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REAL ESTATE LAW & INDUSTRY



REPORT

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LAND USE

Recognized as an innovator in environmental and land use law, Chuck Wolfe heads up his own law firm in Seattle and is an affiliate associate professor in the College of Built Environments at the University of Washington. Wolfe has been credited for his pioneering work representing clients who reuse brownfield sites and for his advocacy of sustainable development methods. He also has served as chairman of the American Planning Association Planning and Law Division and the Washington State Bar Environmental and Land Use Law Section and is currently treasurer of the Urban Land Institute's Seattle District Council. He hosts the website www.myurbanist.com. Wolfe spoke recently with BNA's Richard Cowden about a range of planning and commercial real estate issues, such as development of pedestrian-oriented communities and the changing landscape of land use law. He indicated his views on the long-term transition to more environmentally friendly development practices are tempered by the realities of markets and local political exigencies.

Land Use Expert Sees Big Picture of Seattle's Bid for Progressive Development

BNA: Do you think that when the market picks back up again, it will become obvious to the public that we've entered a new phase of urban development that is oriented around street-level activity?

Wolfe: Certainly it will among what I would call the cognoscenti public—those people who covet the richness of an urban environment. However, one thing I see from a law practice perspective and from writing some articles and teaching at the University of Washington, there is a component that still, for a variety of reasons, doesn't want to live in an urban environment. So I think

we are seeing in both the literature and product delivery—you know, in our developer/client base—more of a different product line that is exurban, or a hybrid. I think people want some of what you've alluded to—the density, the complete streets, the walkability. But not everyone wants all of it; they want a choice. They may want to live on their large lot in a family home and have that be their town center that they can get to, maybe even by driving, God forbid.

So the default reaction to your question is, oh my God, yes, yes, yes, but I think the real challenge will be

the in-betweens because not everybody necessarily wants this vision completely. They want to be able to retreat to some element of what was America—you know, the single-family home. I would say the trend lines are shifting. The generational desires are certainly shifting, but I think the interesting thinking right now and the interesting product delivery research and the interesting regulatory drafting efforts and the interesting project permitting are also in the in-between areas.

Denser Development. We are very familiar with [walkable neighborhoods] out here, but I would say what about those areas that are never going to be urban? I am coming from the perspective here in Washington state where we have a Growth Management Act that defines urban growth boundaries. And for 20 years it has been obvious that growth will occur in a denser way in these urban growth boundaries. But outside the urban growth boundaries, there is the interplay between urban centers where it is not as simple as the [concept] that you put on the table.

BNA: It never is, is it? I am pretty familiar with Portland, Oregon, and how it has developed and I think they have done a good job of, first of all, getting a handle on their land use policies, and second, orienting their regional growth plan around light rail. Is it possible to approximate that kind of approach in a city like Seattle?

Wolfe: We do have light rail. As of last July we have light rail that goes from downtown and Sea-Tac Airport. It is slated to expand to the north to the University of Washington and out to a couple of suburban cities. And then it is slated by the mid-2020s to go across one of our floating bridges to the east side of the lake. And there are some great debates going on about the location of the alignment with the city of Bellevue right now, which is a major edge city across [Lake Washington]. The Portland experience is certainly held out as a success. It is interesting; we have gone through a period in the region of sort of leading the charge, but now among those who aspire to the model of development we're discussing, we have a lot of Portland envy and we have a lot of Vancouver, B.C., envy. This is our struggle right now, because Seattle intellectually is still ahead of the curve—you know, some say it is the most educated population in the country and so forth.

I think that the principles that have been successful in Portland are being touted by everyone everywhere. It's part of the Kool-Aid. Whether they can [succeed] everywhere under every political process or every population will have a lot to do with the return of the economy, with the success of the three-agency [Department of Housing and Urban Development, Department of Transportation, Environmental Protection Agency] initiative in Washington, D.C., sending federal money towards planning consistently along these lines—linking land use and transportation. Of course, I am talking about the Office of Sustainable Communities (2 REAL 1142, 12/29/09).

The Portland Example. Our [former county executive], Ron Sims, is second in command at HUD, and I think we are painfully aware of Seattle needing to grow up a bit. And when Mr. Sims has come home he has consistently reminded this region that we have to learn to make decisions more efficiently, and we have a long history of taking forever to decide major transit, major infrastructure issues. That is one reason why, although we have a land use regime that is as progressive as any-

where, we have significant transportation issues that we are trying to resolve.

In answer to your question about Portland's principles, most municipalities are trying hard and thinking about their town centers. In Mike McGinn we have a new mayor who is espousing walk-bike-ride and he is bringing his past as a Sierra Club activist—as a supporter of parks and transit, not a supporter of new roads—to the political table. And we have a lot of professionals who are trying to catch this wave.

Seattle as a city was in a high-rise kind of frenzy at the time the market disappeared. I would say that to the degree there is development in the future, it will be along the lines of the model you provided. But I can think of one project that I'm working on as the environmental lawyer that will be in many respects the largest transit-oriented development in the country. It is in the Pioneer Square area. It is a historic district in the oldest part of Seattle in the area adjacent to our sports stadiums.

I am coming from the perspective here where in Washington state; we have a Growth Management Act that defines urban growth boundaries, and for 20 years it has been obvious that growth will occur in a denser way in these urban growth boundaries.

You can certainly learn from the principles of successful examples elsewhere but we have to be careful not to whole-cloth adopt [a model]—not unlike the dawn of zoning—when we took what was intended for Manhattan and nationalized it. We have to be very contextual about these things for them to succeed because there are immediate concerns; there is political opposition to increased density and oftentimes we find that, for instance, folks who live in the vicinity of light rail stations here in Seattle may be folks who immigrated from other countries and their dream was a single-family home and a car. So, ironically, some of them would be opposed to some of the transit community efforts.

BNA: You touched on something that reminded me of a question I wanted to ask you about zoning. If we had never developed the Manhattan model of zoning that required strict segregation of land uses, but had adopted something more like the model that we are seeing today, with planned unit development (PUD) approaches to projects, do you think our cities would be better off?

Wolfe: Interesting way of putting it. I think a couple of things happened. As you well know, we gave primacy in the zoning pyramid to single-family uses, separated from other uses. It went against organic urban development, both here and elsewhere in the world and we have spent 80 to 90 years reclaiming truly the concept of mixed uses—the notion of live/work—the idea of mixed-use retail with apartments above it. The problem is sometimes we imposed it so awkwardly that it is ugly;

it is a standard product that is overburdening the market.

Primacy of Single-Family Housing. That having been said, when I teach land use law, I use Professor [Daniel] Mandelker's book, which as a case book has that subtext: Why did we give primacy to [single-family housing], the implication being it made no sense. Why did we disrespect multi-family zoning in the hierarchy? Let's look carefully at the language of [U.S. Supreme Court] Justice [George] Sutherland in the [*Euclid v. Ambler*] case, with the presumption that multi-family apartment uses are parasitical in their nature. Your comment is appropriate now that we look today at reclaiming—some would argue—what we had. The first generation of planning in this country inherited a number of themes: the “settlement house” movement—special assistance to immigrant populations; the “garden city” movement from England, which ended up in romantic railway suburbs; the “city beautiful” movement—you know, the grand, monumental style. Then it transitioned into dealing with the results of the automobile.

Again, some of the fundamental efforts in the New York region, from which came a lot of our thinking, was really responsive to the automobile. It set up the paradigm of single-family housing versus mixed-use or something else.

So, I don't know if we would be better off but we would certainly be more where we want to be now, wouldn't we? When you say “better off” about a city, it is far more than zoning. It is public safety issues; it is vitality of schools, all of those things. So the implication becomes, had we developed in an alternative fashion, would we have been able to retain better education in the urban cores? Would they be safer places to live? I don't know the answer, but it certainly is fascinating.

If you go online and if you are a Twitter fan or a Facebook fan, those people who are in the echo chamber and talking about this stuff are all writing the same article right now—myself included. They are variations on the same theme of: Oh, my God, how do we get back what we lost? It is an interesting theory you put out there that single-family zoning led to all of this.

BNA: Do you see potential regional conflicts that could be generated by having a mix of walkable and drivable cities? If they are intermingled within regions, I could foresee how something like that could become a conflict among those cities within a region.

Potential Regional Conflicts. Wolfe: Sure it is and it is playing out like never before in our region, where we are trying to make some very important transit allocation decisions with regard to even how buses serve our metro. Our method of allocating bus service has given precedence under sub-equity area policies to the suburbs, and it is Seattle that demands transit the most. So the new county executive is working hard on redefining that mix. If you are going to move the “choice” users to an area where they are not, what is going to incentivize them? Well, ironically, walking is one of the big things people are talking about to incentivize choice users of transit. It seems to me there has got to be a tremendous amount of human in-migration in a region for this to really work. There is this big adjustment that needs to take place and during that period, it is evolutionary. It is not going to happen overnight.

We had our Urban Land Institute-led Reality Check here a couple of years ago and one of the major findings of the folks who sat around the table, playing with Legos, and interfaced about the job/housing mix, was that we have to find a way to get people close to their jobs, or closer to public transit to get to their jobs. And we have to have that transit reliably interconnect the urban centers under our land use scheme. That is part of the Kool-Aid. It is part of what we are all trying to do and what we are all writing about.

I think your question is: Isn't the implementation going to create some dramatic challenges? There is a lot of messy stuff going on and I think it is symptomatic of what you are talking about. You've got half the population saying: “You know we have talked about this for 13 years. Let's get it built.” And then you've got the other half of the population saying: “Wait a minute. That is not what we want.” So that is a symptom of the kind of dilemma you are raising.

Again, some of the fundamental efforts in the New York region, from which came a lot of our thinking, was really responsive to the automobile. It set up the paradigm of single-family housing versus mixed-use or something else.

In terms of operational, on-the-ground examples, you can say client X built a great, greened-up community that is walkable to some form of center, but are we sure the bus lines will feed the rail lines? How do we make sure everything is strategically located without a larger regional vision? So, one thing that we are doing as part of the Urban Land Institute and this Quality Growth Alliance of eight affiliated organizations is [to develop] the idea of a TOD [transit-oriented development] compact that will incentivize municipalities who are on the light rail lines that are built over the next 20 years to engage in a certain set of principles in and around the stations. That's just one example of what it will take to make all of this work.

Tradeoff Led to TriMet. So then going back to your Portland question, Portland benefits from rigorous land use planning that began back in 1972. As a partial result of opposition led by a young Neil Goldschmidt (before he was mayor of Portland, governor of Oregon and U.S. secretary of transportation), [Portland took] money that was slated for freeway improvements and channeled it into [light rail].

BNA: You mention on your website that you worked with a condo project that was the fastest prospective purchaser consent decree negotiations in Washington state history. Can you explain a little bit about that—how that happened?

Wolfe: Yes, that was back in 1999 and the developers at the time were much less risk-averse than many. They were willing to clean up a property that was pre-residential and marketed it and they were very successful. One way they did that was an entire—what we call removal. In other words, all the contamination was ex-

cavated. And the route of that clean-up was eased because we had a very motivated project manager for the [Washington] Department of Ecology and all the stars aligned to work through the technical documentation and the legal documentation on a fairly expedited basis. And that doesn't always happen. The stars have aligned on other projects I have worked on as well that were actually far more complex than that one.

But [this project was] more a statement about how well the public and private sectors can work together when there is a common goal as people are embracing a theme. In that case it was, let's just call it a flagship model for redevelopment in our city and it was really one of the first where a residential use went on what was previously a highly ranked contamination site. That didn't happen very much even in 1999. Now it is much more commonplace. However, people may be more risk-averse again; the economy is sending us that way. The economy is making everyone do a better job of dotting their Is and crossing their Ts in terms of loan documentation, as you well know.

BNA: What is the most difficult environmental compliance issue your clients have to deal with?

Wolfe: I would say for my practice it would be addressing environmental contamination in a way that is consistent with complex development projects that can allow for a range of uses and allows various teams of professionals to work together. I also, of course, serve clients who are stressing critical area issues under our Growth Management Act. And those are wetlands, steep slopes, that type of thing. And then we also have

a related piece of legislation here called our Shorelines Management Act. Oftentimes there are limitations based on shorelines or jurisdiction. Of course the greatest challenge comes when all of these things merge together. You have a dirty property on the shoreline. That is like the new headquarters for the Seattle Seahawks.

BNA: It sounds like that is one of your big projects now.

Wolfe: It is largely completed but it is one of the projects I have worked on over the last several years.

Overbuilt Housing. BNA: Do you think we are likely to see prolonged problems in the housing sector caused by overbuilding homes that will be out of favor, such as the big single-family homes in the suburbs?

Wolfe: [The author Timothy Egan recently wrote an article] about the new ghost towns of the West. It is about the drive-to-qualify California towns that are in some instances largely not so much towns but developments that are empty because either the construction is incomplete or they are complete and they are unoccupied or they are being foreclosed on. There has been a fair amount written on that. We have some parallels in our region. It is going to be a question as you get farther out. I think there will be a surplus and it might create a whole new challenge of reuse in certain areas. It may create new demolitions if they are never sold.

The location-inefficient, drive-to-qualify mortgage may have created a bunch of artifacts. I don't think any of us really knows how that is going to play out.