Look Before You Leap

by Barry Winningham

Lenders are aware of the potential risks involved with approving a loan for purchase of a commercial property. Accepting a commercial property as collateral for a business operational loan, purchasing property for a new branch bank or foreclosing on an existing loan can be equally risky. The historic use (or misuse) of a particular commercial property can have a substantial environmental impact that is not readily discernable by mere site inspection. Transactions involving commercial properties should include an assessment of the property for potential environmental issues prior to completing the loan process. A thoroughly conducted Phase I assessment helps secure both the lender's and the borrower's interests in the property by establishing a historical record of property ownership and business usage. By detailing a property's history and former use, the potential presence of recognized environmental conditions, and the liabilities inherent to same, can be determined. With that information in hand, sound business decisions can be reached.

Unfortunately, many times the lessons that provide us the most practical business experience are the ones involving our mistakes. Such was the case with a recent purchase by an Arkansas realtor. What appeared on the surface to be a great business opportunity proved in the long run to be a financial nightmare. The realtor found a vacant property located at a busy intersection of a State highway and city boulevard. Access to the site was good and visibility was excellent. The asking price was well below the apparent market value for a property located in a rapidly developing part of the city. The realtor made the purchase, in this case without the assistance of a lending institution. A major retail firm expressed interest in developing the location and made a tentative offer that, if successfully negotiated, would afford the realtor a substantial profit on a very short-term investment; the retailer's offer carried one stipulation - completion of a Phase I Environmental Site Assessment that did not identify any recognized environmental conditions. The assessment was completed by the retailer's consultant and revealed the fact that the property had been operated as a gasoline station and garage between 1949 and 1965. Furthermore, several underground petroleum storage tanks had been abandoned on the property and covered by rubble when the old gas station building was razed. After expenditure of approximately $185,000 for underground storage tank removals, contaminated soil excavation and disposal, and groundwater impact assessment, the Arkansas Department of Environmental Quality provided a determination that no further site remedial action was necessary. The transaction with the retail firm was eventually completed, and the realtor gained some very valuable experience.

Former ABA President and board member of The Southern Co. of NLR, Inc. Barnett Grace states, "No one wants to unknowingly become the lien holder on, or owner of, a property that may require extensive environmental cleanup. The best defense is to have an environmental professional perform a Phase I Environmental Site Assessment according to ASTM E1527-05 Standard Practice for Environmental Site Assessments prior to loan closing."

The Southern Co. of NLR, Inc. (SOCO) is Arkansas' largest distributor and installer of petroleum storage and delivery equipment. SOCO's Environmental Division provides professional services to private industry, Arkansas State government, and the banking community; services include everything from initial property assessments to site remediation. One of the least expensive, yet most valuable, services provided is performance of Phase I Environmental Site Assessments.

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