

MARK GERSHON

Getting to 'Yes' for Real Estate Developments

by Laura Fletcher



"There are obviously so many different challenges," says Mark Gershon of **Polsinelli Shughart PC**, reflecting on his long career as a real estate lawyer and advocate pioneer of new energy development in the Midwest. "I think one of the greatest challenges is to continually be flexible because the market and the industry change so much...15 years ago energy work was a small part of my practice, today it is booming."

Then, the United States deregulated energy. "Suddenly you had energy companies that were acting as developers, and they realized they were no longer just public utilities and they needed development attorneys. That sort of shifting focus... was both exciting, but also a challenge to figure out how to make it work." As only one example, the large regional office parks Mark represents can be up to 1000 acres, but large wind farms can exceed 50,000 acres and involve hundreds of property owners.

A veteran of large scale real estate projects from shopping centers to industrial parks and from brownfields to urban renewal, Gershon helped negotiate the first development approvals for a commercial wind farm in Illinois. He has since become involved in numerous projects involving both renewable energy and natural gas while still representing large

commercial real estate developments in a challenging economy.

Dirk Andreas, formerly of the Florida Power & Light subsidiary New Era Energy, worked with Gershon on that first wind energy project. Later he would take executive positions at both Spain's Ibedrola, the largest wind power producer in the world, and Montreal's Enkern, Inc., a company that produces ethanol from garbage.

"Everybody has people who are in the renewable field, but none of them have been in as long Mark," says Andreas. "That is the more determining factor for me... You want to work with someone who has seen a lot of deals and has seen projects that have failed and projects that have worked."

Besides staying flexible, Gershon's other big career challenge has been keeping focused on what matters in any given negotiation.

"Very often, whether it's a client or someone else, they can get so caught up in whatever the immediate issues in front of them are, that it's sort of my job to be the guy that can take a deep breath, have the patience to see the bigger picture."

Gershon recalls a wind farm project for which the public hearing drew seven law firms that opposed the development, as well as

hundreds of local residents. Representatives of the project had to submit to being "attacked by people who were afraid, who didn't understand what was happening... because wind farms were still very new in the Midwest."

Don't Call Them Stupid

Gershon and his team had brought in an engineer who had worked on major wind projects in Europe. In preparing the engineer for the hearing Gershon asked how he would respond to fears raised by some objectors that wind farms could cause shadow flicker, which can trigger seizures in epileptics. The engineer sneered and indicated that he would tell the County Board that it was a ridiculous statement.

"I said OK, just so you know, we just lost the hearing. If that's your response, here's why: there is a girl who lives in [this] area that has epilepsy. Even if her fears are not realistic, we need to respect her, both because she deserves it and because the County Board will never respect us if we do not respect them and the community."

Gershon's proposed response was to check the National Epilepsy Foundation's website for clarification on the issue. He learned that the flicker rate people were concerned about was five to ten times faster

than the shadow flicker from a wind turbine.

“Knowing the facts is only half the battle, being able to explain them to public officials and the community, and get them to listen, is equally important... Getting people, whether it is a resident, seller, lender or public official, to accept that there is more than one side to an issue or that community concerns are addressed is a tough thing to do sometimes, but it’s what makes what I do exciting and a challenge.”

“Mark at the public hearings did very well,” says Andreas. “He had the ability to say that what the person was saying wasn’t right and let them leave the stand with dignity, rather than embarrassing the person... That’s why he shows up so high on [lawyer] rankings, because you can’t deny that he has a personality that’s easy to work with.”

Gershon has developed innovative ways to make sure projects happen by making sure he understands every party involved.

Most recently, he worked with a major energy company on the rehabilitation of a large former refinery site in the Midwest. The company had built an oil refinery on the site in the early 1900’s which was the driving force behind the local economy both in terms of jobs and revenues until it closed. The company poured hundreds of millions of dollars into remediation of the site as part of a plan that included redevelopment with a large new industrial park which would replace some of those lost revenues and jobs. Unfortunately with the adverse turn in the economy, the city was unable to meet its end of the financial obligations for the roadways, and other infrastructure necessary for the project to succeed.

A small group of local citizens sharply criticized redevelopment of the industrial site. At the same time, the city had significant economic issues and wanted to redevelop its historic downtown, having created several different plans over the years for doing so, none of which it could fund.

Since the city was financially strapped and both projects promised to increase economic activity, Gershon worked with his client and the city to establish a TIF district which allowed new tax revenues to enable both the industrial park’s development, and with taxes from that new development, implementation of the city’s downtown redevelopment plans.

The solution was a hit.

“These aren’t things that happen over night, but when you figure out what the other side wants, it usually works really well,” he says. Too often, deals are slowed or bungled because people fail to truly listen to one another.

He points to a similar incident in which a local woman had gone to the county

government and threatened lawsuits to prevent a natural gas plant that Gershon represented. A county official had described her as the biggest obstacle in the community, a person who was opposed to everything.

Gershon’s client asked him to talk to the woman. “[He] said to me, ‘Mark, I don’t know how, but you always walk into someone’s house with a box of doughnuts in the morning, and somehow you walk out later with a deal.’”

No One Had Talked to Objector

Gershon did just that, and discovered that the woman had no ideological grudge against the plant but was simply concerned about her view across miles of farm land, which would be obstructed by a shield of berms and trees proposed to buffer her home from the plant. Gershon proposed an alternate layout which protected her views while also buffering her from the plant, and the problem was solved.

“No one had talked to her,” Gershon notes. “No one had ever really found out what her issue was.”

Gershon first honed his listening skills as an undergraduate at Northwestern, where he was executive vice-president of the student government.

“I was in charge of the student funding for all student organizations, so you get an incredibly broad-based mix of people. It’s actually funny... I would have the most right wing and the most left wing groups on campus ... walk into (my) office screaming at each other, and at me, and...I would have to say you know, how can we work together to make this work? You don’t win every one of (those), but when you do, it is worth it.”

Attracted to real estate development from the beginning, he studied human development and social policy before entering Northwestern’s law school and ultimately landing an associate position at Rudnick & Wolfe.

That firm trained him in “the developer’s mentality,” a mindset that makes “getting the deal done while protecting your client” a lawyer’s top priority. Because it was 1986, the year the tax code changed, he was thrown into work, closing several deals just days after getting his license.

“One of my mentors when I was a young associate told me, and I’ve told every person who’s ever worked for me, ‘If you don’t know how your client’s making money on the deal, you can’t represent them’... They don’t teach that in law school,” he says. “As only one example, doing a great job of getting a project approved means nothing if you do not know that your client is making money on the tax credits, not the development, and needs you to ensure that its rights to those credits are protected.”

He began to establish real clout as a

development attorney when, in his second year as an associate, he became part of the elaborate deal that brought Sears to Hoffman Estates. He still works with Sears on development projects 25 years later.

From Recruiter to Recruited

People are often surprised to learn that Gershon stayed at one law firm for most of his career— but he is quick to remind them of the series of mergers that changed his firm dramatically. By the time 25 years had passed, the “developer’s firm” of Rudnick & Wolfe had become Piper & Rudnick and then DLA Piper— the largest law firm in the world. Gershon has a lot of respect for his time and friends at DLA Piper but also recognized that he needed a different platform that was specifically aimed at addressing the needs of his development clients.

In 2009, he received a call from a headhunter, not an uncommon occurrence for a big firm partner with an impressive book of business. However, unlike most recruiters, this woman didn’t simply pitch a new firm to him within 30 seconds of initiating the conversation. Instead, she listened to him— for three hours.

“(She) effectively said, ‘Your clients love you. You love the work you’re doing, and... for rates and other things, you need to be doing it somewhere else.’”

It was true that his higher billing rate discouraged clients who wanted to spend more time brainstorming and using Gershon as a partner and counselor in their strategic planning. So Gershon made the leap to Polsinelli Shughart, quickly assembling an all-star real estate development team.

Three years later, the insightful headhunter, Jennifer Sara Levin, is now his fiancé.

“I picked him for a reason,” says Levin, who was an attorney at both Sidley & Austin LLP and Jenner & Block LLP before founding Nate & Dot Recruiting and Consulting. “Very few men are this professionally successful and also this kind.”

The two share an adventurous spirit. When Levin observed the lack of opportunities for in-house legal counsel to be recognized for their work, she founded First Chair Awards and brought in Mark as the Chair of the Nominating Committee. First Chair ranks and awards top in-house lawyers, holds networking events, and publishes a national magazine. “Mark is a natural leader and has been a huge asset during our rapid growth,” says Levin.

Levin’s sense of adventure doesn’t extend to the top of the Wit Hotel, however. She was watching from the ground, along with one of Gershon’s three children, Arielle (his daughter Rachel is a Junior at Washington University and his son Adam is the Associate Director of

Marketing for First Chair), when Gershon rappelled down the side of the building to benefit the Respiratory Health Association of Metropolitan Chicago in its “Skyline Plunge” event.

“Year after year, he [has been] one of our top fund raisers,” says Joel Africk, the Association’s executive director. “He also became one of our best recruiters... He has an infectious friendly personality.”

In 2010, the Association awarded Gershon with the Making a Difference - Philanthropy Award. He has also been active in the organization’s 180 mile CowaLUNGa bike tour, and has been accompanied by his daughter Rachel and Levin on the ride.

“I think that we all have to challenge ourselves,” says Gershon. “It’s exciting to know that you’re making a difference.” ■