

## State of the Market 37: More's the Laws

By David A. Smith

Moore's Law observes that the rate of computational-power improvement does not slow, even as performance increases. Something similar operates in housing and affordable housing development – the rate at which communities add 'new and improved' development barriers also does not slow, even as the aggregate obstruction of those barriers rises.

Development regulations arise because as urban societies become more dense and more complex, more things need to be coordinated. No one wants unmanaged development on toxic fill, no one wants overloaded waste systems, and everyone wants a place to park. Regulations generally fill an actual need, which makes arguing against any given rule difficult.

It's been happening for decades and there's no end in sight, with far-reaching consequences for affordable housing and America's cities and our national economy.

Call it More's the Laws.

### **The ever-shifting, ever-increasing development barriers**

Urban civil societies develop rules around development permissibility; they have learned that the necessity to weave civic physical and systemic infrastructure throughout a living metropolis requires urban use and location coordination. Over time, the otherwise simple business of property development becomes festooned with requirements, substantive or procedural, and while each in the abstract is defensible, even laudable, their cumulative effect is crippling. From



*I can develop in any city I please ...  
I just can't please any city*

tangible to abstract, these developmental barriers include:

- **Environmental remediation.** If the site has something toxic on or in it, any owner wishing to develop must first remove the sludge. This requirement usually being absolute rather than negotiable, some sites' cost to remediate exceeds their value when improved, so some quality sites can languish for decades. Meanwhile the definition of 'hazardous' is diluted, imposing ever-higher tolls on development.
- **Water and sewer impact.** On-demand system-to-site delivery of water, and site-to-system removal of sanitation are triumphs of urban engineering – predicated on the establishment, maintenance, and ongoing reinvestment in a sophisticated utility infrastructure. Those who add fluid demand to this wash-and-flush circulatory network should and usually do pay a fee for the privilege of hooking up.
- **Accessibility.** Despite the simple blue-and-white wheelchair logo – whose real-estate consequences are incontrovertible – what constitutes a handicap has been expanded, because to the Bureau for Preventing Hammer

Abuse, everything looks like a vulnerable nail.

- **Parking impact.** An alien might think Americans zone for cars, people being merely a byproduct. Ratios of 2.00x expected households dominate much of America, and even in urban environments, 1.25x is common. Parking mandates consume land (acquisition cost) or multi-level structures (construction cost).
- **Wetlands/ environmental impact.** We all love sunlit photos of pristine wilderness, but how big is enough? Since topography slopes, every urban location can be either a water source or a catchment, and the definition of wetland can expand without check.
- **Undefined 'green' development.** Though few quarrel with the sustainability goal, engineering and technical choices constantly change. If policymakers are untethered to economic viability, there is no real cap on how much of the tech-du-jour they believe should be carried by – and paid for by – each new development.
- **Historic or conservation zones.** *What is historic?*, asking jesting Pilate, and would not stay for the public hearing, a process that my then-neighbor Paul Krugman described to me as "the government of the people, for the people, by the people with nothing better to do."
- **Exclusionary zoning.** Given the natural if base desire of richer people to surround themselves with other richer people, and keep 'those people' somewhere else, 'sustainability' becomes merely the most recent cover story. Whether in minimum lot size, setback requirements, or the more recent 'streetscape' restrictions, the combined and often deliberate objective is to spread out dwellings,

and hence to make each one more expensive.

- **Localized anti-development barrier wars.** If *my* town's affordable-housing barriers are higher than yours, then all of 'those people' will live in *your* town, adding to *your* school system, bringing down *your* property values, while by day I can still employ them in *my* grocery stores. So localities 'gain' by racing-to-the-toughest.
- **Judicial-izing approval processes** (notice, hearing, appeals). 'Formalizing' review can be dressed up in clothes of transparency and good-government – but the unstated implications are that development is inherently adversarial, that the public should have a vested and wide latitude to sound off on anything, and that delay is costless. In reality, as many development opponents know full well, delay is expensive and developers will trade away rights for speed.

All of these barriers complicate and extend the process of urban-market development. Up and up go costs.

### **More's-the-Laws means developing is ever more tortuous**

The chokehold on development doesn't merely depress land values by piling up non-revenue costs; it also distorts American housing costs and tenure choices, and hence distorts and retards our economy.

- **Development restrictions become an insiders' game.** Once a process becomes a shifting maze, those who know the maze become well-paid guides, as up sprouts a business of professionals who rent you the string to find your way out. As the system becomes more complex, these fees continuously rise.

- **Insiders man the bastions of barriers to entry.** Those who know seek to keep out those who don't.
- **Housing costs rise in real terms.** Fifty years ago, the average American household spent roughly 25% of income for housing. Fifteen years ago, it was up to 30%. Today, in development-restricted urban areas, it is 35% (but nobody wants to admit it). In fifteen years, it'll be 40%, and we'll start trimming our expectations of typical urban footprint. If you don't believe me, try buying a flat in London.
- **Cities and states slowly drive out affordability and economic competitiveness.** Both Bruce Katz of Brookings and economist Ed Glaeser of Harvard have demonstrated that developmental barriers add cost, tighten housing markets, reduce labor mobility, and inhibit economic competitiveness.
- **Affordability becomes a Red-Queen's-Race.** Even as states and localities create new particular local affordability resources, they cannot keep up with the widening finance gaps resulting from total development costs that rise much faster than post-affordability values. The 'generous' town that hands out soft debt doesn't realize that nearly all of it flows right through development cost increases from complying with that same town's very own procedures.
- **The nexus of political development power shifts to states and localities.** Balkanizing finance adds costs and works against efficiencies otherwise available from capital-markets scaling.
- **Development encounters the Production Paradox:** whatever a developer wants to do is opposed. Try to put in affordable housing, and the neighbors will be up in arms. Return

fifteen years later to convert that same property to market use, and the same (now older and more voluble) neighbors will be up in arms.

- **Development volatility increases.** Demand has to go somewhere, so if in some places one cannot develop at all, the friendly development environments will inevitably be overbuilt.
- **Jobs migrate warm, wet, and west,** because jobs need homes to go sleep at night.
- **Politics becomes gridlocked by an unholy political alliance** between incumbent local experts seeking to keep out developer interlopers and believers in BANANA: Build Absolutely Nothing Anywhere Near Anybody. The enemy of my political enemy is my political friend.
- **Some places zone into a political minority.** Which states are losing representatives through decennial redistricting? Those with high barriers to development. Which ones are gaining? Those without.

### **As barriers complicate, development processes localize**

In practical terms – and *State of the Market* readers are nothing if not practical – the consequences of *More's-the-Laws* regulation are real, immediate, and costly.

- **Everything is non-conforming.** As-of-right zoning is efficient. When regulations proliferate and tighten, everything is non-conforming (unalterable without case-by-case approval), even as everything existing is grandfathered.
- **Adaptive reuse slows.** As repositioning costs rise, adaptability slows, and the real estate inventory economically obsolesces.
- **All hail the political taste police.** Each new procedural hurdle is

presented as value-free, but in the world of real, case-by-case localized approval gives unlimited power to the taste police, who can use their veto over one transaction aspect to meddle in all the others.

- **If it doesn't exist, it can't exist.** Because of the Production Paradox, acquisition-rehab (for all its headaches) can be easier than demolish-and-rebuild or even, heaven forbid, demolish and upzone.
- **Development people become better paid.** Given the multiplicity of independent variables in play all at the same time, development becomes personalized; an experienced senior executive must devote all her time to her deal-in-process for months if not years. Those people gain personal brands and personal assets, and become progressively more valuable even as they become narrower.
- **Developers are size-capped.** As development becomes localized, the costs of maintaining state-of-the-business knowledge rise, and development companies narrow their focus. Entities that used to develop capably in four or five markets at a time find now that they are effective in only one or two, turning what should be an industry into a cottage industry.
- **Capital should own property, not develop it.** Ownership scales and the commodity's value will rise in real

terms. Development specializes and has a high people cost.

- **Developers become merchant builders who team, then sell off.** Ownership scales: capital availability, property and asset management grasp and quality control, organizational and IT platforms all improve with scale. Ownership therefore has a rising minimum size. With developers being size-capped and owners being size-mandated, development properties must be handed off, usually at loan conversion (from construction to permanent).
- **Everything is case-by-case.** There is always the next approval for this deal, the next application for the next deal, and the next waiver or closeout for the last deal. Administrators gain power and become capricious, taste being passed off as policy.

### Conclusion: Less is More?

Ever since the 1960s' invention of urban renewal authorities, our garden of real estate development rules has steadily grown more tangled, and there's every reason to think this will continue.

Even gardens full of useful plants become useless if unmanaged and unweeded. To avoid being paralyzed by development entanglements, developers and investors must learn to advocate for the results, rather than the ostensible intentions, of the regulations they will end up living with.

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