

DIMENSIONS

HOW SELF-DRIVING CARS, UBER, AND THE URBANIZATION OF AMERICA ARE CHANGING THE WAY STRUCTURED PARKING FACILITIES ARE DESIGNED, BUILT AND FINANCED

By: Robert S. Goldsmith and Steven G. Mlenak

For perhaps the first time since the invention of the automobile, developers, businesses and governing bodies are now taking into consideration a diminishing demand for parking when designing and financing structured parking facilities.

Historically – with increases to the population, the volume of people commuting to work, and the number of households purchasing second and third vehicles – the demand for parking has seemingly grown unabated year after year. Due to the impending rollout of autonomous, self-driving vehicles, the rise in popularity of shared-car services, and changing societal trends, developers and governing bodies throughout the country are now considering the “shelf life” of structured parking facilities like never before. Those looking to finance the construction of these facilities would be well advised to take into account what many experts believe will be a seismic shift in the way people get around in the decades to come, and when debt service payments will still be due. Whether it be through conservative planning, the design of facilities which allow for adaptive reuse, or the utilization of shorter term financing options, developers of structured parking facilities may successfully avoid finding themselves in a position where they are still making debt service payments on an empty, unused, and ultimately non-adaptable facility.

Car-share companies such as Zipcar, car2go, Uber and Lyft claim that for every shared vehicle in use today, 15 personally-owned vehicles are taken off the road. Additionally, studies have shown that up to 20% of Zipcar members

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avoid the purchase of a personal vehicle. Generally, cost-sharing services such as Zipcar are on the rise due to growing enthusiasm in the corporate sector for the cost savings associated with not maintaining a fleet of vehicles, along with a younger generation less keen on vehicle ownership. In Paris alone, it has been estimated that more than 20,000 private cars have already been taken off the road due to such services. When you consider that personally-owned cars are parked as much as 95% of the time, it makes sense that such services will continue to prosper as more and more individuals and businesses look to shed unnecessary car payments, repair and maintenance costs, and insurance premiums.

Another significant factor to consider is the expected growth and implementation of driverless, autonomous vehicles. Companies such as Google, Apple, Ford, Volvo, General Motors, and Tesla have been developing self-driving technology for years. By all accounts, we

are moving closer to the introduction of such vehicles to the mass market. The Boston Consulting Group, a leading global management consulting firm, predicts that fully automated cars could make up nearly 10 percent of annual global vehicle sales by 2035. The U.S. government is preparing for a driverless world as well, as \$4 billion has been included in the Department of Transportation’s 2017 budget for the purpose of creating and implementing driverless vehicle pilot programs. At the state level, eight states and the District of Columbia have adopted autonomous vehicle legislation, and a similar bill in New Jersey was recently passed by the Assembly Transportation and Independent Authorities Committee and awaits a vote by the full General Assembly.

At first impression, it could appear that the advantage of such vehicles would be personal, and without an impact on overall vehicle ownership, however many experts believe that such vehicles would cause a dramatic reduction in the number of cars needed by families. In theory, a driverless vehicle could drop dad off at work in the morning, drive back to pick up mom and drive her to work, deliver the kids to and from school, and pick both parents up at the end of the day. When not in use, the car could park further away and avoid more convenient and costly options. Finally, driverless technology could improve traffic flow by eliminating erratic braking, employing re-routing to avoid congestion, and traveling closer together to increase road capacity. With cars in

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SELF-DRIVING CARS

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more continual use and a reduction of vehicles per family, much less parking space would be needed.

Technology aside, our society is slowly shifting its values away from vehicle ownership and suburban or rural lifestyles. In 1983, more than 91% of people between the ages of 20-24 held a driver's license. By 2014, that number had dropped to approximately 77% and shows little sign of recovering. At the same time, cities are growing faster than the country as a whole. The Pew Research Center found that 48% of Americans would prefer walkable urban areas instead of the suburbs. Notably, more people have used public transportation in the past few years than in the past six decades.

For all of these reasons, there have been calls on developers to strategically design a "new generation" of parking structures. Engineers tasked with designing garages must now consider the flexibility of facilities ten, twenty and thirty years following construction. Architects and designers are more frequently being challenged to design urban parking garages with the "good bones" necessary for re-purposing in the future. The most significant design change – one that would yield maximum flexibility but also be the most costly – would be doing away with sloped garages. Exterior spiral ramps or elevator lifts, for example, would surely enable developers to re-purpose facilities with the greatest flexibility. However, the cost of eliminating tried-and-true sloped ramps, which serve as the means of traversing parking levels and also add additional surface area for parking, will likely prove uneconomical for many projects.

While the experts agree that parking demand is going to decline, it is difficult to predict how slowly or rapidly that decline will occur. We simply cannot determine at this time the parking demands of society thirty years into the future. With conservative planning and

prudent engineering, however, parking facility developers may be able to avoid making debt service payments decades from now on an underutilized parking facility.

NEW JERSEY SUPREME COURT REVERSES BAN

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single digital billboard. The court found a considerable amount of available literature would permit the township to adopt appropriate regulations for digital billboards, and it noted that the NJDOT had, in fact, promulgated regulations on the very issue. The court likewise dismissed the public safety debate because the "record is also bereft of any examination of the safety impact of the installation of three static billboards." It found that "the numbers standing alone do not lead inexorably to the conclusion that the installation of a single digital billboard in the Township will exacerbate the accident rate. ... In short, bare numbers do not carry the public safety debate." The court concluded that "in the fact of a record founded only on unsupported suppositions, fears, and concerns, we need not address whether the course taken by the governing body is reasonable under all of the circumstances."

In ultimately reversing the Appellate Division and holding that the ordinance was unconstitutional, the court stated that "a governing body seeking to restrict expression cannot simply invoke those interests with scant factual support informing its decision-making and expect to withstand a constitutional challenge. In the end, the record provides no explanation of the qualitative differences between three static billboards and a single digital billboard. The record also belies the assertion that no standards existed to address aesthetic and public safety concerns."

Most zoning and development applications for development do not involve free-speech issues. However, municipalities should take note that mere window dressing in support of protecting aesthetics and public safety

does not pass muster as protecting "substantial" government interests absent at least a modicum of support for the invoked interest. Here, there was a virtual disconnect between the ordinance and common sense, because the township presented no empirical data suggesting that digital billboards cause more accidents than static billboards, or that they are less aesthetically pleasing than static billboards, particularly when located in the township's light manufacturing zone and adjacent to a major interstate highway.

SUPREME COURT RELEASES OPINION ON "GAP YEAR"

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have wrongfully failed to propose a rezoning of the objecting builders' sites. The Supreme Court's gap year opinion should boost the prospects of builders in that category.

Even when builders do not have a current interest in providing affordable housing in given municipalities, proposed settlements should still be reviewed in towns in which builders have an interest in properties. Certain settlements are proposing terms that are unfavorable to property owners generally, such as "growth share" type ordinances that impose affordable housing obligations on all properties without providing any density bonuses or other compensatory benefits. Such terms may be unlawful. Public notices of proposed settlements must be carefully reviewed, and vigilance is required to guard against the application of such ordinances to properties of interest.

Conclusion

The Supreme Court's gap year opinion provides good news to builders and other affordable housing advocates. It removes a significant element of uncertainty that has plagued the process for well over a year. The trial courts must still manage the Mount Laurel cases to conclusion, but the gap year opinion will no doubt bring about more settlements and speedier resolution of the cases involving towns that choose not to settle.