

Understanding Property Rights

Smart Growth Tools
for
Main Street



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Private property rights are among the most important rights enjoyed by Americans. They enhance our freedom. They give us financial security. They help to protect our personal investments. Without property rights, we would have little incentive to invest time, money, and labor in the improvement of Main Street buildings and businesses.

Our property rights come from the Fifth Amendment to the U.S. Constitution, which states in part: "...nor shall private property be taken for public use, without just compensation." This language is generally called the Takings Clause because it is intended to prevent the government from "taking" – or seizing – a property owner's land without paying a fair price for it.

Too often, property rights are misunderstood. Some people erroneously believe that property rights are absolute. They think that they can do literally anything with their property, even if their actions harm the property rights of their neighbors or the public welfare.

Extensive and precious as they are, our property rights have never been – and are not now – absolute. Like most other rights, property rights are tempered by responsibilities. The U.S. Constitution does not give property owners the right to abuse the land or to use their property in a way that hurts others. Indeed, zoning-based restrictions on land use were first created to *protect* the property rights and values of property owners against the potentially harmful actions of other property owners.

It's important to remember that the value of a parcel of land stems as much from nearby public improvements paid for by the community as a whole – and from the labor and investments of neighboring property owners – as from the activities and investments of the landowner. Private property values are typically enhanced by such taxpayer-funded projects as roads, water and sewer lines, libraries and schools.

Property Rights and Main Street Goals

It is not uncommon for Main Street revitalization advocates to propose such measures as design standards, curbs on sprawl, zoning restrictions and other policies intended to protect a downtown's appearance and economic vitality. But in doing so, they are often told that these measures violate private property rights and are therefore illegal and unconstitutional.

Main Street leaders should know that these measures are, in fact, constitutional. Literally thousands of American cities and towns have enacted historic preservation ordinances, design standards, and land-use laws that limit what property owners may do with their

land. American courts, including the U.S. Supreme Court, have repeatedly upheld these laws when properly enacted and enforced.

To be sure, land-use restrictions must advance a public purpose, be fairly and reasonably applied, and leave property owners with an economically viable use of their land. When these standards are met, however, land use regulations will pass legal muster.

Sensible land-use laws almost always enhance, rather than depress, property values. One only needs to look at such vibrant Main Streets as those in Santa Barbara, Calif.; Hudson, Ohio; and Nantucket, Mass.; to see the positive impact of strong land-use and design standards on property values. The popularity of such places reflects two realities:

- People flock to places that enforce good design standards and sensible growth management policies; and
- The scarcity and popularity of well-designed, sensibly controlled commercial districts have increased their value.

We need more of these places so that they will not just be enclaves of the wealth and privileged. Everyone should be able to enjoy life in an attractive, livable community. The more we can do to create well-designed, livable communities, the more available and accessible they will be to everyone.

The owners and developers of regional shopping malls understand how design and other rules can enhance property values. That's why they routinely impose strict controls on the design, upkeep, and operation of mall businesses.

Resources

- "Focus on Property Rights," a special issue of *Historic Preservation Forum*, the journal of the National Trust for Historic Preservation. July/August 1993/Volume 7/Number 4. Call 202/588-6296 or go to www.preservationbooks.org
- *Takings Law in Plain English*, an overview of "takings" law with suggestions for responding to the takings challenge. To order, go to www.preservationbooks.org and click on "Communities and Sprawl."
- *Zoning and the American Dream: Promises Still to Keep*, edited by Charles M. Haar and Jerold S. Kayden. APA Planners Press (Chicago: 1989).
- *Aesthetics and Land-Use Controls: Beyond Ecology and Economics*, by Christopher J. Duersken. American Planning Association PAS Report No. 399 (1986)
- Georgetown Environmental Law & Policy Institute web site, go to www.law.georgetown.edu/gelpi/

- Community Rights Counsel web site, go to www.communityrights.org/

Note: On April 23, 2002, the U.S. Supreme Court handed down a sound victory for preservationists and environmentalists in the Lake Tahoe development moratorium case (Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency). In a 6 to 3 decision, the Court upheld the moratorium against a "takings" challenge from Tahoe property owners, and reaffirmed several of the key takings principles of the case, Penn Central Transp. Co v. New York City, 438 U.S. 104, including a clarification of the Court's position on the "parcel as a whole" issue. For a copy of the decision, which also includes a useful summary of court decisions pertaining to moratoria generally, see <http://www.supremecourtus.gov/opinions/01pdf/00-1167.pdf>

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