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Land Use Goes Boutique

A Recessionary Dip in Real Estate Transactional Work Accelerates the Trend

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One of the enduring tried-and-true practice groups of major law firms may increasingly be on the way out the door: land use.

The practice has become more of a niche market in recent years, as a growing number of land use lawyers have left large firms to start their own, specialized boutiques. And forces driving the migration - including client demand for lower rates and a slowdown at large firms in the transactional real estate work that often feeds land use - have picked up steam in the recession, experts say.



"Over the years, it has been migrating out of large firms to smaller, more local firm practices," Peter Zeughauser, chairman of the legal consulting firm the Zeughauser Group, said of land use work. "It's a local practice, generally speaking, and involves work at the local government level. It's not really work that can be done across a multi-office firm."

There are, of course, exceptions to every trend. Industry observers point to large firms such as Sheppard, Mullin, Richter & Hampton; Manatt Phelps & Phillips; and Latham & Watkins as a few of the larger, strong contenders in the land use arena.

"It's not a very leverageable practice," said Zeughauser. "One or two people work on a matter, so it's not as attractive to large firms."

The pressure on lawyers at large firms to charge high rates affects all practice areas. And it has been well documented that increased client demand for lower or more flexible prices during the recession has driven legal work from large to mid-sized firms. That tension has been especially intense, however, for Big Law land use lawyers because of the practice's low-leverage model.

Dale Goldsmith, former head of the land use department at Greenberg Glusker, was at the forefront of the trend when he launched his own firm in 2004 with fellow land use lawyer Mark Armbruster. Land use law does not lend itself to the typical business model of big firms, he said, which involves swarming high-volume cases with less experienced associates to rack up thousands of billable hours each year.

"In big litigation matters, you can literally throw attorneys into the project and generate a lot of fees," said Goldsmith. "The land use practice isn't nearly as labor intensive. I think there's a recognition, particularly among developers, that having a senior person and not having this layer of associates will give you the same results without running up a whole bunch of fees."

Without the overhead of a large firm, Goldsmith said, he has lowered his fees from the mid-\$900s to \$610 an hour. His current firm, Armbruster Goldsmith & Delvac, now includes six lawyers and two planners. The group boasts a long roster of high-profile clients, including the historic Century Plaza Hotel in Century City, which captured headlines in recent months when it was slated for and then spared from demolition.

While the ability to attract more work with lower billing rates has been a boon for some land use lawyers who have gone into start-up practices, land use's relatively low billing power has simultaneously pushed some lawyers out of large firms. Especially since the economic downturn, the one-two punch of fewer clients willing to pay big fees and less transactional real estate work to feed land use practices has led some firms to cut back in those areas.

"The large law firms have really down-scaled or eliminated their real estate practices," said Paul Rutter, executive vice president and general counsel for the commercial and residential developer Thomas Properties Group. "Without a transactional real estate practice, the land use guys don't have the support, so they're more likely to become more of a niche player."

Land use lawyer Michael Woodward, who specializes in entitlements, had been a partner at DLA Piper for four years when he was let go as part of a massive downsizing in February 2009. Woodward, who previously worked at Paul, Hastings, Janofsky & Walker and Munger Tolles & Olson, decided he did not see a future in big firms. He opened his own one-person operation in Tarzana a little more than a year ago. Current clients include a major film studio, a charter school organization and a housing developer, he said.

"I had a couple of long-term clients that I knew would be pleased by the reduction in my fee, and then I picked up another one," said Woodward. "Since then I've got about seven clients, I'm doing fine and working in my jeans at a T-shirt here."

On the flip side, land use lawyers who remain at large firms must adapt to the current market to stay busy.

"There's a general slowdown in the transactional world, so land use lawyers like myself adjust our practices," said Michael Durkee, firm-wide co-chair of the land use practice at traditionally real estate-heavy firm Allen Matkins Leck Gamble Mallory & Natsis.

Allen Matkins has seen at least two land use lawyers depart in approximately the past year to start their own highly specialized solo shops. (One has since shifted his practice away from land use.) Meanwhile, land use lawyers within the firm are aggressively pursuing more public agency work, Durkee said, and developing expertise in green building practices.

"Across the board, the face of land use is changing, and those who don't adapt are going to get crunched," said Durkee.

Land use lawyers who do go out on their own do not necessarily need the brand name of a global firm to generate business, experts said. That is partly because success in land use relies on not just legal knowledge but also on political savvy and individual relationships with officials, from city council members to county supervisors, to push development projects through the pipeline.

"We've found that our practice is reputational," said John Murphy, co-founder of Murphy & Evertz, a new eminent domain and land use litigation firm that opened its doors in Costa Mesa on Thursday. "I think that's true of land use and eminent domain. There isn't a dominant two or three firms. There are lawyers."

Until last week, Murphy, co-founder Douglas Evertz and the Murphy & Evertz's five other lawyers made up about a third of the Orange County contingent of Luce Forward Hamilton Scripps.

Rutter agreed with Murphy's assessment.

"When I go out now and try to hire lawyers, when I look for a law firm to represent us, I'm not looking at the size of the firm as much as the individual lawyer in the area," he said. Thomas Properties, he said, employs Armbruster, Goldsmith & Delvac for ongoing projects. The company previously worked with Goldsmith when he was at Greenberg Glusker.

While several large firms continue to be big land use players, Rutter said, there is a growing divide between the type of work that goes to those bigger firms versus boutiques.

"The clients at the larger firms are probably going to be large institutions who are using firms on a national basis and need to go to the very largest firms," he said. "Fortune 500 companies and the top banks are probably using large firms for their work. They may, therefore, give those firms work in the real estate or land use area if they're already a client. I'm not sure how many clients those firms are attracting just for real estate, and that's the difference."