

Taking the Offense on “Takings”

A Communication Framing Memo
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Taking On The “Property Rights” Movement

This memo is intended to inform on-going discussion and work for communications to stop the “Property Rights” movement in its tracks. It provides a conceptual framework for re-framing our own perspectives, and redefining the public discourse, to move beyond defensive strategies and begin an offensive campaign to pre-empt the “Property Rights” movement, and to continue the work of improving the built environment.

The challenge in taking on and defeating the radical “Property Rights” attack is also an opportunity to re-consider our broader work and the most effective ways to describe it to others. The goals, strategies and communications that will be required to win the campaign must be clearly based in widely shared values to advance the common good.

The “Property Rights” movement can be neutralized in its ability to determine public policy. But not by trying to argue with, or refute, the values at the core of the “Property Rights” story.

The phrase “Property Rights” appears in this paper, and should always be used, in quotation marks. It is the name of a narrow, ideological movement. They use the term “property rights” to evoke *their* story -- government regulation and over-reach, preventing citizens the fair exercise of individual freedom and rights. The opposition has successfully created and moved “property rights” as a frame – they own it. It is established in political discourse: when we use “property rights” it evokes and thus reinforces their frame. Our job is to control the underlying values to evoke *our* story: protecting our homes and communities from unplanned, unfair development, and from undemocratic decision making. We should diligently avoid using the term “property rights” except as the name of a radical movement. Instead, we must talk about the *right to own property* and *the rights of property owners*.

The opposition seeks to force us onto defensive territory. We will never be able to trump values of fairness, democracy and the rights of ownership – nor should we want to. We must embrace and define these values, and make sure our work and our language advances them.

The current story, as framed by the “Property Rights” movement, makes them the guardians of individual liberty against the intrusion of government. Our opposition seeks to dismantle existing law and prevent future laws. On defense, we can be painted as siding with government against the individual. That story is not only a loser: it doesn’t begin to reflect or advance our goals. We must seize and control the terms and the story.

Telling Our Story

We must take the high ground and aggressively defend the rights of citizens to own and benefit from property. There can be no equivocation, no “*Yeah, but...*” implied in our language or in our underlying assumptions: “*Yeah, but* though we have rights, we also have responsibilities...”

We must adamantly defend the rights of property, and we must talk about these rights. By defining rights explicitly, we also define and illuminate the limitations of rights, and the responsibilities that those rights engender. **We need to be clear on what we mean by the rights of property owners, and how our positions support those rights.**

Engage the opposition:

Force the opposition to define what they mean by “property rights”. The more explicit they become, the weaker their stand.

We must stand for the protection of the value, and the values, of our homes, our neighborhoods and our communities. Property values are neighborhood values, and the security and worth of our property is increased when we improve the community, and decreased if we diminish the community. **When we talk about protecting land, it must be clear that people (not “the environment”) will be the beneficiaries.**

Name the opposition:

Identify which “property owners” are which. Are we talking about homeowners in defined geographic areas? Property that is owned by everyone, such as public parks and streets? A few fortunate land-holders who want to cash out? Land speculators? The radical “Property Rights” movement is a threat to homeowners’ property values and to our ability to keep what we value.

We must insist that systems and decisions are fair. There can be no equivocation. When we counter fairness to individuals with fairness to the community, or, argue that being fair to every individual would cost too much, it hands the opposition an easy target, to characterize us as not being fair. **The system must be fair to individuals,** and we must be prepared to define what is fair and what is not. We should be leading efforts to identify where existing policies are not fair, and advocate strongly for reforms and decisions that are better and more fair.

Engage the opposition:

Identify victims of unfair changes in land use, unfair practices by irresponsible property owners, and unfair treatment by inflexible governmental bodies. Insist on remedies for these victims, and on policy that will prevent further abuse. Refuse to let stand false distinctions the opposition attempts to make between

“preventing harm” and “providing benefits”: the issue is fairness. Name the opposition, and make explicit who will actually gain, and who will lose.

We must demand democratic, open decision making. This is fundamental to shifting the political landscape in favor of development decisions that look at the big picture, consider all the options, represent the will of the people, and benefit the community as a whole.

Name the opposition.

Make explicit whose interests the “Property Rights” movement represents. Expose the radically anti-democratic ideology that motivates it, and the narrow self-interest that seeks to circumvent and undermine the ability of communities to determine their future.

This communication challenge is two-fold: we must communicate about the “Property Rights” movement and the policies it proposes; and we must proactively set the terms, by actions as well as words, that define and defend these core values. We must make these values a central focus of our work. As an example, if we were to propose a law to conserve farmland at the metropolitan fringe, we would start with the question: “How do we develop a system that will benefit farm owners, especially those who want to keep farming, but even those who don’t, while at the same time conserving the land?”

By crafting such a proposal to *expand* options for farmers on the fringe, rather than limit them, we subvert the story of the “Property Rights” movement. Keeping the *needs of people* as the primary focus in mind means that the policies, their names (e.g., “The Farm Owners Security and Preservation Act.”) and our communications all reflect these values. A purely regulatory system is fragile. Our policy proposals should expand constituencies, and not merely inflame those who feel they have lost out.

Our policies and rhetoric have to be aligned with each other. To establish a winning story, we must be sure we share internal clarity about what we mean by these key values, and that our values truly are reflected in our policy goals.

The 2006 election defeats of “takings” initiatives reflect successful defense by the many organizations that worked to defeat them. To go on the offense, pre-empting not just these types of initiatives but the foundational story of the “Property Rights” movement, we must recognize that Eminent Domain and Regulatory Takings are conflated in the public mind, linked by the same key values and exploited in the same ways. We should address the generalized concern about government over-reach that underlies both issues. The opposition uses the Kelo decision to evoke the “property rights” frame. They gain power with it because it taps into deeply held values. We can get ahead of the eminent domain issue by establishing the terms of debate -- calling for and supporting appropriate, measured reforms, ensuring that its exercise is fair and serves truly important public needs. We must insist on a transparent *democratic* process, and make sure affected owners and residents are fully consulted and *fairly* treated.

Key Values

Rights and Responsibilities

The right to own property, including the right to improve, sell, and buy more, means opportunity in America. It is essential to our aspirations to provide for ourselves and our families. For most Americans, homes and land are the largest investment they will make. It is the means to, and the meaning of, economic security.

Our rights are protected by the laws we establish. No citizen is allowed to unfairly infringe on the rights of anyone else. The right to own property is no different. A person cannot engage in activity that will substantively reduce their neighbors' ability to use and enjoy their property. When we talk about the right to own property, part of what we mean is this: Property owners have a right to seek protection from the actions of others that will reduce their ability to use and protect their property.

The "Property Rights" movement is a front for a collection of property owners seeking special and exclusive rights, to improve their property at the expense of others. It seeks to subvert the rules that prevent degradation of the community, or to *exempt* themselves from those rules, often to gain a windfall profit. This effort is a backdoor way to gut the regulations, because people won't go along with a direct assault. The "Property Rights" movement must be re-defined as the radical effort it is, financed by well-connected insiders who expect to make a fortune in real estate development at everyone else's expense.

Although they fly the "Property Rights" flag, the absolute nature or meaning of these "rights" is not explicitly stated. This is the enormous weakness in their story. Our communications must be structured to challenge the opposition to define what they mean by "Property Rights", and publicly call out their refusal and/or inability to do so. The more specific their position, the weaker their stand. For example if they say "property rights" means they should not have to "buffer" riverfront property, the issue becomes the importance of and proper means to protect water resources, not "rights".

The single most important communication tool is this question:

What do you mean by "Property Rights"?

The answer – some version of "the right to do whatever you want with your property" – is an indefensible position; the harder we push it, the further into defense the opposition must retreat. "The right to do whatever you want? Does that mean you have a right to dump oil in your backyard if you want?"

Everyone knows there is no such absolute right. You can't break the law. The rights of property owners do not include a right to interfere with their neighbors' rights, or threaten the security of their neighbors' property.

Certainly the right to own property includes the responsibility to not interfere with the rights of others. All rights include the responsibilities that protect our rights.

We must carefully avoid constructions that imply that rights are less important than responsibilities, such as “*Yes, we have rights, but we also have responsibilities.*” Or “Your rights to do what you wish end at the point your responsibilities begin.”

The only way to protect our rights is to make sure everyone meets their obligation not to interfere with the rights of others. We have a shared responsibility to protect everyone’s rights.

The measures advocated by the “property rights” extremists are perhaps the single greatest threat to the stability of the very system that protects the right to own property and maintain its value.

We must be vigilant in our opposition to efforts that will diminish the protections available to individuals, including efforts led by the “Property Rights” movement, *and* by unresponsive or over-reaching government. We must recognize and articulate that this is not only an issue of protecting land or the environment; it is about protecting the rights of everyone.

Property Values and Security

Property values depend upon neighborhood values.

Real property has value. Maintaining and improving property value is essential to economic security. For individual homeowners, the *security* of their property increases as their neighborhood and surroundings improve (their property has more value), and decreases if the neighborhood or community is diminished (their property has less value).

Property value is more than the land and buildings. It very much includes the location, and what that location provides – schools, transportation, proximity to other locations, attractiveness, and the wide range of factors that make the location more or less desirable for varying purposes. Protecting property value includes protecting the things that the people in a community value.

While property value includes the value of the infrastructure and present location, it also includes the *future* location value. Future location value is intrinsically speculative. It’s a risk.

We protect property value by seeking to increase security and reduce risk, and by preventing actions that will reduce future value, whether by private or public actors.

Over the years, rules and regulations have been adopted to reduce the overall uncertainty for property owners. For example, zoning prevents a noisy or dirty manufacturing operation from being built in a residential area and reducing the future value of homes.

It wasn’t always like this. The protections have been adopted over time to meet the needs of growing and changing communities. At one time putting an outhouse on your land was

simply a matter of deciding where to dig the hole. But as public understanding of water, sanitation and health grew, communities prohibited that type of activity.

The radical “Property Rights” movement is a threat to future property values of every property owner invested in their home and community. They want decisions about land use to be left up wholly to individual property owners, without regard to the effects on other property owners. If they were to succeed, it might create windfall profits for a few lucky landowners who happen to be in a position to cash out.

”Property Rights” proponents want a guarantee that community interests and democratic decisions won’t interfere with their speculation and accrual of value. Land speculation is a gamble . The “Property Rights” movement aims to rig the game so there will be no future “interference” from the neighbors – including local government and the neighboring communities.

It’s time to up the ante, by getting specific about who wins and who loses. Victim stories trigger individuals’ fear of loss, and motivate people to take actions that will punish the perpetrator or protect the victim. It can work for either side of an issue, if the victim is credible – depending on which side sets the terms of debate. Those demanding the “right” to do whatever they want with their property, are threatening the security of everyone else’s right to enjoy and benefit from their own property. Oregon’s ill-conceived Measure 37 is already victimizing property owners. The national backers and local string-pullers of similar efforts have left a long list of victims in their wake, as have other developers around the country who have been able to exploit their holdings.

Protecting the rights and the property values of the community as a whole obliges us to name the villains and the victims, and tell their stories.

Fairness

Your mother can tell you “life isn’t fair”. Your government can’t. No one will accept government that is not fair. Fairness means everyone follows the same rules. Fairness means fair to *me* as well as to *you*.

Fairness is not simply about money. Mrs. Kelo was offered more than fair monetary compensation. Dorothy English, the elderly poster child of Measure 37 in Oregon was a victim, not because she had “lost money”, but because she couldn’t build a home for her children. Fairness means people are treated with dignity and respect.

Oregon attorney David Hunnicutt, a key strategist in the passage of Measure 37, tells audiences that his campaign is “a fundamental issue of fairness.” Framing the issue as fairness forces his opposition – us – into a defensive mode. The importance of fairness cannot be minimized. Too often in the past, we have attempted to trump “fairness & individual rights” with “the common good” & “public benefits”. This doesn’t work. In fact, it plays into the opposition strategy. For example, it has been argued that provisions requiring governments to waive zoning or pay the landholder are too expensive. This puts a price on fairness and, implies that it *is* too expensive, or not worth the cost, to be fair to individuals. That argument loses. If we take this course, we strengthen our opposition by

demonstrating one of their central claims: that planners, environmentalists and “smart growth” groups don’t respect or value individual rights or fairness.

To promote our position effectively, we must be clear about what we think is fair and what is not, and insist that any dispute be debated in terms of fairness to all. If our position is fair, then debating which position is most fair will usually work in our favor. Anything less than a commitment to fairness cracks open the door of government abuse and over-reach, and the radicals will jump in with both feet. This means we can’t just rely on the word *fair*: we have to evoke the value. Imagine a lively group discussion of fairness – *that’s* what we mean by fairness – the whole discussion, all the ideas, not just a dictionary definition.

A well-planned and well-regulated community is intended to be fair as well as beneficial to all concerned because community protections benefit each one of us individually. Good, reasonable protections create reciprocity of advantage that serves everyone’s interests.

To be fair, we must fully support the payment of compensation when regulations single out one or a few owners to bear a disproportionate burden that, in all fairness and justice, should be borne by the public as a whole. That is only right, and that is what the Constitution already requires. However, we must oppose, as unfair, demands by the “Property Rights” movement that the taxpayer confer windfalls on owners who are sharing in the benefits of the community but who want to be exempted from (or bought off from the effects of) the kinds of regulations that apply to everybody else.

We must become watch dogs – we can’t wait for others to exploit citizen frustration with unfairness. Our role must include looking for unfairness – even in laws and approaches we largely support –and exposing or correcting it. Eminent domain cases must be publicly examined and discussed: Is there a transparent and public process that ensures fairness? What is fair or unfair in this case?

Eminent domain is a massive power, and must be used fairly. It is not well understood by citizens. It’s inadequate to assume that, since the number of cases of unfairness is relatively few, these cases are relatively unimportant. Left unanswered, a single case of perceived unfairness becomes a poster-child for government inflexibility, over-reach and abuse of the individual. Who besides the victim, and perhaps their attorney, is actually prepared to defend or increase the fairness in the process? It should be us – citizens and organizations working toward better decisions about growth and development.

Bob Stacy, Executive Director of 1000 Friends of Oregon, explained this well when he recalled that in the years preceding Oregon’s Measure 37 fight, “We were busy defending and hanging on to laws we already had, rather than meeting the vision we began with.” Since the passage of Measure 37, 1000 Friends of Oregon has re-invigorated its vision, and is helping to influence a broad re-evaluation of land use policy in the state.

By truly being advocates for fairness, we can establish what fairness means and how it works. **Being fair does not mean everyone is happy** with a given outcome. Where interests conflict, there will be winners and losers. Our job as citizens is to make sure the process is fair.

What's fair about it?

In Oregon, a well-to-do landowner is blackmailing the state's taxpayers: "Pay me \$203 million or I'll ruin a national monument with a rock mine and a power plant."

The disabled son of a farmer can't sell his property because a neighbor is opening a rock crushing operation next door, thanks to Oregon's new law. This is not fair.

Fairness means protecting everybody's property values, not just enabling windfall profits for lucky landowners or developers and speculators.

Fairness to voters means telling the truth about who wins, who loses and who really pays when a wealthy New York developer/speculator like Howard Rich pays to put a misleading measure on our state's ballot.

Restructuring our story requires a willingness to acknowledge that abuses in the application of land use laws can happen – and do. We need to talk about fairness, and at the same time, we must actively pursue remedies and reforms to existing circumstances that have made or can make the decision-making process unfair.

Democracy and Decisions

President Abraham Lincoln observed in his Gettysburg Address that our nation is based on a faith in "government of the people, by the people, for the people." Our commitment to democracy is also reflected in the Preamble to the Constitution, which begins, "We the people....," and in the provisions of our national charter setting forth the procedures for selecting our elected representatives.

Democracy means that power is ultimately vested in the people. Citizens of a democracy have the power to govern themselves, setting rules to protect the rights of individuals and advance the general well-being. The working of democracy requires that government responds to the will of the people, and acts in the interest of the people.

To protect our freedom and democracy, we have a responsibility to participate in the process of governing, and a responsibility to respect the results of the democratic process.

Decisions about what, where and how we build – how we grow and how land is used – must be made democratically. Citizens want meaningful participation in these decisions. They want early and complete information about the community's future and its options. No more back-room deals. Everyone must have the opportunity to help make fair decisions that will benefit the whole community.

Voters blame local officials for problems that result from poor planning, and they don't think officials are being held accountable. They believe elected officials have their own agendas, set largely by developers, and that government often discourages meaningful public participation, even while going through formally required exercises in "public input". Local officials are not trusted to consider the long-term consequences of their development decisions.

Advocating for greater public participation and effective democracy in growth and development decisions – and making sure all the options get on the table – will improve the decisions communities make. Increasing the ability of the citizenry to influence the future of the built environment will lead to more and better planning, because people want their built environments to improve, and want to keep and maintain what they value in their environments.

The “Property Rights” movement is intent on preventing the work of democracy. In its radical agenda, designed to prevent any restraints on property development, the “Property Rights” movement is deeply anti-democratic. Ballot measures including provisions modeled after Oregon Measure 37 would quite plainly undermine the democratic process because they would make it impossible for voters to advocate for community protections in the future.

The “Property Rights” movement is successful in evoking the value of individual freedom, or liberty, because they establish the *context* as **government regulation**. When that’s the context, freedom from government interference is *always* a primary value. As long as we respond within the context of government regulation, our position appears pro-government, and, , and we are cast as advocates for government prerogatives over individual freedoms.

We must establish the context as local progress, and improving the community.

When this context is explicitly established, then the values of democracy and community benefit take precedence over an individual’s liberty to advance their own interest at the expense of the community.

The San Jose Mercury News, in its editorial opposing Proposition 90:

"Proposition 90 masquerades as a savior to protect your property from seizure by the government through eminent domain. But behind that mask, the proposition is a serious threat to taxpayers, to consumers, to the environment and **to anyone who believes communities should have a say in what development is allowed next to homes and schools**. Vote no. And spread the word. Voters easily could be misled by a superficial glance at Proposition 90."

As suggested above, this editorial also characterizes the “Property Rights” movement as essentially deceptive – a masquerade. Our communications about the movement and its initiative must name the players, as has been done with Howard Rich and Americans for Limited Government. Illuminating the money trail, and establishing the motives and interests of those promoting “Property Rights”, helps illustrate the story that this movement is a threat to the democratic process, and that *we the people* must protect ourselves from its schemes.

Meeting the Challenge

Beginning immediately, we have to test the ideas and key values described. One form of testing these ideas is through internal discussion and clarity: is it true, for example, that our work is more about protecting people than about protecting “the environment”? And what are the strategic implications of the answers to those questions? We must be willing to engage in mutual, honest discussion of these values, and how they apply to our work. See the Addendum attached, with comments from Alan Caron and Eric de Place, as an example of this type of discussion.

A second key to testing these values is to apply them to the development of specific communications, to start turning these concepts into specific messages that can be shared, emulated and improved upon. If the thinking in this memo is correct, it can be applied to a wide range of communications, in all media, to change the story and make explicit the values discussed. We offer as an example the draft press release below, characterizing the November 7 election victories.

A third and equally vital way to test these concepts is through empirical research. We should be actively pursuing (and sharing the results of) high-quality public opinion research including both polling and focus groups. We can all benefit from a robust empirical analysis of opinion research, as well as a debate over the meaning of the findings.

Voters in CA, WA and ID reject efforts to gut property ownership protection.

(Washington, DC) -- Voters in three key Western states Tuesday resoundingly rejected anti-taxpayer measures that sought to hamstring communities' efforts to protect property value and make decisions about future growth and development.

Foisted onto the ballots with millions from New York real estate developer Howard Rich and allied groups, the measures in California, Washington and Idaho sought to exempt certain developers, speculators and land owners from democratically established property value protection standards. The measure would have forced taxpayers to pay developers and certain land owners to obey existing zoning and land use laws, including subdivisions of protected lands, gravel pits, etc. If taxpayers couldn't pay they would have to waive the rules, exclusively for those land owners.

“Voters understand their communities need the power to make and enforce sound, local decisions to protect their neighborhoods, property values, and economic investments,” said Don Chen, executive director of Smart Growth America. “Our coalition defends the rights of individual property owners, and their right to establish protections. These measures were an attempt to circumvent community protections to unfairly benefit a few speculators, at the expense of every other property owner.”

In Washington, the pay-or-waive scheme, couched in so-called “property rights” language, was soundly rejected by 58 percent of voters. Fully three-fourths of Idahoans turned back the effort to gut their property protections, and 53 percent of Californians rejected the deceptively named “Protect Our Homes” measure. California’s Proposition 90 was opposed by one of the largest, most diverse coalitions ever assembled for a ballot measure, as well as by Governor Arnold Schwarzenegger.

ADDENDUM

Comments from two of our advisors on this project. The differences between these perspectives, and the useful correctives to the ActionMedia document) are provocative, and illustrate the type of on-going discussion needed.

From Alan Caron, Grow Smart Maine:

(Taking the Offense on Takings memo) concludes by arguing, correctly, that this general approach should guide future ‘communications’. I think we should go further to say that the overall approach suggested here should guide not only communications but strategic planning and organizational development, offering specific examples. Perhaps this is something that will emerge from the upcoming meetings and further meetings in Washington in early December and thereafter.

The document essentially says, when you strip away the more abstract language, that we have to start by caring about PEOPLE. Start where they are, not at the 25,000 foot level of policy. This is the fundamental shift that you’re suggesting, but not quite expressing or painting a picture of, as a value. It is about caring that people are treated fairly, not just because it’s politically smart but because people matter. What we’re really talking about in this document and others, also, is revising our view of ourselves from people with smart ideas who are outsiders to the voice of people who we identify with AND CARE ABOUT. This is the fundamental shift that forms the foundation under the language you’re using, in my opinion. This is why I am always asking the question: who do you speak FOR, rather than who do you speak to? It’s the ‘we’ thing, as ActionMedia has also expressed, rather than the ‘they’ thing. Too many of us don’t know this word ‘we’.

From Eric de Place, Sight Line Institute:

People look for simplification and ways to categorize messages and messengers. We are in essence asking them to create a new, nonpartisan category in their mind about a subject that has become a very divisive and politically charged issue. How do we do that? The values expressed in the paper seem on target, but what tactics do we use to make people believe that we genuinely care more about people than about land protection or conservation issues? And is that even true?

In a related vein, public opinion polls repeatedly show that a huge majority of Americans *do* care about land/environment/natural heritage (though the support is, admittedly, much broader than it is deep). Why are we so sure that we shouldn’t connect property issues to those widely held values of environmental protection? What specific lessons are there from the past about this? How can opinion research inform these decisions? To put a finer point on it, many of the groups that will be actively involved in these issues – both funders and advocates – are clearly groups with a strong environmental interest. Won’t it seem (or perhaps even be) disingenuous to elide conservation issues?