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JOHN OVERMYER

May troubled tower bring city a tool kit

■ Ashby high-rise dust-up points out need for innovative regulation

By JAMES D. HILL

IF two wrongs don't make a right, then one should not respond to an absurdity with another absurdity. Yet, this is exactly how the city of Houston is responding to the public outcry against the proposed Ashby high-rise. The public, in this case, consists almost entirely of people living within a few hundred yards of the site.

The proposed building is clearly out of scale and incompatible with the surrounding neighborhood. But the truth is, it satisfies all of Houston's ex-

isting development regulations. By focusing on traffic impact as the deal breaker, the city is invoking the untenable principle that it is the straw that breaks the camel's back that should bear all of the costs. Also, this approach tries to divert attention away from the proposed building itself, thereby assiduously avoiding the third rail of Houston politics: zoning.

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In a city that faces unprecedented growth and development pressure, our lack of comprehensive development regulations is now impossible to ignore, and can no longer be addressed by reactive, emergency measures designed to repair the odd loophole that comes to light every now and then.

First, we should clarify our terminology: While it is correct to say that Houston has no zoning, this does not mean that we have no land development regulation whatsoever. Most zoned cities have a book of development regulations in which zoning is simply one chapter. Houston, while lacking this chapter, has all of the others, regulating such aspects of development as subdivisions, off-street parking, landscaping, signage, historic preservation (sort of) and flood control.

And, since we do not regulate land use in any comprehensive manner, we have over the years amassed a patchwork of ordinances that deal with specific uses such as slaughterhouses, alcoholic beverage sales, communication antennas, sexually oriented businesses and bungee towers. (This last was the result of another emergency. Back when bungee jumping was the emerging craze, one of our entrepreneurial spirits proposed to open such a facility near the intersection of Loop 610 West and the Southwest Freeway, in full view of the approximately half million cars per day that traverse this interchange, one of the busiest in the country. In this case, the offending structure had actually been built [well, it was basically a modified tower crane.] Days from opening, it was stopped in its tracks by another reactive ordinance.)

TOWER: For a system of regulations

I am no fan of conventional zoning ordinances. First enacted in the early 20th century, they are a comparatively recent addition to the history of urban development and are proving to be a heavy-handed and cumbersome method of addressing land-use allocation. Their primary means of resolving conflicts between incompatible uses is to segregate differing uses into separate districts.

Thus, the typical zoned city is characterized by monoculture subdivisions of single-family homes, business districts that are desolate after hours and congested arterial roads lined with shopping centers. The slightest errand requires a drive, often of several miles.

Actually, the overall result is not too different from unzoned Houston, an observation that says more about the influence of the market on urban form rather than a regulatory structure that, all too often, simply codifies natural tendencies.

The argument against zoning in Houston invariably turns on the issue of property rights. Zoning opponents always invoke it, despite the fact that most other cities have zoning authority, and that it has been consistently upheld at all levels of the court system. But Houston's anti-zoners continue to insist on a peculiarly absolutist notion of property rights that was more appropriate in the 19th century, when many people had large acreage holdings in a rural setting. In the dense environment of a modern city, the property rights of the neighbors must also be considered.

As Houston grows in the coming years and development in inner-city areas continues to evolve toward higher intensity, mixed-use models, these property-rights conflicts will become more acute.

What, then, are we to do with the Ashby high-rise and other projects like it that will invariably surface? Many of them will not occur along two-lane roads or, more to the point, in influential neighborhoods. Does this make them OK?

It is past time for Houston to move beyond its fragmented and inadequate system of development regulation. Many zoned cities, now confronting their outdated and inflexible system of single-use districts, are developing new approaches that involve context-sensitive and performance-based evaluation of development proposals. These new, more nuanced regulations are form-based rather than use-based. The Ashby tower foes are less opposed to the proposed use than its scale and intensity. While not widely reported, it should be noted that the proposed Ashby site is already occupied by multifamily housing. It is an old apartment complex that, despite having been renovated in the past 20 years, is notably downmarket from its wealthier neighbors. It's an obvious redevelopment candidate.

It is clear that Houston does not have adequate tools to properly and sensitively regulate development, while respecting the right to a reasonable use of property. A steady accretion of limited, specially targeted ordinances is no substitute for a comprehensive and holistic system of development regulations.

The dust-up over the Ashby high rise is just one manifestation of an innumerable number of incompatible and controversial development proposals that will continue to emerge. Houston, there's an elephant in the room.