

Industri-Plex Custodial Trust Brings Superfund Site Back to Life

By Cynthia N. Brooks

In 1989, the Environmental Protection Agency (EPA) helped to establish a new brownfields redevelopment strategy when it created an independent real estate trust, the Industri-plex Site Interim Custodial Trust (Custodial Trust), to take title to approximately 120 acres of undeveloped land in the Industri-plex Superfund Site. Ranked number five out of almost 1400 nationwide sites on the EPA's National Priorities List (NPL), the 245-acre Industri-plex Superfund Site in Woburn, Massachusetts had previously hosted businesses that manufactured pesticides, munitions, and leather products for more than 100 years. When a developer bought the land that has now become the site in the 1960s, he began to build roads, subdivide lots, and sell off parcels of the land to make way for commercial and industrial park development. In the course of these activities, the developer uncovered and stockpiled buried animal hides that emitted noxious odors. The odors provoked complaints from nearby residents and drew the attention of environmental regulators to the site. By the late 1980s, the remaining undeveloped land owned by the developer was considered to be of "nominal" value, and the then-bankrupt developer was viewed by many of the parties as recalcitrant and unreliable in his land-use practices. The undeveloped land was enclosed in a chain-link fence and offered by the developer to the EPA in exchange for relief from all past and present liability.

The potentially responsible parties (PRPs) who owned the site before the 1960s had long since divested record title to the property and had no desire to re-enter the chain of title. Allegations that industrial contamination from a nearby contaminated waste site was responsible for a cluster of childhood leukemia cases traumatized and polarized the Woburn community and made taking title to the undeveloped portions of the Industri-plex Site even more problematic. Rife with heavy metal waste, entangled in title encumbrances (such as mortgages and liens), and subject to federal litigation and community outrage, the Site lacked the crucial element of a redevelopment champion.

Enter: the Industri-plex Site Interim Custodial Trust. As the phrase indicates, the trust was created to be a custodian, to take title to the undeveloped land in the Site from the developer, to manage and secure the land, and to sell whatever land could ultimately be sold. In 1989, the EPA, the Massachusetts Department of Environmental Protection (DEP), and 22 PRPs entered into the Consent Decree for the Site. The Consent Decree established two separate, independent trusts: the Remedial Trust and the Custodial Trust. The Remedial Trust consisted of the PRPs, functioning through a Management Committee, and is responsible for remediation of the Site. The Custodial Trust, although originally viewed primarily as a custodian, has come to fill numerous roles with respect to the Site and has cultivated, in the case of the Industri-plex site, innovative redevelopment strategies and unprecedented community-based cooperation.

The Custodial Trust took title to 120 acres, virtually all of the undeveloped land, within the Industri-plex site. The Custodial Trust was to ensure that property issues did not interfere with site remediation, and that all sellable land was ultimately resold. As landowner, the Custodial Trust also was given responsibility for inaugurating and complying with "institutional controls"--the land-use restrictions which permit and facilitate site reuse while protecting the long-term integrity of the remedy. In short, the Custodial Trust was vested with all the powers and responsibilities necessary to fulfill its fiduciary obligations to its beneficiaries: the City of Woburn, the EPA, the DEP, and the PRPs.

The daunting tasks of the Custodial Trust began with a phase of relationship development. Open, honest communication was pursued with key officials from the City of Woburn. Their strained past associations with both the Wells G&H Superfund Site and the Industri-plex Superfund Site had to be ameliorated

through a true partnership. As trust began to build, the community embraced the notion that it could and should have the most to say about any future use of the Industri-plex site. The City of Woburn became the most powerful ally and partner in the redevelopment process, and in a unified vision among all the stakeholders, the future of the Industri-plex site began to take shape.

Next, the Custodial Trust undertook feasibility studies to analyze the marketability of the site, determine its "highest and best use," and ascertain infrastructure improvements which were paramount to implementing that use.

In reaching stakeholder consensus, the Custodial Trust reviewed its findings with the project stakeholders--the city, EPA, DEP, and the PRPs--and secured their endorsement. The priorities of the Custodial Trust's beneficiaries were distinct but interdependent. The city wanted a redevelopment plan that would create new jobs, return the site to the tax rolls, and help resolve some major quality-of-life issues. The EPA wanted end uses that would protect human health and the environment and be widely supported by the community. The PRPs sought an acceptable return on their investment in the Custodial Trust and a redevelopment plan that would manage and/or mitigate their long-term liability.

The Trust promptly moved to structure public-private partnerships. Together with the City of Woburn, the Trust approached key individuals in the state administration and legislature, ultimately negotiating and entering into a series of partnerships with various state transportation agencies. Plans for a new interchange on Interstate 93, a project proposed in the 1970s and dropped when the site was declared a Superfund site, promised to alleviate traffic congestion in the area. After the interchange was approved, parties had to convince the Massachusetts Bay Transportation Authority to build a regional transportation center in collaboration with the MassHighway Department and the Massachusetts Port Authority. The City and the Custodial Trust provided seed money for permitting and design. In exchange, the state agreed to fund and build roadway, mass transit, and highway infrastructure improvements for the Site. Strong community leadership and appeals to representatives at the state and federal governments were critical to making the case for receiving public funds.

Some of the proposed infrastructure improvements required changing the remedial design to accommodate new transportation facilities. The objective was to construct alternate covers and caps to enable specific, future transportation uses to be constructed on some of the most contaminated areas of the Site. The Custodial Trust also assembled, and helped to assemble, the necessary parcels of land and, in two instances, donated land to the state for these public purposes and as a strategy to maximize property sales value. The planned infrastructure improvements resulted in extensive positive publicity that virtually pulled the market to the site. Following complex negotiations, the Custodial Trust entered into one purchase and sale (P&S) agreement with Dayton Hudson Corporation (based in Minneapolis) and another P&S agreement with National Development of New England (a major regional developer). After clearing title to the property and assisting Dayton Hudson with securing development permits, the buyer closed on a parcel consisting of approximately 18 acres of buildable land for a purchase price of \$11.5 million. One of the many conditions to closing was the buyer's receipt of a Prospective Purchaser Agreement (PPA) from the EPA. In accordance with the Consent Decree formula, the Custodial Trust distributed the proceeds from the sale to the City of Woburn, the PRPs, and the EPA.

Since then, the Custodial Trust has closed on a second parcel of land to National Development and GTE Inter-Networking, Inc. for a 235,000 square foot office park in the Site. The Trust expects to sell all of the remaining salable land in the Site under its control by the end of 1999. The concept of a Custodial Trust holds great potential for application in the brownfields redevelopment arena. The Industri-plex experience represents one of many approaches for implementing the redevelopment of a Superfund site. Regardless of the specific approach, each site must be evaluated for its potential reuse(s), and some sites may not be

viable candidates for redevelopment for any number of social, economic, market-related, community-based, or environmental/technical reasons. The manner in which any particular trust could be structured will be determined ultimately by site-specific circumstances and what the appropriate regulators and other stakeholders deem acceptable. The trust structure and utility depends upon such variables as the trustee's specific skills, expertise, commitment, and ability to manage complex relationships. These skills and capabilities cannot and should not be characterized as competence in either mediation and/or dispute resolution. "Candidate" trustees who can effectively and proficiently function as vested, directed, and strategic leaders and advocates of the redevelopment process have the best prospects for success. Perhaps more important, the site team-EPA, DEP, the City, residents of Woburn, and the PRPs at Industri-plex, for example-is as critical to redevelopment success as the concept of a trust.

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