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Development Hell: Lawsuits that Impede Development

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View of East Street, New London, CT.
Site of proposed Fort Trumbull redevelopment in *Kelo.*



Impediments to Redevelopment.

Redevelopment can be stopped by litigation initiated by parties seeking to:

(1) wield authority over local government decision-making or

(2) obtain money.

Power Wielding Plaintiffs.

I. Self-Styled Power Brokers.

   1. No direct monetary benefit to plaintiff and
   2. The issues raised are not the actual motive for the suit.

Source of Self-styled Power Broker's Authority.

A. Expansion of taxpayer standing.

1. Impact on property value,
2. Tax increase and
3. Potential pecuniary damage.

Expansion of taxpayer standing.

B. Standard to show interest distinct from the public.

1. Whether the taxpayer reasonably may sustain a pecuniary loss or a tax increase, or
2. Requiring proof that the project has increased taxes.

Lightening the Burden to Show Monetary Loss.

C. Expenses incurred by the local government.

1. Acquisition and relocation expenses and
2. Decrease in the tax base.

Expanding Property Owner Standing.

D. Importing zoning law standing.

1. "Aggrieved person" standing

(a) Close proximity-

Ability to "see" or "hear" and

(b) Adjoining, confronting or nearby property owner.

Limits on "Aggrieved Person" Standing.

2. Standing limited to persons with an ownership interest that would be taken or damaged, or
3. Proximity and lay opinion of diminished property value.
4. Challenge of a "land use decision."

Ideological Plaintiffs.

II. Standing for Ideological Plaintiffs.

A. Substantive grounds raised are the actual motivation.

1. "Injury-in-fact" and

2. More than a speculative diminution in property value.

Money Seeking Plaintiffs.

I. The "Hold-outs" Problem.

A. Last property owner holds project hostage for a price greater than fair market value.

1. Transfers costs to public

(a) acquisition cost and

(b) project delay.

Remedies for "Hold-outs."

B. Private voluntary acquisition.
   1. Private parties bear costs, but
   2. Subject to public disclosure of plans.

C. "Quick-take" condemnation actions.
   1. Concrete immediate necessity required and
   2. Present plans for use of property.

Plaintiffs Claiming Indirect Harm.

II. Economic Harm by Competitors.

A. Sufficient for "property owner" standing?

B. Competitor's advantages from government subsidies.

Developer Plaintiffs.

I. Enjoining the Development.
   A. Cloud on title to property.
      1. Prevents development and
      2. Chills potential alternative developers.
   B. Unrecoverable losses created by "damages cap" provision.

Effect of Injunctions.

C. Delaying the Project.

1. Increases carrying costs,
2. Delays recovery of property acquisition costs,
3. Reduces value of adjoining properties and
4. Damages credibility.

Failure to Satisfy Obligations.

II. Conditions Precedent to Closing.

A. Financing the Project.

1. Evidence of financing for construction of the project (a) commitment letter.

2. Extension of time.

3 Ironies.

1. Redevelopment increases the tax base and lowers the tax burden. Lawsuits do the opposite.
2. A "damages cap" causes "irreparable harm" making injunctions likely.
3. You can win the case, but lose the development.