



IN THE VIEW of most concerned professionals, zoning legislation is a necessary bulwark against chaos in urban land use. Without zoning, it is contended, external diseconomies will abound: pickle works will come to rest next to single family homes, glue factories beside country clubs, and oil refineries in proximity to restaurants. Moreover, it is feared that rapacious land developers will erect, profit from, and then abandon buildings, placing undue strain on the capacities of municipal services. Further, the unzoned city will be one of haphazard construction, falling property values, instability, disregard for neighborhood "character," irrational allocation of property—and a haven for unscrupulous speculators.

Zoning is the attempt to suppress these supposed market defects by

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legislatively prohibiting incompatible uses of land. Under this ordinance, the pickle factory would be prohibited from residential neighborhoods and required to locate itself in a special industrial area, reserved for that kind of operation. There, surrounded by similar uses, it would presumably do little harm.

The zoning idea has a certain appeal. What, after all, could be more simple and obvious? If land usage seems imperfect, all that is needed is the enactment of a set of laws compelling proper behavior. Arguments for zoning are so widely made and frequently accepted that even those who otherwise appreciate the merits of the competitive market system have felt constrained to make an exception in this instance. In view of this state of affairs, and given the serious drawbacks in zoning which are continually making themselves felt, it is of the utmost importance to

consider such legislation clearly and dispassionately.

Confronting the charge that zoning is all that stands between a viable urban environment and chaos is "Exhibit A," the City of Houston—which has never enacted such legislation. The very existence of a large North American city (an area in excess of five hundred square miles and a population of 1.6 million) which can function normally and continue to grow without zoning is a major piece of evidence against the traditional view that zoning supposedly protects against chaos.

Divergent Tastes

In *Zoning: Its Costs and Relevance for the 1980s* (The Fraser Institute, British Columbia, 1980) a survey is made of several empirical land use studies in Pittsburgh, Boston, Rochester, Houston, and Vancouver. The effects of "incompatible uses" on property values are traced. The overwhelming preponderance of evidence casts serious doubt upon the presence of uniform external diseconomies. (External diseconomies are said to prevail when A harms B by doing C, and B cannot collect damages nor force A to cease and desist from such activities. Uniformity would mean that all market participants view C as harmful.)

The reality appears to be that either there are few significant interdependencies and externalities in

urban property markets or that "One man's meat is another man's poison." One and the same phenomenon, such as the presence of commerce in an otherwise residential neighborhood, is interpreted in a positive way by some people and in a negative way by others.

The point is that market processes exist naturally to eliminate such externalities that would arise from the proverbial glue factory on the corner of Park Avenue and East 65th Street. In a system based on the inviolability of private property rights, the laws of nuisance would prevent the dispersion of invasive odors, or dust particles. But the market process functions even without this protection. Quite simply, land prices in the residential or business neighborhoods are too expensive for the glue factory; they effectively prohibit any but the most valuable, concentrated uses—such as large office buildings or high-rise residential dwellings.

This view is supported by Roscoe H. Jones, Houston's Director of City Planning. In his opinion the market "has tended to create a reasonably well-ordered pattern. Because of private 'marketplace zoning,' we find no filling stations at the end of cul-de-sacs; ship channel industries are, naturally, located along the Ship Channel, and so on."

The natural proclivities of the market would also protect against the "hit and run" land developer who

is said to leave an excessive population in his wake, swamping municipal services.

A developer who tried to pack too many people into an office building would have difficulty finding mortgage assistance. Lenders would realize that such compressed conditions would overload services, resulting in tenant dissatisfaction, lower rents, and the possibility of mortgage default. It is of course true that builders and lenders can make mistakes, and that some overcrowded structures might be built, but the inexorable forces of profit and loss would ensure that such errors were few in number. Zoners are likewise subject to miscalculation; the problem is that there are no automatic bankruptcy procedures to weed out bureaucrats with poor judgment. One of the most persuasive arguments against zoning is the fact that it institutionalizes errors. In effect, planners do not have the incentives to "get it right," nor do they suffer the consequences of "getting it wrong." The competitive system thus can obviate the need for building height restrictions, set back requirements, floor space ratios, and other bureaucratic measures which artificially attempt to limit density.

Undue Strain on Public Services

The typical pro-zoning argument is couched not in terms of undue strain on halls and elevators, which

are internal to the building, but rather in terms of the effects of high density on social overhead capital: electricity, gas, water, sewers, roads, sidewalks, parking, public transit, parks—all of which are external to the subject premises, i.e., externalities.

But this should give us pause for thought. For surely there are other amenities necessary for the successful functioning of a large office building, which are or can be considered externalities, but which do not concern the city planner nor unduly worry anyone else: for example, restaurants, barber shops, banks, jewelry stores, pharmacies, stationers, and the like. One reason may be that every member of the former category is run by public or quasi-public enterprises while the latter are all managed privately.

When the excavation for a new office building is begun, the small merchants in the neighborhood roll up their sleeves in anticipation of the new customers and additional profits likely to come their way. Their first thoughts are concerned with physical expansion, adding extra shifts, providing more services. The contrast with the bureaucratic orientation is stark indeed. At the prospect of new building, the bureaucratic tendency is to ponder the "strain" additional hordes of people will place on public services. Their answer is to place a myriad of zon-

ing restrictions on the new builders, instead of encouraging coordinated expansion.

Thus it appears that if error and hence the need for correction lies anywhere, it is not with the "rapacious builder" who places "strains" on public services, but rather with those charged with the provision of the infrastructure: those in the government sector. Perhaps the answer lies in improving the provision of these services, not in holding down new construction.

The Case of Houston

A useful comparison is the case of Houston. Here the practice is not to hem in the private market with a bewildering array of complex zoning restrictions, but rather to *cooperate* with the land developer by forecasting the growth patterns in order that the city government may supply the necessary municipal facilities and services. It must be emphasized that zoning is only one weapon in the planning arsenal: even were these restrictions scrapped in their entirety, the public authorities would still exercise great control over land use patterns through (1) provision of infrastructure and amenities, such as parks, water mains, sewer placements, and the layout of freeway and major arterial streets; and (2) direct land use controls concerning building heights, set backs, floor space ratios, and the like, but ap-

plied uniformly to an entire city, and not differentially to districts within its boundaries.

This does indeed undercut much of the case for zoning. But in the interest of creating further discussion, one might even question whether government has a comparative advantage, vis-a-vis the market, in the creation of such products and controls. Without a market-created price system, it is extremely difficult for the public official to rationally allocate resources. Moreover, no profit or loss automatically accrues to him as a spur in decision making. He risks none of his own money, and can earn no honest profit from correct choices.

Declining Property Values

There are few things feared more by the average urban property owner than declining residential values. This is understandable, for much of the real savings of the typical citizen is tied up in a single family house. Perhaps this is the most important explanation for the high regard with which many citizens hold zoning legislation—it is supposed to protect property values.

But the view that zoning is the best guarantee of stability is inconsistent with the evidence: The stability of neighborhoods that zoning seeks to protect thus appears to be endangered by the rezoning that is part and parcel of the enactment of

zoning by-laws in the first place. What security can zoning provide against the possible ravages of the glue factory if its provisions can be rescinded at any time?

Of far greater reliability may be the system of deed restrictions, or restrictive covenants, as practiced in Houston, whereby the property owner may contract with his neighbors concerning the uses to which land may subsequently be put. Alternatively, land developers may require, as a condition of sale, that all purchasers agree to continued land usage, either for a stipulated (long) period of time or until a majority vote of such buyers overturns the agreement.

This system is far more flexible. Even the maintenance of single-family neighborhoods by zoning statutes is questionable: by keeping land and buildings in the same use over time, zoning can promote neighborhood decay and speed the demise of the single family neighborhood. Zoning is a rigid control, and is likely to fracture during times of change in consumer tastes, neighborhood demographic structure, urban growth, and transportation and building technologies.

No Guarantee of Values

Ultimately, of course, there can be no absolute guarantee against declining property values. A fall in the price of wood, an increase in the

market rate of interest, the sale of publicly held lands, technological improvements in prefabrication methods can all reduce housing prices. One might perhaps contract with an insurance company for the preservation of home values, but the cost of the premium payments would have to be subtracted, thus defeating the plan.

Value preservation is a will-o'-the-wisp, for price is a manifestation of the worth placed on an item not by one person, but by two groups: potential sellers and potential buyers of items like the one in question. We can not speak with certainty of the value an owner will place on his home in the future; it is even less possible to assess the worth a future hypothetical buyer will give it. It is clear, moreover, that that which is owned is the physical house, and not its value. For while the owner has a right to collect damages from the boy who breaks a window with a ball, he has no such right with respect to the man who invented prefabricated housing—even though the latter might well have been responsible for a greater drop in the value of his house than the former.

While citizens have a clear and obvious right to have their homes protected from physical damage, this does not apply to the *value* of their property. Yet this is precisely what zoning seeks to preserve. Thus not only must such legislation fail to ac-

comply with this task—it would be improper even if it could do so.

Uniformity

Another shortcoming associated with zoning is the uniformity it engenders. And this is not surprising: to divide all building into residential, commercial, and industrial, as the early enactments did, and then to impose these three categories upon the entire pattern of future construction, is hardly likely to foster architectural innovation.

This rigidity soon became evident, and an effort was made to become more "flexible." The zoning codes added variances, exceptions, Planned Unit Developments (any excess building in one parcel is to be offset by a reduction in another within the planning district), mixed-use zones, performance zoning systems, land use contracts, and development permits. In one respect these reforms were a plus, for the system became less rigid. But this change ushered in a new crop of problems. For one thing, the system became even more complex. Literally dozens of districts have been defined; what may and may not be done with each is subject to a bewildering and growing number of regulations. The days of three-district zoning with two or three pages of regulations have long since passed. Today's ordinances are continually growing to accommodate more detailed regulations of use,

lot size, building height and bulk; more reasons for granting variances, bonuses, and special exceptions; and much more complicated procedures for appeals and reviews. Today few sets of zoning regulations appear in tomes of fewer than 500 pages.

A system with so many complications, exceptions and changes could no longer be governed by any clear set of rules or principles. The procedure instead became one of "judging each case on its merits" in an ad hoc manner.

Although this might appear to some as fair and judicious, the flaws in it are grave. First, it is a clear retreat from the idea of zoning itself. According to this philosophy, urban planners were assumed to have enough wisdom to forecast, at least in broad brush strokes, the future spatial organization of the city. But the very need to grant numerous exceptions, as a continuing institutionalized process, has belied this claim. Ability to incorporate the needs of a changing future is simply incompatible with patchwork changes as reality confronts the master plan. It is akin to claiming the ability to forecast inflation for the next five years—and then changing the prognostication each week.

Secondly, as Nobel Laureates Milton Friedman and Friedrich Hayek have so eloquently shown, "judging

each case on its merits" is the *absence* of lawfulness—not its presence. Each has demonstrated (the former in his analysis of "rules not authorities" in monetary policy; the latter in his work on the "rule of law") that to consider matters on a "case by case" basis is to color the judicial process with stultifying arbitrariness.

The Rule of Law

The proper scope of government, in this view, is to set down the rules of the game, clearly, and before the contest begins—and then not to continually alter them in the midst of the fray. Under these conditions, the individual is free to pursue his lawful ends, secure in the reasonable knowledge that the government powers will not suddenly be used to frustrate him at every turn. But a zoning system, especially a "flexible" or "reformed" one, can change the uses to which a land parcel may be put at any time. It is thus clearly destructive of these ends.

Thirdly, zoning complexity and changeability have spawned graft and corruption. The reason for this is easy to discern: a less restrictive variance may be worth millions of dollars to the land developer. Be the bureaucrat ever so honest, he will be sorely tempted by a share in these gains—especially in an era where rezoning is an easily contrived and commonplace occurrence. Paradoxically,

this is not necessarily all to the bad. If a bribe can convert a land parcel to a use more highly prized by consumers, wealth and the allocation of resources will have been much more nearly optimized. This is not the first case on record attesting to the benefits of black markets. The great loss, however, is the general disrespect for the law engendered by this practice.

Private Zoning

If zoning can be defined as matching specific areas of land with particular uses, then nothing said above should be interpreted as opposing *private* zoning. Indeed, it is impossible for any rational land developer to act in any other way. He must, if he is to function at all, decide to place the garage here, the house there, and the backyard elsewhere. How else could he conceivably operate? But this is all that is meant by private zoning.

The case is an exact parallel to the planning debate. As has been said many times before, people must plan if they are to act rationally. The debate, then, is not between planning and non-planning. It is between central planning, on the part of the government, and individual planning, as coordinated through the marketplace. Similarly the real issue here is not the choice between zoning and non-zoning; it is between private and governmental zoning. What has been

criticized above is *government zoning*, not the private variety.

What is private zoning? The most well-known example is, of course, Houston's system of deed restrictions. Private zoning also takes place every time a glue factory is priced out of a residential neighborhood, or whenever the gas station locates on a major thoroughfare, not in a side street. But it also includes such prosaic activities as the individual's arrangement of household furniture, the office's placement of desks and room dividers, the factory's disposition of machines and guardrails, and the shopping mall's apportionment of its tenants.

Items for sale must be deployed in the most advantageous manner possible. Thus merchants match store areas to particular uses. The success of each enterprise rests, in great part, upon the skill in such "zoning." If the grocer discovers, for example, that apples and oranges sell better in close proximity, or that the juxtaposition of corn and peas detracts from the sale of both, without any offsetting benefits on the remainder of the stock, he can profit by incorporating this information into his "zoning" decision making. He will gain a competitive advantage over those of his colleagues who are not similarly skilled. It is in this way that the market promotes efficient zoning.

The same process is at work in

shopping centers and malls. Since the various tenants are contractually unrelated to one another, the situation is closely analogous to governmental zoning. Private entrepreneurs, however, are judged, in their profit and loss accounts, by how well they promote positive externalities and repress negative ones. And, in fact, it is difficult to imagine two "incompatible" tenants adjacent to each other in a shopping mall. Any such mal-zoning would only, in the long run, reduce the landlords' total receipts.

There is a vast reservoir of private zoning efforts operating in the economy, unreported, under-publicized. This brief discussion has barely scratched the surface. But it can be viewed as one more aspect of the case against public zoning efforts.

What public policy recommendations follow? Although one must always be cautious and realize that no one solution can offer a total panacea, there is a strong presumption toward the non-zoning extreme of the spectrum. After all, zoning has not worked very well. The externalities that it is designed to ameliorate have been shown to be minimal or non-existent. The maintenance of single-family neighborhoods by zoning statutes is also questionable.

One might even take an extreme position here, and advocate abolishing the system of government zoning—root and branch. ☸

What Causes Wealth?

THE POOR are still with us. Despite tremendous advances in agriculture and industry, poverty persists. But why? Why do some people suffer life-long poverty? Why do others enjoy high standards of living? What makes possible decent, even comfortable, conditions? These are age-old questions.

Over the centuries the normal human condition has been subsistence in a state of relative poverty. Wealth was the exception rather than the rule. The first major work of economics, written in 1776 by Adam Smith, was appropriately entitled *An Inquiry into the Nature and Causes of The Wealth of Nations*. It was the existence of wealth and prosperity that required an explanation, not the fact of poverty; hence

economists and social scientists beginning with Smith have sought to discover the cause of wealth. An examination of the shortcomings of many common explanations for the existence of poverty offers insight into the real cause of prosperity.

Over-population. One popular claim is that poverty exists because of over-population. It is said that countries with large populations, such as India, Bangladesh, and the People's Republic of China, suffer from poverty because production cannot possibly be great enough to feed, clothe and house adequately the millions of people. If leaders could only convince their people to practice birth control, so the argument goes, the standard of living would begin to rise to a decent level.

This explanation has shortcom-

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