



LEGAL LINES

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Local Government "Grassroots"

"Are Property Rights the Answer to Difficult Land Use Planning Problems?" (And is Government Involvement the Problem?)



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In theory, land use planning by local governments benefit the community at large by promoting rational development and contributing to making communities which are well designed, safe, with sufficient infrastructure. Land use planning is also advocated as a tool for eliminating blighted areas, encouraging economic development, and facilitating sufficient affordable housing. In practice, local governments have failed to meet these goals and actually contribute to core development problems. In addition, as many manufactured community owners seeking to process a change of use have found, the political process involved in gaining land use approvals is anything but rational.

One of the obstacles facing land use planners lies in the inherent tension between certain goals, such as the desire for preserving open space and the desire for affordable housing. However, much of the problem begins with the very concept of utilizing an unavoidably political and economically burdensome process for land use planning, rather than relying on the fundamentals of the free market and invigorating and defending the rights of property owners to develop their property.

In California, many local governments are sitting on billions of dollars in property tax "increment" which is exclusively designated to provide affordable

housing. These "redevelopment" funds are doled out as part of a political process and have often been underutilized because of political opposition and the inability of local governments to actually develop affordable housing. The California Legislature has attempted to raid these redevelopment funds to address the state's budget deficit¹. According to an August, 2006 "White Paper" by the California Redevelopment Association, over the last ten years they have used \$31.5 billion in revenues "to leverage additional private investment in local redevelopment projects for the public good..." Can anyone seriously argue that from 1996 to 2006 these billions of dollars actually helped solve the problem of blight or made housing more affordable?

In 2004, the California Budget Project issued its report *Locked Out 2004: California's Affordable Housing Crisis*. Decades of government "investment" have not solved the problem of affordable housing. According to UK *Telegraph* reporter Tom Leonard, the problem of urban blight has become so intractable that one solution reportedly being considered by the Obama administration is literally bulldozing large areas and returning the land to nature². After spending tens of billions of dollars fighting the blight, the problem very definitely is not solved.

¹ On May 5, 2010, a Sacramento Superior Court Judge gave the most recent victory in the battle over redevelopment funds, upholding the borrowing of redevelopment funds by the Legislature for use in bridging the huge budget deficit.

² Leonard, Tom, "US cities may have to be bulldozed in order to survive" *UK Telegraph*, June 12, 2009. Leonard quotes Karina Pallagst, director of the Shrinking Cities in a Global Perspective program at the University of California, Berkeley, as observing "there was 'both a cultural and political taboo' about admitting decline in America."

Many communities which are not ready for bulldozing nonetheless suffer from significant planning problems. Chief among them is the “NIMBY” or “Not in My Back Yard” problem, which refers to local political opposition to certain kinds of development projects. NIMBYs have successfully blocked tall buildings, desalination plants, landfills, incinerators, power plants, prisons, and especially transportation improvements (e.g. new roads, passenger railways or highways) and mobile telephone network masts and have even interfered with the pet projects of those who advocate “sustainable” development, such as wind farms, which are blocked because of local political opposition.³

The predictable solution identified by politicians is more government spending, imposing broad assortment of impact fees and development fees, and demanding costly infrastructure improvements as a condition of development. Both government spending and the indirect tax on development have increased enormously. For example, the enormous increase in spending by the California government has been well documented⁴. Local governments dominated by liberal politicians have continued to impose the highest burden of development in those communities where the cost of housing is least affordable. As Thomas Sowell observed, “To put it more bluntly, liberals have driven housing prices sky high by forbidding, restricting, and harassing the building of housing⁵.” Sowell notes that prior to the 1970s, housing prices in California were comparable to the rest of the country.

Manufactured home communities under rent control have witnessed first hand the impact of these ill advised

efforts of local governments to micro-manage the development of affordable housing. Many of these communities suffer from a lack of investment, with aging infrastructures held together by band-aid fixes. Why? There is no economic incentive to invest in these communities. At the same time, rent control does nothing to make housing more affordable, as any reduction in rent is simply capitalized into a higher sale price of the home.⁶

The solution for many of the land use problems does not lie in yet greater spending and imposing even greater burdens on real estate development. Rather, local governments should get out of the business of micro-managing land use and, instead, limit their role to adopting broad zoning and development restrictions. Local governments should stay out of the way by respecting private property rights and let the free market operate.

By removing the government imposed barriers to development, local governments will do far more to eliminate blight than the billions of dollars wasted in clumsy, politically tainted redevelopment programs. Eliminating or minimizing the role of local politics in development will also enable the development of necessary infrastructure to support long term growth at a lower cost. Housing will be more affordable because the principles of supply and demand will result in more housing being built where it is least affordable. Money will flow into “blighted” communities. With economic activity, local government coffers will have funds needed to acquire and preserve open space, paid for by the community as a whole, rather than by unfairly imposing the burden on individual property owners.

William Howard Taft, who was President from 1909 to 1913, observed “Next to the right of liberty, the right of property is the most important individual right guaranteed by the Constitution and the one which, united with that of personal liberty, has contributed more to the growth of civilization than any other institution established by the human race.” Taft was right. America’s growth and development is directly linked to the recognition of property rights, just as the economic failure of other nations can be linked to the failure to recognize property rights.⁷

There is certainly a role for land use planning, including adopting zoning and restrictions on development that are not targeted to specific projects or developments. Beyond that, local governments should stay out of the way. By respecting private property rights, the free market will do what it does best, encourage investment and development, resulting in economic growth and the elimination of blight and providing the wealth necessary to support the investments necessary to improve our infrastructure, protect the environment, and provide educational and economic opportunity for all Americans. ■



³ The book *NIMBY Wars: The Politics of Land Use* by P. Michael Saint, Robert J. Flavell, and Patrick F. Fox (Saint University Press, 2009) describes their experience in dealing with highly politicized local land use planning.

⁴ Adam Summers of the Reason Foundation reports that in the 10 years prior to 2009, California’s budget increased an enormous 92 percent - far in excess of what is necessary to address inflation and population growth.

⁵ Sowell, Thomas, *Government Created Scarcity: California’s “Affordable Housing Problem,”* Capitalism Magazine, December 4, 2003

⁶ Carl Mason and John M. Quigley, *The Curious Institution of Mobile Home Rent Control: An Analysis of Mobile Home Parks in California.* 2006

⁷ See Lee Hoskins and Ana I. Eiras, *Property Rights: The Key to Economic Growth*; Gerald P. O’Driscoll Jr., Kim R. Holmes, and Mary Anastasia O’Grady, 2002 Index of Economic Freedom (Washington: The Heritage Foundation and Dow Jones, 2002).