

Government trampling on property rights with zoning

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While I concurrently study the Tulsa Zoning Code Update Public Review Draft and news from around America that involves zoning codes, one common theme emerges – a disharmony exists between citizens and their local government and between citizens and other citizens.

The question is why do we need a zoning code at all, and the answer should be to create order and to protect property rights – but the headlines are full of examples showing that order (or perhaps we should call it peace) and protection of property rights have become victims of the system we call zoning codes and comprehensive plans. Here are some examples.

In California, the California Building Industry Association (CBIA) sued the City of San Jose for requiring developers building more than 20 units to offer at least 15 percent of those units at lower than market value. This “inclusionary” practice essentially says that developers must add the losses incurred by the discounts offered to lower-income families to the other units in the development. The purpose is to make housing more “affordable” (which in government speak means subsidized) and to force the rich to live among the poor.

The CBIA’s lawsuit claimed that the practice was unconstitutional and amounted to a taking, similar to the taking by eminent domain. In this case, developers must either pass the cost of providing lower-than-market housing on to other customers or absorb the loss themselves. They won the case in the first round, but lost when the city appealed.

In another case, a Christmas tree farm operator expanded his business by offering weddings and other events on his 110-acre property. Neighbors complained and the owners of the tree farm were told that they could no longer provide the services because weddings and other events were “not accessory uses.”

In that case, the owners lost in court because the extra activities they offered were not “ancillary to their farm operation” and therefore did not meet the definitions of agriculture or agri-tourism.

In still another case, a property owner who had not obtained a building permit was turned into their city by another citizen. After obtaining the permit, the property owner requested the name of the person who made the complaint, but was denied the information. At the appeals court level, the property owner finally prevailed when the city was ordered to release the information, and that the city had committed an abuse of discretion.

Perhaps one of the most outrageous examples of government overreach is found in Santa Monica, California, where city officials have been trying for decades to close its municipal airport. According to a report on the Aircraft Owners and Pilots Association (AOPA), the airport “supports more than 1,500 jobs and 175 businesses” and “the airport generates more than \$250 million in economic activity each year, and reduces congestion in the air and on the roads that otherwise increase if traffic were to be diverted elsewhere in the busy Los Angeles area.”

Initially, Santa Monica attempted to ban small business jets from operating at the airport, but were prohibited by the courts from doing so. City officials claim that the airport needs to be closed due to complaints about noise, but the real reason they want the land is not apparent in report. It is, clear that they want the land for something else.

If the purpose of zoning codes and comprehensive plans is to create order and protect property rights, it is not evident in these examples. The truth is, American cities are redefining what property rights are, and they are forcing citizens into situations where they must either capitulate or fight to use their properties in a reasonable manner and according to their own interpretation of the highest and best use of their property. Unfortunately, if a property owner is not wealthy enough to hire legal counsel and file lawsuits, their rights that are guaranteed in the Constitution become a moot point.

It may be that well-intentioned city officials and others seek to create the orderly development of their city through the use of zoning codes and comprehensive plans, but that very system imparts too much power in the city government, or even worse, in too few individuals in city government. We are evolving into a system whereby government does not protect property values by preventing harmful activities, to one that predestines the use of property to the use that best suits the government rather than the property owner, even after the owner has made an investment for some other use of the property.

The danger is that we have also evolved to a point that we believe that this is all normal, when there is a much better way. More on that next week.



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