeeded in causing developers to incorporate affordable units into new housing, even in higher-end projects.¹⁰⁷

¶25 Again, examples illustrate the City's success. At Columbia Pointe, located at 63rd and Woodlawn streets, 51 new homes replaced a vacant and abandoned commercial strip, and the addition of up to 209 more homes is under consideration.¹⁰⁸ Twenty percent of

⁹⁵ *Id.* at 13.

⁹⁶ U.S. EPA, NO. EPA 500-F-98-254, BROWNFIELDS SHOWCASE COMMUNITY: CHICAGO, IL 2 (1998), available at http://epa.gov/brownfields/pdf/sc_chica.pdf (last visited Aug. 6, 2008).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ De Sousa, *supra* note 33, at 6. While residential reuse of brownfields has been commonplace in Europe and Canada, the United States has been slower to warm to the idea, focusing instead on the direct monetary benefits of industrial and commercial use. However, there has been growing recognition among stakeholders and actors in the United States that the residential redevelopment of brownfields holds enormous potential for increasing the availability of housing in cities, improving the economic and social well-being of inner city neighborhoods by eliminating blight, strengthening community pride, enhancing local tax bases, raising property values, and maximizing the efficient use of services. *See also* Chicago Brownfields Initiative, *supra* note 11, at 2. The Initiative originally focused on industrial and economic redevelopment, job creation, and tax revenues, but the vision expanded to include the creation of green spaces, affordable housing, and office space.

¹⁰¹ De Sousa, *supra* note 33, at 27. Note that not all publicly assisted projects are necessarily part of the Chicago Brownfields Initiative.

¹⁰² *Id.* at 31 (defining affordable as priced for buyers who make 80-120% of the median income of the metro area).

¹⁰³ Chicago Brownfields Initiative, *supra* note 11, at 24; *see also* De Sousa, *supra* note 33, at 42 (noting that these same mechanisms were identified by developers as effective ways for a city to encourage residential redevelopment).

¹⁰⁴ De Sousa, *supra* note 33, at 43.

¹⁰⁵ *Id.* at 43-44.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 45.

¹⁰⁸ *Id.* at 61.

these homes are designated to be affordable.¹⁰⁹ In Bronzeville, at 705 East 40th Street, 33 new homes were constructed, 16 of which are now occupied by residents who had previously moved from the neighborhood due to its deterioration and lack of housing stock.¹¹⁰ A large project called University Village near University of Illinois at Chicago's South Campus resulted in 930 new residential units.¹¹¹ Here, the City arranged for TIF districting on the condition that 21% of the new units be affordable.¹¹² North Town Village, built on seven acres near the former Cabrini Green housing projects, provided 261 units on a former commercial and gas station site.¹¹³ Consisting of seven-story mid-rises and flats, 30% of the units are market-rate for-sale units, 20% are affordable units, and 30% are subsidized public housing.¹¹⁴

iii) Improvements to Quality of Life, Services & Amenities Provided

¶26 The City of Chicago seems to have recognized the importance of improving the quality of life in the areas surrounding brownfields and has responded by incorporating service-providers, amenities, and open spaces into many Chicago Brownfields Initiative projects. By providing such useful services and recreational facilities while at the same time eliminating vacant lots that harbor criminal activity, the Chicago Brownfields Initiative has contributed to improved quality of life near redeveloped sites.

¶27 At 3333 East 87th Street, the site of the new Solo factory, the City created two TIF districts—one for Solo and one for “the betterment of the surrounding neighborhood.”¹¹⁵ The Chicago Park District worked with the Department of Planning and Development to create a lakefront park at the site. The roads to and from the park were revamped into boulevard-style roadways to improve community access and aesthetics.¹¹⁶ The development of the Columbia Pointe Homes was similarly beneficial to the area. The new affordable housing provided a basic necessity for the community, and the development was accompanied by bike trails, new lighting in alleys, and neighborhood fruit and vegetable gardens.¹¹⁷ At the 76th and Parnell Street residential redevelopment, the north portion of the site was reserved for green space and a community center was built to provide after-school programming, education, and family-oriented activities.¹¹⁸ The California Avenue Business Park includes a job training facility and prompted the expansion of local transportation facilities.¹¹⁹

¶28 In North Lawndale, the Lawndale Christian Development Corporation (LCDC), a community organization focused on economic development, crafted plans for a much-needed childcare center in the mid-1990's after a series of community meetings about

¹⁰⁹ *Id.*

¹¹⁰ Chicago Brownfields Initiative, *supra* note 11, at 21.

¹¹¹ De Sousa, *supra* note 33, at 66. Note that University Village was not an actual Chicago Brownfields Initiative project; rather, it was initiated by private developers who then worked with the City to acquire financial and technical assistance and complete the redevelopment.

¹¹² *Id.* at 67-68.

¹¹³ WALZER, ET AL., *supra* note 75, at 99-100.

¹¹⁴ *Id.*

¹¹⁵ Chicago Brownfields Initiative, *supra* note 11, at 14.

¹¹⁶ *Id.*

¹¹⁷ WALZER, ET AL., *supra* note 75, at 64.

¹¹⁸ Chicago Brownfields Initiative, *supra* note 11, at 20.

¹¹⁹ WALZER, ET AL., *supra* note 75, at 96.

how to improve the community through the development of a vacant lot.¹²⁰ However, the group was deterred from building at that time by the presumption of contamination on the land.¹²¹ The LCDC eventually teamed with two other non-profits and approached the City.¹²² The City agreed to acquire the LCDC site along with several adjacent parcels, clean the site, and then transfer it back to the LCDC for \$1. The result was the Jubilee Family Resource Center and the Carole Robertson Center for Learning, a 20,000 square foot childcare center with Head Start and Youth Alternatives programs. The North Lawndale community had voiced a strong desire for daycare facilities, and the provision of this much-needed service was well-received by local residents.¹²³

¶29 In addition to providing services and amenities, brownfield redevelopment also improves the quality of life in a neighborhood by reducing the incidence of detrimental activities in the area. Redevelopments have been linked to a decrease in criminal behavior. Vacant lots and abandoned buildings provide out-of-sight venues for drug use, dealing, and other criminal activity.¹²⁴ Such sites also invite illegal dumping that deepens the risk to human and environmental health in the area.¹²⁵ By eliminating these vacant lots and structures, these illicit activities are pushed out as well.

iv) *Encouragement of Additional Investment*

¶30 Brownfields legislation and programs are no longer just about remediation and reuse, but rather function as a means to increase the economic viability of an area.¹²⁶ One new building does not an economic turnaround make, so to be deemed successful a brownfield redevelopment must bring with it additional investment, businesses, and development.¹²⁷ Many of Chicago's brownfields projects are credited as the source of additional investment in the area. The ATA Airline Training Center came hand in hand with the modernization of Midway Airport.¹²⁸ A company near the Chicago Center for Green Technology changed its plans to leave the community.¹²⁹ On West Adams Street,

¹²⁰ Felten, *supra* note 47, at 688.

¹²¹ Chicago Brownfields Initiative, *supra* note 11, at 16.

¹²² *Id.*

¹²³ Felten, *supra* note 47, at 688.

¹²⁴ Telephone Interview with James Van der Kloot, *supra* note 13 (detailing his recent visit to a Chicago Brownfields Initiative site on Roosevelt Avenue that was formerly abandoned and frequented by drug addicts, dealers, and prostitutes, and is now being sold as new commercial space into which a number of businesses have already moved); *see also* Chicago Brownfields Initiative, *supra* note 11, at 5, 11 (stating that the California Avenue Business Park replaced thirty-seven acres of land "blighted by waste and illicit behavior").

¹²⁵ Telephone Interview with James Van der Kloot, *supra* note 13 (The interviewee recounted that since being partially destroyed in a fire during the 1980's, the former Burnside Steel site had been scavenged to the point of collapse, has housed various types of illegal activity, and is piled waist high with illegally dumped materials. The site is now occupied by an expansion of the Verson Corporation stamping operations and other private businesses.); *see also* Chicago Brownfields Initiative, *supra* note 11, at 5, 11 (stating that illegal waste dumping had become a problem at 2242 South Grove Street, now the site of the International Union of Operating Engineers Local 399); WALZER, ET AL., *supra* note 75, at 99 (Gateway Park at 76th and Albany Streets had become known as the largest illegal dumpsite in the state.).

¹²⁶ Green, *supra* note 4, at 571.

¹²⁷ *Id.* at 573-74 (Green notes that inner city neighborhoods present development challenges not only because of potential environmental issues, but also due to overall economic conditions, household income, and general blight. These areas thus suffer from deteriorated infrastructure, patterns of disinvestment, abandonment, and lack of basic services such as grocery stores and retail outlets.).

¹²⁸ Chicago Brownfields Initiative, *supra* note 11, at 10.

¹²⁹ *Id.* at 7.

the Scott Petersen Sausage Plant, located across the street from a City-initiated brownfield development, added a new smokehouse and hired locals to fill 100 new positions in the plant.¹³⁰ The California Avenue Business Park is expected to encourage neighboring businesses to replace decaying and obsolete facilities, expand current operations, and add complementary uses or office space.¹³¹ The Columbia Pointe residential redevelopment is not only spurring additional rehabilitation and rebuilding by private residential developers, but is part of a larger plan to bring in retail, business, and recreational opportunities.¹³² In many cases, it is difficult to directly attribute additional investment in an area to a brownfield redevelopment.¹³³ However, the benefits that accompany brownfield redevelopment—such as increased population due to new housing stock, city investment in infrastructure, and improved aesthetics—all seem likely to encourage additional investment, and the instances above demonstrate that this is occurring in Chicago.

v) *Benefits to Local Government Due to Increased Tax Revenues*

¶31 The success of a brownfield redevelopment can be measured in part by the attendant increase in tax revenues.¹³⁴ The City identified this as a major focus of the Initiative in its original brownfields plan.¹³⁵ The California Avenue Business Park has been the headliner in this arena, generating estimated annual tax revenues of \$2.3 million.¹³⁶ While exact numbers are not available for the other sites undertaken by the Initiative, it is reasonable to assume that the transformation from abandoned and vacant property to productive use has substantially increased the City's tax revenues.

vi) *Environmental Health and Safety*

¶32 One of the goals of the Brownfields Initiative, and of all brownfields programs and legislation,¹³⁷ is to improve environmental health.¹³⁸ The degree of both contamination and cleanup varies substantially from site to site within the City, so Chicago conducts site-specific assessment and remediation planning. This allows for cleanup to be matched to the current contamination and to the future use of the site.

¶33 At the California Business Park site, 964 tons of lead and chromium contaminated soil and eleven underground storage tanks were removed and backfilled with crushed stone.¹³⁹ At the Gateway Park site, 600,000 cubic yards of concrete, asphalt, construction

¹³⁰ Telephone Interview with James Van der Kloot, *supra* note 13.

¹³¹ WALZER, ET AL., *supra* note 75, at 97.

¹³² De Sousa, *supra* note 33, at 64.

¹³³ NORMAN WALZER & GISELE F. HAMM, RETURNS TO BROWNFIELDS INVESTMENTS (Illinois Institute for Rural Affairs, Western Ill. Univ. ed. 2004) (The authors conclude that measuring the overall impact of brownfield redevelopment is difficult given the available information on employment, payrolls and private investment. The effects extend well beyond the immediate brownfield site, and thus are hard to capture. In addition, there is no central place in the City that collects comprehensive data on such investment.).

¹³⁴ David A. Dana, *State Brownfield Programs as Laboratories of Democracy?*, 14 N.Y.U. ENVTL. L.J. 86, 99 (2005).

¹³⁵ Chicago Brownfields Initiative, *supra* note 11, at 2 (stating that the Brownfields Initiative originally focused on industrial and economic redevelopment, job creation, and tax revenues).

¹³⁶ *Id.*

¹³⁷ See *supra* note 46.

¹³⁸ About the Brownfields Initiative, *supra* note 11.

¹³⁹ Chicago Brownfields Initiative, *supra* note 11, at 5.

debris, rubbish, and hazardous automobile shredder residue were removed.¹⁴⁰ The International Union of Operating Engineers (IUOE) site was freed of 2,990 tons of radioactive and contaminated soil as well as a number of underground storage tanks.¹⁴¹ The new Solo site was remediated to residential standards, returning the site to its pre-industrial condition.¹⁴² At the West Pullman site, several thousand tons of contaminated soil was remediated on-site and deteriorating structures were demolished and removed.¹⁴³ In North Lawndale, two underground storage tanks were excavated and 3,700 tons of contaminated soil was removed to prevent ground water contamination.¹⁴⁴ The list continues in a similar manner—each site’s environmental condition was improved by the Chicago Brownfields program. The Initiative facilitated the removal of thousands of tons of contaminated soil, hundreds of piles of potentially hazardous debris, and tens of leaking underground storage tanks.¹⁴⁵

2. Next, the Concerns

¶34 It is apparent that Chicago’s Brownfields Initiative has been largely successful by conventional measures. These successes, however, are not unqualified. The program must be evaluated to address a number of concerns that are often at issue in brownfield redevelopment and that Chicago may not have entirely escaped. This section addresses some of these issues and suggests how the City might alter its program to avoid these potential pitfalls.

i) Do the Jobs Generated Benefit Members of the Community?

¶35 Since the goals of the Chicago Brownfields Initiative include both job creation¹⁴⁶ and community revitalization,¹⁴⁷ it logically follows that brownfield redevelopment should reduce the high unemployment that plagues many of the inner city neighborhoods in which the redevelopment occurs.¹⁴⁸ Chicago has made an effort to do so in many of its brownfield projects. Because many of the sites became home to industrial facilities, most of the jobs created are likely to be accessible to the less educated workforce that resides near brownfields. Furthermore, a number of the Chicago brownfield redevelopment projects incorporated job training programs aimed at bringing local residents up to speed with the skills needed to fill the jobs created by redevelopment.¹⁴⁹

¹⁴⁰ *Id.* at 9.

¹⁴¹ *Id.* at 11.

¹⁴² *Id.* at 13.

¹⁴³ *Id.* at 15.

¹⁴⁴ *Id.* at 16.

¹⁴⁵ *Id.*

¹⁴⁶ About the Brownfields Initiative, *supra* note 11 (stating that “the purpose of the Chicago Brownfields Initiative is to create jobs”).

¹⁴⁷ Chicago Brownfields Initiative, *supra* note 11, at 2 (claiming that the City of Chicago has created the most aggressive program in the nation to reverse the urban blight associated with brownfields and open new horizons for distressed communities).

¹⁴⁸ BROWNFIELDS SHOWCASE COMMUNITY, *supra* note 96 (noting that the sites chosen by the City during the 1990s were located in areas with unemployment rates between 7.6 and 17.5% and poverty rates between 17 and 44%).

¹⁴⁹ Chicago Brownfields Initiative, *supra* note 11 (there are job training programs at the Center for Green Technology and the Chicago Job Corps Center at 3350 South Kedzie Avenue); WALZER, ET AL., *supra* note 75, at 96-98 (The authors explain that the site for the California Avenue Business Park was chosen due to locational assets, one of which was the high level of unemployment and attendant available labor force).

¶36 Other redevelopments, however, seem less locally-oriented. The ATA Training Center includes a hotel, restaurant, and training facilities for airline pilots, attendants, and customer service personnel¹⁵⁰—jobs not likely to go to area residents. Likewise, the Chicago Center for Green Technology houses an environmental consulting firm and a solar panel company—creating positions largely foreclosed to those lacking higher education.¹⁵¹ The IUOE provides a new facility for union members,¹⁵² which may or may not include area residents. While not harmful to a community, these sites do not fully incorporate community members in the benefits of redevelopment.

¶37 Another deeper question accompanies the “job creation” goal of brownfield redevelopment: whether new industrial jobs really benefit a community in the long run. The Chicago Brownfields Initiative has focused on re-industrialization of abandoned or unused sites.¹⁵³ Meanwhile, in the economy at large, there has been a systematic disinvestment in the nation’s industrial capacity.¹⁵⁴ Should this pattern of deindustrialization result in the loss of jobs in the manufacturing sector, the Chicago Brownfields strategy could end up contributing to central city unemployment in the future.¹⁵⁵

¶38 Thus, while the Brownfields Initiative has created many new jobs, there remains room for improvement. Chicago must be vigilant in encouraging development that will employ, develop, and fairly compensate the local labor force in a sustainable manner. There are a number of ways in which Chicago can make strides towards this goal, and the City is empowered to do so through the negotiation process. For each City-coordinated brownfield redevelopment, a negotiation process occurs in which the City and the property developers set forth the purposes of the project, work through the financial arrangements, examine and often discount the purchase price, evaluate the cost of remediation and infrastructure, and then put it all into written form in a redevelopment agreement. During this process, the City has ample opportunity to offer various incentives—including reduced purchase prices, grants, subsidies, tax breaks, and technical assistance from City personnel—in exchange for agreements regarding employment and operations from developers.¹⁵⁶

¶39 One of the most straightforward, and perhaps effective, methods of guaranteeing local employment is conditioning City assistance or tax breaks on the number of jobs given to locals.¹⁵⁷ The City could also incentivize developers or owners to offer

However, the City recognized that the labor pool had a relatively low skill level, and thus a job training facility was necessary. The U.S. Steel/Solo site will also provide job skill training through funding from the IL FIRST program to educate employees on current manufacturing technology.).

¹⁵⁰ Chicago Brownfields Initiative, *supra* note 11, at 10.

¹⁵¹ *Id.* at 6.

¹⁵² *Id.* at 11.

¹⁵³ *Id.* at 2.

¹⁵⁴ Georgette C. Poindexter, *Separate and Unequal: A Comment on the Urban Development Aspect of Brownfields Programs*, 24 FORDHAM URB. L.J. 1, 8 (1996) (describing the shift away from dependence on the manufacturing sector and a restructuring of the economy towards new sectors outside of manufacturing).

¹⁵⁵ *Id.* at 18.

¹⁵⁶ WALZER, ET AL., *supra* note 75, at 90-95.

¹⁵⁷ The state of New York, for example, conditioned tax breaks on the number of jobs created at brownfield sites. This conditional tax break was offered in lieu of general TIF districting. *See Green, supra* note 4, at 594-95. Such a tax break might have the added benefit of drawing developers to more depressed neighborhoods because the financial incentive offered is not contingent on the financial success of the

subsidized rent to industrial, commercial, and administrative employers who fill a percentage of their positions with local employees.¹⁵⁸ In order to truly benefit the surrounding community, the City might also consider a requirement, in combination with the aforementioned schemes aimed at ensuring employment of locals, that these employees are paid a true living wage.

¶40 The City faces a more complex problem in addressing the type of jobs that will be created by brownfield redevelopment. Reindustrialization of brownfields may be a short-term solution to a long-term problem,¹⁵⁹ and the longevity of the businesses that make former brownfields their home will be crucial to their success as community contributors and benefactors. The City thus faces a challenge to find sustainable jobs that are also accessible to the local workforce. A combination of developer selection and job training programs could address this issue. By choosing development partners in a range of sectors—industrial, commercial, technical, and administrative—the City could work towards ensuring that the jobs brownfield redevelopment creates are economically desirable and sustainable. By incentivizing employers to offer job training programs, or by formulating job training programs of their own, the City could work towards filling these jobs with local residents.

ii) *Do the New Services and Improvements Benefit Members of the Community?*

¶41 Many of the Chicago Brownfields Initiative sites in which the provision of “services”¹⁶⁰ was a focus were sites initiated by, or redeveloped in close collaboration with, an organized community group. Columbia Pointe, the Lawndale site, and the Bronzeville site provide prime examples of how brownfield redevelopment, prompted by community groups and facilitated by the active efforts of the City, can reflect and fulfill the needs of the community.¹⁶¹ It is encouraging that in cases where community groups have become involved, their participation has been welcomed and the results have been positive.¹⁶² In light of this, whenever possible, the City should actively seek out community groups and local leaders to spearhead brownfield redevelopments. By providing grants and subsidies for such involvement, the City would put power in the hands of communities from the outset of the project. With local groups initiating projects, the needs of the community are likely to be addressed.

development (as with TIFs), but rather on a variable that they can fully control—the percent of their own workforce that is local.

¹⁵⁸ This technique was used without City-prompting at the privately-redeveloped former Sears site in west Chicago. See Espinosa, *supra* note 1.

¹⁵⁹ See *supra* note 154.

¹⁶⁰ I include affordable housing stock, as well as childcare centers, community programs and centers, recreational facilities, and green spaces, within the definition of services.

¹⁶¹ See De Sousa, *supra* note 33, at 62 (noting that the development of the Columbia Pointe Homes was coordinated by a coalition of not-for-profit community-based organizations, and the Lawndale Christian Development Corporation was the motivating force behind the Jubilee Family Resource Center and the Carole Robertson Center for Learning); see also Chicago Brownfields Initiative, *supra* note 11, at 21 (stating that in Bronzeville, the Genesis Housing and Development Corporation, a faith-based organization known in its community for dedication to affordable housing for local residents, was the driving force behind the City-assisted construction of much-needed housing stock at 707-755 East 40th Street).

¹⁶² Telephone Interview with Mike Charles, *supra* note 13 (stating that in progressive communities, where the community works to piece together funding and partners, they are usually successful); Telephone Interview with Keith Harley, *supra* note 13 (stating that when a community expresses interest, they are usually listened to and incorporated into the process).

¶42

However, in many other cases, where community groups are less active, it is difficult to find any mention of efforts to provide services to a community; and unfortunately, it is often the communities least able to organize that are most in need of the services and improvements that brownfields redevelopment has the potential to offer.¹⁶³ It is here that the City should make an extra effort to provide such services to the community without outside prompting. The City could use incentives to encourage, or make City assistance contingent upon, a developer providing some service or funding to the community. Further, when coordinating the inclusion of such services and amenities, the City must take care to ensure that the services are in fact needed and desired by the community. Consulting a community leads to a greater chance of long-term success because the redevelopment is filling a void, not forcing a change, and because communication fosters a sense of ownership and a stake in the success of the redevelopment.¹⁶⁴ City-coordinated community involvement in the early stages of planning could ensure that maximum benefit is derived from each site.¹⁶⁵ Because there is no enforceable right under Illinois law for community members to participate in the brownfields development process,¹⁶⁶ the City should consider instituting an enforceable right to involvement in the Chicago Municipal Code. Without an enforceable public right to participation, the community is left without recourse when they are excluded from redevelopment discussions, and even if discussions do occur, there is no public record maintained of the comments nor obligation to provide the community comments with any deference. Further, the nature of this right to participate should be such that community desires and concerns are assessed before the City and the developers start making plans. If a community is not informed of a project until the submission of a remedial action plan, then the site, the cleanup standard, and the basics of future uses will already have been decided without any community input.¹⁶⁷ If these threshold decisions are made in a vacuum, the services and amenities most useful to the community are unlikely to be incorporated into the project. Chicago should thus offer more than generic public notice and comment periods regarding brownfield redevelopments. The community needs to be involved from the start of the process, and actual deference must be granted to community suggestions.

iii) Has Brownfield Redevelopment Led to Gentrification, Pushing out Original Residents?

¶43

According to some observers, redevelopment in Chicago has been synonymous with displacement.¹⁶⁸ Critics allege that City Hall has followed the lead of downtown

¹⁶³ Telephone Interview with Mike Charles, *supra* note 13 (stating that in the most economically depressed areas there is a vicious cycle—they need the help the most, but the same circumstances that put them in that state in the first place make it more difficult; the forces for change just are not there).

¹⁶⁴ See Felten, *supra* note 47, at 683-84, for an extensive discussion of why community participation is important.

¹⁶⁵ See Felten, *supra* note 47, at 680; see also Eisen, *supra* note 7, at 889, 998 (noting that meaningful and early community involvement is crucial to the success of brownfields projects and the key to successfully engaging a community in a project lies in creating more than mere procedural routines that evince an image of cooperation without truly giving a community any influence in the redevelopment process).

¹⁶⁶ U.S. EPA, NO. EPA-560-R-05-001, STATE BROWNFIELDS AND VOLUNTARY RESPONSE PROGRAMS: AN UPDATE FROM THE STATES (2005), available at http://www.epa.gov/brownfields/pubs/bf_states_r5.pdf (last visited Aug. 6, 2008).

¹⁶⁷ See Eisen, *supra* note 7.

¹⁶⁸ John A. Powell & Marguerite L. Spencer, *Giving Them the Old “One-Two”*: *Gentrification and the*

corporate interests and the real estate industry, and that the low-income and working class enclaves that stand in the way of redevelopment are simply removed and the community disbanded.¹⁶⁹ Further, as affordable housing stock shrinks and the rental market tightens, the concern becomes even more urgent because gentrification may not only force residents out of their communities, but also might leave them without a place to go.¹⁷⁰ While the Brownfields Initiative cannot be blamed for this alleged pattern of city-center gentrification pushing the poor to the west and inner suburbs,¹⁷¹ there is some indication that the brownfields program has perpetuated this problem.

¶44 Smaller Chicago Brownfields Initiative sites are unlikely to contribute to the gentrification of an area to any substantial degree. For example, at 76th and Parnell Streets, six single-family, eighteen two-flat homes, and twelve single-family foster care homes were constructed.¹⁷² The homes are “moderately-priced” and intended for community residents who are first-time home buyers.¹⁷³ In Bronzeville, thirty-three new homes (twenty-one single-family homes and six two-flats) were built, and sixteen of these were sold to families who formerly lived in the community but left due to stagnation and blight.¹⁷⁴ Projects like these are not only geared towards current community residents, but their size also makes it unlikely that they will substantially change the character of the neighborhood and push area residents out.

¶45 Larger redevelopment projects, however, bear an increased risk of causing gentrification and displacement. Columbia Pointe, upon completion, created 260 new residential units, 20% of which are reserved as affordable housing.¹⁷⁵ While the intent of the redevelopment was to expand area housing options for a mix of income levels and promote economic opportunity for the local community, concern arose early amongst neighborhood residents that there was a need for more affordable housing and that too many condominiums were replacing subsidized rental housing, pricing residents out of their own neighborhood.¹⁷⁶ Though these concerns were discussed with community stakeholders,¹⁷⁷ the percentage of designated affordable housing was never changed and the units, none of which were rental, sold for between \$200,000 and \$400,000 soon after completion.¹⁷⁸ In a neighborhood such as Woodlawn, in which 39% of the residents live below the poverty level and only 28% of households have annual incomes of more than \$35,000,¹⁷⁹ housing in a large new-construction development like Columbia Pointe is

K.O. of Impoverished Urban Dwellers of Color, 46 How. L.J. 433, 463 (2003).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 463-64. In 2003, there was a city-wide gap of 155,000 affordable housing units, and 16,000 Section 8 unit contracts expired in 2005, following the loss of 46,000 units over the prior decade despite a 112,000 population increase. Compounding this problem, there was only a 4% vacancy rate. With the tightening of the rental market, rental prices will naturally rise with demand. Many lower income renters will become priced out of the rental market unless City-landlord affordability agreements and Section 8 contracts, which mandate affordable units, are maintained. *Id.*

¹⁷¹ *Id.* at 464 (noting that new expensive housing is being built and concentrations of poverty are moving farther west, southwest, and into the inner ring of suburbs).

¹⁷² Chicago Brownfields Initiative, *supra* note 11, at 19.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 21.

¹⁷⁵ De Sousa, *supra* note 33, at 61.

¹⁷⁶ *Id.* at 64.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 61, 64.

¹⁷⁹ *Id.* at 61.

inaccessible to a majority of the existing residents and is likely to contribute to gentrification that could eventually push these residents from their community.

¶46 At University Village, a similar situation resulted in a boycott of the project by a number of community groups.¹⁸⁰ Hundreds of vendors who had operated in the area were displaced by the redevelopment, and locals feared that the new residents would alter the fabric of the surrounding neighborhood and cause exclusionary displacement of the original residents and businesses.¹⁸¹ The controversy eventually subsided, and 21% of the units were designated to be in the affordable range, but the 930 units (ranging in price from \$165,900 to \$1,299,900¹⁸²) were marketed as a planned community and were sold overwhelmingly to University of Illinois, Chicago faculty and staff, staff from nearby hospitals, city employees, and suburbanites moving back to the City.¹⁸³ This large redevelopment, which also included restaurants, shops, academic buildings, and student housing, is inherently different from the mixture of immigrant culture, commerce, and enterprise that formerly occupied the space,¹⁸⁴ and neighborhood residents do not consider the redeveloped area “part of the neighborhood anymore.”¹⁸⁵

¶47 North Town Village, built on the abandoned site of a former service station, manufacturing facility, and machine shop, was part of the Chicago’s Plan for Transformation.¹⁸⁶ It was slated to replace some of the residential units that would be destroyed with the razing of the Cabrini Green high-rises.¹⁸⁷ Two-hundred and sixty-one residential units were constructed and divided into three categories: Fifty percent private for-sale units, twenty percent affordable units, and thirty percent replacement public housing units.¹⁸⁸ While the project has been called a “model of mixed income residential integration,” some insist that poor people are being forced to move elsewhere as affordable properties to rent become less and less available.¹⁸⁹

¶48 The issues of affordable housing and gentrification are much larger than the scope of this Comment, and although brownfield projects are but a small part of the larger patterns, they are not exempt from scrutiny in this arena. Each of the above-mentioned brownfield projects incorporated affordability agreements into redevelopment arrangements, but large-scale projects such as these are inherently likely to alter the

¹⁸⁰ *Id.* at 68. In 2000, several coalitions, including the Coalition to Protect Public Housing, the Maxwell Street Historic Preservation Coalition, and the St. Francis of Assisi Preservation Committee, boycotted the project in an effort to get developers to address issues related to affordable housing for the very poor and displaced residents, to give existing businesses an opportunity to remain in the area, and to preserve the sixty historic buildings on Maxwell Street. Note that University Village was not an official Chicago Brownfields Initiative project—the project was initiated by private developers who then worked with the City to acquire financial and technical assistance and complete the redevelopment. *Id.*

¹⁸¹ *Id.* at 67.

¹⁸² *Id.* at 65.

¹⁸³ *Id.* at 67.

¹⁸⁴ *Id.* at 65.

¹⁸⁵ Powell & Spencer, *supra* note 168, at 464.

¹⁸⁶ WALZER, ET AL., *supra* note 75, at 100. The Plan for Transformation is the Chicago Housing Authority’s blueprint for reinventing public housing in the city. It was approved by the U.S. Department of Housing and Urban Development in 2000 and represents the largest reconstruction of public housing in the nation’s history. See CHICAGO HOUSING AUTHORITY, PLAN FOR TRANSFORMATION, *available at* http://www.thecha.org/transformplan/plan_summary.html (last visited Aug. 6, 2008).

¹⁸⁷ WALZER, ET AL., *supra* note 75, at 100.

¹⁸⁸ *Id.*

¹⁸⁹ Powell & Spencer, *supra* note 168, at 464 (quoting Daniel Bassil of Cabrini Connections, a tutoring and mentoring program for at-risk youth).

nature of a neighborhood and increase area property values. By pursuing more small-scale infill projects, the City could avoid such sweeping neighborhood transformations and bring only a reasonable number of outsiders into an existing community. The City should seek to do so. Finding appropriate sites for smaller infill projects should not be difficult, as the majority of brownfields are not large industrial sites, but parcels where dry cleaners, gas stations, or auto mechanics once were located.

¶49 However, even if more time and effort is focused on such infill projects, the City must still address the accessibility of brownfield developments of all sizes to current neighborhood residents. Again, the most direct and effective way to do so is by using incentives during the negotiation process to influence redevelopment agreements. By offering carrots such as reduced purchase prices, cleanup assistance, and infrastructure grants, the City can convince developers to provide truly affordable housing and rental options. This could be done independently during brownfield development negotiations and planning, or it could be done in conjunction with the Chicago Housing Authority (CHA), which is currently in the process of replacing high-rise public housing with “new mixed-income communities with contemporary town homes and low-rise buildings where public housing residents will live in the same neighborhood as people who purchase market rate and affordable homes.”¹⁹⁰ Generally, these CHA developments consist of one-third public housing, one-third affordable housing, and one-third market rate homes.¹⁹¹ Brownfield redevelopments, due to location, infrastructure, and available private investment, offer an ideal opportunity for creating these types of communities.

¶50 In addition to the gentrification concerns addressed thus far, physical displacement of community members can also be caused by increasing property values and taxes and, as at University Village, by the forced removal of residents and vendors. Such physical displacement must be minimized. The City should tread very carefully with respect to any project that threatens to move current area residents from homes or businesses, and should perhaps consider barring these projects entirely. The City may also consider entering into agreements with current neighborhood residents to freeze or moderate property taxes at a rate which would allow them to afford to stay in the neighborhood despite surrounding redevelopment. Overall, the City must be conscious of the community that exists near each brownfield and use the incentives at its disposal to direct redevelopment away from damaging gentrification.

iv) Is Site Remediation Sufficient to Protect Community Health and Safety?

¶51 Much has been written on the environmental justice issues surrounding brownfield redevelopment. Because states often offer relaxed cleanup standards, streamlined administrative procedures, and releases from future liability to spur development and reuse, voluntary brownfield cleanups may involve trading increased health risks for the prospect of economic improvements.¹⁹² The environmental and human health concerns raised by the Chicago program are similar to those associated with most brownfields programs and legislation. Because the site-specific TACO approach is used in Illinois, there is significant flexibility with respect to cleanup standards depending upon the

¹⁹⁰ CHICAGO HOUSING AUTHORITY, *supra* note 186.

¹⁹¹ *See id.* (follow FAQ hyperlink).

¹⁹² Eisen, *supra* note 7, at 887.

expected post-development use of a site.¹⁹³ Under Illinois brownfield legislation, each site must be cleaned to a level that is considered safe enough for the developer's self-identified next use.¹⁹⁴ At each site, the IEPA evaluates the consequences of leaving certain contaminants at the site with or without certain controls, and an engineer must certify that the selected cleanup methods are sufficient to protect human health and the environment.¹⁹⁵ While the TACO cleanup standards for brownfields are fairly conservative, there remains concern that lowered standards may expose neighbors to contaminants.

¶52 Additionally, when a site is remediated with only the next use in mind, the future use of the property is restricted to that (or a similar) use. This practice raises two issues: (1) concern that the restriction will be forgotten or ignored, exposing future users to contamination; and (2) concern that the property will be locked into one future use that may prevent the property from being put to the most beneficial use for the community.¹⁹⁶ For example, residential sites are subject to higher cleanup standards than sites that will host industrial facilities.¹⁹⁷ Should a site be redeveloped for industrial use, unless substantial additional cleanup is done at a later date, the land will never be available for residential development. Even at residential sites, the method of cleanup can restrict future uses. At the Parnell Place site, one section of contaminated soil was allowed to remain on the site but covered with a three foot barrier to eliminate exposure at the surface.¹⁹⁸ The decision to cap, instead of remove, the contaminated soil was made because it was not necessary to put water or sewer lines in the parcel, and capping requires less time and resources than excavating the soil.¹⁹⁹ Consequently, the insertion of underground utilities will never be an option at the site.²⁰⁰ More specific concerns regarding the environmental health of Chicago's brownfield sites include the fact that remediators and redevelopers do not have to consider whether drinking water may be drawn from the site at any point in the future,²⁰¹ and that the program allows developers to segment portions of a brownfield, remediate a "fenced off" section, and disregard the effects on neighbors still exposed to the contamination present in the unremediated sections.²⁰²

¶53 While some flexibility is necessary in order to make projects fiscally approachable, allowing different remediation standards and control techniques presents questions of environmental justice, long-term community well-being, and sustainability. The City should use the powerful incentives at their disposal to discourage developers from locking a site into a single future use and to encourage the most complete assessments and cleanups practicable. The City might also consider establishing a baseline cleanup

¹⁹³ See *supra* note 51 and accompanying text.

¹⁹⁴ Telephone Interview with Keith Harley, *supra* note 13.

¹⁹⁵ Telephone Interview with Mike Charles, *supra* note 13.

¹⁹⁶ Telephone Interview with Keith Harley, *supra* note 13.

¹⁹⁷ Chicago Brownfields Initiative, *supra* note 11, at 21.

¹⁹⁸ *Id.* at 20.

¹⁹⁹ *Id.*

²⁰⁰ The integrity of capping as a remediation technique is well-established with respect to certain conditions. See U.S. EPA, NO. EPA 540-R-97-013, RULES OF THUMB FOR SUPERFUND REMEDY SELECTION 12-13 (1997), available at <http://www.epa.gov/superfund/policy/remedy/rules/rulesthm.pdf> (last visited Aug. 6, 2008). However, in cases such as this, capping does limit the future use of the site.

²⁰¹ Telephone Interview with Keith Harley, *supra* note 13.

²⁰² *Id.*

standard to ensure that no project will endanger the health and safety of the surrounding community.

IV. CONCLUSION

¶54 The Chicago Brownfields Initiative has achieved remarkable success in many different areas. It has created jobs, reduced environmental hazards, provided useful services, and brought numerous vacant sites back into productive use. Yet there remains room for improvement. As Chicago moves forward with additional brownfields projects, the City must be conscious of maximizing the economic, environmental, and social benefits that brownfield redevelopment can provide a community. Because Chicago has taken the initiative to seek out, coordinate, and incentivize its own brownfields projects, the City is in a prime position to guide developers and stakeholders in a direction that remains true to the goal of brownfield redevelopment—economic and environmental improvement to the benefit of surrounding communities. By encouraging the development of sustainable sources of local employment, involving the surrounding communities in early and meaningful discourse, steering residential development away from gentrification, and demanding a high standard of remediation, the City of Chicago can improve its already successful brownfields program, and in doing so, continue to provide a progressive model of brownfield redevelopment for other cities across the country.