

Carl Von Clausewitz

An historical yet timely perspective on 'Zoning Wars'

By P. Michael Saint

When Prussian soldier and writer Carl Von Clausewitz wrote his classic book, "On War" in the 1830's, his words were directed at the philosophy, strategy and tactics of successful ground wars in Nineteenth Century Europe. But his ideas are equally relevant to real estate zoning battles in 21st Century America.

Twenty years ago, most commercial and residential real estate projects were easily approved at the municipal or county level. Development was seen as beneficial — a sign of progress and growth, a source of new jobs and tax revenue for the community, a wellspring of new opportunity for the business community, and an example of accomplishment that local politicians could cite as a reason for re-election.

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All that has changed.

Today from small towns in the Midwest, to suburbs on both coasts, to cities in the South, citizens are organizing to oppose all kinds of new projects: big box category killers (Wal-Mart, Home Depot), shopping malls, power plants, cellular phone towers, residential subdivisions, apartment complexes, affordable housing, office buildings, industrial parks and even churches, schools and playgrounds.

Twenty years ago, citizen opposition was mostly found in overbuilt coastal areas, and was led by the classic NIMBY (Not In My Back Yard) homeowner. Opponents now include ad hoc citizens' groups with names like "Citizens for Responsible Growth," as well as environmentalists who oppose traffic and pollution and seek to preserve species habitat; preservationists, who hope to save old buildings and maintain community character; the "Smart Growth" and anti-sprawl planning movements; Native American tribes protecting burial grounds, and even retailers who have decided that it's worth the investment to use zoning bylaws to stop new market entrants than to compete with them after they open.

The "new jobs and new taxes" that developers traditionally promise no longer have the resonance they once enjoyed. Development is no longer synonymous with progress, nor is growth necessarily good. And local officials today understand that there is no political upside in approving projects that their constituents overwhelmingly oppose.

To be successful, the modern real estate developer must assume every proposal will be opposed and that every project will require a campaign using the kind of

battle strategy and analysis that Von Clausewitz brought to the battlefield two centuries ago. Here are some thoughts from Von Clausewitz and their modern application.

COMMIT ENOUGH RESOURCES — Von Clausewitz: "... (I)f we desire to defeat the enemy, we must proportion our efforts to his powers of resistance." These days, development opponents are well organized, with strategies and tactics worthy of a battlefield general. They bring money, consultants, and determination to the fight, and can recruit large numbers of their fellow citizens to serve as soldiers in the fight. Real estate developers must commit sufficient resources to defeat the opposition, or face wasted opportunities, contentious hearings, long delays, and ultimate defeat. Few contests are won cheaply these days.

GET GOOD INFORMATION — Von Clausewitz: "... (A) great part of the information obtained in War is contradictory; a still greater part is false, and by far the greatest part is of doubtful character." The developer who undertakes a project using too many assumptions, or bases his strategies on "insider" information and misinformed opinions, is courting disaster. These days, devising a successful strategy requires polling, detailed political research, and analysis to identify likely opponents and tactics to neutralize or marginalize them; to identify potential supporters and methods of motivating them; and to analyze the various agendas of politicians and discover the factors that may influence their support.

DELAYS BENEFIT THE DEFENSE — Von Clausewitz believed that the defender has an advantage and that delay often works for the defense. This is certainly true in zoning battles. When projects require rezoning, many jurisdictions require a super majority vote (2/3 or 3/4) of the city council or county commission. This means the "defense" only needs 1/3 plus 1 to defend the status quo – a far simpler task than winning 2/3 plus 1. With millions of dollars at stake, delays are costly to the developer, so opponents strive to prolong delays, improving the chances that the developer's resources will dry up; that key tenants will go elsewhere; or that the project will no longer be financially viable. As Von Clausewitz wrote: To increase the probability of success, you must wear out the enemy, which "amounts in practice to a gradual exhaustion of the physical powers and of the will by the long continuance of exertion." A developer who wants to avoid becoming the victim of delay needs to do his research, create his battle plan, marshal his resources, and organize his troops before doing battle, not in mid-clash. There is no substitute for preparation.

BUILD A CROWD — Von Clausewitz: "... (T)he superiority in numbers is the most important factor in the result of a combat...the greatest possible number of troops should be brought into action at the decisive point." At zoning hearings, local officials usually vote for the side with the most supporters in the room. No matter what he whispers in the back room, the public official fears making the unpopular

choice, because the consequence is defeat in the next election, or calls for his resignation. Neutralizing the crowd, so that public officials can safely vote in favor requires the developer to produce as big a crowd at the hearing as the opponents do — not an easy task in a NIMBY world — and impossible unless the developer has a well-tuned battle plan.

For the real estate developer today, an effective battle plan devised by strategists expert in the art of winning zoning battles is an essential part of the process.