

# Houston Business

A Perspective on the Houston Economy

## Zoning Rejected Again: Why the Issue Won't Die

In a citywide referendum held on November 2, Houston voters rejected zoning for the fifth time in the city's history. Real estate interests initially persuaded the city council to reject zoning in 1930 and again in 1938, and in 1948 and 1962, voters strongly rejected the proposal in city referenda. This time, the margin was narrow. Only 52 percent of the voters opposed zoning, indicating that inevitably, the issue will return.

Why does zoning continue to bubble to the surface of Houston politics? If zoning distorts the housing market in inefficient ways, as economists often argue, why does virtually every local government in America implement the policy? The short answer is that zoning serves especially well the interests of upper- and middle-class suburban homeowners. In Houston, it was precisely this group that forcefully raised the zoning issue and that will continue to serve as zoning's chief activists and avid proponents. This article examines why these single-family homeowners are so persistent in their demand for zoning. Economic research suggests that this group wants zoning as an anti-growth, anti-development tool and that when upper- and middle-class homeowners are allowed to decide when local development should stop, they draw the line too early for the good of the community.

### THE FISCHEL MODEL OF ZONING

At face value, zoning is the arrangement of economic activity into districts that separate non-conforming or incompatible uses. For a variety of reasons, economists have been skeptical about this rationale for zoning. Cities seem to divide them-

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selves rather naturally into industrial zones at railheads and key highway intersections. Smaller commercial businesses seek out major thoroughfares, and room is left for residential areas. And where such areas overlap in Houston, the city provides an effective system of land-use controls in the form of private deed restrictions and numerous city ordinances. (See the November 1992 issue of *Houston Business* for further discussion.)

A more recent view of zoning puts aside nonconforming uses and assumes zoning is primarily a means for the politically potent middle- and upper-class homeowner to restrict development near their homes. Thus, zoning joins growth controls used in other cities, such as subdivision controls and development fees. As the Advisory Commission on Regulatory Barriers to Affordable Housing put it: "...suburbs and high-growth areas are natural breeding grounds for [this] syndrome because they are in the enviable position of being able to impose selective controls. They can count on attracting as much development as they want and no more."

William A. Fischel<sup>1</sup> has proposed a model to explain why zoning arises and why it is so widely and diligently applied, especially in the suburbs. His framework is relevant to Houston's recent zoning decision because it contrasts the interests of the landowner/developer with that of the homeowner.

The essential flaw in zoning, according to Fischel, is its legal origin in the "police powers" of the state. It allows the homeowner to control nearby open land without paying compensation, limiting the use of these tracts to "conforming uses." Benefit to the community from this appropriation need not outweigh cost to the landowner. The courts are reluctant to intervene in the zoning process, and under zoning's police powers the landowner cannot offer other compensation or bargain for another solution, any more than we allow a market for health certificates for restaurants. With zoning, local homeowners who value the aesthetic qualities of large lawns, greenbelts and open meadows can acquire them more cheaply than if they (or their local government or homeowner association) had to buy them at market rates. The result of this implicit subsidy to open land and conformity is restrictive and less-intensive development.

It is no accident that single-family homeowners are consistently the most persistent and strident advocates of zoning. *Existing* home-

owners are the clear winners when it is implemented. Losers are the landowner/developers, of course, who find powerful limits placed on the use of their land. Other losers are the homeowners who would have come to the zoned community had development continued; they find themselves living in second-choice communities, squeezed out by limited supply or high prices. Renters also lose, as apartments—even low-density and luxury apartments—are a special target of homeowner groups.

## THE ZONING ISSUE WON'T DIE

Houston's existing system of deed restrictions and voluntary covenants breeds its own demand for zoning. The system keeps homeowner associations organized and highly aware of land-use issues as the associations enforce deed restrictions in their neighborhood. Restrictive covenants offer better protection than zoning within the neighborhood, and neighborhood associations diligently patrol their area in search of covenant violations. Some hire local service firms to patrol and search out violators; many associations keep track of adjacent communities to protect themselves from lapses in nearby neighborhoods.

Restrictive covenants offer no help, however, in controlling adjoining commercial areas or areas where covenants might have expired. This is why zoning is so appealing to neighborhood associations. The zoning map prepared for Houston shows again and again how determined these single-family neighborhoods are to reach into commercial fringe areas and have these fringes zoned residential. In several well-publicized cases, businesses intruded into these neighborhoods in the 1940s; it speaks to the power and determination of homeowners that zoning could be used to turn the clock back 50 years or more. Existing businesses that found themselves zoned residential under Houston's proposed ordinance were grandfathered, but the terms of the arrangement would have forbidden their future expansion and required them to remain in their current line of business. There is no official estimate of their number, but it was large simply as a result of zoning a developed city. Grandfathered or not, all these businesses could have been closed by an appeal to the Board of Adjustment, initiated by nearby residents or the city planning director. Zoning proponents called this a good neighbor policy;

many businesses felt it left them at the mercy of activists in neighborhood associations.

## THE END OF UNABATED GROWTH?

Throughout the early efforts to bring zoning to Houston, neighborhood associations, city elites and mainstream organizations such as civic clubs and Chambers of Commerce supported zoning. Opposition stemmed from large and small property owners and landlords. Rapid growth in Houston made virtually every landowner a speculator, keeping opposition to zoning strong and active. The intrusion of commercial business into residential areas was viewed less as a nonconforming use and more as a speculative opportunity.

In this latest vote, the speculative fires that long consumed Houston real estate were largely extinguished. The oil bust of the 1980s precipitated a widespread decline in local banking and real estate. The markets for office space and industrial property remain subdued, and for raw land the market is quite depressed. Many Houston homeowners learned bitter lessons about the loss of equity in single-family housing in the 1980s. The average sale price of an existing home sold in Houston in 1983 was \$105,000; in 1988, this average fell to \$79,900; and last year it was still only \$99,000. Homeowners who were trapped (or who remain trapped) in their homes by negative equity and a slow real estate market quickly grasp how their self-interest is served by zoning.

In the 1962 vote, real estate interests were joined by working-class, Black and Hispanic neighborhoods in a powerful vote against zoning. For several reasons—including integration and better minority representation in the city—this year's vote was less solid along racial and ethnic lines than in the 1962 election. (See *Table 1*.) One factor was that troublesome commercial neighbors in Houston's poorest inner city neighborhoods—motels, factories and salvage yards—became an important issue. The zoning ordinance would have closed numerous nuisance bars located in minority neighborhoods that were zoned residential; it would have grandfathered existing businesses and forbidden new ones.

If racial and ethnic differences blurred, class differences persisted in this latest zoning vote. Low-income groups opposed the ordinance, while middle-income groups favored it. Fischel's

**Table 1**  
**Precincts Defined by Race, Ethnic Group and Economic Status**

Area	Percent Turnout	Percent Voting:	
		For Zoning	Against Zoning
Low-Income Black	11.1	27.9	72.1
Low-Income Anglo	17.6	31.8	68.2
Middle-Income Black	23.1	62.6	37.4
Middle-Income Anglo	28.1	55.6	44.4
Predominantly Hispanic	13.1	42.0	58.0
Upper-Income Anglo	34.5	43.8	56.2

SOURCE: *Houston Chronicle*, November 3, 1993, p. 6A.

original model of zoning was narrowly applied to suburban neighborhoods. As he has applied it to central city neighborhoods, he finds that enthusiasm for zoning should wane. The poor property owner, the apartment dweller and the inner city business are more likely to benefit from continued growth and development than the suburbs; the anti-growth bias of zoning is less welcome in the city.

If zoning is seen as a higher standard—a barrier to the supply of cheap housing and an increase in its cost—it simply discriminates against the urban poor. Minorities enter the equation as a disproportionate share of the urban underclass, hurt more by zoning largely on the basis of economic status. Low-income Houstonians voted their interests very effectively in this election.

## CONCLUSION

It is too early to declare the narrow defeat of zoning a sign that Houston's long-standing passion for unabated growth is waning. However, the anti-development bias of the suburban, single-family homeowner largely created the zoning ordinance and nearly won the election. With the ranks of speculative real estate interests decimated, this referendum was zoning's best chance ever. And Houston, of course, is neither a central city nor a suburb. Its 539 square miles include a broad mix of inner city neighborhoods and hundreds of suburban enclaves. The inner city desire for continued growth provides a healthy counterweight to suburban pressures to limit it.

<sup>1</sup> William A. Fischel (1978), "A Property Rights Approach to Municipal Zoning," *Land Economics* 54 (February): 65-81, and Fischel (1985), *The Economics of Zoning Laws* (Baltimore: Johns Hopkins University Press).

**E**conomic conditions in Houston remain slow but stable. Private-sector job growth remains at a standstill. Mining and manufacturing are showing some early signs of recovery. Construction is currently the weakest sector in Houston. So far in 1993, building permits for the city are running 11 percent behind last year; the metropolitan area has lost 5,500 jobs in construction since January if the data are seasonally adjusted. Local government employment continues to grow, led by hiring in the school districts.

### RETAIL SALES AND AUTOS

The retailing environment in Houston remains difficult, with cautious consumers and strong competition. Discounters see a very competitive market; small retailers are expressing concern about pending health care reform and changes in the minimum wage. All are laying cautious plans for the holiday season. Auto sales are a bright spot, with both August and September sales exceeding those of the year before. These were the first back-to-back monthly improvements this year, and they leave auto and truck sales 1 percent ahead of last year's level.

### OIL AND GAS MARKETS

Oil prices have been highly volatile, with the December futures contract briefly trading under \$17 in early November, after trading at more than \$19 in early October. Volatility stems from weak global markets and uncertain production from OPEC, Iraq and the former Soviet Union. Lower oil prices hurt natural gas prices throughout late summer and early fall, as industry and utility customers switched from natural gas to fuel oil. Early cold weather has since brought seasonal improvements in natural gas prices. Current winter storage levels for gas are comparable with those available at this time last year.

Oil machinery and service companies are experiencing strong seasonal increases in demand. Domestic drilling is the main reason for improvement; international markets are still weak, although some respondents report improved business throughout Latin America. The Gulf of Mexico continues to operate at high levels of utilization of available equipment. The domestic

rig count has stalled in recent weeks, but respondents from area companies remain optimistic about seeing continued seasonal gains through the rest of the year. They report strong orders and backlogs, some hiring and spot inventory shortages.

### REFINING AND CHEMICALS

Demand is better than expected for refined products, up seasonally right now and slightly ahead of last year. Texas and Louisiana Gulf Coast refineries have operated at high levels of capacity utilization. Margins have improved and deteriorated as volatile oil prices fell or rose; however, improvements in margins are short-lived and can't be sustained with the current overcapacity in the industry. The near-term outlook is more of the same: modest demand growth with weak margins.

The chemical market continues to see slow but steady volume increases and weak prices. Foreign markets are reported as a source of weakness, while the domestic market is improving. Prices are weak in most product lines, but especially among the bulk petrochemicals where overcapacity is a serious problem.

### LUMBER AND PAPER

Local demand for lumber and building products is very slow. Prices are up for East Texas pine, however, based on strong state and national housing markets. Demand for paper remains strong.

### REAL ESTATE

Existing and new home sales fell seasonally as the school year began. Existing home sales are now running slightly ahead of last year, and the inventory of homes on the market continues to decline slowly. New home sales, in contrast, are running 6 percent behind last year's levels; new home starts in September were at the lowest level in 21 months.

The office market is mixed, with downtown still lagging and some slight improvements seen in the suburbs. The industrial market is stable and rent is flat. The apartment market is stable, with modest improvements in rent.

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