



LaBella

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Environmental Due Diligence

HORROR STORIES

PRESENTER



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Manager



AIR & WASTE MANAGEMENT
ASSOCIATION





What Does an Environmental assessment primarily evaluate?

The presence or likely presence of hazardous substances or petroleum products in, on, or at a property, due to any release to the environment, under conditions indicative of a release to the environment, or under conditions that pose a material threat of a future release to the environment.





So What conditions are we concerned with?

The environmental consultant will research the history of the property and evaluate site conditions for operations which handled hazardous substances or petroleum products.

Project No. _____
address: _____
interviewee: _____
Date of Interview: 7/1/201

PHASE I ESA INTERVIEW

How long affiliated with Site:
 Owner
 Neighbor
 Other (explain): _____
 Owner Representative
 Purchaser
 Other

of this assessment?
 Selling the property
 Other (explain): _____

PROPERTY SURVEY MAP or OTHER MAPPING of the Site as shown (if Yes, please provide if possible)
Total sq. ft. of _____
 Unknown

the Site and DATES, if known?
DATES of occupancy, if known?
Dates of Usage



Why?

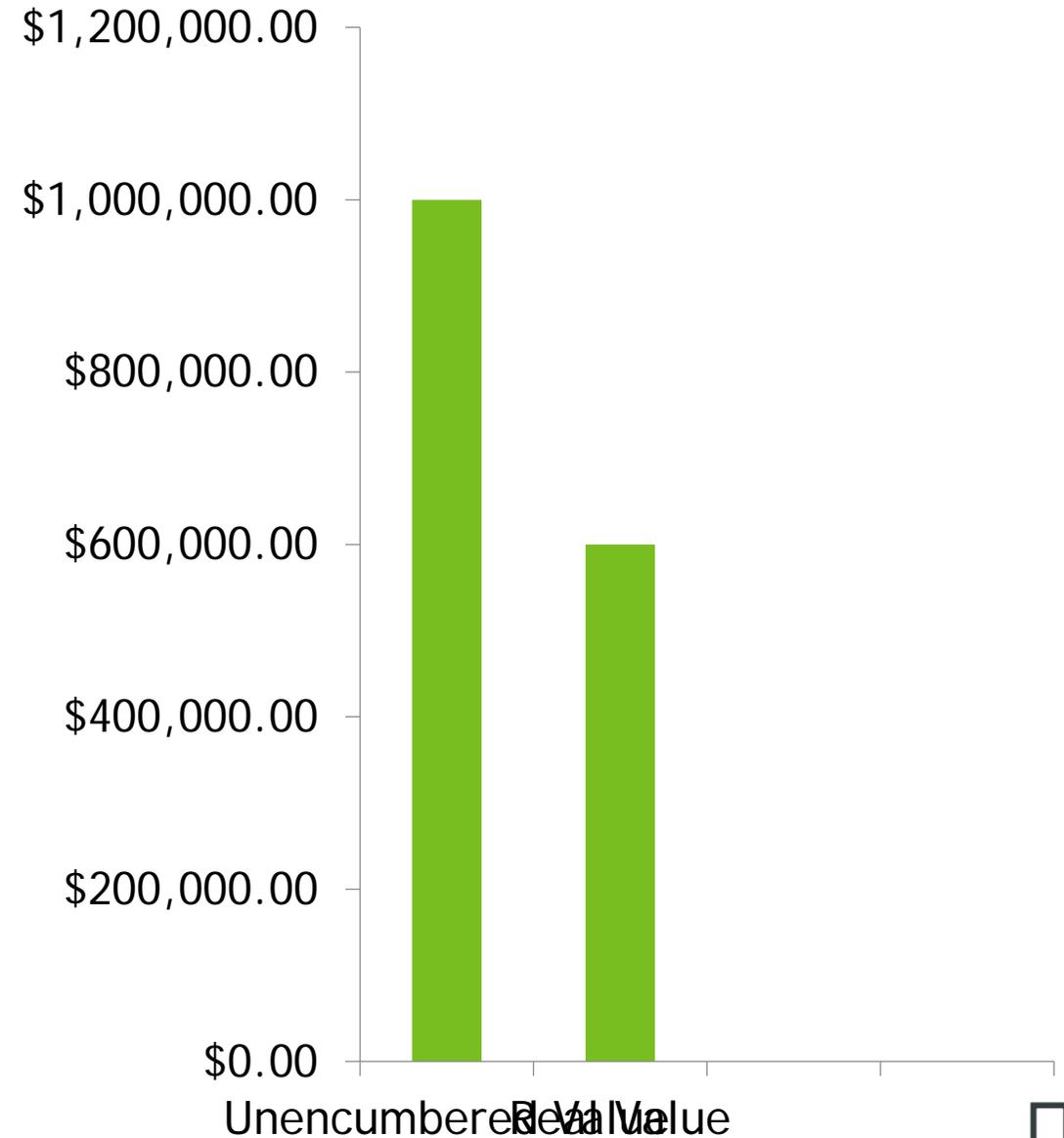
- **The Business Case**

Environmental issues can affect the fair market value of a property, they can affect future asset disposition, and they can add costs associated with remedial actions.

- **The Legal Case**

CERCLA provides a mechanism for *landowner liability protections* (LLPs) for the following categories:

- innocent landowner
- contiguous property owner
- bona fide prospective purchaser





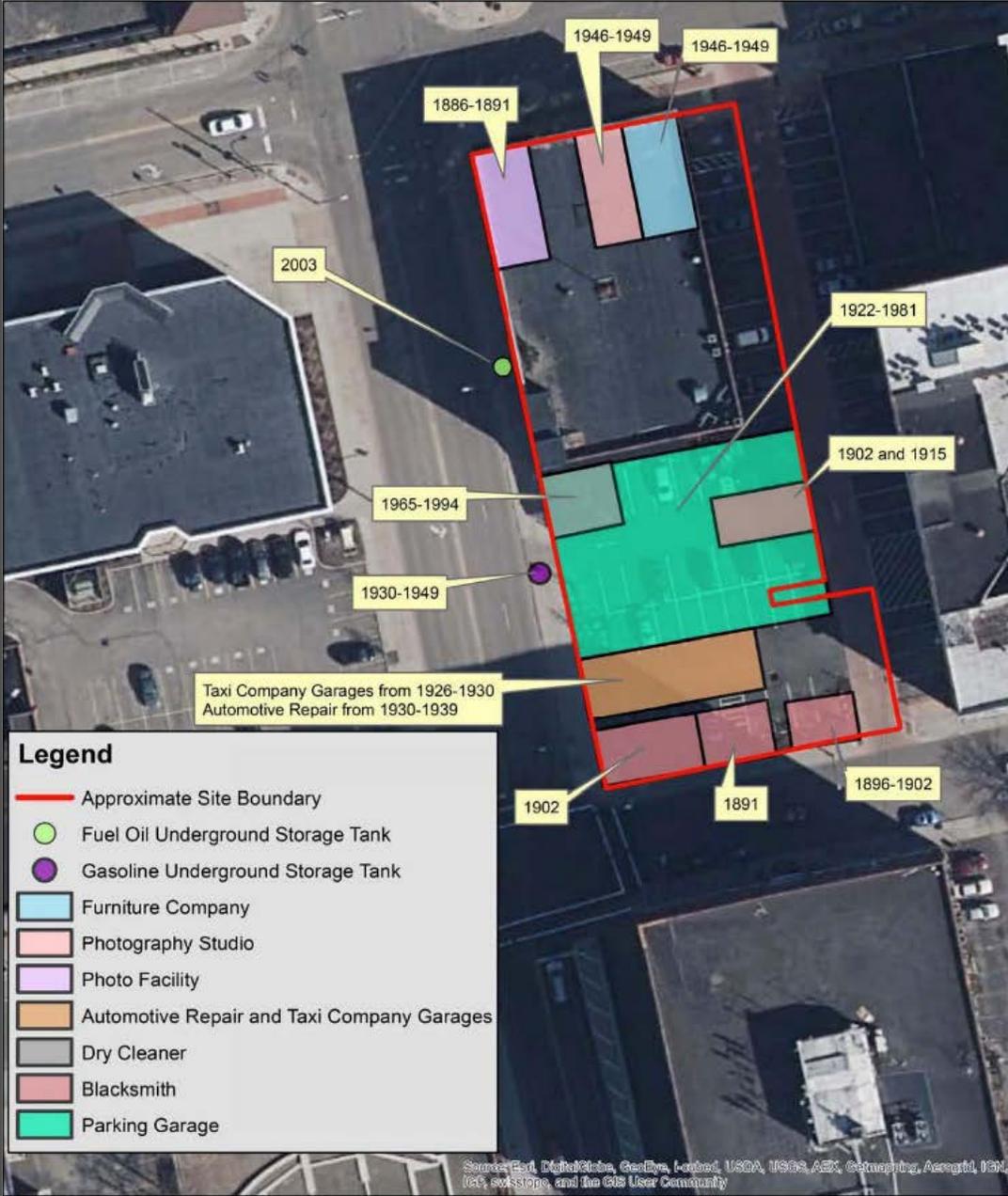
Case Studies

Let's walk through some example projects to see the common work flow, common observations and consequences, and some uncommon or unintuitive twists we have encountered over time.



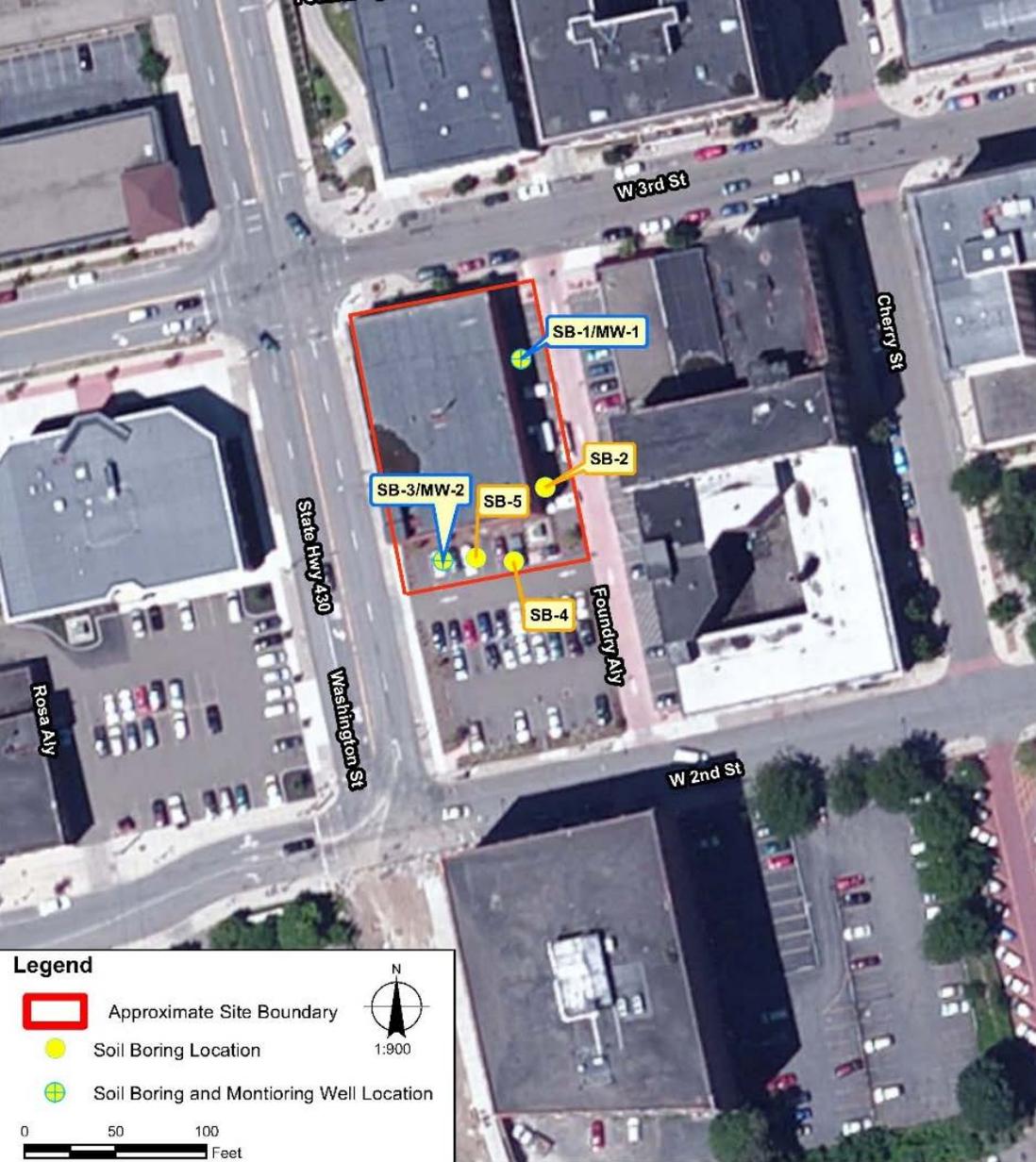
Case study 1

- LaBella retained to complete Phase I ESA - August 2017
- Ordered by lending institution for real-estate purchase and construction lending
- Phase I ESA conducted in 2003 found no environmental concerns. The property owner relied on the 2003 Phase I conclusions to purchase the Site.
- Several environmental concerns identified related to on-site and off-site operations



Case study 1

- LaBella retained to complete Phase II ESA - August 2017
- Ordered by lending institution to evaluate environmental concerns identified within Phase I ESA on north parcel only
- Significant concentrations of dry cleaning chemicals (i.e. chlorinated solvents) and gasoline impact identified south of the Site Building in subsurface soil and groundwater.
- Purchaser has spent ~\$7,000 for due diligence

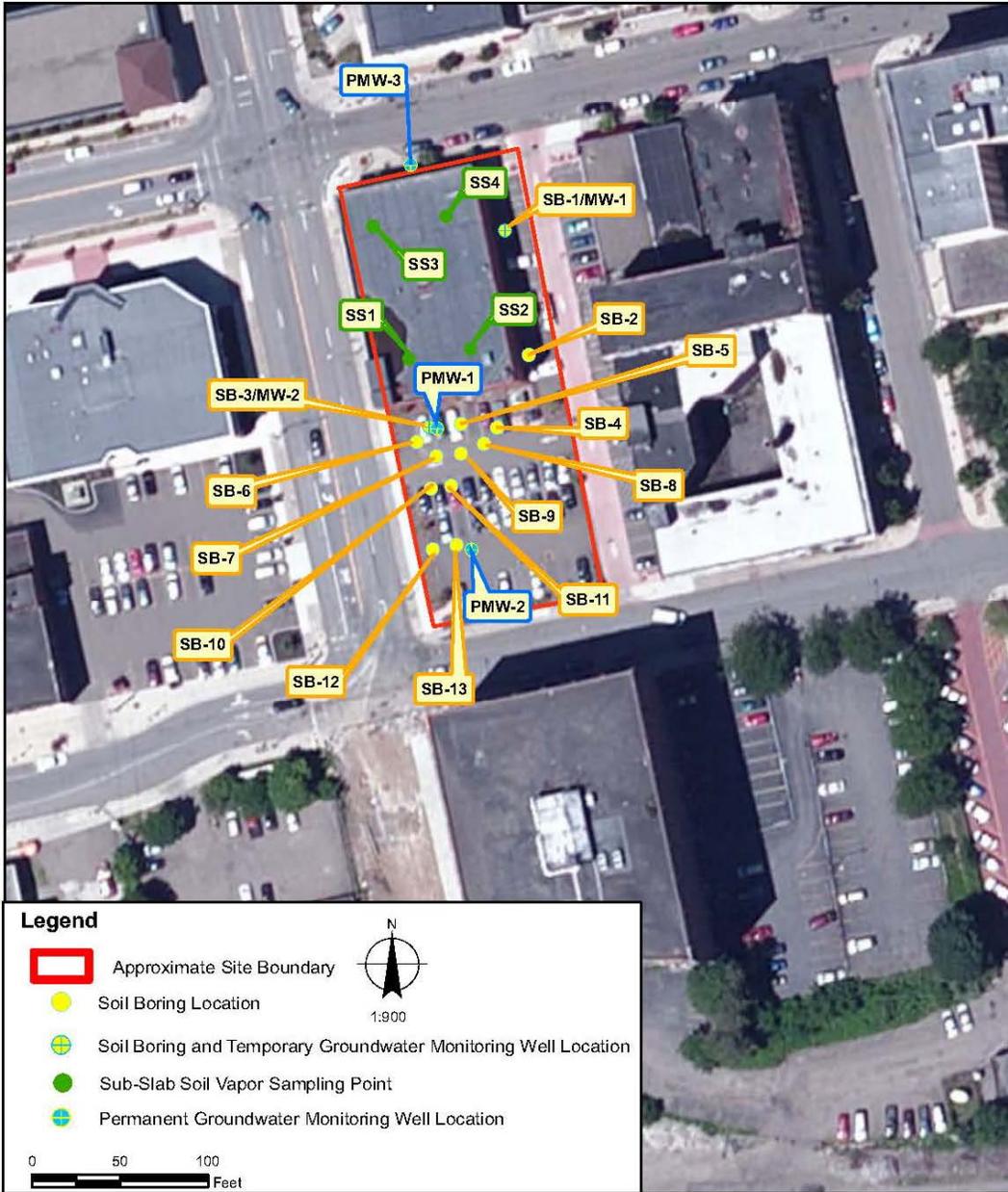


PROJECT/DRAWING NUMBER:	SITE INVESTIGATION MAP	LABELLA Associates, D.P.C. 300 PEARL STREET BUFFALO, NY 14202 P: (716) 551-6281 F: (716) 551-6262 www.labellapc.com ©2016-17 2013
ISSUED FOR:	ISSUED BY: SND	
REVIEW:	DATE: AUGUST 2017	
DATE: AUGUST 2017	REVIEWED BY: AB	



Case study 1

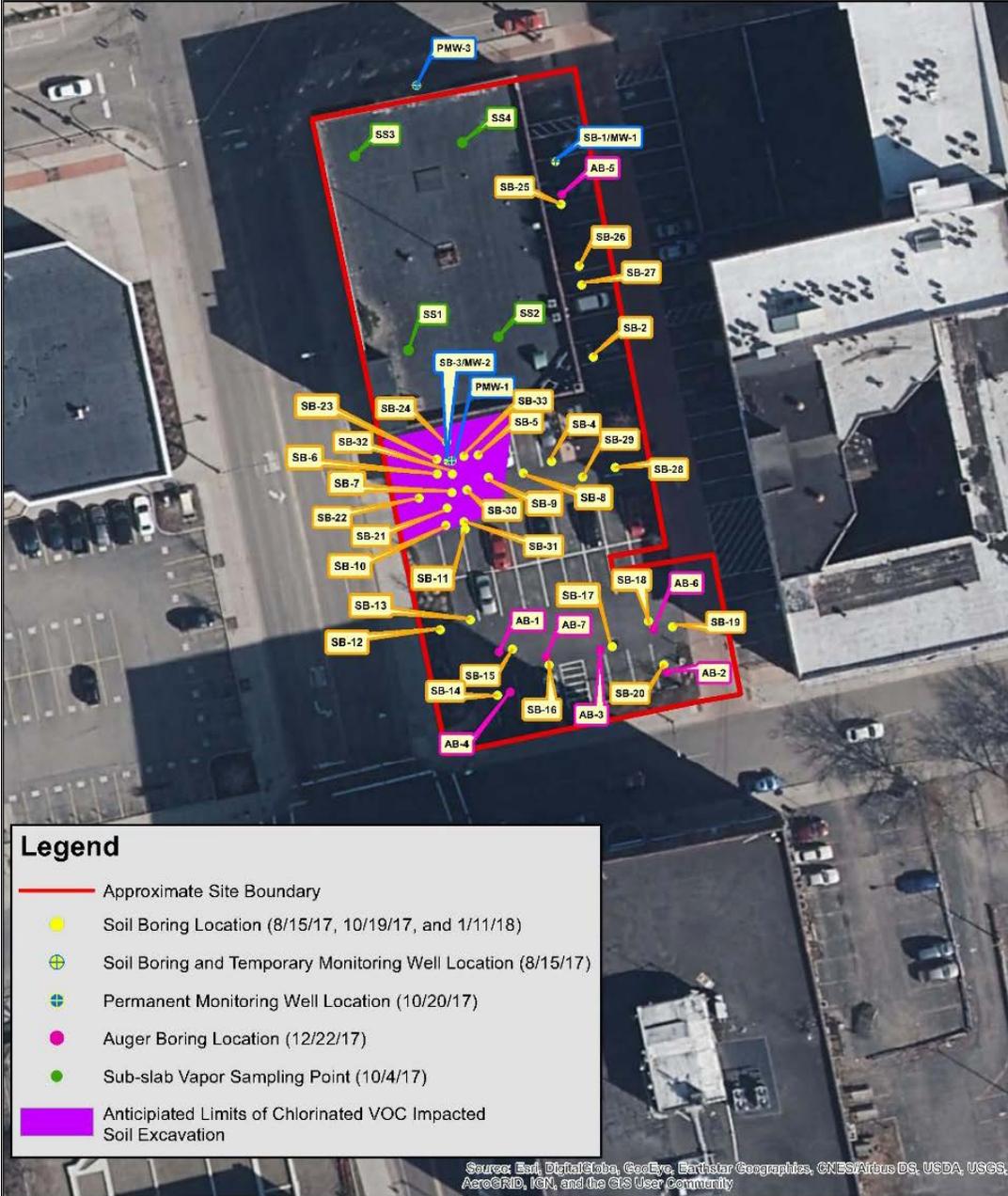
- LaBella retained to complete Supplemental Phase II ESA - October 2017
- Retained by property owner to further evaluate extent & severity of subsurface impact and threat of soil vapor intrusion within Site Building
- Impact appears to be relatively confined, but appears to be migrating south with groundwater
- Indoor air impact confirmed
- Owner incurs ~\$13,000 for Supplemental Phase II ESA



PROJECT/DRAWING NUMBER	DATE: OCTOBER 2017	DESIGNED BY: SND DRAWN BY: SND REVIEWED BY: AZ	PROJECT/CLIENT
SITE INVESTIGATION MAP			
LABELLA Associates, D.P.C.			
300 PEARL STREET BUFFALO, NY 14202 P: (716) 551-6281 F: (716) 551-6282 www.labella.com ©2013/2014/2015			



Case study 1



- LaBella retained to complete Second Supplemental Phase II ESA - January 2018
- Retained by purchaser to further evaluate extent & severity of subsurface impact
- Purchaser is considering negotiation purchase price and application/entrance into state brownfield program subsequent transfer of ownership
- New data confirms likely source area and significantly elevated concentrations of PCE
- Soil PCE ~240 ppm
- Groundwater PCE ~36 ppm
- Purchaser incurs ~\$14,000 for Second Supplemental Phase II ESA
- Purchaser total due diligence cost to date ~\$27,000

PROJECT #/DRAWING #/DATE:	DRAWING NAME:	PROJECT:	<p>0 20 40 Feet 1 inch = 50 feet INTENDED TO PRINT AS: 8.5" X 11"</p>
	AREA OF CONCERN		<p>LaBella Powered by partnership.</p>



Case study 1

- LaBella retained to support brownfield cleanup - Spring 2018
- Property purchased with negotiated price
- New owner successfully enters brownfield cleanup program
- Soil source removal completed January 2019
- Over 2,000 tons of PCE and gasoline impacted soil excavated and landfilled
- Approximately 30,000-gallons of PCE and gasoline impacted groundwater generated
- Sub-slab depressurization system (SSDS) installed & subsequent indoor air sampling clearance completed
- Collective estimated environmental cost bared by parties involved approximately \$600,000





Case study 2

- Purchaser retains “Environmental Consultant A” to conduct Phase I ESA in 2001 to evaluate property.
- “Environmental Consultant A” concludes environmental concerns exist related to historic on-site gas stations and automotive repair.
- “Environmental Consultant A” recommends additional investigation to evaluate the site for potential orphan underground storage tanks and subsurface impact.
- Purchaser retains “Environmental Consultant B” in 2001 to review Phase I ESA prepared by “Environmental Consultant A.”
- “Environmental Consultant B” concludes no further investigation is warranted based on municipal permits suggesting tanks were removed. Purchaser buys property.





Case study 2

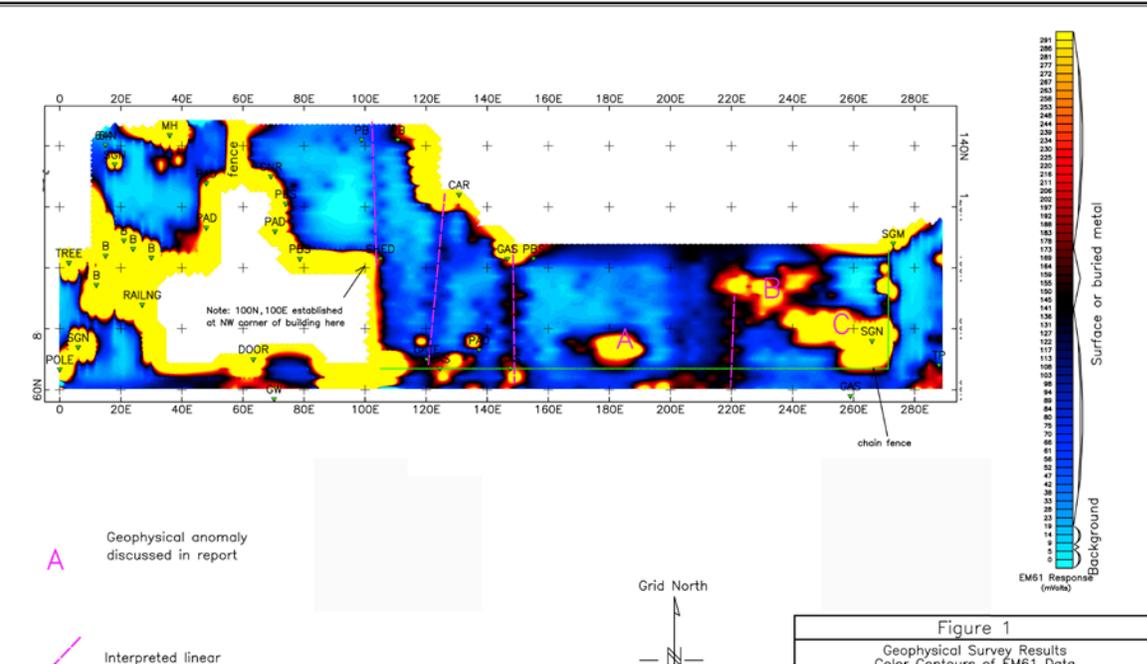
- Remediation of chlorinated solvents on north adjacent property identifies subsurface petroleum impact at Site boundary in 2014
- NYSDEC opens spill, identifies Site owner as responsible party, and requires remedial work plan
- LaBella retained to assist property owner
- LaBella conducts new Phase I ESA and subsequent comprehensive subsurface assessment of Site in 2014



Case study 2

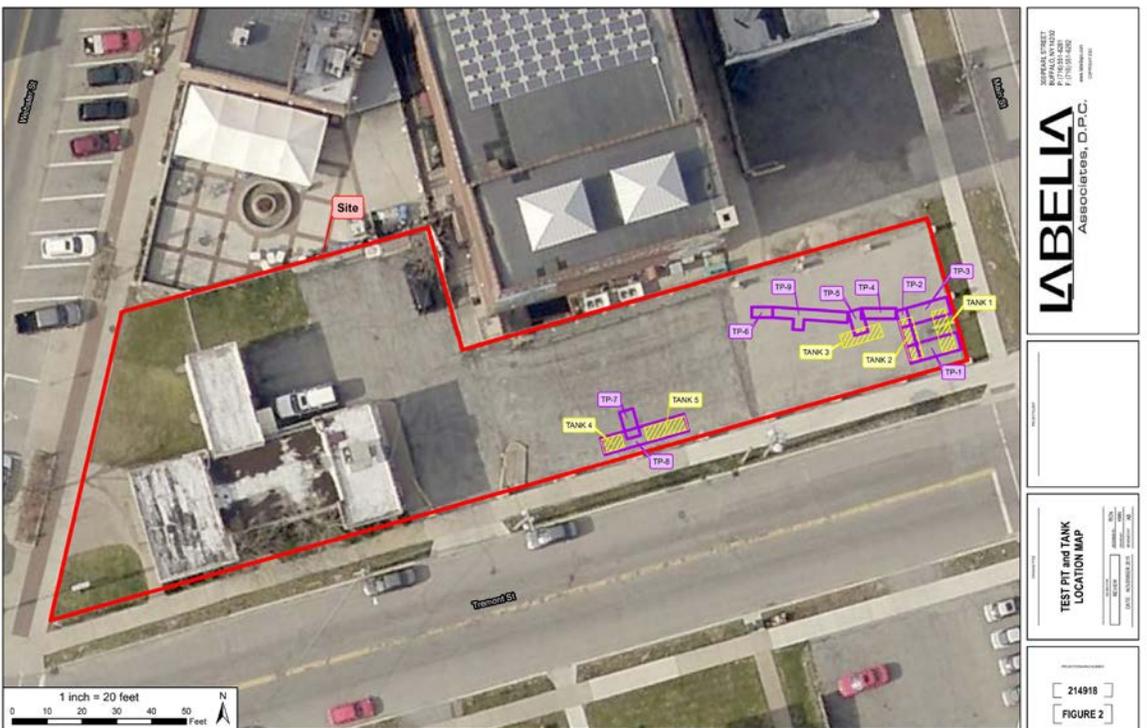
- LaBella Phase I ESA complete in January 2015. LaBella confirms 2001 Phase I ESA conclusions prepared by "Environmental Consultant A"
- Site historically consisted of three parcels and included three individual gasoline filling stations and an automotive repair facility. Underground storage tanks were affiliated with all three operations
- Tank removal permits reviewed by "Environmental Consultant B" included permits for property located approximately 200 feet south of the Site





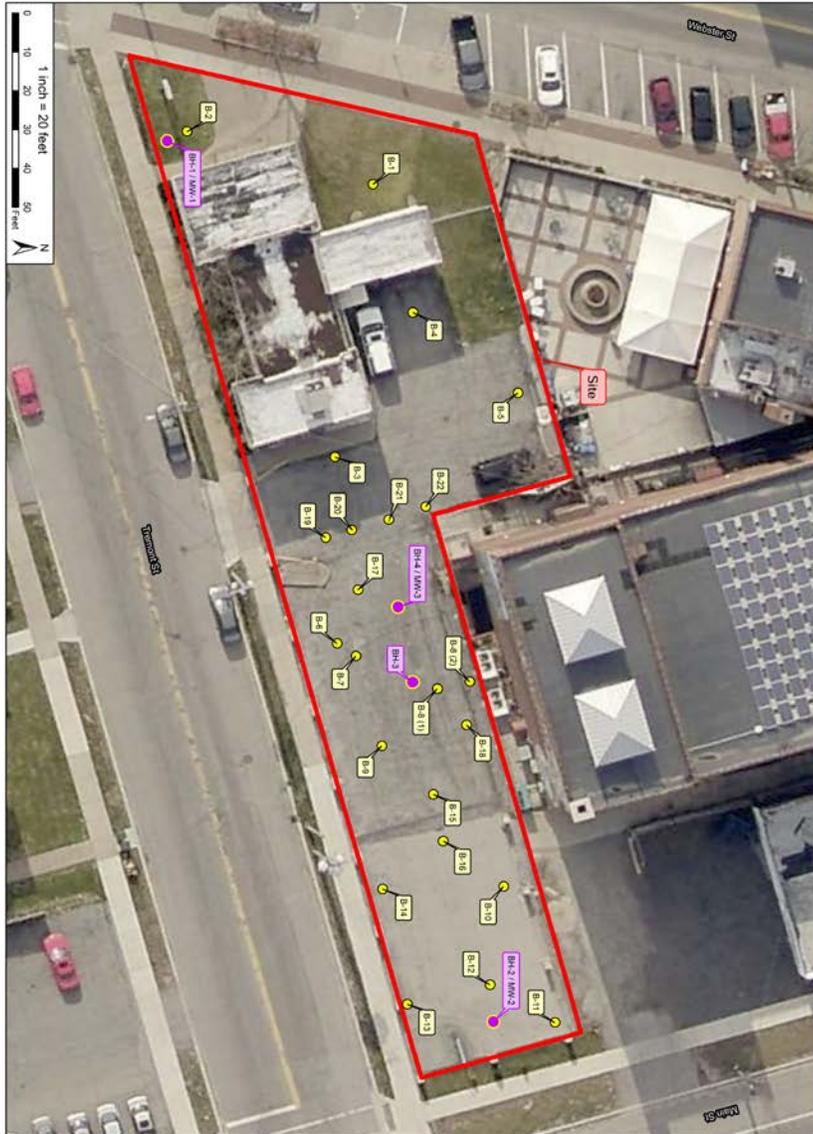
Case study 2

- Geophysical survey conducted in December 2014 to evaluate Site for potential orphan underground storage tanks
- Three anomalies detected
- Exploratory excavations advanced in January 2015
- Five underground storage tanks encountered, some still containing gasoline and waste oil
- Significant petroleum impact observed proximate the underground storage tanks



Case study 2

- Soil and groundwater assessment completed in April 2015
- Soil and groundwater on east portion of the site contained petroleum at concentrations exceeding NYSDEC standards
- West portion of Site was relatively clean
- LaBella's reports were shared with the NYSDEC
- LaBella's services totaled over \$30,000
- Property owner used LaBella data to pursue previous operators for damages
- Cleanup estimated at between \$150-250K



Case study 3

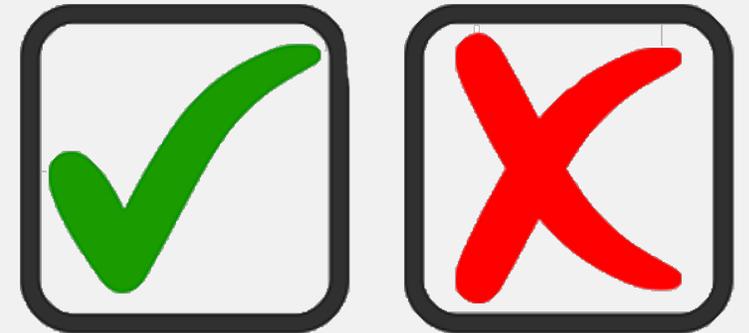


- LaBella retained to complete a third party review of a Phase I ESA for a financial institution for lending purposes
- Phase I ESA was completed within two months of the date LaBella was engaged
- Phase I ESA was initially completed for presumably a cash purchase of the Site evaluated
- Property located in a typical suburban industrial park setting
- Site was a vacant ~21,000 square foot warehouse/production facility with office space constructed in 1984
- Several significant deficiencies were identified
- While not necessarily a deficiency, user questionnaire not completed (transaction was a purchase) - user cannot obtain innocent landowner liability protections



Case study 3

- Two NYSDEC spills and RCRA generator listings related to Site not evaluated. NYSDEC files not reviewed.
- Adjacent/adjoining regulator listings not discussed.
- Municipal records not reviewed.
- Floor drains and sump within the Site Building were not discussed
- Only source of aerial photographs was google earth back to 1995
- Report only established history of property to 1995. However, records are ascertainable for Site to approximately 1880's based on LaBella experience.
- LaBella recommended to the financial institution that the report deficiencies be addressed with the consultant, or a new Phase I ESA be prepared.
- The deficiencies are ultimately a burden on the purchaser.



Case study 4



- Property owner retained environmental consultant to prepare Phase I ESA for commercial real estate
- Phase I ESA - some minor issues identified
- Lending institution provides Phase I ESA to third party environmental consultant and Phase I ESA findings are confirmed
- Property appraised value of \$4.3M
- Lending institution lends approximately \$3.2M





Case study 4

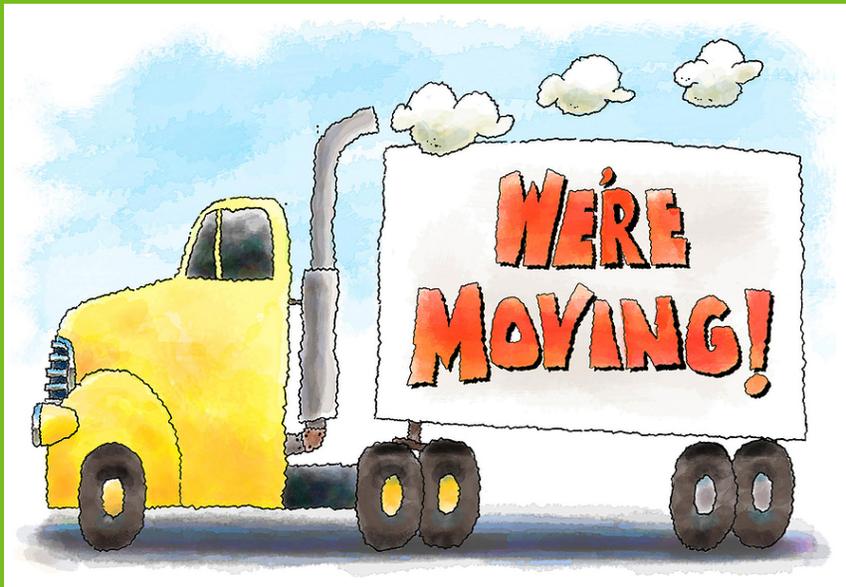
- Subsequent loan closing, USEPA meets with property owner/borrower informing the owner of intention of USEPA to order cleanup of property
 - Property was utilized as a refinery for nuclear materials from 1940s to 1960s
 - Long history of poor housekeeping, violations, worker exposure, and “deplorable conditions”
 - State brought charges against operators in 1958 and they plead guilty
 - Operators are ordered to decontaminate property; however, cleanup efforts fail to decontaminate
 - Property is further investigated in 1970s, 1980s, and 1990s





Case study 4

- Owner sues environmental consultant who prepared Phase I ESA
- Suit brings public attention to the Site through local media
- Owner retains environmental consultant to review USEPA files - determines Site remediation would cost between \$4M and \$30M
- Tenants vacate the premises
- Owner/borrower defaults on mortgage



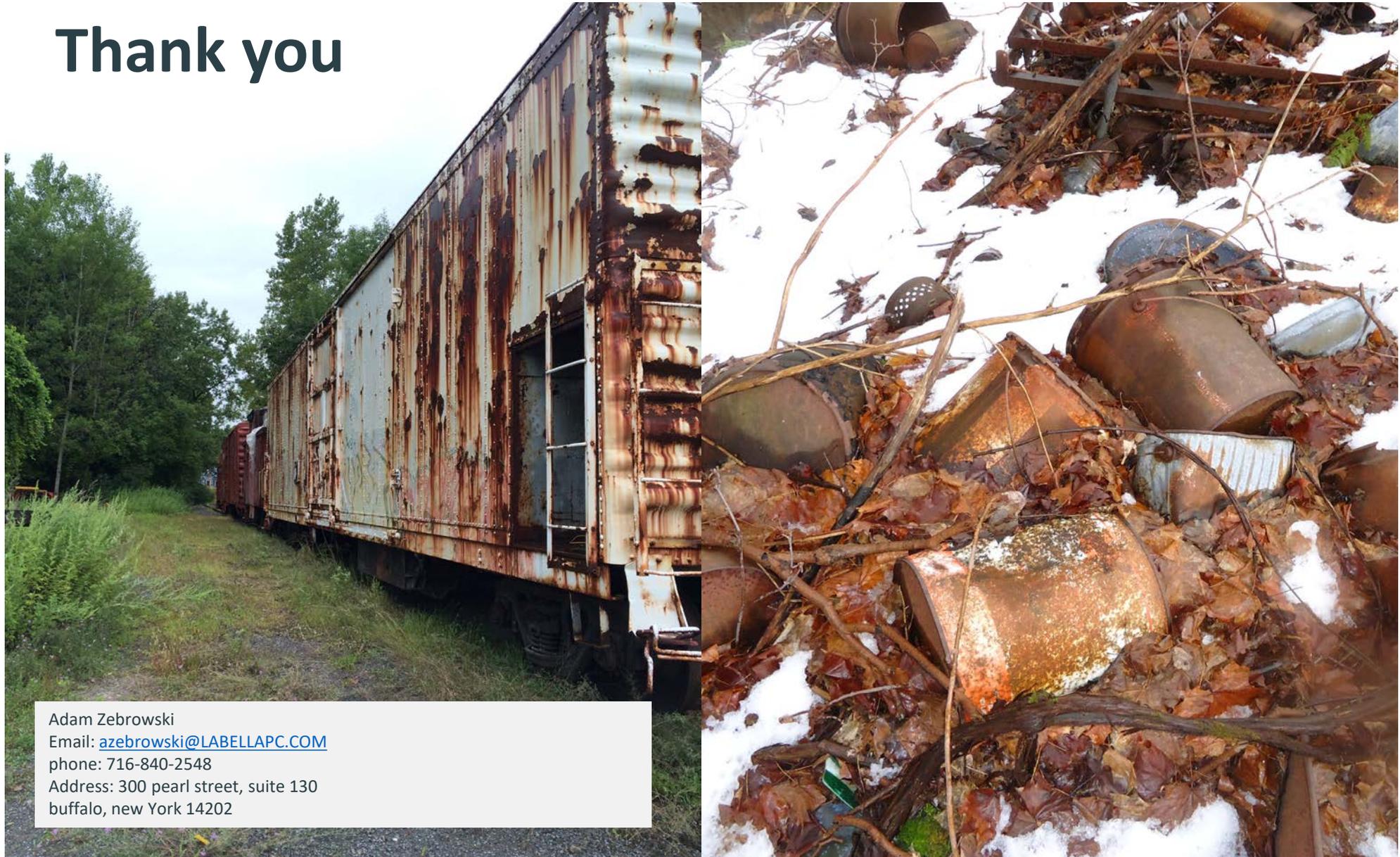
Case study 4



- Lender commissions new appraisal to prepare for foreclosure - valued property at \$0
- Lender sues both consultants
- Statute of limitations on environmental reports have expired - lawsuit dismissed.
- Final thoughts



Thank you



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