

Back to the Future for Real Estate?

By way of disclaimer, this article does not analyze a case, comment on a statute or address some other substantive legal issue. Instead, I will merely be pontificating about the future of real estate development going forward. While there are many nuances and cross-currents affecting real estate, I will focus on only two areas.

First, there is a perception shared by a few that our current economic malaise has its root cause in an overzealous home building industry and an equally complicit banking industry. The prevailing thought is that there was too much supply and the demand from under-qualified buyers fueled by too-easy mortgage money. Some claim that the same conditions existed during the Great Depression. This perception has created a rush-to-regulation. Whether builders are victims or villains depends upon how you spin the argument, but comparing current conditions to the Great Depression is simply not factually correct. While there is some information confirming huge price drops during the 20s and 30s, in that time frame more homes were owned outright without any mortgage (70%) and where mortgages were provided, the average term was a 3 to 5 years, interest only, with a balloon payment. Such a financing arrangement would have certainly had a huge impact on prices. Regulators also fail to consider that today a much larger percentage and a greater economic cross-section of Americans are homeowners.

In prior downturns, the housing industry and consumer spending powered the economy back to strength. Home building not only created construction and finance jobs, but also fueled manufacturing of glass, lumber, furniture and appliances, to name a few. By suppressing any recovery for the housing industry, the economy as a whole suffers. By way of example, despite wide-spread fear after 9/11 that New York's economy would never recover, examination of the city's real estate market shows great strength and resilience in the ten years following the attacks, assisting in the city's post- 9/11 economic recovery.

Secondly, the regulatory environment for permits and approvals continues to constrict growth. While some local governments now better understand the positive fiscal impact

from development, many ordinances and attitudes continue to be antiquated. To that end, creativity will be a key to growth. Examples include returning to existing non-conforming uses that may be expanded or upgraded by right, combining or mixing uses such as retail and residential, or retail with other retail (think food and gas) and creating ordinances which create fiscal and development incentives for green building.

Many of these ideas propelled past growth and can do so again. Instead of pointing to the past as reasons for doubt, let's use the past as a positive springboard toward the future.



By: Neil A. Stein, Esq.

Neil A. Stein is a founding principal and member of the Land Use, Zoning & Development group. He has over 25 years of experience representing real estate owners, developers, lenders and builders in complex land use, zoning, environmental and corporate matters, as well as design professionals in contracting and business structuring. Neil has also served as a solicitor to several local townships and zoning hearing boards. He can be reached at 610.941.2469 or by e-mail to nstein@kaplaw.com.



KS News

Four Kaplin Stewart attorneys were recently selected by their peers for inclusion in *The Best Lawyers in America*® 2011. **MARC B. KAPLIN** in the fields of Land Use & Zoning and Litigation – Land Use & Zoning, **GEORGE W. BROSEMAN** in the field of Land Use & Zoning, **RONALD B. GLAZER** in the field of Real Estate Law and **ROBERT A. KORN** in the field of Construction Law.

Five Kaplin Stewart attorneys have been recognized and designated as *Pennsylvania Super Lawyers* for 2011: **ANDREW B. COHN** (Construction Litigation), **RONALD B. GLAZER** (Real Estate), **MARC B. KAPLIN** (Land Use/Zoning), **ROBERT A. KORN** (Construction/Surety), and **WILLIAM J. LEVANT** (Bankruptcy & Creditor/Debtor Rights). We are also proud to have several Kaplin Stewart attorneys designated as *Pennsylvania Super Lawyer Rising Stars* for 2011: **GREGG I. ADELMAN** (Land Use/Zoning), **MOHAMMAD A. GHIAUDDIN** (Business Litigation) and **JOSHUA C. QUINTER** (Construction/Surety).

THE ANTI-DEFAMATION LEAGUE (ADL) has elected Marc B. Kaplin to a two-year term as Chairman of its Eastern Pennsylvania/Delaware Regional Board. Working to protect civil rights for all, the ADL is one of the nation's leading civil rights/human relations agencies combating anti-Semitism and other forms of bigotry.

KEVAN F. HIRSCH, a principal in the Business & Commercial Litigation and Construction Law groups, has been appointed as a board member of the M. Patricia Carroll Fund (MPC). The MPC Fund provides financial assistance for in-patient and out-patient treatment for addiction to lawyers with demonstrated financial need. The MPC Fund is a Pennsylvania non-profit corporation funded almost entirely by tax-deductible contributions by lawyers and law firms.

ROBERT A. KORN, a Fellow of the College of Commercial Arbitrators, has been invited to serve on the faculty for a program sponsored by the American Arbitration Association and the College of Commercial Arbitrators. The program is being held in Columbus, Ohio on October 31, 2011; the topic is "Managing Your First Arbitration." Mr. Korn is a principal in the firm's Construction Law group. He handles contract negotiation, dispute resolution through negotiation,

mediation, arbitration and trial. Mr. Korn is a member of the American Bar Association's Committee on Alternative Dispute Resolution and the Pennsylvania Bar Association's Dispute Resolution Committee.

MAURY B. REITER, Managing Principal, and Chair of the Tax & Estates group, presented a continuing education program to the accountants at Muracco & Liuzzi, P.C. on Friday, July 22, 2011. The program was entitled "Partnership and LLC Taxation." Mr. Reiter, who is also an accountant, has a broad-based business law practice including taxation, corporate and commercial law and estate planning and administration.

JOSHUA C. QUINTER, a principal in the Construction Law group, will be presenting a program at the Metalcon International Construction Conference in Atlanta, Georgia on October 13, 2011. The program is titled "Evaluating and Dealing with Critical Issues in Construction Contracts", and is sponsored by the Metal Building Contractors and Erectors Association and the Metal Building Institute. The program will cover clauses affecting payment, provisions dealing with potential liabilities such as personal injury claims, and project entanglements such as indemnity and insurance issues. Mr. Quinter will discuss due diligence, the questions to

ask up front, contract forms, mechanic's lien claims, surety bonds, various contractual provisions, insurance and indemnity clauses, and workers' compensation rules.

Kaplin Stewart's members continue their strong spirit of giving back year after year. Three of our own, **ROBERT KORN**, **LISA LAPENNA** and **JULIE LUND** participated again in the annual 150 mile "Multiple Sclerosis: City to Shore Bike Ride." Robert Korn has been riding in this event for more than 20 years, this was Lisa LaPenna's 9th year and Julie Lund's 2nd year. The ride, on September 24-25, 2011, took place in New Jersey from Cherry Hill to Ocean City and back. Each year these dedicated riders raise significant sums of money to help local people living with this devastating disease. Kudos to our riders and to those waging war against M.S.!

Since the City to Shore Bike Ride is not enough of a challenge for Lisa LaPenna, she also rode in the Livestrong cancer ride in Montgomery County on August 21, 2011 and rode the 5th Annual Bike Philly event on September 11, 2011. Somehow Lisa also managed to squeeze in getting married in August. Congratulations Lisa!

As part of our community efforts, Kaplin Stewart participated in the Independence Chapter of the Association of Legal Administrators' Annual Back to School Supply Drive. Our members donated a variety of school supplies and money to help deserving children start the school year on a positive note. The Crime Victim's Center of Chester County distributed the items to children of their clients, as well as those of other social service agencies in the Chester area.



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Meet our Commercial Litigation Professionals

This month, Kaplin Stewart shines the spotlight on Karin Corbett, an Associate in the Commercial Litigation and Construction groups. Karin's practice includes cases involving construction contract claims, liens, insurance coverage, bad faith claims, and construction-site accidents, as well as all aspects of commercial litigation and business disputes. Karin also practices equine law in which she represents professional equestrians, horse owners, products companies and other business owners in the industry in corporate and transactional matters, as well as equine litigation and disputes.

Karin was born and raised in Montgomery County, Pennsylvania, where she attended Germantown Academy. Early on, Karin had declared that she would be a lawyer someday, recognizing her natural tendency to advocate for others. However, after she used her advocacy skills to convince her reluctant parents to offer her riding lessons, Karin caught the "riding bug" and shifted her focus towards training horses and equine sports medicine. She followed local hunter circuits as a child and learned about equine medicine by shadowing equine veterinarians. During high school Karin completed an independent study through GA's Academy Scholar Program to analyze and improve the efficiency of the nursing and volunteer programs at prominent large animal neonatal intensive care units in Pennsylvania, Florida and Kentucky.

Karin later pursued pre-veterinary studies at Mount Holyoke College in South Hadley, Massachusetts. There she also competed on the Varsity Equestrian Team for eight semesters, frequently qualifying for

and representing the College at Regional, Zone and National invitationals and finals. Karin often took leadership roles on the team, including heading the team's fundraising initiatives where she helped the team triple their profits from prior years. During this time, Karin began competing on the United States Equestrian Federation's "A" Circuit under the tutelage of top hunter and jumper trainers and studied other riding disciplines, including dressage.

Ultimately, Karin decided against becoming a veterinarian, after hearing more and more about law school from her older brother, who was a law student at the time.

So, Karin headed in the opposite direction of her rural college town and attended law school at the Pennsylvania State University, Dickinson School of Law, in Carlisle, PA where she earned her J.D. Karin recognized early in law school that she would be a litigator.

Upon graduating from law school, Karin returned to the Philadelphia area and began her legal career at Fox Rothschild, LLP, where she gained extensive experience in complex commercial litigation and courtroom advocacy. This year, Karin accepted an Associate position with Kaplin Stewart which allowed her to continue her existing litigation and equine practice as well as expand into another area of interest, construction law. Karin is admitted to Federal and State Courts in Pennsylvania and New Jersey.

Karin currently resides in Doylestown with her significant other and three dogs. She continues to compete on the "A" Circuit with her young horse, "Diskotek," and trains young equine prospects for resale.



KARIN CORBETT

Do You Know...

That effective January 1, 2011, but not mandatory until January 1, 2012, Pennsylvania employers must withhold local earned income tax ("EIT") at the higher of the non-resident rate in the employer's jurisdiction or the resident rate in the employee's jurisdiction. Act 32 requires that at the end of each calendar quarter each employer must file a quarterly return with the tax collector officer ("TCO") and remit the EIT deducted during the preceding calendar quarter.

For employers with employees located in several tax collection districts ("TCD"), the employer must remit the EIT to the TCO of the workplace TCD and remit electronically on a monthly basis. The workplace TCD will send the taxes it collects to the employee's residence's TCD. Employers must require each employee to complete a certificate of residency and employers must register with their TCO.

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Legal Perspectives

One Casualty of Pennsylvania's New Budget: Homeowners Emergency Mortgage ("Act 91") Assistance

Until recently, Pennsylvania – alone among the 50 states – offered a program designed to help homeowners who, through no fault of their own, had become unable to afford their mortgage payments, and were thus faced with the possible loss of their homes in foreclosure.

The Homeowners Emergency Mortgage Assistance Program (commonly referred-to as "Act 91" assistance) provided loans to eligible homeowners to bring their mortgages current, with flexible repayment schedules based upon the homeowner's income, and adjusted annually. Unfortunately, no funding for "Act 91" assistance was included in the Commonwealth's Fiscal 2012 budget, and as a result, the

program shut down in late August, 2011. If you are a lender, this means that you are no longer required to send an "Act 91" notice before starting foreclosure on any owner-occupied residence located in Pennsylvania.

If you are a homeowner, this means that you will no longer be able to apply for "Act 91" assistance if you fall behind on your mortgage payments. Also, if the original principal amount of the mortgage loan on your residence exceeds the statutory "Base Number" (\$221,540.00; adjusted annually), you may not receive any pre-foreclosure notice at all.

Lenders should consult legal counsel to ensure compliance with these changed requirements; homeowners should consult legal counsel as soon as they miss a mortgage payment, because termination of the "Act 91" program may shorten the amount of

time within which a default can be cured at minimal cost before foreclosure commences.



William J. Levant

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Unless otherwise expressly stated herein, all discussions and opinions are based upon the law of the Commonwealth of Pennsylvania and the State of New Jersey. **Your comments or suggestions are welcome... Phone: 610.260.6000 • Fax: 610.260.1240 • www.kaplaw.com**

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