

JAMES A. GRAASKAMP COLLECTION OF TEACHING MATERIALS

V. INDUSTRY SEMINARS AND SPEECHES - SHORT TERM

F. Miscellaneous Professional Associations

5. Mortgage Bankers Dinner, No Title,
Philadelphia, April 30, 1981. Talking about
valuation and title issues

MORTGAGE BANKERS DINNER

Philadelphia-April 30, 1981

- I. What is so simple about fee simple title? Which rights come with the standard bundle of rights?
 - A. Begin reading the long definition of rights accorded to fee simple title.
 - B. But the law has always defined private options to use and benefit as those rights which are not preempted by the public since the constitution reserves:
 1. First claim on productivity - the real estate tax
 2. First prerogative on use decisions - the police power
 3. Compensation in cash only for entrenched private rights - eminent domain
 - C. Court cases in Wisconsin have held that the land owner does not have inherent right to develop marsh land to the damage of the general public by upsetting the natural environment...nothing this court has said or held in prior cases indicates that destroying the natural character of a swamp or a wetland so as to make that location available for human habitation is a reasonable use of that land when the new use, although of a more economical value to the owner, causes a harm to the general public. ... While loss of value is to be considered in determining whether a restriction is a constructive taking, value based upon changing character of the land at the expense of harm to public rights is not an essential factor or controlling. The Land belongs to the people... a little of it to those dead... some to those living... but most of it belongs to those yet to be born..." Just vs. Marinette, 56 Wis 2d 7.
 - D. In Madison neighborhood planning counsels can veto commercial uses on commercially owned land, arguing that Taco Bell is not genuine Mexican food and that a professional office building was incompatible with a family neighborhood.
 - E. On a little broader base, the Rockefeller Land Use Commission noted a growing public consensus that land use was central to both environmental balance and social equity and therefore subject to public control first and private development second.
 - F. In short, title provides access to an opportunity. But the nature of that opportunity changes with the political and social trends and value systems of our general society. Entitlement to make specific use of the property is the result of organized perceptions about the property and the user. It is no longer clear when we buy our properties how much we pay for title and how much we pay for entitlements which are not one of the bundle of rights.

- G. Consider purchase of an existing shopping center position from a developer, particularly where we take assignment of the developer's corporate or partnership position with consent of his partner's department stores. Among the rights we acquire are:
1. Title to the site encumbered by cross easements for access, parking, sharing foundations and structures, and leases to a hundred different merchants.
 2. Participation in an operating agreement which guarantees joint efforts at marketing, security, management, and the maintenance of shared facilities as well as the guaranteed operation of the major department stores for 25 or 30 years.
 3. The operating agreement franchises the developer to build, lease and manage the center among the department stores, sell electricity and facilities, release, participate in sales profits, sell services and control the merchants' association-all of which are profit opportunities.
 4. There may be other goodies included including environmental permits, monopolistic zoning, economic development loans, tax incremental financing and other concessions.
- H. Title may provide access to opportunity, but the profit centers are entitlements generated by a private collective agreement or public collective agreement and all of these would be regarded as intangible assets like patents, franchises, licenses and cartel agreements. The accounting fraternity is much more precise about classification on these matters than the real estate fraternity, but the distinction between title and entitlement becomes significant:
1. when defining that portion of total business value that is subject to the real estate tax.
 2. when defining which rights are pledged as collateral for the mortgage loan.
 3. when defining which profits are subject to capital gain and which ones are treated as ordinary income.
 4. when defining which assets are depreciable, which are land, and which are attributable to that mysterious measure of momentum, "goodwill".
- I. Most values in real estate are found in the entitlements we create or negotiate, and these entitlements are the range of options within which society allows enterprise to operate. Wealth is created from entitlement; title simply provides some degree of latitude in the sharing of wealth between private concerns and public priorities.
- J. Therefore, it would be useful to have some sense of major social and political trends and underlying value systems in our general society as they may impact on entitlements.