

Government Versus Freedom

By Warren S. Ross and J. Brian Phillips

This pamphlet was written in the aftermath of the zoning debate that took place in Houston in the early 1990's. The ideas remain relevant today. This pamphlet may be reproduced in its entirety, but may not be modified.

Over the past fifteen years, Houstonians have witnessed nearly constant attempts to place controls on the use of private property. These efforts have taken many forms -- restrictions on billboards, prohibitions on indoor smoking, the landscaping ordinance, and zoning, to name a few -- and have been led by many different people.

Each of these efforts has been presented as a benevolent means of improving our city. We have been told that our "quality of life" will improve, that our neighborhoods will be protected, that our economy will benefit, that people will be "empowered".

Considered out of context, some of these goals may be desirable. But we cannot consider goals out of context-- we must also consider the cost and the means of obtaining those goals. We must ask whose idea of "quality" will serve as the standard, and what does "empowerment" mean. And will the means advocated attain the desired ends?

As we will see, these movements are united by more than just the desire to place controls on property use. They are based on common principles, principles which are ultimately destructive to all Houstonians.

The Right to Property

A right is a moral principle which defines and sanctions an individual's freedom of action in a social setting.

Rights place boundaries on the actions of others, thereby allowing an individual to act without interference from others. The mutual rights of others prevent him from interfering with their actions.

It is important to understand that rights pertain only to freedom of action. They do not guarantee that one's actions will be successful, nor do they grant one a claim to the results of others actions. Such a claim would in fact violate the rights of those forced to provide those results, and thus negate all rights. Consequently, there is no such thing as the "right" to an education, or health care, or haircuts. There is only the right to be free to earn such values.

(In this regard, consider the precision of the language of the Declaration of Independence. That document states that we have the right to the pursuit of happiness, not a guarantee to happiness, nor a right to demand that others make us happy. The Declaration states that we have the right to be free to act.)

The right to property is the right to earn, use, and dispose of material values. In logic, the right to use and dispose of property, e.g., land, means that the owner may use that property as he chooses, free from the dictates of his neighbors or the government. Ownership means control. However, as with all rights, he may not use his property to violate the mutual rights of others.

To "violate the rights of others" does not mean using your property in a manner which others find objectionable. If such were the case, anyone could claim that he finds your use of your property to be objectionable, and hence, are violating his rights. In such an atmosphere, virtually every Houstonian could make a claim against every other Houstonian. The result would be chaos and the destruction of all rights.

The only way to objectively violate another's rights is through the use of physical force against him and/ or his property. It is only through physical force, e.g., murder, kidnapping, or robbery, that an individual can be deprived of his life, his freedom, or his property, or be compelled to act (or not act) in a particular manner.

In a civilized society, the initiation of force is prohibited. In such a society, individuals are permitted to pursue their values, but may not impose those values upon others. All relationships (both personal and economic) are based on the voluntary consent of every individual involved.

(Retaliatory force, such as arresting suspected criminals, or imprisoning convicted murderers, kidnappers, and thieves, is proper. But such force is properly used only in retaliation, and only against those who initiate its use. Furthermore, law enforcement officials cannot arrest individuals merely on suspicion, but must have evidence to support such suspicion and must act in accordance with objectively defined rules.)

If you send poisonous fumes into your neighbor's back yard, you have violated his rights. If you conduct target practice in a residential neighborhood, you have violated your neighbor's rights. If you keep your neighbor awake by playing loud music all night, you have violated his rights. In each case, you have imposed physical harm (or a very real, and objective threat thereof) upon others.

However, if you open a commercial establishment, or plant certain kinds of trees (or none whatsoever), or erect gargoyle adorned columns in front of your house, you have not violated your neighbor's rights. It does not matter how psychologically offensive he may find such actions, physical harm has not been forced upon him.

An individual's rights do not preclude him from voluntarily agreeing to limit his actions. For example, employers generally establish certain conditions of employment, such as the hours one will work, the type of attire which is acceptable, passing a physical, etc.

In land use, individuals often find it beneficial to agree to certain restrictions on the use of their property. The most common means of doing this is through deed restrictions. Such restrictions are voluntary and contractual, i.e., they are a condition of purchasing a property. The popularity of deed restrictions demonstrates that individuals can work together voluntarily and cooperatively to accomplish mutually beneficial goals, while recognizing and respecting the rights of each individual.

Attacks on Property Rights

In 1980 City Council passed an ordinance which, among other things, limited the size and location of outdoor signs and billboards.

Advocates of the ordinance referred to Houston's abundant sign population as "visual pollution" ¹ and "a plague" ², thereby implying that the existence of these signs is a threat to one's health. Such an argument is clearly absurd-- Houston's medical facilities have yet to report a single case of billboard related illness or death.

The purpose of the ordinance was to reduce the number of-- and eventually eliminate-- billboards in Houston. The justification was not that the billboards violated anyone's rights, but that billboards "clutter" the landscape, i.e., they are "unpleasant" to look at.

In other words, some Houstonians, as well as a majority of City Council members, found billboards objectionable, and passed a law aimed at their abolition. Which means, the city initiated force against the owners of those signs, as well as the owners of the property upon which they are erected. Rather than protect the rights of its citizens, the city became a violator of those rights.

It should be noted that those who find billboards objectionable have legitimate means for implementing their values without infringing on the rights of others. For example, such individuals can choose a route for their travels which does not include billboards (such as the beltway); they can live in a planned community in which billboards are prohibited; or they can purchase the billboards from their owners and tear them down.

In the early 1990's City Council passed an ordinance which requires developers to plant a specific number and type of shrubs and trees in their projects. The purpose of the ordinance was to promote a better "quality of life". The justification was not that developers had violated anyone's rights by planting Chinese tallows, but that some Houstonians regarded such trees as "trash".³

In other words, some Houstonians, as well as the majority of City Council, found certain kinds of plants objectionable, and passed a law to compel developers to plant different species. Again, the city initiated force against its citizens.

More recently, City Council has debated an ordinance which would place restrictions on "historic buildings". The purpose of this law is to prohibit the demolition of older buildings. The justification for this ordinance was not that the owners of such buildings were violating the rights of any one, but the protection of our heritage.

The most controversial aspect of the proposed ordinance was not the fact that the city intended to violate the rights of property owners, but that the owners would have an opportunity to "opt out" of the "historic" designation. In other words, the controversy was not the violation of rights, but the fact that property owners would retain some control over their property.

Each of these ordinances is intended to place restrictions on the use of private property, either through proscription or through prescription. And each of these ordinances is intended to promote some "public good", such as a better "quality of life", or protect our "heritage", etc. (The same holds true of many other ordinances not addressed here, such as the sexually-oriented business ordinances and smoking ordinances). These similarities in practice are the result of the similarities in theory, i.e., the principles which underlie each of these assaults on property rights.

Underlying each of these ordinances are two principles -- collectivism and sacrifice.

The proponents of each of these ordinances argued that the welfare of some group, such as the city or the community or our neighborhoods, required the proposed restrictions on the rights of individuals. In other words, the welfare of the group superseded the welfare of any individual. This is the doctrine of collectivism-- individuals are to be subservient to the group.

In practice, this means that the individual may act, not by right, but with the permission of the group. It means that he may use his property only in accordance with the dictates of the group. And since the concept "group" really means just a collection of individuals, subservience to the dictates of the group really means that some individuals may violate the rights of other individuals. To accomplish this, they need only assemble enough like-minded people who are willing to violate the rights of others and convince city officials to enact the appropriate laws.

While many may respond that this is the democratic way, it should be noted that our Founding Fathers did not establish a democracy, but rather a constitutional republic. The American Constitution restricts the powers of government, including the powers of any majority which happens to control the government, not the actions of individuals.

A literal democracy means unlimited majority rule-- that the majority may do as it pleases because it is the majority. In a democracy, individual rights are in principle as non-existent as in a dictatorship. Remember that Socrates was put to death at the hands of the majority of the citizens of ancient Athens, and Adolf Hitler came to power in a democratic Germany.

Morally, collectivism holds that the individual must place the welfare of others above his own. Each of us must do his "fair share" for the "common good". Those who refuse to do so "voluntarily" are regarded as "selfish", "rugged individualists", etc. and may properly be forced to sacrifice their values.

These two principles-- collectivism and sacrifice-- serve as the justification for all of the attacks on property rights, past, present, and future. The particular form and emphasis of the arguments may change, but the principles which underlie them do not.

The same holds true of the most comprehensive attack on property rights-- zoning.

The Nature of Zoning

The purpose of zoning, and its sole reason for existing, is to give government control over the use of all land within the community. While the rightful owner remains responsible for that property, the government will determine how that property is used. Under zoning, individuals may use their property only for the purpose dictated by law, and violators are subject to fines and/ or imprisonment.

Under zoning, a property owner may use his property, not by right, but by permission. Yet ownership without con-

trol is a fraud. Under zoning, land ownership is nothing more than nominal ownership.

Zoning officials may zone a parcel of land for any purpose they choose-- industrial, retail, residential, etc., using criteria they establish and may change at any time. Or they may prohibit any land use whatsoever in a given area.

Zoning officials may attach any conditions they choose to a building permit. A builder might be required to install "public art", or "donate" land to the government, or repair city facilities. A builder might be required to "contribute" money to an official's favorite social cause.

Zoning officials not only have the power to zone an area for a particular use, such as single-family homes, they also have the power to define what constitutes that use, such as defining the term "family" to exclude students, gays, minorities, or other "undesirable" people.

Zoning officials thus have complete reign over every aspect of land use. They may impose their interpretation of what is right and proper upon the individuals in a community, whether or not those individuals share the values thus coercively imposed.

By imposing "community standards" upon individuals, zoning forces individuals to sacrifice their values to the group. Zoning is thus an assault on the freedom of every productive citizen. It limits one's choices as both an employee/ businessman, and as a consumer. This remains true regardless of the adjectives placed before zoning, e.g., "Houston-style" zoning, and neighborhood zoning. While the details of implementation may differ, the principles underlying these variations do not.

Undefined Bromides

During the debate over zoning in the early 1990's, and in the time since the referendum in 1993, zoning proponents have made many claims about zoning. They have claimed that zoning will "empower the people", that it will be founded on a consensus. They have claimed that we will avoid the corruption and divisiveness experienced in other cities with a "unique, Houston-style" form of zoning, that zoning will improve our "quality of life".

In cities with zoning, in an attempt to be "democratic", zoning officials regularly hold hearings for citizens to express their views regarding land use. These hearings become a magnet for special interest groups eager to push their own particular cause. The result is a steady parade of noisy gangs, each declaring that it represents "the public" and demanding that its views be implemented. One might insist on Spanish architecture, while another wants to limit the size of buildings. One might want more park space, while another wants the project canceled entirely. While each group differs on what or how they wish to control the use of another's property, they agree that they should have a voice in how that property is used.

But we do not need to rely solely on the experiences of other cities to see what occurs under zoning.

During the debate over zoning, Houston's city officials held dozens of hearings to solicit input from citizens. They sought to be "democratic", to develop a consensus-- i.e., "common vision"-- as the zoning maps were developed. However, as the details of those maps became known, residents and business owners in Southgate, Afton Oaks, Montrose, and other neighborhoods routinely made headlines as they protested zoning designations.

While zoning advocates promised a consensus, what resulted was the divisiveness inherent in zoning. Neighbors fought neighbors over the use of land which neither, or only one, owned. This is what "empowering the people" means: It grants non-owners of a parcel of property a voice in its use. At the same time, the rightful owner is a hostage to the demands, desires, and decisions of others. He is forced to conform to the demands of the group; he is forced to sacrifice his values to others.

Further, on three separate occasions voters have rejected zoning. Yet, zoning proponents refuse to accept these results, each time returning with a new proposal to violate property rights. If zoning advocates truly wish to empower the people, why do they continue to refuse to accept the outcome of the electoral process?

True empowerment comes from freedom, not political influence. True empowerment comes from the right to pursue one's own values, not the power to impose those values upon others.

Zoning advocates have claimed that zoning will improve our "quality of life", but they have not told us what they mean by that term. They assume that we know, and agree to, its meaning.

"Quality of life" is a matter of individual values. Each of us has different goals and different aspirations, we seek different things in life. Some Houstonians prefer a picnic in the park; others prefer dining in elegant restaurants. Some Houstonians enjoy attending movies; others enjoy shopping. These preferences are based on an individual's values.

Similarly, in land use, our individual values determine the type of use we choose for our property, the style of architecture, etc. Under zoning, an individual's values are to be subservient to the group. Under zoning, individuals are no longer permitted to make such decisions, but are forced to obey the demands of the group.

Under zoning, all individuals are compelled to accept the "quality of life" dictated by zoning officials.

If city officials are truly concerned about improving our quality of life, they should be protecting our freedom, i.e., our property rights. They should allow the free market to raise the standard of living, by removing the arbitrary restrictions of land use controls. The result will be greater variety and lower costs in housing.

Zoning advocates have argued that Houston's neighborhoods are in danger, that a lack of zoning will result in "unstable" land uses. But they have not told us whose view of stability will prevail. Nor have they explained why the desires of the non-owners of property should take precedence over the desires of the property's owner.

Zoning advocates have argued that the actions of one property owner often have an adverse affect on neighboring property owners. Zoning will help to bring stability to land use. It should be remembered that the purchase of property, including a home, is at least partially an investment.

As with all investments, the actions of others can have an effect on the value of that investment, for better or for worse. Anyone who has tried to sell a house near neighbors with trashy front yards or unconventional paint colors knows the effect it has on his investment. While it is natural that people want to protect their investment, a civilized person will do so by agreement and contract. An uncivilized person, who does not care about the difference between persuasion and coercion, might try to do so by force or government regulation. Those who seek to use zoning to protect the values of their investment are seeking to gain economic security in exchange for economic liberty, which will ultimately result in neither.

Lies, Misrepresentations, and Scare Tactics

In the months since the November 1993 zoning referendum, zoning advocates have launched a number of accusations against their opponents. Zoning opponents, pro-zoners said, were dishonest and unprincipled.

They resorted to lies, misrepresentations and scare tactics to win the election. They bought votes with advertising.

First, it should be noted that zoning opponents are not monolithic. For example, one organization argued that "Zoning without a plan is worse than no zoning at all." This group argued for even more comprehensive government regulation than the proposed ordinance called for and therefore rejects everything we stand for. We regard such organizations as opponents on the issue of property rights. Consequently, zoning advocates cannot paint their opponents with a wide brush. While we agree that zoning is economically impractical, as many other zoning opponents have argued, we oppose zoning primarily on moral grounds.

When zoning opponents claimed that zoning could be used to segregate minorities and other "undesirables", zoning proponents cried foul. Yet, in Mt. Laurel, New Jersey, zoning was systematically used during the late 1970s and early 1980s to drive the town's small black population out of the community.

National surveys regularly find that housing in Houston is among the nation's most affordable. While many factors

influence the cost of housing, one of the most significant is zoning. In the early 1980's, the Department of Housing and Urban Development studied the costs zoning and building codes impose on housing. The survey involved development projects in three locales: Shreveport, LA; Hayward, CA; and Allegheny County, PA.

The findings were dramatic. In Shreveport, government regulations accounted for 21% of the project cost. In Allegheny County, an additional 24% was added, and in Hayward, the cost increased 33%. The survey found that the primary reason for the additional costs were delays imposed by the various approval processes required by law.

These approval processes require developers to seek government permission to begin a project. Which means, before an individual may use his property as he chooses, he must secure the approval of government bureaucrats.

Under zoning, the developer has no option but to patiently seek the zoning officials' approval and meet their conditions. These conditions can range from playgrounds to senior citizen centers to "public art". The costs incurred by the developer-- such as maintaining equipment and inventory, servicing the debt on undeveloped land, legal and permit fees, and the costs associated with the zoning officials' conditions-- are ultimately passed on to consumers.

The government study cited above is not the only evidence that zoning increases the cost of housing. Phil Rafton, a developer in Southern California, estimates that he could reduce costs by 30% without zoning. Former HUD Secretary Jack Kemp regularly used a flow chart to show how regulations add \$40,000 to the cost of a new home in Orange County, California.

An article in the May 9, 1989 issue of *The Wall Street Journal* addressed the issue of high housing costs. Less regulation, the article stated, leads to lower housing costs. In North Carolina, for example, a developer can build a 4-bedroom house for \$95,000 after a 3 to 4 month approval process. In New Jersey, the same home would cost \$230,000 and be delayed by an average of 3 years. While other factors contribute to the higher costs in New Jersey, the bureaucratic delays and regulatory requirements are a major reason for the dramatic difference.

The costs of zoning are not always computable in dollars and cents. In 1983 a New Jersey developer began planning a 3,300 unit condominium. The units would sell for \$130,000, a price which 35% of the area's families could afford. Bureaucratic barriers delayed the project for six years, increasing the price to \$240,000 per unit, a price which only 18% of families could afford. Which means, government regulations virtually halved the affordability of this housing.

By imposing additional costs on developers (and hence consumers), zoning makes housing less affordable. Those most affected by this reduced affordability are the poor, the middle-class, and first-time buyers. Unfortunately, these individuals seldom realize that zoning is the reason they cannot afford to purchase a home. They are the hidden and voiceless victims of zoning.

Higher housing costs are not limited to single-family homes. The above example shows that zoning also increases the cost of condominiums. Zoning has the same affects on apartment complexes.

Bureaucratic delays, legal and permit fees, "impact fees", etc. increase the costs of developing apartment projects. These costs must eventually be passed on to consumers in the form of higher rents.

Zoning is frequently used to limit the density of apartment complexes. Reduced density means higher costs for the developer, as well as fewer apartments available for renters. We should note that at least one zoning advocate has suggested using zoning to restrict "development densities", i.e., to control the freedom of developers to build apartment complexes.

The burdens and costs associated with zoning and other regulations not only increase the cost of housing, but also discourage its creation. Investors often decline projects because of the costs--either real or potential-- they will have to accept.

It is neither a scare tactic nor a lie to take an individual's ideas seriously. The debate over zoning is a serious intellectual issue, which will impact the life of every Houstonian. We have demonstrated that zoning has a specific na-

ture, that specific principles underlie zoning. We have demonstrated that those principles logically lead to the use of governmental force to impose a community's values upon individuals. We have provided examples of these principles in action, in other cities and in Houston.

Zoning advocates have called such arguments and examples lies, misrepresentations, and scare tactics. They have refused to refute our arguments, but instead responded with angry, unsubstantiated assertions. When confronted with the problems zoning has caused in other cities, pro-zoners respond that those are other cities, and they don't have "Houston-style" zoning. In other words, those problems may be a result of zoning in Miami, Detroit, and Chicago, but that is Miami, Detroit, and Chicago. They don't have "Houston-style" zoning. In other words, zoning advocates believe that there are no principles which underlie zoning.

Any attempt to interject principles into the debate has been met with angry accusations. Zoning advocates believe that it is invalid to use examples from other cities, because Houston will have a "unique" form of zoning.

But there are principles which underlie zoning, and those principles can be used to predict the consequences of "Houston-style" zoning, "neighborhood" zoning, or any of the variations zoning advocates can concoct. Zoning, by its very nature, is a violation of property rights, and destructive to human welfare.

While zoning advocates have responded to principled arguments with accusations of lies and misrepresentations, they have engaged in their own misrepresentations.

Zoning proponents would have us believe that opening a business near a residential area violates the property rights of the residents. They would have us believe that "trash trees" violate the rights of nearby residents. As we have argued, this is false. Zoning advocates are using such alleged rights violations to justify their own proposal to violate property rights-- not on a neighbor-to-neighbor basis, but on a massive city-wide scale. They are proposing to bring harassment to new levels by institutionalizing it in the form of zoning.

To understand this, consider the following quote from a handout from Jim Greenwood's Ad Hoc Task Force on Planning and Zoning titled "Proposed Goals for Planning and Zoning Houston": "Planning and zoning should allow landowners the opportunity to use their land as desired, but with consideration for its impact on the value and quality of life of neighboring areas and the City's comprehensive plan."

Which means, when an individual's desired land use differs from the City's plan, or that land use is determined to have a negative impact (whether real or imagined) on neighboring areas, the individual's desires are to be ignored. Which means, an individual may not in fact, use his land as he desires-- land will be used as the City desires.

Consequently, to claim that zoning permits property owners to use their property as they desire, is not only incorrect, but actually the exact opposite of the truth.

Herman Lauhoff, in an OpEd article in *The Houston Post* in November 1994, wrote that anti-zoners outspent zoning proponents in the November 1993 referendum by 3-to-1. Similar claims had been made previously by zoning advocate Brandy Wolf, in an editorial in *The Houston Post*, by Post columnist Tom Kennedy, by Chronicle columnist Lori Rodriguez, and others.

Each of these individuals has conveniently ignored the tens of thousands of dollars spent by the city to conduct zoning hearings and workshops, to print literature, to draw zoning maps, etc. The budget for the Planning and Zoning Commission in 1992 alone was over \$6 million.

City officials were not neutral on the issue of zoning-- they overwhelmingly favored it. Their efforts to "educate" the public were entirely one-sided. Which means, every dollar spent by the city was in effect a dollar spent in favor of zoning. Furthermore, the money spent by the city came from the taxes of all Houstonians, including those who were opposed to zoning and those indifferent on the subject.

The fact is, the approximately \$500,000 which *The Houston Post* reported spent by zoning opponents in the 1993 campaign pales in comparison to the money spent by zoning advocates. The actual amount is impossible to deter-

mine because the entire process was woven into the fabric of government. Zoning advocates refuse to acknowledge that much of the money used to support their cause came from those who oppose it, while zoning opponents were required to raise all of their funds through voluntary contributions.

If zoning advocates are so principled to decry "lying and scare tactics," they should have the integrity to pay for their own campaigns. Instead, they have forced voters to provide financial support, voters who have consistently rejected them.

Furthermore, the entire discussion of how much money was spent to oppose zoning is based on the false premise that spending money to defend one's rights is immoral. Those who are the victims and potential victims of government regulations have every right, in fact a moral obligation, to defend their values with whatever means they have available. What is immoral is not that they spend that money, but that they are required to do so to protect their freedom. Consequently, such individuals are financially victimized even before zoning is enacted (not only by being required to spend money to defend their rights, but also by having their tax dollars used to support a policy they oppose). Such individuals have a moral right to demand compensation for every penny spent.

Zoning advocates would like us to ignore the horrors of zoning in other cities. They want to prevent principles from entering the debate. They want to ignore facts, while simultaneously calling their opponents dishonest. The truth is, by ignoring the principles which underlie zoning, its advocates have blinded themselves to the destructive consequences of the ideas which they advocate.

The Freedom to Choose

In contrast to the advocates of zoning, who hold that society may force its values upon individuals, we repudiate the initiation of force in human affairs. We assert that each individual is a sovereign entity, that each individual has a moral right to pursue his values without interference from others. Furthermore, we believe that government should ensure that each individual may peacefully pursue his values, no matter how unpopular they might be. The proper purpose of government is the protection of this right.

In a free-market, innovators and entrepreneurs have the freedom to offer new ideas and new products. And each individual has the freedom to choose which ideas and products he will support. So long as he recognizes and respects the mutual rights of others, each individual is permitted to pursue his values without interference.

Henry Ford, for example, was chastised for his horseless carriage. The free-market permitted Henry Ford to offer an unpopular product for sale. The free-market permitted individuals to voluntarily purchase that product. The free-market permits individuals to make choices for themselves, and prohibits them from forcing those choices onto others. The essence of the free-market is freedom of choice.

This is as true of land use as any other value. The free-market allows property owners to pursue their values in a voluntary, cooperative manner, yet also provides a means to ensure predictability in property use. That means is deed restrictions.

Deed restrictions are contractual agreements made between property owners restricting land to a particular use. Deed restrictions can restrict a piece of property to virtually any use: residential (multi- or single-family), retail, industrial, etc. Deed restrictions can also govern such features as the presence and dimensions of trees, fencing heights, or the color of a home. In most communities, an association made up of homeowners enforces the deed restrictions.

Many people see little difference between zoning and deed restrictions, between zoning officials and a homeowners' association. They do not understand that zoning is political and mandatory, while deed restrictions are contractual and based on free choice.

The homeowners in deed restricted communities a) have chosen where they will live based (partly) on whether the deed restrictions are acceptable to them; b) have been given the opportunity to read and consider the contractual restrictions they and their neighbors agree to; and c) may leave those communities (or exercise legal remedies) if the specific and very limited authority given the homeowners' association is abused. Because deed restrictions vary

across the city (and are non-existent in some areas), consumers are provided with an unlimited array of choices regarding the use of their land.

In contrast, the homeowners in a zoned municipality have no power to choose the conditions under which they will live, and have nowhere else to move if those conditions are unacceptable. In short, the difference between deed restrictions and zoning is the difference between voluntary choice and coercive imposition, between the private agreements of individuals and the dictates of public tribunals.

The advocates of zoning point to areas where land use has changed, and claim that this proves the ineffectiveness of deed restrictions. This claim is false, for deed restrictions allow homeowners to choose to change the land use if they desire (voting requirements vary). In some cases, property owners in a subdivision have exercised their right to change the land use. In other cases, deed restrictions were written poorly, so that it was too easy to change the land use. Homeowners who thought they contracted for a certain guarantee of protection discovered they were in error. However, the remedy here is to write more precise legal language into the deed restrictions. One of the requirements of responsible home purchasing is to ensure-- through legal advice if necessary-- that one's values are being upheld by the contracts one signs.

Another objection raised against deed restrictions is that they are costly to enforce. Occasionally, a homeowner will fight enforcement of deed restrictions by suing the homeowners' association. This is not an argument against deed restrictions per se, but an illustration of how frivolous lawsuits can undermine the enforcement of any contract. Such obstructive lawsuits are relatively rare in deed restriction enforcement. Proper responsibility to stop such attempts must continue to reside with the judiciary, which by and large acts on the principle that mere enforcement of a contract (with no auxiliary circumstances) cannot by itself constitute grounds for a civil suit.

To make this point clearer, consider the same argument from the context of a home mortgage, i.e., a contractual agreement between a borrower and a lender. If a lawsuit challenging the initial contract were filed, no one would claim that the cost of litigation invalidates all mortgages. Instead, we would focus on the faulty legal mechanisms which permit unscrupulous individuals to break long-term contracts.

What about those people who settle in communities without deed restrictions? That is their right and their choice. Those who did so mistakenly, and don't like the way their community has evolved, are free to learn from their errors and make a better choice in the future. Many people in Houston, it should be noted, choose to live in non-restricted communities because property values are lower, and hence houses are more affordable. They don't mind that a convenience store is near their house, because if it weren't they wouldn't have a house. This is an example of how the free market provides a wide variety of land uses, meeting the individual needs of everyone.

Master-planned communities, like The Woodlands or First Colony, are generally larger than the small subdivisions, and more restrictive in land use. They are also more comprehensive: The developer plans shopping areas, schools, streets, etc., usually along a common pattern or theme. Some people value this unity of design enough to pay the higher prices for land and community fees that exist in master-planned communities.

The advocates of zoning have told us that the popularity of master-planned communities attests to the fact that Houstonians want "planning", which they say means zoning²⁷. Again, we find that the zoning advocates are equating private choice with political coercion. Some Houstonians do want planning, and they have found a voluntary way to achieve it. We regard it as disingenuous on the part of zoning advocates to twist a practical free-market alternative into an argument for political intervention.

The advocates of zoning seek to posit themselves as the agents of the public, declaring that they will lead us to economic growth and a better "quality of life." But the truth is, developers-- who must meet the freely chosen demands of the marketplace-- are the true agents of the public. Throughout Houston's history such developers have fueled and kept pace with unparalleled economic growth, and improved the quality of life immeasurably.

The Challenge to Zoning Advocates

Zoning proponents have presented zoning as the solution to many of the "problems" confronting Houston. At a time when the nation, and indeed much of the world, is rejecting government programs as the solution, zoning ad-

vocates endorse a massive government program as the solution to problems both real and imagined.

For nearly 75 years, zoning proponents have predicted that Houston would decay into various forms of depravity without zoning. Yet, all of these predictions have proven false. This has not stopped the most recent crop of zoning advocates-- they have renewed these predictions while simultaneously ignoring the evidence which damns zoning.

Zoning advocates have made many claims about the "benefits" of zoning. Yet, they can provide no examples which substantiate their claims. They cannot point to a single municipality which does not experience higher housing costs, higher taxes, higher business costs, corruption, or other negative effects as a result of zoning. All they can offer is the promise that these things won't happen in Houston.

The challenge to zoning advocates is to prove why Houston will not suffer these same detrimental consequences. It is easy to make claims, it is another thing to prove them. It is easy to say that Houston is different from other cities, it is another thing to explain and prove why.

We agree that Houston is different from other cities, but for a reason entirely different than what zoning advocates would have us believe. We believe that the citizens of Houston have a respect for property rights, for the right to pursue values which may not be generally accepted, but which do not violate the rights of others. We believe that Houstonians value their freedom.

There is a fundamental difference between zoning advocates and our organization, not just in terms of property rights and land use controls, but also in regard to the value placed on individual human beings.

Where zoning advocates believe that individuals should be compelled to sacrifice their values to those of the community, the neighborhood, or some other collective, we believe that individuals should be free to pursue their own values without interference from others.

The debate over zoning is a debate about the future of Houston. It is a debate which must be taken seriously. It is a debate which cannot be conducted via unsubstantiated claims of cost-free benefits and ad hominem attacks on the opponents. It is a debate which must be conducted on the principles which underlie zoning, and its alternatives. A "debate" conducted on anything less is not a debate, but a negotiation of the details of the implementation of commonly accepted principles. There are no common principles between zoning and freedom.

If city officials and the media are concerned about a principled debate over this issue, then let them open their forums to the principled opponents of zoning. Let them refrain from ad hominem smears and address the principles which underlie zoning.

The challenge to the advocates of zoning is to explain why Houstonians should willingly sacrifice their property rights. The challenge to the advocates of zoning is to explain why Houstonians should reject the principles of the United States Constitution. The challenge to the advocates of zoning is to justify the use of force to compel Houstonians to accept and live by their vision of proper land use.

The citizens of Houston await their response.

References

1. George F. Pierce Jr., *Houston Chronicle*, "Viewpoints," 22 January 1991, p11B.
2. Peter Brown, *The Houston Post*, "Billboards still a scourge on Houston," 9 October 1988, pE3.
3. David Ellison, *The Houston Post*, "Concerns sprout over landscape ordinance," 9 October 1990, pA19.
4. Julie Mason, *Houston Chronicle*, "Waiting periods urged for historic sites," 12 November 1994, pA29.
5. For an examination of these principles in regard to another City ordinance, see J. Brian Phillips, *Houston Chronicle*, "City can't eliminate gangs by behaving like one," 21 July 1994, pB19.
6. See the ordinance passed by City Council in 1993.
7. Gary Hull, *The Intellectual Activist*, "The Collapse of Building," 17 November 1989, p3.
8. Gary Hull, *ibid*, p5.
9. For example, see Jim Greenwood quoted in *The Houston Post*, "Zoning 101: A guide for Voters," 29 October 1993, pA39.
10. David Plesa, *The Houston Post*, "New zoning plan could take effect by mid-1992," 5 January 1991, pA1.93, pA39.
11. For example, see Jim Greenwood quoted in *The Houston Post*, "Zoning 101: A guide for Voters," 29 October 1993, pA39.
12. For example, see Karen Weintraub, *The Houston Post*, "Bar owners oppose some zoning rules," 6 January 1993, pA11. See also Karen Weintraub, *The Houston Post*, "Zoning plan already has battle lines," 25 October 1993, pA35.
13. For an examination of the housing market in Houston during the 1970s and early 1980s, see "Houston's Laissez-Faire Housing Policy," by J. Brian Phillips in *The Freeman*, June 1987.
14. Edward Kopinitz, *Houston Chronicle*, "Defeat of city zoning ordinance solves nothing," 12 November 1993, pA33. See also Lori Rodriguez, *Houston Chronicle*, "Can we live with the zoning vote?," 6 November 1993, pA33.
15. This was a popular slogan for Citizens for a Better Houston.
16. William Tucker, *Reason*, "Zoned Out," May 1990, pp31-2.
17. Ralph Bivins, *Houston Chronicle*, "Houston's bargain homes," 29 January 1995, pE1.
18. Gary Hull, *ibid*, p3.
19. Gary Hull, *ibid*, p3.
20. Herman Lauhoff, *The Houston Post*, "Majority of Houstonians not afraid of zoning laws", 3 March 1990, pA33.
21. Herman Lauhoff, *The Houston Post*, "City can't stand harm that lack of comprehensive zoning causes," 6 November 1994.
22. Karen Weintraub, *The Houston Post*, "Zoning goes down for 3rd time," 3 November 1993, pA1.
23. "Twilight for Zoning," *The Houston Post*, November 3, 1993, p26A.
24. Tom Kennedy, *The Houston Post*, "You go for lies? I got some here," 7 November 1993.
25. Lori Rodriguez, *Houston Chronicle*, "Can we live with the zoning vote?," 6 November 1993, pA33.
26. Karen Weintraub, *The Houston Post*, "Zoning opponents outspend backers by 4-to-1," 26 October 1993, pA9.
27. For example, see Tom Kennedy, *The Houston Post*, "Zoning looks more palatable," 29 January 1990, pA15.