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Dear member of the International Platform of Experts on Planning Law

Re: Response to French query about restraining large shopping centers to protect small businesses

The question posed by the anonymous French person is not quite clear. Does the person mean: How could one deter new shopping centers in order not to compete with current small commercial enterprises?

If so, then this is mostly an issue for improving local and regional planning policies, and is less amenable to outright legislation. Each situation and place has to be assessed and balanced on its own merit. There is, however, room for some legislation especially on the fiscal (taxation) level and on the planning-procedures level.

Here are some suggested instruments – some based only on planning (land use) controls, others requiring legislation or judicial intervention.

- 1) Local or regional plans or policies do not permit large shopping centers that provide easy and cheap parking (on the town's outskirts), and thus compete with in-town shops. The Netherlands used to have very strict policies in this regard (somewhat relaxed today), but these were motivated largely by the desire to protect open spaces (see my comparative paper on open space preservation - Alterman, Journal of the American Planning Association 1997, may download from my web site <http://alterman.technion.ac.il/admin/files/farmland.pdf>)
- 2) Local or regional plans or policies which permit shopping centers only for "big box" shops – those that carry items that are less lucrative in the town center, such as furniture and "white electrics" such as refrigerators.
- 3) In the US some local governments regulate even types of small stores within the city center in order to limit the number of "chain store" enterprises that are allowed to open shops, in order not to "kill" local entrepreneurship.
- 4) Use fiscal instruments: For example, place a special levy on developers of out of town shopping centers (or even in-town large centers) to place in a public fund dedicated to the improvement of the parking, streets and facades of in-town shops. The rationale is that this will increase the competitiveness to some extent and slightly add to the costs of building new centers. To be effective, the levy must not be trivial.
- 5) Use additional fiscal instruments especially targeted to the conversion of land from farmland to shopping; that is, a limited and targeted "betterment tax" to capture the "unearned increment" in this type of land use change only. I do not know of a specific country where this tax is applied especially for shopping centers. However, there are a few countries where an "unearned increment" tax is applied to other specific land uses such as infrastructure or affordable housing. See attached paper.

- 6) The land use planning law could be revised to specify that approval of major shopping centers cannot be done by any “bypass” procedures – exceptions, variances, or “fast track” procedures because these procedures tend to be project-specific while downgrading the overall view of the city or region. The law could specify a threshold, beyond which the local plan must undergo a full revision in order to approve a major shopping center. In Israel, a recent High Court of Justice decision approved a petition by storeowners in a medium-size city who fought the location of a shopping center on the town outskirts. The local government had approved the development through a land use exception to change to commerce in an area designated for industry. The Court ruled that this was not a balanced decision (unreasonable, disproportionate to the context) and required that such decisions be done only through a major plan revision.

Sincerely



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Initiator and co-founder: **International Platform of Experts in Planning Law, Instituut voor Bouwrecht the Haag** www.internationalplanninglaw.com