



Ordinances and Acquisition:

Control Your Site, Control Your Future

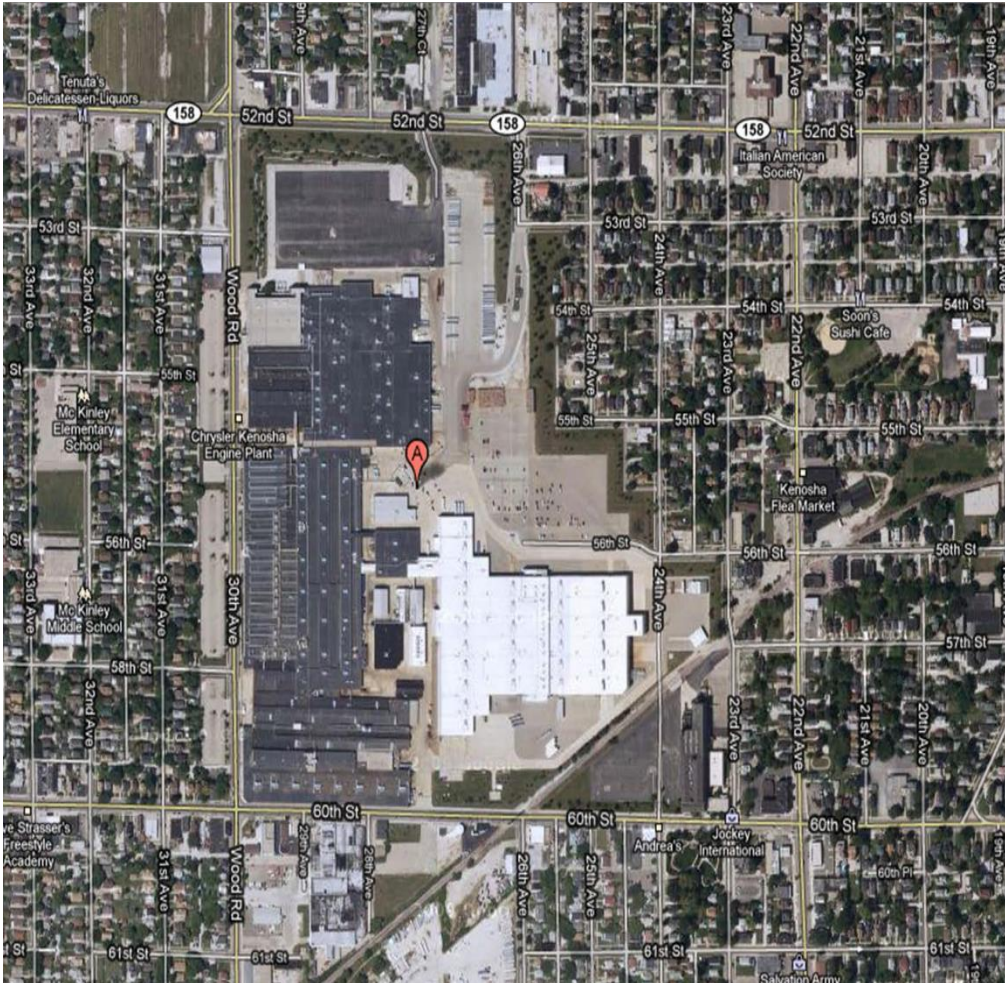
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Controlling Your Destiny: Kenosha, WI



Today's presentation

- Overview of hypothetical
- Share with you what we learned
- Describe what tools worked
- What we would do differently today

Overview of Hypothetical

- Insolvent Paper Company shuts down operations
- Secured lenders have \$25M outstanding debt
- 1 million sq. ft. facility operated for over 90 years
- Unknown asbestos and PCB building components
- Estimated value of contents/components - \$2 Million
- Paper Company files for Chapter 128 receivership and seeks liquidation
- Receiver wants to solicit contract to conduct an auction for machinery and seek RFP for removing remaining scrap value from building

Issues for Interested Parties

- The City
- The Secured Creditors
- The Receiver
- The DNR
- The Auctioneer
- The Demolition Contractor

The City's Perspective

- Ensure proper performance by a responsible contractor
- Interest in completion of demolition of all structures in accordance with laws
- Get site ready for future redevelopment at a highest and best use
- Seek cleanup of legacy contamination

DNR/EPA Perspective

- Clean up all legacy contamination under the buildings
- Ensure the buildings are demolished in accordance with applicable environmental laws
- Ensure that equipment is properly decommissioned before removal
- Ensure that there are responsible parties that can fulfill these responsibilities

The Secured Creditors' View

- Maximize equipment resale
- Maximize scrap value of building components
- Avoid liability for pre-existing contamination
- Exit site as soon as possible to avoid building upkeep expense
- Sell building/land to highest bidder regardless of proposed use

Receiver's perspective

- Take the least cost provider of auction and demolition contractors
- Maximize value of equipment and scrap values
- Avoid expenses that are not “value added” for the estate
- Minimize contamination liability for estate
- Sell or seek to abandon building/land ASAP to avoid administrative expenses

Auctioneer's Perspective

- Quick Auction (Time is Money)
- Maximize value of sale of equipment
- Get the equipment out of the building with least removal expense
- Minimize auction expense for licensing/bond/insurance requirements

RFP Demolition Contractor

- Avoid conducting demolition activities that are not “value added”
 - Non-recyclable portions of buildings
 - Activities that create high disposal/reprocessing costs
- Strong financial incentive to remove high value recyclables at front end of the project
- Avoid liability associated with activities that are high risk
 - Asbestos containing
 - PCB impacted building components
 - Removal of foundations and other site barriers

The Perfect Storm for the Public

- Responsible party is insolvent for legacy cleanup
- Valuable equipment sold to the highest bidder
- Buildings are stripped of valuable recyclable components
- Structures containing high risk liability and removal cost remain on the property as legacies for the community if no buyer.
- Secured creditors “walk” from the property relying on the lender liability exemption
- Valueless property remains a ‘dead zone’ for decades

Background: Kenosha Engine Plant

- Over hundred years manufactured autos
- Closed production in October 2010
- As many as 16,000 employees in 1960's
- 107 acres in downtown Kenosha
- Within a half mile:
 - 3,700 residential-related properties
 - Environmental justice area
 - 2,300 single family homes
 - 8, K-12 schools

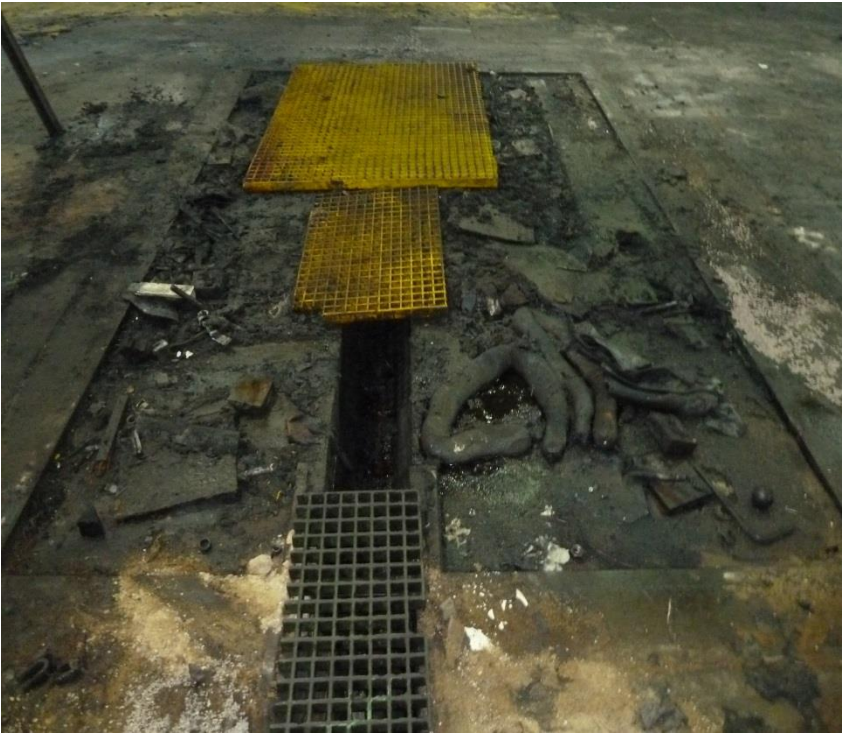


Kenosha: Tools to Control Site

- Acquisition agreement
- Access agreement
- Structural Ordinance
- Legal tools, such as bankruptcy proof of claim
- Superior Lien



Acquisition and Access



- Work with owner to gain reasonable access
- Use police powers if necessary
- Inspect interior and exterior of property
- Consider acquisition of site using exemptions

If there is a bankruptcy

- Work with DNR & EPA
- Gain access
- Inspect, with DNR
- File proof of claim
- Use other tools, such as liens and superior liens and salvage ordinance for leverage



Concerns to Address

- Existing equipment and chemicals in building
- Trespass
- Who will operate remediation systems
- Salvage operations and equipment removal
- New waste generation
- Others remove the value and leave the LGU with costly “remains”



Tool Developed: Model Ordinance

- Model Structural Ordinance – RR 989
- For vacated, non-residential structures
- Requires of owner and salvagers:
 - Permit
 - Financial assurance
 - Insurance
 - Standard protocols for salvaging
 - Notices and inspections
 - Reporting

What this prevents – another WI LGU:



- Post 2009, salvagers on foundry property
- Mix elemental mercury with PCBs
- EPA Superfund called in
- \$500,000 in cleanup costs for interior
- Windfall lien

Lessons Learned

- Pass structural ordinance - can save you big \$
- No company too big to fail
- Many times, acquisition makes sense.
- Form your team: LGU, state, and federal govts.
- LGU: consider hiring on-site inspector for salvage
- Gain access, inspect, and continue to inspect
- If bankruptcy, file proof of claim
- Control your destiny; you are your own best advocate