

SITIE Symposium: How Real Estate Responds to Disruptive Change

Program Agenda / June 22, 2019

8:30 – 9:00 am

Arrival; informal networking; coffee & pastries
courtesy of Professor Smirniotopoulos

9:00 – 9:15 am

Welcome

Annette Clark, Dean
Seattle University School of Law

Introduction to SITIE and Seattle U Law's Innovation Curriculum

Steven Bender

Associate Dean for Planning and Strategic Initiatives & Professor
Seattle University School of Law

Lead Author, **Modern Real Estate Finance and Land Transfer:**

A Transactional Approach, 6th Ed. (Wolters Kluwer/Aspen Casebook 2018)

Preview of the Day's Program and Introduction to

"Innovating the Built Environment: How the Law Responds to Disruptive Change"

Professor Peter Smirniotopoulos

SITIE Faculty and Course Instructor, *"Innovating the Built Environment"*

Adjunct Professor, Seattle University School of Law

Author, **Real Estate Law: Fundamentals for The Development Process, First Ed.**

(Routledge, NOV 2016)

This day-long learning event is an outgrowth of and integral to Professor Smirniotopoulos' course, *"Innovating the Built Environment: How the Law Responds to Disruptive Change,"* one of four, four-week courses offered throughout the month of June, in addition to the *"Immersion Course: Lawyering for Entrepreneurship and Innovation"* taught from May 28th through June 1st, which together comprise Seattle U Law's inaugural **Summer Institute for Technology, Innovation, and Entrepreneurship** (SITIE, pronounced "city"). The SITIE curriculum contemplates that each of these four courses have eight hours of instruction on one weekend day or divided over the course of a Saturday and Sunday on the same weekend. Given the nature of the subject matter for *"Innovating the Built Environment,"* using the all-day Saturday class for this Symposium offers the opportunity to expand the perspectives to which students in the course are exposed, by opening up the discussion to all SITIE students

and faculty, to the larger Seattle U Law community, and to aligned professionals and interested stakeholders throughout Greater Seattle.

The abstract for *"Innovating the Built Environment"* posits:

*In an entrepreneur's struggle for "legal compliance" in the battle to bring technology and innovation to market, asking forgiveness (sometime down the road), rather than seeking permission before launch (perceived by entrepreneurs as more likely to conflict with optimal market timing) may be **the rule rather than the exception**. This course looks at the natural tensions between technology, innovation, and entrepreneurship, on the one hand, and complying with the law (or, at least, not running afoul of the law), on the other hand, by guiding students through the exploration of four public policy issues greatly impacting the built environment:*

- **TOPIC #1:** "Amazon's HQ2 search: Should States and Localities **'Pay to Play?'**"
- **TOPIC #2:** "Tiny Homes, Micro Units, and ADU's, OH MY!: **Addressing Affordable Housing**"
- **TOPIC #3** "**Who Should Bear the Burdens** of Housing the Regional Workforce?"
- **TOPIC #4** "**In the Smart Cities of the Future, Who Will Own Your Data?**"

The subject-matter Sessions comprising today's Featured Presentations and Expert Panel discussions are directly related, in one way or another, to the four, above-referenced Special Topics addressed in *"Innovating the Built Environment"* or, as is the case with today's first Session on Opportunity Zones, demonstrate how sometimes but rarely the law leads innovation rather than always playing catch-up.

Each of today's Sessions, set forth below, is prefaced with its own Abstract.

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ABSTRACT:

As stated at the beginning of the Course Description for “Innovating the Built Environment”:

When it comes to innovation, “the law” has always been a lagging indicator of change (to borrow a phrase from economics). This is perhaps no truer than in the realm of real estate law, which has remarkable breadth as an area of academic study and a pervasive impact upon every aspect of real estate development, financing, occupancy, and property management.

More often than not, the law appears in the form of a stick rather than a carrot, being used as a cudgel to beat down innovations challenging the status quo.

While this is largely the case, in the area of federal incentives, enacted under the Internal Revenue Code and refined through the promulgation of Treasury Regulations, encouraging certain types of investments intended to benefit the public good, these “qualified investments” do not occur in a vacuum; rather, **they are very specifically induced**. Such is the case with the Historic Rehabilitation Tax Credit program (historic preservation credits), Low-Income Housing Tax Credits (LIHTC), New Markets Tax Credits (NMTC), and, now, the Opportunity Zones (OZ) program. With the issuance of a second-round of Treasury Regulations on April 19, 2019, further guidance for encouraging and applying private-sector investments in targeted areas will, hopefully, open up capital formations in furtherance of well-specified public priorities.

However, while addressing the technical requirements of the OZ program, this Session’s Featured Speaker and Expert Panel members will also endeavor to address an oft-asked question about all of these IRS incentive programs: Do they **really** help the residents, occupiers, and patrons of the distressed communities they’re intended to support?

9:15 – 9:45 am	How Sometimes the Law Leads...After a Fashion Professor Smirniotopoulos
9:45 – 10:15 am	Featured Speaker: OZ Opportunities for Greater Seattle Dave Enslow, Principal, Timberlane Partners, Seattle, WA
10:15 – 11:00 am	Panel Discussion Jeanne Marie Coronado, Moderator Debt & Structured Finance, CBRE Affordable Housing, Seattle Dave Enslow (see above) Katya Sienkiewicz, Chief Resilience Officer and Philanthropic Liaison, Office of Mayor Jenny A. Durkan City of Seattle Daniel Goodrich, Attorney, Hillis Clark Martin & Peterson Seattle Robert Keasal, CPA, Tax Partner, Tax Director, Peterson Sullivan LLP, Seattle
11:00 – 11:15 am	BREAK

11:15 am – 12:30 pm **SESSION 2: Pros and Cons of Upzoning**

ABSTRACT:

Remember the old Dorito's™ marketing campaign: *"Eat as much as you want. We'll make more?"*

That same sentiment might be applied, in wholesale fashion, to Greater Seattle's increasingly acute housing affordability crisis and the solution *du jour*: Upzoning. Intense demand for close-in housing has created shortages that have driven-up housing prices. **The solution? Make more housing** (or, more-precisely, incentivize the private sector to make more housing, and insist they make at least some of that new housing more affordable than what the market would otherwise allow or dictate).

As greater and greater demand by renters and home buyers "with means," seeking close-in housing options in trendy communities, drives up the cost of housing simply because those buyers are able to pay higher prices (whether in rent or mortgage payments), more affordable housing gets pushed out to the periphery of the urban core. As employment centers proliferate to accommodate increased commercial growth—as has clearly been the case in the Greater Seattle area, with the meteoric growth of more-remote areas such as Redmond and Bellevue, as well as the exponential growth of closer-in communities like Lake Union, Capitol Hill (the home of Seattle University), and Ballard—affordable housing gets pushed **even farther** out from Seattle's urban core. **Through upzoning local jurisdictions simply offer to "just make more" housing, like so many Doritos™**, by intentionally expanding existing building envelopes in specified areas of the City, encouraging private-sector developers to build at greater densities while **also requiring** that specified percentages of the housing developed under that permitted, higher density enabled through upzoning are income-qualified, and made available to targeted-income households most-impacted by rising housing costs.

Upzoning is just another, potential strategy in a range of options for addressing the housing affordability crisis. As with the housing options contemplated under the course's Special Topic, **"Tiny Homes, Micro Units, and ADU's, OH MY!"**, no affordable housing strategy, particularly given the market dynamics of Greater Seattle, is perfect. However, the inherent complexities of each strategy require that unintended consequences be fully explored in advance so as to avoid those that threaten to undermine the underlying premises of such policies in the first place. By way of example, increasing densities, regardless of how well-intentioned that strategy may, and how vociferously championed by affordable housing advocates, may accelerate gentrification in the communities where densities are increased, running contrary to the underlying motivations for upzoning.

11:15 – 11:30 am *"Tiny Homes, Micro Units, and ADU's, OH MY!:
Addressing Affordable Housing"*

Professor Smirniotopoulos

11:30 – 11:45 am Featured Speaker:

Diane Sugimura, Former Seattle DPD Director

"You Might Ask Yourself: How Did We Get Here?"

11:45 am – 12:30 pm Panel Discussion:
Diane Sugimura, **Moderator** (see above)
Geoff Wendtland, Senior Planning Manager, Planning Department,
City of Seattle
Mike Pattison, Master Builders Association of King and Snohomish
Counties (MBAKS), and
Senior Snohomish County Manager
Alex A. Wilford, Land Acquisition Manager, Pulte Group, Pacific
Northwest Division
Maureen Roat, Senior Staff Attorney, Catholic Community Services of
Western Washington, Tenant Law Center and
Adjunct Professor, SeattleU Law

12:30 – 1:30 pm **TACO TALK** Sponsored by
the Seattle University School of Law and
Seattle Journal of Technology, Environmental & Innovation Law

A Working Lunch discussion moderated by Professor Smirniotopoulos:
Brainstorming Session to discuss “*What Comes Next?*” in the context of
Innovating the Built Environment: How the Law Responds to Disruptive Change

1:30 – 3:00 pm **SESSION 3: Data Privacy and Smart Cities: Are the Trade-Offs Worth It?**

ABSTRACT:

In Chapter 10 of **Real Estate Law: Fundamentals for The Development Process, First Edition** (Routledge, NOV 2016), Professor Smirniotopoulos raises the question: “*What, and Who, Is the Government?*” This is not, however, raised as if in the form of a conspiracy theorist’s rhetorical question but by way of distinguishing between traditional, democratically elected municipal government, and newer forms of governmental entities (some of which, like the Port Authority of New York and New Jersey, are **not** democratically elected) that have arisen and evolved over the past fifty years or, in some cases, somewhat longer. In this section of the textbook’s chapter addressing “*Private Actions Creating Public Benefits*” (and *vice versa*), Professor Smirniotopoulos covers quasi-governmental organizations and entities, created or permitted by state statute, that replace traditional municipal governmental entities but have become somewhat mainstream and accepted. Metropolitan (“Metro”) Districts in Colorado, Special Districts in Texas, Community Development Associations in the Commonwealth of Virginia, and Tax Increment Finance (TIF) districts throughout the U.S. all come to mind in this regard.

As governments at all levels—local, state, and federal—become increasingly dependent upon private-sector service providers, supplanting traditional governmental roles (e.g. public safety, including incarceration; primary and secondary education; health-care), and with an increasing governmental reliance on public-private partnerships, answers to the question “*What, and Who, Is the Government?*” become increasingly murky. Layer on top of these existing complexities the thorny issues relating to

Data Privacy and the creation of Smart Cities generating and utilizing exponentially larger amounts of data they plan to gather, and “murky” doesn’t begin to cover the uncertainties to which the average citizen may be subjected.

The Featured Speaker and Expert Panel discussion in this Session will endeavor to both demystify the subject of “Data Privacy,” while also seeking to resolve the debate over whether the public sector, versus the private-sector, is in the best position to protect citizen’s data.

1:30 – 1:45 pm	A “Smart Cities” Primer, Professor Smirniotopoulos
1:45 – 2:15 pm	Featured Speaker: Jerry Vergeront, Director of Risk and Cybersecurity, Seattle University and Founder and Attorney at Law, Vergeront Law, PLLC <i>“What, Exactly, Is Data Privacy?”</i>
2:15 – 3:00 pm	Panel Discussion: <i>Can Smart Cities & Data Privacy Co-Exist?</i> Jerry Vergeront (see above), Moderator Ginger Armbruster, Chief Privacy Officer, City of Seattle Jessica Nadelman, Assistant City Attorney, City of Seattle Paul Campbell, Chief Security Officer, Ekata, Seattle
3:00 – 3:15 pm	BREAK
3:15 – 5:00 pm	SESSION 4: Pay-to-Play: Should Government Pay for Economic Development (and, if so, How)?

ABSTRACT:

It is not unusual for localities and regional entities to compete with one another across the country to attract “job-creating” businesses looking to establish or relocate facilities. Large, very sophisticated economic development authorities and agencies in well-located parts of the country—the Economic Development Authority of Fairfax County, Virginia, a populous and prosperous suburb of Washington, D.C. with an annual budget of \$7.8MM comes immediately to mind—often offer, as a relocation advantage, demonstrably well-educated and “tech-enabled” workers. However, to be **even more** competitive in securing commitments from high-tech companies to locate within their jurisdiction economic development agencies also, with increasing frequency, offer multi-milliondollar incentive packages to lure and retain Blue Chip enterprises. With the promise of bringing in thousands, rather than merely hundreds, of new, high-paying jobs, substantially larger incentive packages have been offered to attract corporate commitments. Included among the most-notable throughout the United States are Amazon’s now-abandoned HQ2 facility in Long Island City, N.Y. (\$2-\$3B incentive package); Mt. Pleasant, Wisconsin’s new Foxconn “manufacturing” facility (\$4.5B incentive package); and Tesla’s \$5 billion Gigafactory producing car batteries in a new manufacturing facility just outside Reno, Nevada (\$1.3B incentive package).

This process, however, while clearly inuring to the economic benefit and overall profitability of large-scale employers like Amazon, raises fundamental public policy questions. Do such incentive programs simply compete with each other, transferring public funds to private companies with no overall gain in

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public welfare? Should corporate shareholders receive substantial amounts of taxpayers' money—critics refer to it as “corporate welfare”—to augment incentives that already exist?

And should public entities scale back initiatives at the behest of private companies? In the Fall of 2018, the Seattle City Council reversed its very recently enacted Downtown “head tax”—which it had passed to fund solutions to address the increasingly acute needs of the City’s homeless population--after push-back from the Downtown Seattle business community, including large players employers like Amazon. Amazon specifically threatened to abandon its proposed occupancy of 722,000 square feet of commercial office space in Rainier Square Tower (the building’s entire net rentable square footage) if the head tax remained as enacted. In fairness to Amazon, the head tax intentionally targeted companies like it with a large proportion of highly paid workers and a significant physical presence in Downtown Seattle. Ironically, the company announced in late April 2019 it would **not** be occupying its Rainier Square Tower office space upon the project’s completion, and shortly after that further announced it would be relocating an entire division to Bellevue. This raises additional public policy questions: How long of a commitment to “remain” should be expected when economic incentives are involved and how can they be enforced? Can a jurisdiction become too dependent on one corporation, with potential, unintended public policy consequence of being effectively threatened because the jurisdiction has **too many** economic eggs in one basket? The Featured Speaker and Expert Panel discussion in this Session will consider the role of Local Government in seeking to expand economic opportunities by attracting and/or retaining businesses.

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| 3:15 – 3:45 pm | Professor Smirniotopoulos
<i>“Amazon’s HQ2 Search: A Tale of Two Cities”</i> |
| 3:45 – 4:15 pm | Featured Speaker:
Brian Kelly, Associate Professor of Economics, Albers School of Business, Seattle University
<i>“What Economics Can Teach Local Government About Attracting Private Businesses”</i> |
| 4:15 – 5:00 pm | Panel Discussion: Are Some Incentives “Better” Than Others?
Brian Kelly, Moderator (see above)
Lisa Herbold, Seattle City Councilmember, District 1: West Seattle/South Park, City of Seattle
John Stokes, Bellevue City Councilmember, Bellevue, WA |
| 5:00 – 5:15 pm | Wrap-Up and Takeaways
Professor Smirniotopoulos |