

Silent, But Dangerous. Hidden Attacks on Property Values (and How Europe is Riding to the Rescue)

There you are, minding your own business, blissfully unaware that multiple levels of government are at work, silently eroding your property's value. These actions often reveal themselves at some point, yet even the most astute property owners are taken by surprise. Here are just a few examples.

Local Government

Local governments are often faced with the dilemma of balancing economic growth and the negative impacts associated with growth. Most would like a strong local economy, fueled by development, which results in higher tax revenues. Yet, some local governments care primarily about clean air, green space, and low-density. The latter type of local government can be a silent killer, and its weapon of choice is zoning regulation. Most restrictive zoning grows from political muscle exercised by current residents arguing that more intensive uses would devalue their homes. So by convincing elected officials to shift toward essentially silent zoning changes, text amendments and new environmental-based development regulation, no single property is targeted but all undeveloped properties are negatively affected.

Impact fees, or development fees, enacted without much fanfare, have a similar effect. The fees are frequently passed on by developers to purchasers in the price of a new property and, therefore, increase the cost of housing and decrease the profitability of a particular project.

County Government

Property owners often have little interaction with county government. Commercial property owners sometimes require a health department or conservation district permit. However, the county has one key department that affects almost every property owner – the office of assessment which sets the value of a property for real estate tax purposes. While the rate of tax (or millage) is set by taxing authorities (e.g., the school district), the base assessment may be increased by the county under certain circumstances. Comparing the implied fair market value derived from the assessment, against the actual fair market value, may reveal an over-assessment. The result is that you are paying too much tax and therefore your property is worth less to a potential purchaser.

State and Federal Government

Federal and state governments often share in the regulation of the environment, particularly with regard to wetland, flood plain, erosion and sewage issues. Sometimes, regulations become more restrictive by subtle changes in policy, rather than actual regulation. A change in buffer from 500 feet to 1,000 feet can prohibit building of any type, rendering a property virtually valueless, i.e., a taking of property. Staying ahead of these changes is critical. After these changes become law, it is too late.

Europe to the Rescue


I intend to revisit some of these issues in a later article, and suggest some valuable techniques to help lead your counter-attack. In the interim, how about a shout-out to our cash infused European brethren, who buy-up our foreclosure inventory, and whose own failing economies have persuaded our Fed to keep our own mortgage rates low. I guess I can eat French Fries again.




Neil A. Stein


Neil Stein is a principal and member of the Land Use, Zoning & Development group. Mr. Stein has extensive experience representing developers, homebuilders and those engaged in the architecture and engineering professions in each and every phase of the real estate transaction including green and sustainable design, structuring, financing, land use approvals, land use litigation and eminent domain. You can reach Mr. Stein at 610.941.2469 or by email to nstein@kaplaw.com.

KS News


 **Dirk M. Simpson**, a principal in the Corporate & Business Planning group, was a panel member of a program sponsored by the Italian Trade Commission and Innova, S.p.A., a leading European technology transfer consulting firm, entitled "Fostering International Entrepreneurship & Innovation: U.S. & Italian Strategies for Turning Research into Business" on June 12, 2012 in Philadelphia, Pennsylvania at Temple University. Mr. Simpson spoke on the creation of legal structures to promote international collaboration to share the risks and costs involved with university-based technology transfer. Program speakers included members of the Pennsylvania Department of community and Economic Development, the University City Science Center, and Pennsylvania Bio. In his practice, Mr. Simpson handles business planning for closely-held companies, taxation, and trust and estate planning.

 **Barbara Anisko**, a principal in the Business & Commercial Litigation group, will be speaking at the National Business Institute's seminar on Land Use and Zoning Law Litigation on December 10, 2012. Ms. Anisko will be speaking on Property Rights vs. Police Power which will cover property owners and property rights and regulation of property and the Fifth Amendment. In her practice, Ms. Anisko concentrates in real estate and commercial litigation. She has significant lead counsel experience in matters involving commercial disputes, real estate transaction disputes, land development, land use and zoning disputes, eminent domain and condemnation claims, constitutional property rights claims, and claims against state, county and municipal governments and agencies.

 **Mohammad Ghiasuddin**, a principal in the Commercial Litigation and Construction Law groups, participated as a mentor in the Montgomery Bar Association's Summer 1L Internship Program, which provides paid internships to first year law students of diverse backgrounds. This summer, ten highly qualified students were placed with law offices throughout Montgomery County. This program sprang from an effort by the Montgomery Bar to increase diversity throughout Montgomery County. Mr. Ghiasuddin is currently the chair of the Montgomery Bar Association's Diversity Committee and Kaplin Stewart is a sponsor of the Summer 1L Internship Program.

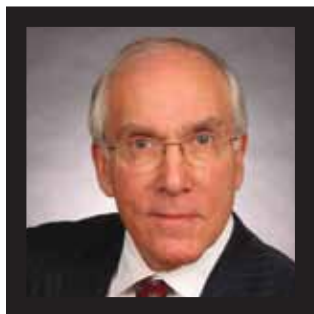
 **Lisa M. LaPenna**, a Paralegal in the Commercial Litigation group, rode in the American Cancer Society Bike-a-Thon on July 8, 2012. The ride was 54 miles beginning in Cherry Hill, New Jersey. Lisa keeps those legs pumping year after year for good causes.

KUDOS TO...

 **Barbara Anisko**, who represented the seller in the sale of a 5.53 acre ocean front property in Bal Harbour, Florida, to an Argentine developer for \$220 million dollars. The Argentine developer plans to build luxury high rise condominiums on the property. The sale is one of the largest land sale transactions in South Florida this year. Ms. Anisko has recently been certified as a life member of both the Million Dollar Advocates Forum and the Multi-Million Dollar Advocates Forum. The Million Dollar Advocates Forum is recognized as one of the most prestigious groups of trial lawyers in the United States. Membership is limited to attorneys who have won million and multi-million dollar verdicts, awards and settlements.

Kaplin|Stewart

is proud to announce that the following attorneys have been selected by their peers to the *Best Lawyers in America*® List for 2013 (copyright 2012 by Woodward/White, Inc. of Aiden, SC): Andrew B. Cohn and Robert A. Korn (Construction Law), George W. Broseman, Marc B. Kaplin and Neil A. Stein (Land Use & Zoning Law), Robert A. Korn (Litigation – Construction), Marc B. Kaplin (Litigation – Land Use & Zoning), and Ronald B. Glazer and Jeffrey Silberman (Real Estate Law).



Robert A. Korn

Robert A. Korn, a principal in the Construction Law group, will be a panel member of a Pennsylvania Bar Institute program on Mechanic's Liens. The program will be given in Mechanicsburg, PA on October 1, 2012, in Philadelphia, PA on October 22, 2012 and in Pittsburgh, PA on November 9, 2012. The panel will discuss, among other things, the latest major court decisions on mechanic's liens, who has

lien rights under the current law, and how to preserve and perfect or defend against a mechanic's lien. Mr. Korn is an active litigator, focusing on all aspects of construction and surety law. He handles contract negotiation, dispute resolution through negotiation, mediation, arbitration and trial. Mr. Korn represents public owners, owner/developers, construction managers, general contractors, subcontractors, fabricators, design professionals, insurers and sureties.



Neil A. Stein

Neil A. Stein, a principal in the Land Use, Zoning & Development group, will be a panel member of a Pennsylvania Bar Institute program on Property Wars. The program will be given in Philadelphia, PA on October 9, 2012, in Pittsburgh, PA on October 18, 2012 and in Mechanicsburg, PA on October 25, 2012. The panel will discuss attacks on private property rights in the form of: (1) increased governmental

regulation and policy; (2) citizen involvement aimed at delaying or prohibiting development; and (3) taking of property rights through condemnation or inverse condemnation. Mr. Stein has more than 25 years experience in complex real estate, land use, and zoning matters. He is a member of the National Association of Home Builders and the Pennsylvania Builders Association, and has served on various task forces focused upon issues of concern in the homebuilding industry.

Meet Our Construction Professionals

This month, Kaplin Stewart shines the spotlight on William D. Auxer, a partner in the Construction Law and Environmental groups. Bill handles many different types of transactional and litigation matters within the construction and environmental fields.

Bill was born and raised in the Philadelphia region. Having a serious interest in the field of engineering and seeking a small private school with an excellent engineering program, Bill attended the University of Dayton to pursue a degree in Civil Engineering. In 1991, he graduated from the University of Dayton with a Bachelor of Science in Civil Engineering. It happened to be the time of a recession where jobs within the construction field were scarce, but jobs in the environmental field were plentiful. Consequently, Bill's career began in the environmental field.

After graduating from the University of Dayton, Bill worked in the environmental field as an environmental consultant for several years. His experience ranged from performing environmental site investigations, managing environmental cleanups and designing environmental remediation systems. After several years in the environmental

consulting field, Bill decided to work for an environmental contractor performing environmental cleanups in the North Atlantic region. During that time, he was first introduced to the notion of contract disputes,



William D. Auxer

which sparked his interest in law – particularly contract law. In 1994, Bill decided to attend law school to pursue a legal career where he could utilize his engineering background. However, the plan to attend law school was placed on hold as Bill's former employer recruited him to co-head an environmental investigation of two naval bases in Bermuda. Needless to say, he happily obliged.

Bill did finally attend law school at Temple University and graduated in 1998. In 1998 to 2000, Bill worked for a small law firm that specialized in Federal Contracting. In 2000, Bill made his smartest career choice and joined Kaplin Stewart.

When away from the office, Bill spends time with his wife and two daughters. Thinking that he is handy with the tool bag, he also performs his own renovation and remodeling projects around the home – much to his wife's dismay.

Do You Know...

About the partisan fight in the Congress over estate and gift taxes? Debate is ramping up as the tax cuts enacted under President George W. Bush are now set to expire at the end of 2012.

The Bush tax cuts generously increased the "exemption" – the amount of an estate that can escape imposition of the federal estate tax – and decreased the rate of the estate tax.

If Congress fails to act, the estate tax rate will rise dramatically to a 55 percent top rate from 35 percent, after excluding the first \$1 million of value. Under current law, the first \$5 million of an estate, or twice that if it involves a married couple, can pass to heirs tax-free. Anything above that is taxed at 35 percent.

Most Democrats agree the tax should not

snap back to the 55 percent level. Obama backs a 45 percent tax on estates after a \$3.5 million exemption. Some Democrats from ranching and farm states fail to back Obama's plan. Republicans are gleefully exploiting division among Democrats on the issue.

To get around their division, the Democrats decided to wait until year end to tackle the issue. The Democrats will, therefore, negotiate on estate tax reform from a position that begins with the January 1, 2013 return to a 55 percent top estate and gift tax rate (and flat 55% Generation

Skipping Transfer tax rate), and a \$1 million estate, gift and Generation Skipping Transfer exemption. Division among Democrats suggests eventual compromise but details remain uncertain.

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Legal Perspectives

Are You e-Verifying Your Employees?

A new law enacted in Pennsylvania on July 5, 2012 creates new employee verification requirements for all public works contracts.

On July 5, 2012, the Public Works Employment Verification Act was signed into law by Governor Corbett. The Act is effective as of January 1, 2013 and applies to all public works contracts in Pennsylvania of more than \$25,000. The Act requires that all public works contractors and subcontractors use E-Verify, an internet-based system, to verify the employment eligibility of its new employees. E-Verify compares the employee's information with information from the Department of Homeland Security and the Social Security Administration.

In order to be awarded a public works contract, a contractor must submit a signed verification form

acknowledging, under penalty of perjury, that the contractor verified the employment eligibility of all new employees through E-Verify. The verification form will be available online by the Department of General Services before the end of the year.



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A public works contractor who fails to verify employment eligibility through E-Verify or fails to provide the verification form can be subject to a warning letter from DGS for a first violation. A second violation will result in the contractor's debarment from public works for 30 days. A third violation will result in the contractor's debarment from public works for 180 days to one year. There are additional sanctions for willful violations of the Act. A contractor can also be subject to civil penalties, ranging from \$250 to \$1,000 for each violation, for failing to use the verification form or for making false statements on the form. Contractors are not liable for violations by their subcontractors.



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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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