

P E R S P E C T I V E S
on Eminent Domain Abuse

Volume
4

Simplify, Don't Subsidize

*The Right Way to Support
Private Development*

by Doug Kaplan
Co-founder of Lomak Property Group, Inc.



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The Right Way to Support Private Development

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A few years ago, I ran into the administrator of the Santa Cruz County Redevelopment Agency. Our real estate development company had recently completed a small office building located on the periphery of his agency's 3,760-acre redevelopment project area and the new tenant, Charles Schwab and Co., was ready to move in. After saying nice things about the building, the redevelopment administrator asked me, "How did it go?"¹

"You're the government," I told him.
"I don't want you to do more for me;
I just want you to do less to me."

"Construction was uneventful," I told him, "but getting permits was a nightmare."

"You should have come to us," he said. "We could have helped you."

And he certainly could have helped us, since, as an executive director of a California redevelopment agency, he had at his disposal an arsenal of powerful

weapons that he could deploy in aid of our project: He could exercise the power of eminent domain to seize our neighbor's property, which he could use to augment our site; he could issue tax-free municipal bonds, which he could use to help finance our project; and perhaps most importantly, he had access to a priceless fast track through the tortuous regulatory and entitlement process.

We didn't need more land. We didn't need financing. As for his willingness to serve as our Virgil, guiding us through the dark worlds of planning and building departments, that would have been tempting . . . but as I said to the administrator, helping us navigate our way through his and his colleagues' convoluted procedures was not the best use of his time.

"You're the government," I told him. "I don't want you to do more for me; I just want you to do less to me."

He didn't understand. He just stared at me with the same perplexed expression that I've seen so many times on the faces of other redevelopment directors, economic development coordinators, members of

committees with names like “Task Force for Economic Revitalization,” consultants hired to craft “Economic Development Strategic Plans,” and other well-meaning government officials who were dumbstruck by my response to their question, “How can we help?”

Our county’s economic development officer didn’t understand when I accepted her invitation to join her economic development task force, but on one condition: The task force would hold a single meeting during which we would agree to submit a one-page report to the county supervisors suggesting that the major obstacle to economic development was the supervisors themselves.

A local city manager and his economic development director didn’t understand my reaction to their invitation to form a “public/private partnership”

Today, in my home state of California, almost 400 cities and counties have gone into the development business by establishing captive government development agencies that now control project areas covering more than 1.2 million acres

to transform the blue-collar town’s former post office into a white tablecloth restaurant. “If you really want to revitalize the downtown,” I told them, “then light the sidewalks, fix the roads, take care of the police, support the schools” The city manager interrupted, “Doug, people are shooting each other outside City Hall. The Council wants me to do something *now!*”

The consultant that the City of Capitola hired to produce an “Economic Development Strategic Plan” didn’t understand when he came to my office to interview me and, before I invited him in, I took him outside, pointed to an empty lot across the street and asked him, “Would a Borders bookstore—right there—promote economic development?” We were standing in the heart of one of the city’s major commercial districts; the infill lot that I was pointing to was located at a major freeway intersection. “It was all set to go,” I explained.

“Borders. Letter of Intent was signed. The developer spent years putting it together. He had lined up other shops and restaurants. The Planning Commission had approved it. But guess what? The City Council said, ‘No,’ after getting pressure from local bookstores that didn’t want the competition. So, the lot is still vacant, and now the City Council hires you to tell them how they can do economic development. I dare you to tell them, ‘You want economic development? Tell Borders you changed your mind.’”

Most of these coordinators, committee members and consultants are good people, they really are. They work hard and want the best for their communities, but they seldom get it. They conduct interviews, take surveys, facilitate all-day “visioning sessions” and write reports. But these reports rarely say, “Hey, city council, you know the businesses that make up this town? You’re killing them. And the businesses and developers that *want* to come to town—ask them—when they walk into the building department, how are they greeted? With a smile or a sneer? And you wonder why you’re having trouble attracting economic development?” The reports never say this; instead they say something like, “Dear city council, your town is underserved. It lacks a fancy hotel (or glitzy shopping center, or affordable housing, or whatever), and we’ll tell you how to get the land and money to make one.” Before you can shout, “Don’t do it!” the politicians have taken the consultants’ advice and floated bonds and tossed people out of their homes and businesses to get the money and land for some “public/private” development that promises to save the town.

Today, in my home state of California, almost 400 cities and counties have gone into the development business² by establishing captive government development agencies (typically, but misleadingly, called *redevelopment agencies*) that now control project areas covering more than 1.2 *million* acres,³ representing almost 15 percent of the assessed value of all real property in the state.⁴ These powerful agencies are sitting on war chests containing just under \$10 *billion* in cash (as of June 30, 2006),⁵ which they are using to lavish subsidies and favors on large retailers, hotel operators, shopping center developers and other “public/private” partners. Meanwhile, business owners and developers like us, who choose to remain independent, are forced

to run an ever-expanding gauntlet of government-imposed regulatory, administrative and financial obstacles that make our work difficult, and sometimes impossible. Today, a private developer faces a difficult choice: Go into business with the local development agency, or go it alone, at great cost and peril.

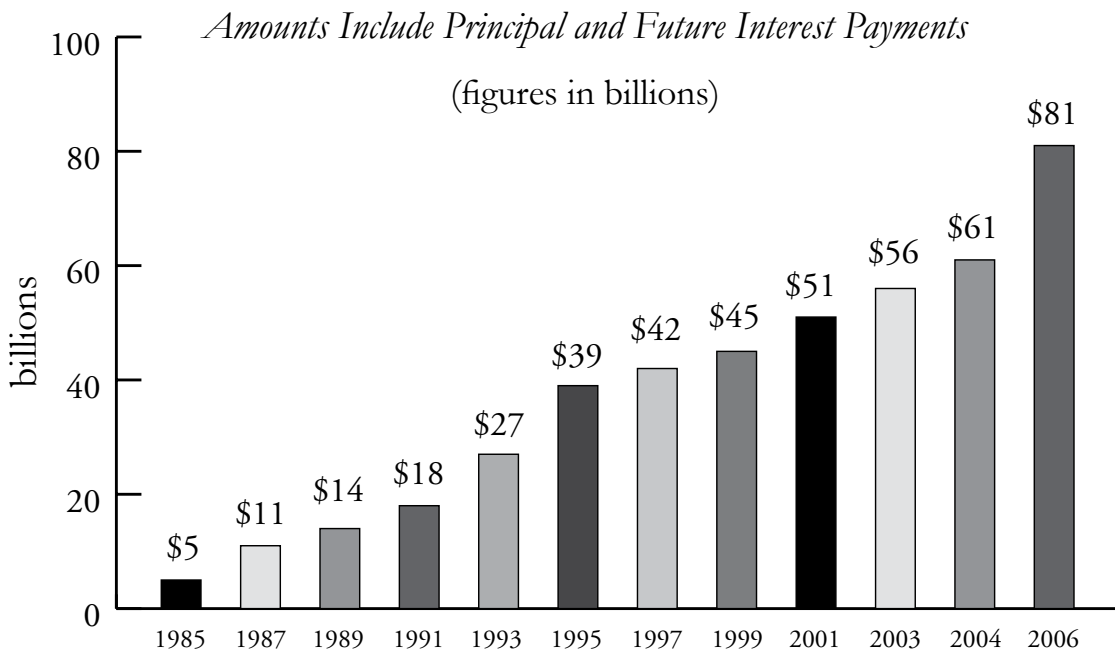
Though this choice is rarely made explicit, sometimes it is. For instance, when San Jose shopping center owner Dennis Fong refused to cooperate with the local redevelopment agency, the agency responded by voting to seize Fong's property through eminent domain and transfer it to the agency's "public/private" partner in a competing project across the street. (The agency partially excused its action by claiming that it would be too "confusing to national retailers if two developers were recruiting tenants at generally the same

time for the same market area.")⁶

More often the choice to join forces with the local government development agency is presented subtly, even innocently, such as the time the Santa Cruz County redevelopment administrator said to me, "You should have come to us. We could have helped you." But however presented—whether as a threat or a friendly offer—the message to the development community from cities and counties across California and much of the nation is consistent: "We're no longer just fee-collecting regulators; we're now developers. We write the rules, we referee the game, and now we want to play. You're welcome to walk onto the field alone, but do you really want to?"

We walked onto the field alone when we began the Schwab project. Let me tell you what it was like.

Growth in Statewide Redevelopment Indebtedness



SOURCE: California State Controller's Office, in *Redevelopment: The Unknown Government*, Municipal Officials for Redevelopment Reform, Sept. 2007, at 12.

Hello, Anybody Home?

Before we could begin construction of the 2,700-square-foot Schwab building—about the size of a normal home—we needed a building permit, but before we could apply for a building permit we needed a “development permit,” which is best understood as a permit to apply for a permit. At the time, our County Planning Department would not accept walk-in applications for development permits; nor would it allow walk-in attempts to schedule an appointment—it would only accept telephone requests for an appointment. That presented a problem, however, since the employee responsible for scheduling appointments only accepted phone calls during a brief window of time once a day. We knew from previous experience that we would face tough competition from other applicants, all of whom would be trying to get through to the sole scheduler so, in anticipation of the problem, we ordered a service from the phone company

called “repeat dialing,” figuring that this would help us snag an open line. Unfortunately, the County Planning Department was one-step ahead of us: It had recently installed voice mail, so even though we could now get around the constant busy signal, we could only leave a message. We did get through—to voicemail—and we did leave our message, and then, like a nervous actor waiting for a callback after the big audition and afraid to wander more than 10 feet from the phone, we waited. Everybody in our office was told that if anyone from the Planning Department called, “Drop all other calls. Don't put the Department on ‘Hold.’ Don't take a message. Make an appointment!”

This Will Only Take a Moment

We were fortunate: Our building was tiny and our project unopposed, so our permits only took *20 months* to process.



Schwab building.

Just One More Department

We submitted 17 sets of plans that were routed to the 14 separate departments, agencies and individuals who were charged with issuing the dozen separate approvals we needed to build our 2,700-square-foot building. By the time we were finished, we had passed an all-too-familiar milestone in our community: The number of government employees involved in the review and processing of our permits outnumbered the number of construction workers who would eventually build the building.

A Few Conditions

The planners assigned to our project loved to write reports. The Environmental Coordinator wrote a report for the project planner who produced a 45-page report for the zoning administrator who generated reports for the Planning Commission, which made recommendations to the Board of Supervisors. Everybody got reports. All these reports were finally distilled into a 12-page development permit, which contained more than 60 conditions, including a last-minute surprise that granted us permission to build an office building, *provided that not more than half of the building was used for offices*. Buried in a chart that was buried in the County's Zoning Code, unnoticed by us and unnoticed by our project planner until late in the application process, was a requirement limiting the amount of office space within the "C1" commercial zone to no more than 50 percent of a building's floor area. Our only remedy was to apply for rezoning—a half-year long ordeal that would take us before the Planning Commission and Board of Supervisors.

Money, Money, Money

We paid about \$40,000 in fees, which worked out to about \$15 per square foot of building area. This does not include the cost of public improvements that we were required to build, nor does it include the cost of consultants and engineers that we hired to respond to the Planning Department's endless requests for additional information. Altogether, we paid 27 separate fees, some more than once. One of these fees, the application fee, was charged "at cost," which meant that the planner assigned to our project billed us \$73 an hour for his time (which probably accounts for the 45-page reports).⁷

Rules and Regulations

We had to comply with the Uniform Building Code and the Americans with Disabilities Act—that was a given—but we also had to comply with the jumble of rules and regulations buried in our county's 1,184-page Zoning Code, the County General Plan, and County Design Review Ordinance. We had to comply with prevailing wage regulations since our water connection was deemed a "public project." We also were caught in the clash of well-intentioned but often contradictory regulations issued by autonomous agencies like the Fire District, Water District, Sanitation District, Redevelopment Agency, Federal Emergency Management Agency, and Regional Water Quality Control Board. (When the rules and regulations of autonomous bodies conflict, Heaven help you, because nobody else can.)

Ballot boxers

The disingenuous “reform” of eminent domain abusers

Why haven't California's lawmakers done something to rein in the state's government development agencies?

The answer is the California Redevelopment Association (CRA), the lobbyist and trade association for the state's government development industry. Its membership consists of more than 350 government development agencies and more than 300 developers, investment bankers, attorneys, title companies, land use consultants and others who benefit from the public development process. CRA, which is able to tap the Sacramento connections and very deep pockets of its members, has a near-perfect record for blocking serious reforms.

In June 2008, CRA was able to kill a citizen initiative designed to halt abusive eminent domain practices, using a tactic that it has perfected in previous legislative battles: substitute its own toothless “reform” proposals for the actual reforms under consideration. The executive director of the CRA is unapologetic. “The best defense is a good offense,” he explains.²⁷ Or in the words of the previous CRA executive director, who was describing a similar strategy for fending off a reform measure that was advancing through the legislature in 1993: “For every loophole they [the legislature] close on use, we can open up four more.”²⁸ The CRA, along with two other associations, contributed *millions* to the initiative campaign—but their primary source of revenue is the membership fees they collect from local governments, which is paid with residents' tax dollars.²⁹

A Matter of Taste

We hired a talented architect who designed a handsome building. Our project planner agreed; nevertheless, he regretfully informed us that we would have to redesign the building since it did not comply with a county design review regulation that dictated that all new development must be compatible with the surrounding neighborhood. Our building was not compatible, he said, and indeed it wasn't. The immediate “neighborhood” consisted of an adjoining office building that we owned, a freeway that ran along the western boundary of the project, and a fast food restaurant and run-down gas station on opposite corners across the street.

We walked into the Planning Department in October 1996 seeking permission to build a tiny office building. We walked out in May 1998—nearly 20 months and over \$40,000 later—shell-shocked but still standing, with permits in hand. As I later told the redevelopment administrator, the project from that point forward was uneventful and just six months later—one-third of the time it took to get permits—Charles Schwab & Co. moved into its new office.

Meanwhile, a different story was unfolding elsewhere in the county's 3,760-acre redevelopment project area. Here are just the highlights, with a prologue that begins in the 1980s:

1980s – Orchard Supply Hardware, Nob Hill Foods, Home Depot and other retailers consider building stores within the boundaries of the future project area. All abandon their plans after preliminary discussions with a demanding and often hostile county government. (Orchard Supply, for example, after completing preliminary studies, discovers that the county will demand nearly half a million dollars in impact fees and, like the others, walks away.)⁸

1987 – The county forms its own government development agency.

1990 – The new government development agency seeks advice from the retail consulting firm of Keyser Marston Associates, which subsequently produces a report titled, “County of Santa Cruz Retail

Development Potential.” The \$38,000 report does not mention the retailers who explored opening stores in the county but fled after learning what it would cost, but it does find that the county is underserved and concludes with six “key findings”:

- Among the *department stores*, Macy’s, Ward’s and Nordstrom are absent.
- There are no *fashion specialty* stores in the county.
- Among *discount/department stores*, Target, Whole Earth Access and Wal-Mart are absent.
- Among *promotional tenants*, about 35 Northern California tenants are not represented.
- There are no *warehouse retail* operations in the county.
- There are no *catalog showrooms* in the county.⁹

(As an aside, some county residents wonder why the agency paid a consultant \$38,000 to learn which stores are not in the county.)

1991 – The County Board of Supervisors adopts the following economic development goals:

- “The Board will undertake appropriate economic development projects to increase local government revenues in order to provide expanded public services to the community.” (Translation: “We need money, so let’s develop something.”)
- “The Board will seek to coordinate and to act as a clearinghouse for economic development activities throughout the county.”¹⁰

September 1994 – The county’s in-house economic development coordinator submits to the Board of Supervisors an Economic Development Strategy Implementation Plan, which, among other recommendations, calls for the creation of a County Economic Development Strategic Action Team (“ED-SAT”) that will coordinate development of nine targeted industries, including “recycled manufacturing . . . high-

tech recreation equipment design and manufacturing. . . Biotech. . .(and) marine sciences.”¹¹

November 1994 – The administrator of the county’s redevelopment agency tells the supervisors that the agency is ready to enter into a “public/private” partnership to pursue an “exceptional project.” He writes that the “use of both eminent domain and financial assistance should only be used when there are overriding public benefits and where it can be demonstrated that such assistance is necessary for the project to proceed. While there are few projects which would meet such a test, there are some exceptional projects which will warrant such special consideration.”¹²

1996 – The agency and its public/private partner commence the “exceptional project” – a two-store retail center for Circuit City and Toys “R” Us.

Elsewhere in Santa Cruz County, city development agencies were doing the same thing. In the City of Watsonville, at the southern end of the county, the government development agency had demolished an entire city block, displacing 29 businesses, some of which had been operating in the same location for nearly 30 years—all to make way for a public/private development that never materialized.¹³ At the northern end of the county, in Santa Cruz—a city notorious for making life miserable for private developers—the government development agency ejected long-established, locally owned businesses to clear land for a public/private shopping center anchored by Cost Plus, OfficeMax and PetSmart.

Today, in cities and counties throughout California, government development agencies are doing the same.

Does it really matter that local governments have become one of the driving forces behind commercial development in California and elsewhere in the country? It does.

First of all, government development agencies undermine the laws and traditions that curb the ability of our elected officials to impose their individual tastes on the rest of us. When a member of the Santa Cruz City Council once remarked, “I don’t know if we’d want to have a Miller’s Outpost downtown,” the community could shrug it off as the expression of one person’s

Sometimes You Gotta Have Fun

In the fall of 1989, we completed the renovation of a small retail center in Aptos, California. The center, which had been continuously occupied and open for business throughout the grueling three-year-long project, had passed all final inspections but one: Our assigned planner refused to sign off on the project until the center's bakery removed its croissant logo from its display window and the center's coffee roasting company removed its coffee bean logo from its window. Both offenses were violations of the county's sign ordinance, he explained.



The offending logo.

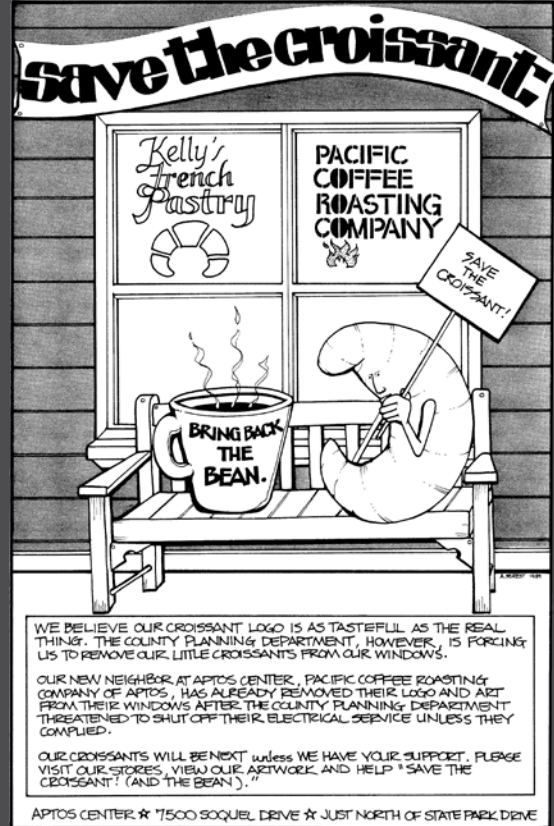
“That’s it! They’ve gone too far,” I told our staff. Thus began the “Campaign to Save the Croissant (and the Bean).” We reserved ad space in the local paper, hired a graphic designer to prepare leaflets and petitions, and enlisted our receptionist, a talented seamstress, who sewed herself a croissant costume that

she would wear while handing out the leaflets on the steps of the County Building.

We were all set to launch, when at the last minute, my conscience got the better of me and I phoned the local county supervisor to warn her about what we were planning to do. A few days later we met with the supervisor’s aid in her office. After I told her our story and showed her the “campaign” material (including the croissant costume), she protested, “You can’t do that! It’s mean!” She then picked up the phone, called the Planning Department and spoke to our assigned planner. She hung up, turned to us and said, “It’s fixed. You’ve got your approval.”

I returned to the office with mixed feelings. “Campaign is off,” I told our disappointed staff.

Anybody need a croissant costume?



WE BELIEVE OUR CROISSANT LOGO IS AS TASTEFUL AS THE REAL THING. THE COUNTY PLANNING DEPARTMENT, HOWEVER, IS FORCING US TO REMOVE OUR LITTLE CROISSANTS FROM OUR WINDOWS.

OUR NEW NEIGHBOR AT APTOS CENTER, PACIFIC COFFEE ROASTING COMPANY OF APTOS, HAS ALREADY REMOVED THEIR LOGO AND ART FROM THEIR WINDOWS AFTER THE COUNTY PLANNING DEPARTMENT THREATENED TO SHUT OFF THEIR ELECTRICAL SERVICE UNLESS THEY COMPLIED.

OUR CROISSANTS WILL BENEXT unless WE HAVE YOUR SUPPORT. PLEASE VISIT OUR STORES, VIEW OUR ARTWORK, AND HELP "SAVE THE CROISSANT! (AND THE BEAN)."

APTOS CENTER ★ 7500 SOQUEL DRIVE ★ JUST NORTH OF STATE PARK DRIVE



Top, campaign literature. Middle, Aptos Center before renovation. Bottom, Aptos Center after renovation, in 2008.

individual taste—but when that same council member takes his seat as a director of the city's development agency, one should probably say goodbye to Miller's Outpost.¹⁴ When an Oakland city council member said, "In a very progressive city like Oakland, Wal-Mart is not a favorite store, Target might be," the audience could dismiss the comment as the personal taste of a young professional attorney.¹⁵ But the moment she and her colleagues adjourn their council meeting and immediately reconvene as the city's development agency—poof!—like Clark Kent stepping out of the phone booth as Superman, she is instantly transformed into a public official with the means, money and power to impose her tastes on every shopper in the community.

But it is more than just a matter of taste; government development agencies give public officials extraordinary power to protect individual self-interest. In the mid-1990s, shortly after the popular owner of the City of Santa Cruz's largest bookstore completed his term as mayor and director of the city's development agency, the agency inserted unusual conditions in its development agreements for two public/private projects near the former director's bookstore. One agreement, which was for a large downtown retail/office complex, included this condition: "... no part of the Site shall at any time be used as a bookstore operated by a national retailer of books."¹⁶ The second agreement, which was for a major public/private shopping center project, prohibited bookstores altogether.¹⁷

Government development agencies are also guilty of driving up the cost of doing business, particularly when it comes to land values. In the early 1990s the *San Jose Business Journal* reported, "The San Jose Redevelopment Agency paid \$2 million, or \$182 a square foot, for the 11,000-square-foot San Jose Metropolitan Chamber of Commerce building in downtown San Jose in March. Almost every other building sold in 1992 went for less than \$100 a square foot, and many went for less than \$50 a square foot."¹⁸ About the same time the article appeared, a successful San Jose developer was the guest speaker at a downtown breakfast meeting. He began his speech by telling the audience, "I got started in downtown San Jose because it was the only spot you could do anything. \$10,000 was all I had and with \$10,000 you could buy a \$100,000 building. San Jose

was the only place in the world you could buy a building with 10% down and it would pay for itself."¹⁹ Here's the question: Would this prominent developer have ever gotten off the ground if, in his early years, he had to compete against a government development agency, backed by hundreds of millions of dollars of taxpayer money, that was bidding up the price of downtown property? More often than not, local governments don't "catalyze" private development; they drive it away by

More often than not, local governments don't "catalyze" private development; they drive it away by making it too expensive.

making it too expensive. A variation of the same theme came up during my conversation with the city manager and economic development director who wanted to give us money to turn their town's old post office into a white tablecloth restaurant. "You won't attract developers, you'll drive them away," I told them. "If I was the next developer to come along and I wanted to put a nice restaurant in the Lettunich Building (which was located one block away), I wouldn't because I could never compete with your subsidized restaurant. You can't be just a little pregnant," I said. "It's all or none. If you subsidize one business, you have to subsidize them all."

Government development agencies also contribute to the "homogenization" of America's cities and towns. Swing by the Las Vegas Convention Center in the middle of May, and you'll see why. Every spring, at the annual meeting of the International Council of Shopping Centers, you'll find government officials from villages, towns and cities across the country who have come to Las Vegas to woo the nation's largest retailers and developers. They offer lavish subsidies to land big deals, which is just one more reason that "small is beautiful" is morphing into "bigger is better," and "national chain" is trumping "locally grown" in communities nationwide.

Finally, and most importantly, government development agencies undermine communities. Jane Jacobs, in *The Death and Life of Great American Cities*, was alluding to this when she wrote, "Successful city

districts are never dotted with junkyards, but that is not *why* these districts are successful. It is the other way around. They lack junkyards *because* they are successful.”²⁰ In other words, “A city area . . . is not a failure because of being all old. It is the other way around. The area is all old because it is a failure.”²¹ She understood what government development advocates have difficulty comprehending: Public development is something done *for* a community, not *by* a community, and therefore is more likely to harm than help.

Government development officials use words like “building” and “plan” as nouns. Their agencies produce *a* plan; they deliver *a* building or project. But in vibrant communities, words like “plan” or “building” are primarily verbs: a talented chef planning his own restaurant; a co-op owner remodeling her flat; a charismatic pastor, conducting services in a bare space rented for a few hours every Sunday morning, building a congregation that, God willing, will someday find the means to buy and redevelop an old storefront into a beautiful church of its own; an immigrant couple, juggling multiple jobs, saving so they can start a business; even a grumpy developer on the prowl for

When government development officials step in, take over, and do for people what people want and should do themselves, these officials are substituting their plans and structures for the life, spirit and activity that is a vibrant community.

tired buildings to restore—people, all day, every day, planning and building a better life for themselves and their families, friends, congregants, customers and community. When government development officials step in, take over, and do *for* people what people want to and should do themselves, these officials are substituting their plans and structures for the life, spirit and activity that *is* a vibrant community.

The next time a government development official determines that something “cannot be accomplished

by private industry acting alone,” he or she should ask, “Why not?” If the answer is too much government interference, then the solution is less interference, not more. Or think of it this way: If cutting taxes, reducing fees and streamlining regulations benefits government’s public/private partners, then think what miracles could occur if government did the same for *everyone*. Do less to us and watch us have fun taking care of the rest.

Epilogue

We Have Met the Enemy and He is...

The well-meaning Santa Cruz County redevelopment agency administrator who once said to me, “You should have come to us. We could have helped you,” was appointed director of the Santa Cruz County Planning Department in November 2003. Since the time of his appointment, he and his staff have been working very hard to try to streamline the county’s planning process. Unfortunately, a majority of the county’s Board of Supervisors has been less than supportive. In March 2008, for example, the director presented a package of modest reforms to the Board, which he introduced with these words: “By establishing appropriate levels of discretionary review, clarifying inconsistencies in the County Code, eliminating redundant reviews and unnecessary regulations, and updating our regulations to comply with state law, the reforms are intended to make the regulatory framework for small residential projects more reasonable, affordable and less time-consuming for applicants.” Sadly, after a long discussion, the Board failed to adopt many of his and his staff’s most sensible proposals. In this case (as is often the case), the problem is not with “bureaucracy,” but with the officials whom *we* elect—which, of course, is just another way of saying that too often the problem is “us.”

Staying Alive

As the municipalities in which we operate continue to use their government development agencies to do more *for* us, these are some of the things that they have done, are doing or tried to do, *to* us:

Design Review Ordinance

The stated purpose of this 38-page Santa Cruz County ordinance was to assure that “the basic design principles of harmony, contrast, balance, order and unity prevail in the building design.” The ordinance defined these terms as follows:

1. Harmony is the creation of a positive relationship between the principle elements of a design.
2. Contrast is created by the inclusion of differing design elements which add variation or interest to the design.
3. Balance is the management of the harmonious and contrasting elements of a design. Such a composition could have a static or dynamic balance, achieved through symmetry or asymmetry. Symmetry is the repetition of features on each side of an axis or axes. Asymmetry is the variation of these elements.
4. Order is a hierarchical relationship established between the design principles of harmony, contrast, and balance so as to achieve legible form and space in a building while permitting diversity.
5. Unity is achieved when the design principles of harmony, contrast, balance and order combine in a relationship which is perceived as a whole entity, rather than as a collection of parts.

These are not definitions taken from an art appreciation textbook; nor are they program notes for a museum exhibit—they were part of Section 13.11.072 of the County Code and they were the law. If you did not comply (or more accurately, if the county’s Urban Designer felt that you did not comply) your application was denied.

Traffic Impact Fees

Our traffic impact fees for the 2,700-square-foot Schwab building were \$7.25 per square foot, and we were lucky. A few years earlier the county had considered a traffic impact ordinance that could have generated fees as high as \$43.80 per square foot!²²

Trip Reduction Ordinance

This byzantine proposal to reduce traffic congestion would have imposed fines of up to \$500 a day on businesses that failed to submit a “Trip Reduction Report” documenting “Travel Demand Management Measures” within 90 days of receiving a “Compliance Assistance Packet” from the county’s “Trip Reduction Ordinance Program Manager.”²³

“No Net Increase” Rule

This draconian air quality proposal would have prohibited new commercial construction unless the applicant first eliminated emissions equal to those expected to be generated by the project from elsewhere within the local air pollution control district. The coffee roasting company in one of our centers, for example, would not have been able to open its doors until another coffee roaster shut theirs (or a like-amount of emissions were eliminated from another source). This prompted my partner to mutter, “Pretty soon, before you can have a baby, they’ll make you go out and shoot someone.”

Art Tax

This ordinance grew out of the City of Capitola’s “2003 Arts and Culture Master Plan,” written by the city’s Arts Commission, which declared, “In many communities, the first beacon of cultural leadership is the local Arts Commission, the government-appointed body that makes policy decisions regarding the development of cultural life in the community.

Often, the Commission's capacity to lead is fortified by a significant budget for the arts." You know where this is heading—before you could say, "George Orwell," the city had enacted an ordinance imposing a 2% "art impact fee" on commercial projects, including interior remodeling within *existing* buildings.²⁴ We first learned about the fee when we applied for a permit to renovate an existing office building and were told that before the city would give us permission to redevelop the ugly building, we would have to pay exactly \$10,000 to the Arts Commission. (The fee was subsequently reduced to \$3,950, but not without a difficult fight.)

Notice

For many years, *every* new tenant in a 42,000-square-foot office complex that we own had to be approved by the Planning Commission, even if it was an individual psychotherapist renting a 125-square-foot office month-to-month.²⁵ (As part of the approval process, we were required to notify *every* neighbor within 300 feet of the 3 ½ acre complex that the Planning Commission would

conduct a public hearing to consider the proposed tenant.) We spent years struggling to change this ordinance.

More Fees

Even though we are not in the residential development business, I am still struck every time I pass a large poster that is mounted on the wall in the main room of the Santa Cruz County Planning Department. While not quite as chilling as, "All hope abandon, ye who enter here," the poster is sobering nevertheless. "Typical Building Permit Fees for a 3-Bedroom/2,500-square-foot Home," it warns, will be \$29,424 to \$34,824.²⁶ Many applicants will pay substantially more.

Some of these proposals were never adopted. Other rules, regulations and fees were enacted and subsequently modified or repealed. Still others remain on the books. But all were a battle, and that is the point. Struggling against our own government has become a full-time business, leaving little time for the business of providing the buildings that people want and need.



The City of Capitola wanted to charge us a \$10,000 "art impact fee" to renovate this building. (Before renovation, above. After renovation, right.)



Total Fees Paid to Permit-Granting Agencies 2,700-square-foot Commercial Building (The “Schwab Building”)

Item	Amount	Item	Amount	Item	Amount
10/30/1996					
Development Permit—Proposal to construct 2,676 sq. ft., one-story building					
Process Application	\$2,500				
Assess Site—Erosion	\$500				
Assess Environmental Impact	\$0				
Take in Application	\$81				
Review Road Plans	\$500				
Review Plans	\$500				
Total	\$4,081				
5/14/1997					
Development Permit—Proposal to Rezone from C1 to C2					
Process Application	\$2,169				
Environmental Determination	\$0				
Take in Application	\$81				
Process Application—Rezone	\$500				
Process Application—Road Plans	\$250				
Total	\$3,000				
2/12/1998					
Building Permit Application					
Building Plan Check	\$1,539				
Total	\$1,539				
3/3/1998					
Grading Permit					
Process Application	\$362				
Environmental Determination	\$0				
Take in Application	\$60				
Total	\$422				
3/3/1998					
Development Permit—Soils Review					
Review Soils Report	\$500				
Total	\$500				
3/31/1998					
Central Fire District—Commercial Plan Review					
Plan Review	\$943				
Total	\$943				
5/4/1998					
Developer Fees (County Office of Education)					
Commercial Developer Fee	\$808				
Total	\$808				
5/5/1998					
Sign Permit					
Plan Review	\$122				
State Required Training	\$1				
Total	\$123				
5/5/1998					
Building Permit—Additional Items					
Plan Check	\$1,334				
Plan Check (credit for estimated fee paid on 2/12/1998)	-\$1,539				
Review Plans—Building Permit	\$1,160				
Inspect installation—Electrical	\$70				
Inspect installation—Mechanical	\$70				
Inspect installation—Plumbing	\$70				
Process Sewer Permit	\$2				
State Required Training	\$13				
Child Care Impact Fee	\$615				
Site Assessment	\$276				
Roadside Construction Impact Fee	\$9,600				
California Earthquake Study	\$29				
Roadway Construction Impact Fee	\$9,600				
Sewer Fee	\$0				
Plan Review	\$100				
Zoning Plan Check	\$265				
Total	\$21,665				
8/1/1998					
Soquel Creek Water District					
Storage and Transmission fee	\$2,990				
Fire Standby fee	\$1,950				
Total	\$4,940				
9/2/1998					
Building Permit—Schwab Interior					
Building Plan Check	\$140				
Total	\$140				
9/9/1998					
Soquel Creek Water District					
Meter fee	\$745				
Total	\$745				
9/23/1998					
Development Permit—Revision (Deleting 50% Office Restriction)					
Environmental Exemption	\$0				
Application Intake	\$0				
Minor Variation Fee	\$0				
Total	\$0				
9/25/1998					
Building Permit—Schwab Interior					
Plan Check	\$642				
Plan Check (credit for estimated fee paid 9/02/1998)	-\$140				
Inspection—Building	\$378				
Inspection—Electrical	\$23				
Inspection—Plumbing	\$23				
Inspection—Mechanical	\$23				
State Required Training	\$4				
California Earthquake Study	\$4				
Sewer Fee	\$3,000				
Total	\$3,957				
9/30/1998					
Building Permit—Schwab Interior (Minor Revisions to Plans)					
Building Plan Check	\$468				
Zoning Plan Check	\$207				
Total	\$675				
10/20/1998					
Building Permit—Schwab Interior (Minor Revision to Plans)					
Building Plan Check	\$284				
Intake Deposit Credit	-\$675				
Inspection—Building	\$247				
Inspection—Electrical	\$15				
State Required Training	\$3				
California Earthquake Study	\$3				
Plan Review— Zoning	\$207				
Total	\$84				
11/2/1998					
Central Fire District—Plan Review					
Plan Review	\$371				
Total	\$371				
2/1/1999					
County of Santa Cruz					
Planning “at cost” balance due	\$529				
Total	\$529				
					Total \$44,522

Endnotes

- 1 Except where noted, the conversations in this report are reconstructed from memory. While it is not possible to recover the exact words that were spoken at the time, I have made every effort to accurately convey both the substance and spirit of what was said.
- 2 Office of the State Controller, *Community Redevelopment Agencies Annual Report, 22nd edition*, May 2007, at iv.
- 3 *Ibid* at 2 – 29.
- 4 *Ibid* at xvi, 1.
- 5 *Ibid* at vii.
- 6 Doug Kaplan, “San Jose Shopping Center Blues: A small businessman gets even smaller,” *San Francisco Chronicle*, February 16, 2003, at D3.
- 7 The rate has since risen to \$155.80 per hour (April 2008).
- 8 Interview with Jake Seigle, landowner, conducted by author in March 1994; re-interviewed on April 9, 2008.
- 9 Keyser Marston Associates, Inc., “County of Santa Cruz Retail Development Potential,” prepared for Santa Cruz County Redevelopment Agency, July 1990, at 47.
- 10 Memorandum from Susan Pearlman, County of Santa Cruz Economic Development Coordinator, to Supervisor Walt Symons, County of Santa Cruz, on Revised Economic Development Strategy, September 29, 1994 (on file with author).
- 11 *Ibid*.
- 12 Report on Potential Economic Development Project – Commercial Way Retail Site, Santa Cruz County Redevelopment Agency, November 1994, at 5.
- 13 Author’s interview with Dana Sales, a Watsonville, Calif., realtor whose father owned a barbershop on the affected block. (The buildings on this block were demolished in 1989. A post office was later built on a portion of the site, but a 30,000-square-foot retail center that was planned for the balance of the block was never built. The site remained a vacant lot for more than 15 years until 2005 when work began on a mixed-use municipal building.)
- 14 Dan White, “Battle over Borders far from finished,” *Santa Cruz Sentinel*, October 28, 1999, at A4.
- 15 Presentation by Pat Kernighan, City Councilmember, City of Oakland, Calif., during panel discussion, “Retail Development In A Post-Redevelopment World,” Northern California Alliance Program, San Ramon, Calif., September 13, 2006, from author’s notes.
- 16 Owner Participation Agreement By and Between The Redevelopment Agency of the City of Santa Cruz and Tarigo-Paul, a California limited partnership, executed November 24, 1998, at 12 (on file with author).
- 17 Owner Participation Agreement By and Between The Redevelopment Agency of the City of Santa Cruz and Cypress Properties, Incorporated, executed September 5, 1996, at 22 (on file with author).
- 18 David Barry, “Real Estate Roundup,” *San Jose Business Journal*, January 4, 1993, at 11.
- 19 Presentation by Barry Swenson, President and CEO, Barry Swenson Builder, downtown San Jose business breakfast meeting during the mid-1990s, from author’s undated notes.
- 20 Jane Jacobs, *The Death and Life of Great American Cities*, Vintage Books, 1961, at 230.
- 21 *Ibid* at 189.
- 22 “Traffic Fees,” study prepared by the author and presented to the Santa Cruz County Board of Supervisors, December 6, 1988 (on file with author).
- 23 Santa Cruz County Regional Transportation Commission, Model Trip Reduction Ordinance – Final Draft, September 11, 1992.
- 24 City of Capitola Municipal Code, Chapter 2.58, “Funding the Public Art Program.” This ordinance applies to all private nonresidential projects valued at more than \$250,000.
- 25 City of Capitola Municipal Code, Chapter 17.60, “Conditional Use Permits,” and Chapter 17.27.060, “Community Commercial District – Conditional Uses.” Both chapters were subsequently amended, giving the Community Development Director the authority to issue a simpler Tenant Use Permit to businesses moving into multi-tenant buildings larger than 10,000 square feet, provided the building was regulated by a valid Master Conditional Use Permit (Capitola Municipal Code Section 17.60.160, “Master Conditional Use Permits—Tenant Use Permits”).
- 26 Includes estimated school fees of \$5,350 to \$10,750.
- 27 Comments made during Northern California Alliance Program, San Ramon, Calif., October 5, 2007, from author’s notes.
- 28 Declaration of Richard Erganian, “Observations from California Redevelopment Agency Meeting, City Council Chambers, Clovis, California,” April 13, 1993, submitted to the State Senate Appropriations Committee (on file with author).
- 29 Brian Joseph, “Prop. 99 backers accused of illegal funding,” *Orange County Register*, March 8, 2008.

About the Author



Doug Kaplan is a co-founder of Lomak Property Group, Inc., a real estate development company that specializes in the renovation of retail and office properties. He has written extensively on the subject of redevelopment. He and his wife, Gwen Kaplan, live in Aptos, California.

About the Institute for Justice

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The Castle Coalition, a project of the Institute for Justice, is a nationwide network of citizen activists determined to stop the abuse of eminent domain. The Coalition helps property owners defeat private-to-private transfers of land through the use of eminent domain by providing activists around the country with grassroots tools, strategies and resources. Through its membership network and training workshops, the Castle Coalition provides support to communities endangered by eminent domain for private profit.



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