

5,000 Voters Can't Be Wrong

How Zoning Came to Houston

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For nearly 60 years starting in 1929, Houston zoning advocates lost battle after battle to vociferous promoters of the

unfettered free market. Those rabidly antiregulation types were typically smaller commercial real estate brokers and developers, but they were sometimes joined by titans such as lumber baron John Henry Kirby and millionaire oilman and right-wing ideologue Hugh Roy Cullen. As University of Houston history professor Barry J. Kaplan has documented in the *Southwestern Historical Quarterly*, the city's antizoners flayed this land-use regulation as everything from an infringement on private property rights (in 1929 and 1938) to "un-American and German" (after World War II) to communistic (in 1962, during the Cold War).¹ Eventually, postmodern luminaries ranging from architect John Burgee to Milton Friedmanite land-use-planning critic Bernard Siegan came to regard unzoned Houston as a paradigm of how cities should be built. Private enterprise, these mavens agreed, had done a better job of anticipating where Houston's future growth should occur than bureaucratic planning ever could have done.

Ordinary Houstonians facing the messy consequences of real estate boom and bust began to challenge the prevailing local orthodoxy, but with mixed results. As recently as 1984, when mortgage banker Ben G. McGuire, then a member of Houston's planning commission, advised Mayor Kathy Whitmire that the city should consider a zoning ordinance, he found that the city's chief executive still considered the topic radioactive. During a private meeting in which McGuire broached his suggestion, he says Mayor Whitmire protested that the politically potent developer Walter Mischer would "crucify" her if she came out for zoning. Then "Kathy threw me out of her office," McGuire told me in a recent interview. When his term expired in 1987, McGuire observed, he was "kicked off the city planning commission."

Yet on 9 January 1991, with Mayor Whitmire's support, city council unanimously approved Ordinance 91-63 reconstituting the planning commission as the planning and zoning commission — an unequivocal first step toward ending Houston's unique status as the only big American city with no zoning. What had happened to convert a mayor and an entire council in just seven years? What had made zoning — a concept popular with 1920s civic reformers but by now often viewed elsewhere as corrupt, hopelessly bureaucratic, or the captive of the real estate interests it originally sought to regulate — suddenly the object of almost messianic zeal in Houston?

The answer, initially ignored by politicians, was that the combined effects of the oil boom of the 1970s and early 1980s and the subsequent cataclysmic bust had irrevocably changed the city's physical and political landscape. Neighborhoods struggling desperately with declining property values from the lingering depression of the 1980s were also clamoring for help from the city against all manner of businesses, some of them opened by out-of-work homeowners, that were defacing their turf or disgoring traffic onto residential streets. Such neighborhood leaders as Kay Crooker, Gail Williford, and Brandy Wolf had emerged during the boom in the affluent subdivisions of Tanglewood and Southgate to fight the unwanted symbols of growth — proliferating helicopter landing pads and high-rise office buildings and hotels that abutted neighborhood boundaries. Throughout the long bust, these activists and others

attacked incompatible juxtapositions by championing such broad-brush tools as an ordinance requiring all new businesses to supply off-street parking, and another that would screen unsightly land uses with fences or trees. But like council member Eleanor Tinsley's landmark 1981 development ordinance, which set the tone for such performance-based regulation, these piecemeal reforms ultimately seemed inadequate to treat what many saw as a cancer threatening Houston's quality of life and residential property values.

Eventually the wealthier neighborhood activists began to make common cause with their counterparts in poorer neighborhoods and to argue that residential deed restrictions — Houston's traditional private-sector alternative to zoning — were too cumbersome and too expensive for many areas to enforce. Meanwhile, although it was little emphasized at the time, public opinion polls in the 1970s and 1980s repeatedly showed that a substantial majority of Houston voters, a large number of whom previously had lived in zoned cities, actually supported zoning. University of Houston professors Robert Thomas and Richard Murray's book *Progrowth Politics: Change and Governance in Houston* makes that point and specifically cites an October 1983 survey of 662 randomly sampled city residents who backed the idea of a zoning ordinance by a 60 percent to 22 percent margin, with 18 percent not sure or not answering.²

By the late 1980s, many of the antizoning developers whose campaign contributions in the past had allowed them to dominate city land-use decisions were broke, while those Houston developers smart or desperate enough to leave town and find work elsewhere during the bust "found they could live with" zoning, notes developer (and mayoral confidante) R. Alan Rudy. Some of the biggest local developers decided that for them "zoning was maybe even an advantage, since

Above:
Neighborhood activist Rosie Walker's 1987 single-issue prozoning campaign for mayor gained fewer than 5,000 votes.

zoning limits supply, and they've already got supply," says the city's most prominent critic of zoning, financier Charles Miller, chairman of the Greater Houston Partnership (an umbrella group embracing the Houston Chamber of Commerce, the Houston Economic Development Council, and the World Trade Association).

Moreover, those local developers who were beginning to think about redeveloping the older part of town within Loop 610 noticed that Houston's home buyers were voting for zoning with their dollars. A house in zoned West University Place or Bellaire might cost 10 to 15 percent more than a virtually identical residence across the street in unzoned Houston proper. James C. Box, senior vice-president of the Mischer Corporation, points out that since the oil bust began, over 50 percent of Houston's home sales have occurred in such inner-city sanctuaries or in the oil companies' master-planned communities – Mitchell Energy's Woodlands, Exxon's Kingwood, and Shell's First Colony. Because of developer-imposed new deed restrictions lasting 30 or 40 years and other controls, the latter "are essentially developer-zoned cities," notes Box. Pension funds, insurance companies, and anyone else who hoped to attract new residents to redeveloped inner-city Houston had to figure out how homeowners, businesses, and ultimately the funding institutions themselves could protect their investments.

During much of the 1980s the implications of these changes were no clearer to most politicians than to the usually astute Mayor Whitmire. Then in 1987 a former three-term state representative from northwest Houston, Herman Lauhoff, got caught in a traffic jam as he was trying to leave Sharpstown Shopping Center. Immobilized at Fondren and the Southwest Freeway for more than two hours, Lauhoff had his personal conversion experience right there in gridlock. He decided that Houston would never have a rational transit plan without comprehensive planning, and it would never be able to enforce a comprehensive plan without zoning. And so, as an avowedly prozoning candidate, the oil company personnel director (now a real estate salesman) challenged incumbent Jim Westmoreland for his seat on the Houston City Council. Lauhoff was uncharismatic and underfunded, and reporters ignored his attempts to engage Westmoreland and themselves on what was still thought to be a politically untouchable subject. His campaign sank like a stone.

Two years later, Rosie Walker, a candidate for mayor, became zoning's next martyr. Lauhoff's campaign manager in the 1987 race, Walker was the publisher of a slender giveaway weekly called *Downtown Magazine* from 1977 until 1991. She had become radicalized as a neighborhood activist in the early 1980s when she battled a noisy honky-tonk that encroached on her Woodland Heights subdivision. As incumbent Kathy Whitmire trounced former mayor Fred Hofheinz that November, Walker's single-issue prozoning crusade garnered fewer than 5,000 votes. But her stand provoked warm applause – and even a surreptitious \$10 cash campaign contribution from a political writer – when she appeared before neighborhood groups.

Lauhoff and Walker, the Butch Cassidy and Sundance Kid of zoning, had been schooled as outlaws by the same mentor. At a 1983 meeting of the Northwest Coalition of Civic Organizations, Professor John Mixon, who teaches real estate development and finance law at the University of Houston Law Center, gave a comprehensive, cartoon-illustrated lecture on the ABCs of zoning. A deep-voiced East Texan who over 25 years has hewed out a role as the Thomas Paine of Houston land-use regulation, Mixon predicted that zoning would be instituted in Houston within ten years.

Before embarking on her own campaign, Walker tried to interest others in championing zoning. In 1988, following the annual meeting of the downtown association Central Houston, Inc., at the Four Seasons Hotel, she walked back to city hall with boyishly earnest city councilman Jim Greenwood, telling him why Houston needed zoning. Greenwood, an attorney who in his 1986 Democratic campaign for Harris County judge against incumbent Republican John Lindsay had emphasized regional planning, "was interested and said he'd think about it," Walker recalls. Later, in fall 1988, Lauhoff, Walker, and Mixon met Greenwood – known to be considering a challenge to Whitmire – at a downtown lawyers' luncheon club, the Inns of Court. There, she says, they tried to persuade him to run for mayor as a zoning proponent. In subsequent fund-raising letters, Greenwood did not mention zoning, but he did talk about his interest in land-use regulation and long-range planning. Eventually he concluded that he could not raise enough money to mount an effective mayoral race.

Meanwhile, Walker, who had been a substantial early contributor to Kathy Whitmire's first mayoral campaign, buttonholed the mayor's late chief political strategist, Clintine Cashion, after a Metro

board meeting. "We've got to talk about zoning," Walker recalls saying. Cashion agreed and they scheduled a long lunch the following week. A few days later Cashion was dead, the victim of a severe asthma attack.

Greenwood attended some of the functions at which Rosie Walker appeared, "and the positive response she got confirmed my belief that there was support for zoning," he said in an interview in his modest city hall office. After the November election, Greenwood says, he determined to make the zoning issue "a front-burner item."

"Believers needed to be enrolled," Greenwood says. "Those who were doubters needed to be confronted and converted."



Below, left to right:

Neighborhood leaders

Gail Williford, Brandy Wolf, and Kay Crooker in Southgate.

Shortly before noon on a cloudy 13 December 1989, at a so-called city council "pop-off session," where members speak their minds on any number of subjects, Jim Greenwood took the microphone. "I said it was my belief Houston had to decide what kind of destiny it wanted for itself," he recalls. "The city needed a plan, and that meant it needed zoning – because all previous plans since the 1920s had proved unenforceable without the sanctions that zoning provided. There was no roll of thunder or flash of lightning, Greenwood notes, nor was he instantly vaporized. The newspapers even picked up the story and gave it decent play. Suddenly the Z word was no longer unmentionable in Houston.

But if anything further was to be done, Greenwood knew he would have to do it. He wrote a letter to every civic club in Houston explaining his stand and asked them to give him an indication of whether they, too, supported zoning. Out of nearly 400 letters, he received almost 80 responses – only one of them against zoning.

On 2 January 1990, in her speech after taking the oath of office, Kathy Whitmire made a passing reference to "land-use planning" by the city in the coming year. Ten days later, in an audacious initiative, Greenwood convened his own Ad Hoc Task Force on Planning and Zoning. Among those he named to the panel were Brandy Wolf and Gail Williford, the neighborhood activists from affluent Southgate who were then president and vice-president, respectively, of the Houston Homeowners Association, a coalition of civic clubs founded by Greenwood's Tanglewood neighbor, Kay Crooker; Peter Brown, former president of the local chapter of the American Institute of Architects and a friend of Greenwood's since high school; John (Jack) McGinty, an architect who had served with Greenwood on a "Visions for Houston" committee a few years earlier; Carroll Shaddock, a downtown attorney and antibillboard and pro-tree-planting crusader; John Mixon, the University of Houston law professor and zoning guru; Burdette Keeland, then chairman of the city planning commission and a professor of architecture at the University of Houston; and architect Al Augustine of the Houston office of the Dallas-based developer Trammell Crow, who was lassoed to participate after asking in vain if Greenwood could enlist the city in fighting a garbage dump next door to his company's North by Northwest development on Highway 290. Although the antizoning Houston Apartment Association also contributed a member, Greenwood concedes, "it was definitely a prozoning group."

Below:

Councilman Jim Greenwood convened an influential ad hoc task force on planning and zoning in January 1990, a few days after Mayor Whitmire took the oath for her fifth term.

Municipal access cable channel 1 taped the task force meetings for later broadcasting, building an audience and credibility. Greenwood soon expanded the task force, which met weekly and ultimately had a core of 20 to 30 members or subcommittee members and a mailing list, including less active participants, of 40 to 50. Meanwhile, Greenwood himself was speaking as often as four nights a week before civic clubs across the city and to service clubs such as the Rotary, Lions, and Kiwanis. At each meeting, Greenwood asked for a show of hands and saw over-whelming support for zoning. To each group he emphasized that every citizen votes for seven council members – five at-large members like him, a district council member, and the mayor – and urged each club and individual to make known its feelings on zoning.

By early spring, Greenwood's task force had caught the attention of the mayor, who undoubtedly viewed it as the first salvo in a prospective Greenwood 1991 mayoral campaign. She promptly appointed her own blue-ribbon task force – the Land Use Strategy Committee, or LUSC – which appears to have been designed as antizoning as Greenwood's group was prozoning. It was headed by Charles Miller, president and chief executive officer of the Transamerica Criterion Group, Inc., Houston-based investment managers for \$10 to \$11 billion in clients' funds. Miller, a tall man with a ruffled-looking face and modishly long, graying brown hair who was then vice-chairman of the Greater Houston Partnership, told me that when Whitmire asked him to serve, he "made it clear I was oriented towards toward the free market and less regulation."



Whitmire's frequent troubleshooter and dollar-a-year assistant, Alan Rudy, a real estate developer in private life, served as vice-chairman, and longtime Whitmire aide Jerry Wood was chief of staff – two indications of the extreme importance the mayor attached to the issue. Members of the developer-oriented group included Friendswood Development chairman John Walsh, Mischer Corporation senior vice-president James C. Box, Weingarten Realty's Stanford Alexander, real estate man Julio S. Laguarda, developer Edmund D. Wulfe, architect W. O. Neuhaus III, and, as a token zoning advocate, city planning commission member Kay Crooker, founder of the Houston Homeowners Association and wife of a retired senior partner at the law firm of Fulbright & Jaworski.

Whatever the mayor's preconceptions at the outset, it was clear to Rudy, at least, that Houston's psyche was changing. The previous year at lunch with "friends of mine who are household names in Houston's development community," Rudy says, he had taken an informal poll: a third of his elite sample favored zoning, a third opposed it, and a third were neutral. This was, he says, a watershed event. "In 1981-82," he asserts, "it would have been one hundred percent against." Then, as LUSC began its work, Rudy was even more surprised to find himself getting "calls from a number of other prominent real estate types, each of whom said, more or less, 'I'm probably alone among my peers, but I think maybe it's time for zoning.'" He adds, "I got a lot of those." Naturally, Rudy acknowledges, he communicated his view of the changing political realities to Mayor Whitmire.

Before she formed LUSC, the mayor had already contracted with the American Institute of Architects for the services of a Regional and Urban Design Assistance Team (R/UDAT), a flying squad of out-of-town planners and architects who descend on a city to offer analysis and recommendations.

The neighborhood insurgents made a strategic decision to bombard all of the groups addressing land use with the unpleasant evidence of what the absence of zoning had meant to Houston neighborhoods, and to prove conclusively that deed restrictions were an inadequate tool for protecting subdivisions. At appropriate hearings of Greenwood's task force, R/UDAT, and LUSC, prozoning forces turned out heavily. Explained Rosie Walker, "Whenever a hearing was scheduled . . . we would orchestrate a team of twelve or fourteen people representing different neighborhoods and housing stock



of different eras" to illustrate the difficulties and limitations of deed restrictions as a way to protect subdivisions.

Houston Homeowners Association president Gail Williford "would call and say, 'You got your bag of deed restrictions ready?'" Walker remembers. "My presentation included a shopping bag full of deed restrictions from Woodland Heights subdivision. It had taken two or three years of hard work to get them reinstated, and before the ink was even dry they were under attack by someone who bought a piece of deed-restricted property they wanted to opt out."

Another element of the horror show was contributed by John King III, president of the Eastwood Civic Association, who told about attempting to rid his 1920s era neighborhood near downtown of violent cantinas by taking a busload of neighborhood residents to a hearing of the legislative committee regulating the Texas Alcoholic Beverages Commission – only to be rebuffed by "a state representative from East Measles." As King told the story, the

Above:

John Mixon, UH law professor and early zoning advocate whose public lectures on the ABCs of zoning helped to educate the public on the role of zoning.

representative complained: "Why don't you guys from Houston solve your own problems – why do you always come up here to Austin with these kinds of issues?" Similarly, Bernie Middleton of Riverside Terrace, an affluent, mostly black neighborhood, described the problems that had arisen there with boisterous University of Houston fraternity houses.

Law professor John Mixon listed reasons why deed restrictions didn't work: they did nothing about uses across the street from restricted areas; they were prohibitively expensive for poorer neighborhoods to enforce; until early 1990, the city devoted only one attorney and one paralegal to deed restriction enforcement, therefore getting the city involved in prosecuting a deed restriction violation was difficult; and 40 percent of residential neighborhoods did not even have deed restrictions. Civic club members explained that deed restriction lawsuits took an average of seven years in court to adjudicate and on average cost each civic club at least \$10,000. Sometimes those defending their property values were countersued by offending businesses for slander or loss of livelihood. Walker says committee members would virtually "fall over in their chairs when one of these young, articulate, polite homeowners would explain that 'I was trying to defend the residential integrity of my neighborhood and I got sued for more money than I'll ever have in my life.'"

After LUSC heard from the embattled neighborhoods and its members toured some of them by bus, "everybody felt [zoning] was an inevitability," asserts the Mischer Corporation's Jim Box. Although LUSC chairman Charles Miller lives in a downtown apartment and walks to work, Box says most of the other committee members live in master-planned communities or in zoned enclaves like the Memorial villages and were genuinely shocked to discover "first hand the effect of commercial encroachment" and other problems faced by Houston neighborhoods. "That had a major impact," Box admits. Even the R/UDAT final report, which infuriated partisans such as Mixon by barely mentioning the word zoning, stressed the crisis in Houston's residential neighborhoods and, Box says, acknowledged the need for some sort of land-use controls. As Box, speaking for fellow developers, remembered it, "Everybody just saw the handwriting on the wall – it was time to work toward developing an ordinance that will accomplish what needed to be accomplished without putting us all out of business."

Below:
Medical Center Hilton looms
over the residential neighborhood
Southgate.

By force of personality, Miller – who continues to observe that “zoning takes away property rights” and that “every other big city in the country is zoned and every one has declining-value neighborhoods” – put his free-market stamp on the LUSC final report. Delivered to the mayor on Halloween 1990, it cautiously concluded that although Houston might need some added planning tools and controls, “traditional zoning” was definitely not among them.

Meanwhile, Greenwood – who had attended most of LUSC’s sessions – already had persuaded city council to set aside \$720,000 for “neighborhood land-use planning” and another \$230,000 for beefed-up enforcement of deed restrictions. Either LUSC’s approach or that of Greenwood’s task force, he argued, would require funding. As each of his sub-committees – Goals, Education, and Community Participation; Comprehensive Planning and Urban Design; Research and Drafting; and Staff and Budget – issued its report between August and November, Greenwood circulated copies to fellow council members and to many others, including the members of LUSC. From August to October, the neighborhood activists – Brandy Wolf, Gail Williford, Kay Crooker, and others – began to mobilize their associates in civic clubs to pepper council members with resolutions, letters, phone calls, and other indications of support for zoning. A flood of such sentiment reached each council member. Late in October, members of the civic clubs also began asking the city secretary to put them on the agenda to speak to the council about the subject.

Around this time, Greenwood says, LUSC member Bill Neuhaus and his fellow architect Frank S. Kelly came calling to say the local AIA chapter, of which Kelly was then president, would oppose the zoning ordinance “because they thought we were putting too much importance on zoning and not enough on planning.” After a heated 45-minute discussion, Greenwood says, the pair “agreed to take another look at their position.” He concedes, “They had a misperception of what the ordinance called for because I had not kept them informed.” Ultimately the AIA backed the ordinance, after securing a change in language to stress the ideas that comprehensive planning was the foundation of the ordinance and zoning a tool to support planning. Finally, in mid-November, Greenwood passed out copies of a proposed zoning ordinance to the council members and announced that he would put the matter on the agenda on 5 December (later postponed to 12 December). As the vote approached, the mayor

asked for a 60-day delay. Greenwood knew the momentum was with him but says he “began to get paranoid and saw all the terrible, terrible things that could happen in sixty days.” He began instead to line up support for a four-week postponement. This won overwhelming support despite Whitmire’s strong advocacy of the longer hiatus.

The next week, the councilman and his conferees began to negotiate with Alan Rudy, whom the mayor had asked to represent her in dealing with Greenwood. As Rudy saw it (and members of Greenwood’s task force agree), “The ordinance Jim constructed pretty much assumed we would have traditional zoning in Houston.” Rudy also thought the deadlines the Greenwood ordinance called for seemed unreasonable. To Rudy, who said he spent 40 hours in December and January working on the issue, the point was to provide “maximum protection for neighborhoods and maximum freedom for developers large and small, including the guy who wants to expand his store and the one who wants to remodel his house.”

For Rudy and the mayor there were two critical issues, Rudy says. First, the ordinance called for creating five-member neighborhood advisory councils, which had veto power over nonconforming uses and could be overruled only by a three-fourths vote of the planning and zoning commission. While Whitmire was “prepared to accept that,” Rudy says, she badly wanted to name the members of the advisory councils. Brandy Wolf and Gail Williford, negotiating on behalf of neighborhoods, agreed to give the mayor that power – a concession that Rudy calls “the linchpin [that] allowed everything else to take place.” The other crucial point – discussed at length, Rudy says – was a compromise establishing that single-family neighborhoods would be “sort of dominated by traditional zoning” while other parts of the city would be regulated by performance standards such as those articulated in the development ordinance and off-street parking ordinances. The ordinance was to be simple – there would be just five zoning categories, including residential neighborhoods. Everybody put a high priority on keeping bureaucracy to a minimum.

Over the Christmas holidays, the Greater Houston Partnership held three meetings on the subject; Greenwood attended two. He also met with the Mischer Corporation’s Jim Box and the board of the anti-zoning Houston Apartment Association.

The pivotal meeting, an eight-hour marathon, took place on New Year’s Eve in Rudy’s conference room at 12 Greenway Plaza. Mayor Whitmire attended most of that session, as did Al Haines, the city’s chief administrative officer. Says Greenwood, “The main thing that was added in that session was the neighborhood protection team, which amounted to a beefed-up attempt to support ordinances already on the books” – a key proposal of LUSC. A three-year phase-in period for zoning also was agreed on.

Greenwood and Whitmire met again 4 January, and the next day, at a city hall press conference, Whitmire endorsed “Houston-style zoning.” Though already telegraphed to insiders, it was a historic reversal for Whitmire and Houston – akin to Franklin D. Roosevelt’s inauguration of Social Security in the 1930s, when FDR

co-opted the “old age pension” scheme championed by Louisiana senator and likely FDR challenger Huey P. Long.

In this case, however, Greenwood helped Whitmire steal his thunder. By agreeing to a four-week delay, he says, “I kept the train at the station long enough for her to get on.” In fact, to extend Greenwood’s metaphor, he allowed her to scamper into the engine car and join him at the throttle and brakes. By enabling the mayor to advocate a minimalist form of zoning gracefully, Greenwood got more or less what he had been seeking. But he gave up his chance to run for mayor as the avatar of a zoning movement that by now had acquired some of the characteristics of a religious crusade.

In politics, however, timing is everything. The pro-zoning momentum was at flood tide. And if the council was to institute zoning in strong-mayor Houston, Greenwood knew, “it was essential the mayor of Houston be on board.” After all, he or she would decide whether and how to spend the money to enforce it, and she would hire the new director of planning and zoning. And so, finally, on 11 January 1991 – “a date that will live in infamy,” Greenwood chuckles – Houston’s city council created a planning and zoning commission authorized under Chapter 211 of the Texas Municipal Code. Timetables aside, what Houston-style zoning will actually look like and what it will mean remain cloudy even to those who have been drafting proposals. What happens next depends largely on the mayor elected in November, on Houston’s developers – and on the movement that prodded the change. ■



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1 Kaplan, Barry J. “Urban Development, Economic Growth, and Personal Liberty: The Rhetoric of the Houston Anti-Zoning Movements, 1947-1962.” *Southwestern Historical Quarterly* 84 (1980), pp. 133-34.

2 Berkeley: IGS Press, 1991.