



## To SLAPP or Not To SLAPP

by Janet Stearns

Consider this scenario: You have selected a location for a small residential development. You have conducted market studies, prepared site plans, and found a bank to finance you. Finally, you are ready to submit your plans to the local zoning authority.

And then your worst nightmare becomes reality: local citizens organize a group to stop your development. Suddenly, your name is plastered on signs in front yards, on bumper stickers, and in the editorial page of the local paper. The zoning hearing is being rescheduled from city hall to the municipal auditorium to hold the angry mobs. What can you do?

**SLAPP them.** More and more developers, faced with this situation, are taking the offense and suing the citizens who have organized the opposition. Lawsuits against such citizen groups have become so common they have earned an official nickname: SLAPP, which stands for Strategic Lawsuits Against Public Participation.

Four such cases have been filed in Connecticut in the past year. Those cases are part of a national phenomenon that began in the early 1980s when more citizen groups began to mobilize around environmental and development issues. Media attention and academic study is now focusing on SLAPPs, including a recent segment on the television program "L.A. Law."

Developers use SLAPPs to charge the opposing citizen groups with such offenses as defamation of character, slander of title (false and malicious statements regarding the developer's title to the land), and tortious interference (intentional and improper interference with business relations). The real goal in such suits, however, is not so much to prove these charges as it is to discourage the opposition.

According to a recent study, no plaintiff in a SLAPP suit has ever been successful, and the vast majority of cases are dismissed before they reach trial. However, even if the plaintiff does not win in court, the suit may be a strategic success if it intimidates and silences community opposition. This goal is often accomplished by the mere filing of the lawsuit.

Why can't SLAPPs be won? Defendants in SLAPPs are protected by provisions in the First Amendment of the U.S. Constitution and in state constitutions that guarantee both freedom of speech and the right to petition government bodies, such as zoning boards.

These constitutional protections are generally lost only if the petitioner's statements are "defamatory," or knowingly and recklessly false; or the statements are a "sham." For example, if a citizen group is a front organization for a competing developer whose appeals are intended only to hurt the interests of a competitor, those petitions would be a sham and would not be protected.

However, citizen activity against a proposed development such as the one described in the previous example, which advances legitimate concerns to local governmental bodies, are constitutionally protected speech and would defeat a SLAPP lawsuit.

**Getting SLAPPed back.** Many community groups, faced with an impending lawsuit, would rather run than fight. Often they lack the resources to answer a SLAPP. But some are choosing to fight back, giving rise to the counter-SLAPP suit.

Connecticut law, for instance, allows for triple damages for lawsuits filed without probable cause with a malicious intent to unjustly vex and trouble another person. Other states have similar penalties for vexatious litigation, and legislative proposals are currently being considered to increase the damages in SLAPP cases. Thus, SLAPP plaintiffs and their lawyers must carefully consider the potential penalties for filing baseless SLAPP suits.

Developers facing an angry crowd of citizens must weigh their options. Lawsuits are a course of action, but one that is not without costs, both financially and in terms of community goodwill.

Negotiating development agreements with community groups and local governments is another approach. You might offer to provide the group with office space if you're building a commercial project, set aside open space for other community use, or include a few affordable housing units in the plan.

Such alternatives may lead to a more positive and productive long-term relationship. Especially in these tough economic times, SLAPPs are no panacea for community resistance. ■

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