

Officials abuse power by preventing owners from developing property

By Russ Harding

As director of the Mackinac Center's Property Rights Network, I receive phone calls every week from frustrated private landowners whose efforts to develop their property for business or personal use is being thwarted by local or state government.

I received one such phone call more than a year ago from residents in Macomb County, and what they told me sounded more like another example of Soviet-style central-planning harassment than responsible application of federal, state and township governmental and legal powers.

The call came from Dolores and Ron Michaels, proprietors of the King of the Winds Farm in Macomb Township. I was shocked at the regulatory nightmare the Michaels had endured, but that wasn't the half of it. Since then, the couple has been incarcerated in the Macomb County Jail for six days and endured continued harassment at the hands of Macomb Township legal and government officials.

The erosion of property rights in Michigan is perhaps the biggest threat to the survival of our state. In the wake of the 2005 Michigan U.S. Supreme Court Kelo decision, many people think the worst thing that could happen to a property owner is for a government entity to exercise eminent domain, forcing the sale of one's property for public use at a so-called "reasonable" market value.

Leaving aside the issue of whether the Michaels adequately complied with the consent decree of a Macomb County circuit judge, jailing them as common criminals rather than issuing a fine is an egregious abuse of power that seems to indicate that the Michaels are being singled out for intimidation.

In 2006, Michigan voters approved a ballot initiative amending the state constitution to prohibit government exercise of eminent domain for the sole purpose of economic development. However, there is still room for public employees to engage in mischief in private lives through regulatory takings that force landowners to assume the full legal and financial liabilities of their property without experiencing the full benefits. Such takings are regulation without representation. Each time a state agency, township or other government authority limits an owner's responsible use of his or her property, every Michigan resident suffers.

Many readers may be familiar with the key issues of the Michaels' 20-year ordeal: the township's refusal to permit the

opening of the Michaels' equestrian facility and subsequent attempts to shut down their composting operation, despite the fact that the Michaels were conducting an activity specifically defined by state regulation as agricultural in an area specifically zoned for such purposes.

Eventually, the Michaels and Macomb Township officials entered into a consent agreement in Macomb County Circuit Court in 2005, the terms of which specified that the Michaels would remove all composting materials from their operation by Dec. 31, 2007. Time and again, the Michaels have been found in noncompliance and have been put in the position of trying to prove that the removal of compostable materials does not prevent the natural introduction of

leaves, branches and twigs in a rural agricultural area. I have visited the Michaels' site on several occasions over the past 12 months and have found it to contain nothing that couldn't be found on any other agricultural property.

Leaving aside the issue of whether the Michaels adequately complied with the consent decree of a Macomb County circuit judge, jailing them as common criminals rather than issuing a fine is an egregious abuse of power that seems to indicate that the Michaels are being singled out for intimidation. Their battle with Macomb Township has cost them hundreds of thousands of dollars in legal fees, fines and lost income. More important, however, it has cost them untold mental and physical duress, hours of worrying, preparing and strategizing, and the humiliation of spending the better part of a week in jail.

Even more dangerous, however, is the precedent that Michaels' case establishes for future harassment, bullying and intimidation of other property owners in Macomb Township and elsewhere in Michigan. As I'm discovering more and more each day, the Michaels' experiences are not isolated. What previously occurred in Communist states and the novels of Franz Kafka can happen here and, in fact, already has.

Russ Harding is director of the Property Rights Network and senior environmental analyst at the Mackinac Center for Public Policy, a research and educational institute headquartered in Midland.

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