

## Legal Implications of Data Center Projects

**Niall McMillan:** Hi, welcome back to Litigators Lounge, devoted to discussing litigation news with Offit Kurman's commercial litigators. I'm Niall McMillan.

Joining me today is Anders Sleight. Anders, welcome.

**Anders Sleight:** Niall, thanks for having me. How you doing?

**Niall McMillan:** Doing well. So I understand you have a topic for us today. We're hearing a lot about data centers development in the news. How are those developments changing?

**Anders Sleight:** Yeah, thanks for asking, Niall. I mean, certainly we've all heard about data centers and how they're vital to our economy particularly as we're all interconnected.

And as AI proliferates, everybody needs access to the data and the support for everybody's business and personal needs, right? With that, there's a huge need for development of data center projects, and you've probably seen them occurring in your community, certainly here in our backyard in the Northern Virginia DC metro area as [00:01:00] well as parts of Maryland.

There are developments all over the place. And communities across the country are considering new developments, new projects permitting those and allowing those to move forward with construction. But increasingly, we are seeing pushback, whether it be from neighboring landowners, from folks in the community, from even from government city councils and county governments as well, pushing back or at least just putting forward a measure of concern about the impact of data centers.

So, and recently there was a decision in Virginia in the federal court, it's the Newsome versus Amazon Data Services Incorporated case, a July decision out of the Western District of Virginia. Interesting case in which the adjoining landowner and actually the occupant, which was a commercial enterprise occupying the land which is right next to the data center, was experiencing or they were...

had alleged that they were experiencing excessive noise dust, flooding, and other impacts affecting the plaintiff's [00:02:00] use of their particular property, right, and interfering with the operation of the business that was operating allegedly stemming from the data center development, all the construction and whatnot.

So those folks actually filed a lawsuit challenging or at least alleging a private nuisance. In other words that their use of their property was being impacted and disrupted by the data center development and construction, and they actually were successful in overcoming a motion to dismiss that lawsuit.

That case is going to be moving forward. There's no substantive ruling as far as who's right or who's wrong in that case, but it is going to be moving forward, and I think will be an impact on that data center project development. And maybe just a flaw on the side of the developer in that case.

So these things are gonna continue to happen, as these data center projects develop across the country.

**Niall McMillan:** Yeah, that's interesting because the private nuisance part of that, in our past case law, you see in that a lot of [00:03:00] times it's something like a rock quarry or something like that.

That's the basis of it. But with this new AI, we haven't had that before, so that's interesting that it's gonna develop from here for the landowners and the AI centers, it's a different world that they're gonna have to make new case law on, I'm sure.

**Anders Sleight:** Yeah, no doubt. And certainly It's just another thing for developers to think about.

There's so much focus goes into planning, right, permitting. We're working with the local governments, working with the local residents. And this is just another thing that you'll have, the developers will have to think about is those adjoining landowners or occupants or commerce.

Think of it if you're developing a parcel and commercial property nearby, how does that impact the other businesses? So I think the key takeaways are, you gotta have a wholesome approach to your development project. Working not only with the permitting and authorities but also with the adjoining neighbors, making sure that you're trying to be sensitive to how the development and [00:04:00] construction might impact those neighbors.

Trying to mitigate those efforts as much as possible, 'cause otherwise you might face one of these nuisance suits which certainly can take away or at least be a distraction at the very least for the development. And I'm sure folks will come up with new and more, arguments to try to challenge these just because there's kind of a pervasive attitude, at least from my observation out there that some folks are questioning the benefits of data centers.

Just another thing for developers to bear in mind as they're looking at developing projects that, those adjoining landowners may actually file lawsuits to try to stop or interfere or to seek damages from those developments. So I will continue to monitor to see how it plays out.

**Niall McMillan:** Yeah, that's interesting development. There's certainly a lot of changes going on at all times with this area of the law, change in regulations, all of that. So something to definitely keep updating, your knowledge on it at all times.

**Anders Sleight:** Yeah, absolutely. And we'll see how [00:05:00] attitude shifts, right?

There's been a lot of talk about the jobs that data center developments bring and the debates over that. We won't wade into those waters, but definitely something to keep an eye on as the litigation trends emerge and develop across the country with our data center projects. So thanks for having me, Niall.

**Niall McMillan:** Appreciate it. Will be interesting to see. All right. Well, thank you guys. Offit Kurman is a full service law firm with offices and litigators from coast to coast, providing

litigation services regarding employment, financial services, construction, government contracting, business matters, as well as real estate development disputes as well.

Please reach out to me or Niall, myself, if you have a litigation matter that requires attention.  
Thank you.