

If you're buying or selling property, read this first

Part 2 of a two-part series on buying property

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Part I of this series discussed the major issues of zoning, neighbors, water, and power, as well as transportation infrastructure, soils and slope characteristics. In Part II, the discussion focuses on more specific items that should be reviewed prior to purchase to minimize future environmental liability.

As environmental cleanup and waste disposal costs continue to increase, so does the importance of assessing a property's environmental liability *prior* to purchase. Trying to save money at this point by not investigating a site's environmental history can potentially cost big down the road. A relatively modest expenditure can reveal problems before you buy. If unresolved environmental issues are discovered, the prospective buyer is in a stronger negotiating position.

Prospective sellers also benefit from doing their own environmental assessment prior to listing a property. You may find some surprises that need attention, but you will have the opportunity to fix any problems before listing the property. Finding problems during the negotiating period puts the seller at a disadvantage and may scare off prospective buyers.

The previous use of the site will largely dictate the nature of information that should be gathered. However, some information should be acquired regardless of how the site has been used in the past.

Real estate agents typically gather information concerning zoning, property taxes, and water and power availability. They may also line up the property appraisal, title search, and building inspections. However, many realtors and brokers are not familiar with specific environmental questions that should be asked.

In most states, the seller is required to fill out a property disclosure form, which includes a list of hazardous conditions that may be present, such as radioactive material, landfills, toxic materials and asbestos. Generally, the seller is not required to investigate the presence of any hazardous conditions. He simply indicates whether he is aware of such conditions at the site. If a buyer closes on a property and subsequently discovers an environmental problem about which the seller had previous knowledge, the buyer has the option of pursuing legal reparation. However, proving the seller actually had prior knowledge is often difficult. And, in many cases, the seller is genuinely unaware of environmental problems that exist on his property, such as soil contamination and illegal dumpsites, because they are not perceived as problems. So, it is up to the buyer to discover as much as possible about a site prior to purchase.

If you're looking at buying an existing feedyard, dairy, or farmstead, don't assume there are no environmental risks. Improper disposal of used oil, batteries, pesticides, fertilizer, and shop solvents can be significant environmental liabilities. Ask the seller how these products have been stored, handled, and disposed of in the past, and observe how he manages them now. Closely inspect the shop and other storage buildings. If your tour reveals broken sacks, discarded containers and stained soils outside these structures, it usually

indicates a history of improper handling and disposal of restricted or hazardous materials.

Find out whether there are, or have been, any underground or above-ground petroleum storage tanks at the property. If tanks exist, find out what types of fuels are or were stored and look at the area around the tanks. Ask whether they have ever been pressure tested for leaks. If tanks have been removed, find out what the circumstances were surrounding their removal and get a copy of the report from the consulting firm that pulled the tanks. You may also want to call your state department of environmental quality and ask them to check their records for this location. They should be able to provide you with information concerning any registered above ground or underground storage tanks, hazardous waste storage, or documented spills.

Be sure all septic systems are appropriately permitted and find out the size of the tank and location and dimensions of the leachfield. Take a close look around the area of the leach field for surface discharge. Also, ask if there are any abandoned wells on the property. Uncovered, open wells provide a direct conduit to groundwater. Unfortunately, in the past they have sometimes been used as convenient disposal portals for a variety of wastes. Look for evidence around the well(s) of waste disposal activity. Also, inspect any operating wells on the property. Be sure there are no cracks in the well casing, and that the well head itself is properly sealed from outside sources of contamination, such as runoff water, rodents, insects and reptiles.

Regardless of what your plans are for a prospective parcel of land, it pays to go to the extra effort up-front to really investigate a site prior to purchase. Although there are state laws designed to protect against fraud, it is ultimately up to the buyer to make sure he is getting exactly what he is paying for. In real estate, as with all other transactions, caveat emptor – let the buyer beware – is a valuable adage to keep in mind.