

## Good Planning can enhance Property Rights, Property Values & Property Interests

### I. Real Property Rights Include:

A) Current use of the land. The right **to be free to** do something with the land. The right **to be free from** regulatory taking.

- The Land Use Element and County Code can state that there is a right to one home and one accessory dwelling per legal residential parcel. (And they do)

- The Land Use Element and zoning code can state the type of industry allowed by right. (And they do)

- The Land Use Element and zoning code can identify the size of a commercial facility allowed by right. (And they do)

B) Right **to be free to** possess the land.

- 1) The right **to be free from** trespass.

- The Public Facilities and Services Element can ensure sufficient law enforcement staff to defend the right. (The 2014 Draft Plan talks about it in general terms. Lots of wiggle room to avoid the issue. No clear standards. No clear timeline. No clear responsibility. )

- 2) The Right **to be free from** physical takings, without compensation and due process of the law.

- The Introduction to the General Plan can recognize the existence of the right. (And it does on page 1.)

- The land Use Element can identify an administrative process for evaluating claims of physical or regulatory takings. (The 2014 Draft does not.)

C) The Right **to be free to** experience the quiet enjoyment of your land. The right **to be free from** nuisance.

- Community Plans could allow for appropriate local standards to avoid nuisances in different areas. What is too noisy for homes in Wallace may not be too noisy for industries in Toyon. Burn piles in West Point reduce the nuisance of fuel loads, while burn piles next to the school, the clinic, or the hospital in San Andreas may create a nuisance.

- The Resource Production Element could provide specific setbacks for residential uses from mining, agricultural, and forestry enterprises. (The 2014 Draft does not)

-The Land Use Map may designate hazardous, noisy, or smelly uses away from residential, commercial, and public facilities that would be harmed by those uses. (You Judge)

-The Safety Element and zoning code could provide ways to reduce the potential nuisances associated with hazardous activities. (And they do)

-The Noise Element and noise ordinance could provide standards for maintaining the quiet enjoyment of land. (And they do)

The economic theory that market mechanisms can efficiently allocate resources is based upon four prerequisite conditions. The absence of these conditions cause market flaws that result in inefficient resource allocation by the market. The first prerequisite is that there are clearly defined and enforceable property rights. As noted above, land use planning and zoning can provide an administrative mechanisms for more clearly defining and enforcing property rights.

## II. Property Value & Property Interests

A) Real property values, set by supply and demand in the marketplace, are a function of many variables. (Location, Location, Location)

-Land use or potential land use (residential, commercial, industrial).

-The property's surrounding amenities (views, lack of traffic, parks, good schools, peace and quiet, etc.) All the stuff the realtor told you about the area to get you to buy the place.

-The costs of ownership (utility fees, fire fees, fire & flood insurance, road fees, etc.)

-Economists say that these amenities and costs are "capitalized" into the value of your property.

B) Land use planning and zoning can increase or decrease the value of individual parcels, and of property countywide.

-If the General Plan pushes more development into the high fire risk areas of your fire district, you may have to pay higher fees to protect yourself and your community.

-If new development under the General Plan necessitates the need for expanded roads, or extended water and sewer lines, these costs may be unfairly shifted onto current residents.

-If limited resources (water supply, road capacity, utility capacity, endangered species habitat, etc.) are exhausted prematurely by early wasteful developments, this can impede other land owners from exercising their development options.

- On the other hand, if the General Plan changes a parcel from agricultural to residential, it will tend to increase the value of the parcel. However, oversupplying the market with residential parcels can lower their value countywide.

-Also, by requiring conservation easements to mitigate the impacts of development of agricultural lands, the General Plan can increase the value of parcels that remain in agricultural uses.

C) Thus, real property owners have property interests at stake in planning and zoning, as it affects the value of their home and property.

### III. Good planning can help to secure amenities that give value to property.

A) The Circulation Element and Public Facilities Element can ensure that traffic on roads does not degrade. They can set standards for and help to finance water, sewer, electricity, and telecommunications infrastructure.

B) The Housing Element can help to maintain homes and businesses in a neighborhood.

C) The Resource Production Element could help fund the maintenance of views and rural character.

D) The Open Space/Conservation Element can provide for parks and recreation areas.

E) The Noise Element can:

- maintain peace and quiet where it is valued (e.g. residential areas)

- allow for noise where it is valued (e.g. industrial centers).

F) The Public Facilities Element can help to identify sites for new schools.

### IV. Good planning can help to fairly allocate the costs of public goods.

A) You don't want to be overcharged and to discourage the efficient use of resources. Nexus studies can prevent that.

B) You don't want to pay somebody else's share, and thereby subsidize excess development at your expense. Planning can help ensure that new development pays the costs of new infrastructure it needs. For example, San Joaquin County has a mandatory equitable infrastructure financing policy. (SJCDGP, p. 3.2-24.)

C) You don't want services to decline due to "free riders": people who use public goods without paying their fair share.

D) You don't want to be undercharged and let all the public goods – roads, water lines, sewer systems, etc. fall into disrepair. Planning to properly structure rates can help to ensure that costs are covered.

#### V. Good planning can more equitably distribute resources needed for development.

A) Good Planning can avoid the waste of resources, and thereby allow more people to exercise their options to develop their property. (Pie Charts)

#### VI. Good planning can provide the market with information to function effectively.

A) A second prerequisite condition for effective markets is that consumers and producers in the marketplace have perfect information on price, quantity, quality, maintenance, and other factors affecting their market choices. A general plan can also help the real property market function by providing some of this information.

B) Community plans can provide information about local infrastructure capacity to support new development, local design standards, and land local needs.

C) Good plans can identify the vision for a community that an investor can choose to foster.

#### VII. Good planning can provide tools to protect property interests.

A) Clear and uniformly applied standards can provide the clarity of rights and the information needed by the market to function properly.

B) Fair notice and hearing procedures provide a local forum for protecting property interests.

#### VIII. Comparison of San Joaquin County and Calaveras County General Plans.

A) The San Joaquin County Draft General Plan includes a detailed background section on each city and town providing its history, character, its setting, its land use, its infrastructure, and its public services. (SJCDGP, pp. 3.1-86 ff.) The Calaveras County Draft General Plan does not.

B) The San Joaquin County Draft General Plan includes guiding principles for growth, community character, agricultural productivity, circulation, public services, resource

conservation, water resources, recreational resources, and cultural resources. (SJCDGP, pp. 3.1-2, 3.2-2, 3.4-2.) The Calaveras County Draft General Plan does not.

- C) The San Joaquin County Draft General Plan includes specific criteria to evaluate proposals: to convert agricultural land to another use, to expand community boundaries, to extend public services, to meet development requirements for water sewer, storm drainage, and lighting services; to develop in high fire risk areas, and to develop wetlands. (SJCDGP, pp. 3.1-9, 3.1-80, 3.1-81, 3.2-36, 3.3-11, 3.4-6.) The Calaveras County Draft General Plan does not.
- D) The San Joaquin County Draft General Plan includes measurable objectives for reducing wastewater and reducing greenhouse gas emissions. (SJCDGP, pp. 3.2-39, 3.3-14, & Appendix A.) The Calaveras County Draft General Plan does not.
- E) The San Joaquin County Draft General Plan includes clear standards for the mitigation of agricultural land conversions. (SJCDGP, pp.3.1-60.) The Calaveras County Draft General Plan does not.
- F) For almost every program in the San Joaquin County Draft General Plan, the plan identifies the entity responsible to implement the program, and when they will implement the program. (SJCDGP, Chapter 4.) The Calaveras County Draft General Plan does not.
- G) There are three reasons I bring this up:
  - 1) These are ways the San Joaquin County Draft General Plan is doing more to protect property rights, values, and interests.
  - 2) These are ways that San Joaquin County is doing a better job of promoting the public interest, and thereby giving it an advantage in competing with Calaveras County for water permits from the State.
  - 3) The San Joaquin County plan was drafted by Mintier and Associates. Calaveras County paid for a Mintier and Associates draft plan. The County refuses to let us even look at it, and refuses to let the Board use it to inform general plan decisions.

#### IX. What can you do about these failings of the Calaveras Draft General Plan?

- A) Attend and speak at the hearing on June 30 at the San Andreas Town Hall during which the Planning Commission and the Board of Supervisors will provide guidance to the Planning Department regarding general improvements needed in the Draft General Plan.

- B) Write a letter to the Planning Commissioners and the Board asking that the Draft General Plan be amended to include:
- 1) The 2008 Draft Statement of Visions and Principles so that investors know how to help the County make its plans a reality.
  - 2) Community Plans that provide background information needed for the real property market to function effectively, and list community standards to avoid nuisances.
  - 3) Measurable objectives to keep government accountable to the people.
  - 4) Clear standards, interim or long-term, with limited and tracked exceptions, to better define property uses, to avoid nuisances, to equitably allocate development resources, to fairly charge for public goods, and to feasibly mitigate the impacts of development.
  - 5) Details regarding who will implement the programs, by what time, and with what funds.
  - 6) More of the 2008 Background Information useful to the marketplace.
  - 7) Finally, ask the Board to release the Mintier Draft General Plan, to see if we can use it to catch up to San Joaquin County.

## X. Frequently Asked Questions

- 1) Is there anything that the Board of Supervisors can do to improve the review of development proposals and permits, to make infrastructure financing fairer, and to better mitigate the impacts of new development? Is there a win-win-win for developers, tax/ratepayers, and the environment?

The Board of Supervisors can do more to help land use applicants comply with state land use, zoning, and environmental laws: by developing clear and fair development standards, creating fair and effective mechanisms for infrastructure financing, and establishing feasible programs for impact mitigation.

Unfortunately, the Board of Supervisors has made it hard for people to comply with state law by repeatedly disrupting leadership of the Planning Department, by not providing sufficient staffing for long-range planning and application processing, by failing to establish fair and effective mechanisms for infrastructure financing, and by

letting each projects struggle with the choice to mitigate its own impacts to its own standards and compete with those who do not, or to not mitigate impacts and risk court challenge.

While unnecessary hyperactive regulation by the government can stifle economic activity, so can irresponsible inactivity. What you want is that sweet spot in the middle that provides the necessary level of regulation, the clarity needed so people can secure valid project approvals, and the staffing needed for each.

- 2) If the Draft General Plan is vague on a development standard, can that flexibility be used to deny projects as well as approve projects?

If the vague standards are upheld as valid, then yes it can be the basis for a project denial. A vague standard provides the Board with the “flexibility” to approve or to deny a project. That is the down side of flexible standards. Clear standards limit the power of the Board to arbitrarily deny a project.

For example, a standard that requires roads to be a Level of Service C (LOS C), lets a developer know that the Board will not deny a project for road capacity reasons when the road is at LOS C. On the other hand, if the General Plan allows the Board to approve a project when the road capacity is found sufficient under the circumstances, then the Board may deny a project because it does not feel that LOS C is adequate under the circumstances.

While limiting the power of the Board of Supervisors, clear standards let existing residents know that their interests are protected, and let new developers know what is expected of them. Vague standards make existing residents have to fight to defend their interests with each development proposal. Vague standards create risks that deter developer investment. Vague standards only serve to expand the power of the Board of Supervisors.

- 3) Are there ways to include both clear standards and flexibility?

Traditionally, clear standards have been accompanied by criteria for limited and justified variances. This combination can be very effective when the variances are tracked and limited, to ensure that the exceptions do not swallow the rule.

#### 4) Can planning be used to make government more accountable?

Yes.

Regional Transportation Plans have an entire section devoted to financial planning for road expenditures. The section regularly reveals that new development is not paying for the roads needed for future development. If people want government to be accountable, this could be a good place to start.

Integrated Regional Water Management Plans are supposed to identify the split between the local share and the other financing of costs for water projects. Ours does not. If people want government to be accountable, this could be a good place to start.

For another example, a key component of a general plan can be what things it calls upon the County to measure, to keep track of on an ongoing basis, and to report to the Board of Supervisors and the public annually. People can review these disclosures and encourage the Board of Supervisors to deliver on their general plan responsibility.

For example, since George White, Planning Directors in Calaveras County have voluntarily been tracking the status of project applications and reporting the number withdrawn, approved, denied, and in process. This helps the public and the Board evaluate Planning Department performance.

For another example, when Dave Pastizo worked for Planning, he developed a tracking program for project impacts so that cumulative impacts could be tracked over time.

On the other hand, plans that do not include measureable objectives and clear standards provide opportunities for government to avoid accountability. The problem is that it makes every discretionary decision an unnecessary fight about the same things all over again. If we set a valid and agreeable protocol for streamside setbacks for development, or top and side shielded lighting, then we don't have to argue about it for every project.