



Retail Property Tested by History of Soil Contamination and Remediation

Commercial real estate owner secures funds for extensive cleanup of historic releases from dry cleaning operation

After purchasing a large shopping center on Aurora Avenue in Shoreline, Washington, commercial real estate property owner Conner & Rubin, LLC discovered the subsurface soils and groundwater were contaminated with hazardous substances from historical dry cleaning operations. Following a successful mediation of claims brought against the previous owners for breach of contract and violation of the Model Toxics Control Act, environmental cleanup of the property began in 2014.

PROPERTY HISTORY

The Pepper Hill property is an 11-unit shopping center with retailers and restaurants, including a nail salon, chiropractor, restaurant and dry cleaner. A dry cleaner operated on the property starting in 1983. Unfortunately, the former dry cleaning tenant did not properly manage the disposal of its dry cleaning solvents and waste materials. In particular, a routine cleaning of the catch basins on the property in 1993 revealed that the dry cleaner had been dumping dry cleaning solvent waste into the drains. As a result, the subsurface soils of the

Pepper Hill property and the adjacent property to the south became contaminated. The prior owner of the Pepper Hill property did not address the issue at the time of the original discovery in 1993.

Conner & Rubin purchased the adjacent property to the south of Pepper Hill (known as the Hideaway property) in December 2005, and were eventually approached about purchasing Pepper Hill in 2006. During the course of negotiations, the parties agreed to a provision in the Purchase and Sale Agreement ("PSA") that required the seller to remediate all contaminated soil on the Property per their environmental consultant's recommendations. Unfortunately, the cleanup activities performed by the seller's consultant were insufficient to address the full nature and extent of the problem.

DISCOVERY OF EXTENT OF CONTAMINATION

In 2009, Conner & Rubin considered selling the Pepper Hill property to an interested party. The potential buyer retained a consultant to conduct an environmental site assessment, which revealed the extensive historic dry

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cleaning solvent contamination in the soils on the Pepper Hill property and in the soils beneath the Hideaway property. The prospective buyer withdrew the offer, and Conner & Rubin was left with high levels of dry cleaning contamination beneath both of their properties.

In 2011, after gathering more site data, Conner & Rubin filed a claim against the former property owners for breach of contract under the PSA and for recovery of response costs under MTCA for the contamination on both the Pepper Hill and Hideaway properties. Foster Pepper Environmental attorneys Ken Lederman and Alexandra Kleeman worked with a consultant to determine the extent of contamination on both properties, and to craft a plan for remediating the contamination. Simultaneously, Foster Pepper pursued the former sellers and their insurance for contribution and cost-recovery. After extensive litigation including multiple attempts by the defendants to dismiss the claims, the Foster Pepper team settled the matter by securing approximately \$1 million to be held in an escrow account for the purposes of funding the remediation.

Using these funds, the Foster Pepper Environmental team continues to work with Conner & Rubin and its consultant to ensure that the Pepper Hill and Hideaway properties are fully characterized and that an efficient and cost-effective remedy is developed and implemented. Foster Pepper was pleased to represent Conner & Rubin LLC for this successful settlement, and looks forward to continued efforts to complete the cleanup and restore the value and marketability of both of the client's properties.