

Joel Warren Barna

The Development Ordinance

Houston's first development control ordinance went into effect just over a year and a half ago, and although many consider the measure sane and successful, others think the ordinance is in need of a major overhaul. These two camps most often diverge depending on the type of real estate project and the area of Houston involved. Large firms with commercial projects outside the loop have become born-again setbackters, while smaller developers trying to build and market townhouses in Montrose or the Heights often voice frustration, if not outrage, with the city's administration of the ordinance.

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Sponsored by two-term Houston City Councilmember Eleanor Tinsley in June of 1982, the development control ordinance contains several provisions. It sets minimum standards for the distance between new structures and city rights-of-way — 10 feet along residential streets and 25 feet along major thoroughfares — to provide a view corridor unobstructed by buildings and for later right-of-way expansion. The ordinance limits block

lengths — 1,800 feet on major thoroughfares and 1,400 feet on residential streets — and prohibits the creation of dead-end or "stub streets" between future residential and commercial developments, to promote traffic circulation.

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Planning commission chairman Burdette Keeland

Perhaps the most important provision of the ordinance is the requirement that developers, for the first time, submit their plans for approval by the City of Houston Planning Commission, to make sure regulations are being followed.

Discontents

Before September 1982, only residential developments that included proposals for streets needed commission approval. However, many of the provisions of the development ordinance were observed in residential subdivisions on a voluntary basis before the measure made them law.

"Our office gets a lot of calls from people who are upset because they have to check with the Planning Commission. They've never had to get this kind of approval before, and now they find they have to set their projects back from the city right-of-way," Tinsley said in a recent interview. "That's how we know the ordinance is working."

"New rules always shock people, especially developers, but a year after the ordinance has gone into effect, I think we can say most of the problems have been worked out," says architect-developer Burdette Keeland, a member of the Planning Commission since 1963, and recently appointed its chairman by Mayor Kathy Whitmire.

Keeland, Tinsley, Whitmire, newly appointed Planning Director Efraim Garcia (everyone associated with the development ordinance) have declared his or her opposition to the *bête noire* of Houston politics — zoning — and emphasize that the development ordinance is *not* a zoning ordinance.

"I worked against the referendum on zoning in 1962," says Keeland. "What was proposed was just a modified version of the 1916 Manhattan zoning ordinance. I didn't think that made sense, and I still don't think zoning — where a bureaucrat makes decisions about what can go where in a city — can work in Houston. I don't think there's a planner in the world smart enough to figure out how to use land people live on. I think it's important that we leave developers the freedom to make the choice of location for their projects."

After the 1962 zoning measure was defeated, Keeland was appointed to the Planning Commission, where he had helped come up with a substitute measure called a "subdivision ordinance," containing many of the provisions of the later development ordinance. Efforts to pass the measure failed, however. The commission proposed the subdivision ordinance to city council several times during the Welch, Hofheinz, and McConn administrations, but for the most part the council refused even to consider it. On the few occasions when the measure came up for a vote, it was unanimously defeated.

"One time, during the Hofheinz administration, some other commission members and I took four city councilmen to lunch and described the subdivision ordinance to them," Keeland recalls. "They all agreed that the city needed what we were describing, and said they would support it. The next day they all voted against it."

Kathy Whitmire "seriously had in mind considering what needed to be done to continue successful development in the city," Keeland adds. "But Tinsley took on the tough task of convincing her fellow council members of the importance of the subdivision ordinance — and she got us to stop calling it the subdivision ordinance."



Shepherd Place, under construction, Lloyd E. Pape and Ambrose and McEnany, architects. A project begun before the development ordinance went into effect. (Photo by Paul Hester)

Keeland says the enactment of the ordinance has saved Houston from a number of "problem developments;" he cites a proposed office tower on a 50-foot by 100-foot lot at the corner of Post Oak and Westheimer, on which the developer wanted to put a building cantilevering out into the city's air space over both streets. Revision of the city major-thoroughfare designation and enactment of the development ordinance left the builder with "a sliver of useable property," Keeland says. "We [the Planning Commission] turned down the request for a variance on

the project. Imagine what that would have been like at one of the most crowded corners in the city."

Other projects are not so cut-and-dried, according to Keeland. "We have had people come to us for variances with townhouse projects in inner-city neighborhoods. They say they want to put their project no closer to the sidewalk than the buildings on either side. We have to tell them we're sorry, but they are the first people on the block who have to set their buildings back at least 10 feet."

Adds Keeland, "In 100 years all the city will be set back 10 feet. A lot of people don't understand that, particularly when they could make a lot more money if we would give them a variance. But they're not looking past their project to the future."

Many major outside-the-loop developers agree that the development ordinance is necessary and well-designed, in large part because their cooperation was assiduously cultivated by city staffers and Tinsley in a series of

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Houston City Councilmember Eleanor Tinsley

meetings designed to work out a compromise ordinance everyone could live with. The success of Tinsley's consensus building was shown by the fact that when she introduced the ordinance in June 1982, it was denounced by Jeff Lewis, then president of the Greater Houston Builders Association. Two months later, when the ordinance came up for a vote, Lewis urged city council to pass it.

Richard Bowe of Bowe Incorporated, Lewis's successor as president of the Greater Houston Builders Associa-



Three55 Timmons, 1983, Kendall/Heaton Associates, architects. A project built before the development ordinance went into effect. (Photo by Paul Hester)



Portsmouth Townhomes, under construction, Alan E. Hirschfield, architect. A project built after the development ordinance went into effect. (Photo by Paul Hester)

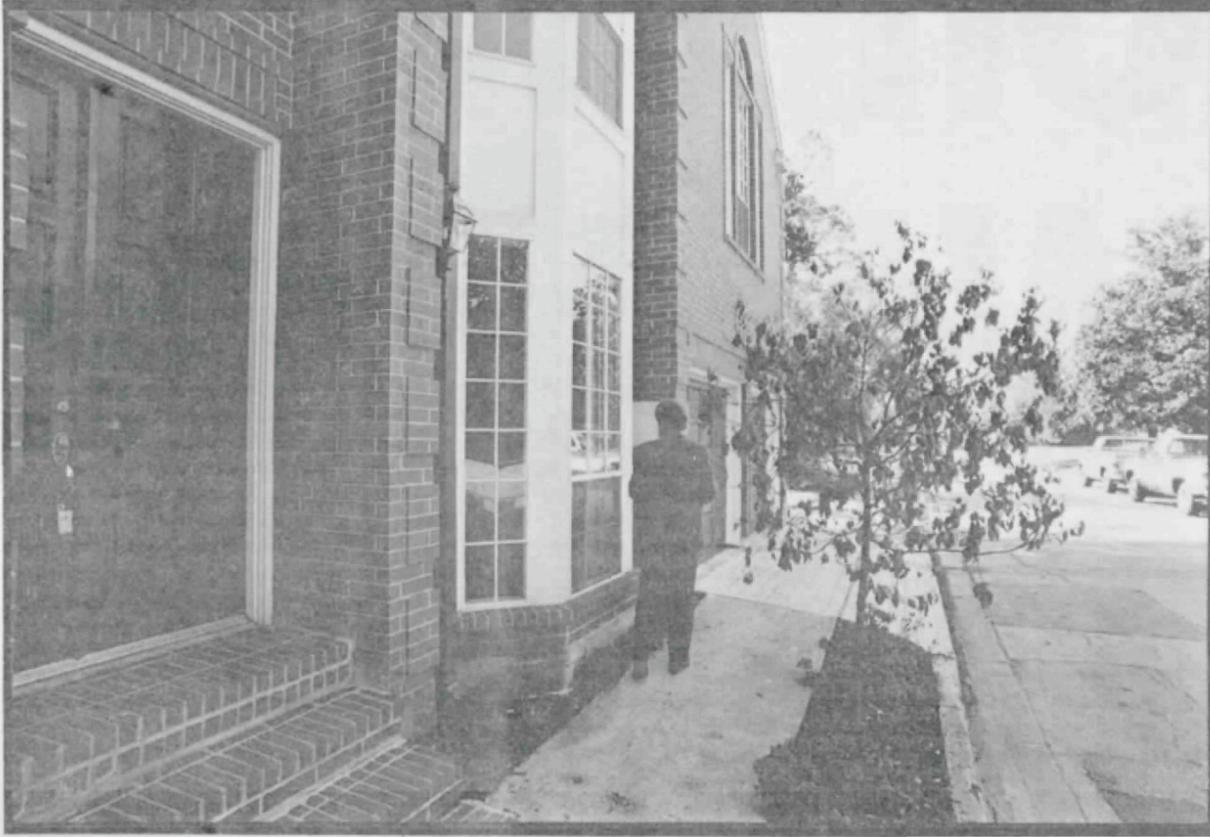
tion, says, "I think the effect of the ordinance has been very positive. The primary impact has been on commercial development, since the residential developers were already pretty much following the rules. I haven't heard about any problems, but I'm sure that if there are any, the city will be receptive to working them out."

Says developer John Hansen of John Hansen Investment Builder, "Overall this has been a positive step for Houston. I guess we've found, if anything, that the requirements didn't go far enough - the setback required on major thoroughfares should have been 50 feet instead of 25 - but we did what was practicable at the time."

Hansen was developer of the Riverway complex, one of a number of mid 1970s projects plunked down along the sidewalks of the terminally congested Woodway Drive in the booming Post Oak area. The apoplectic irritation of motorists stuck in the "Woodway canyon," as the stretch came to be called, formed the catalyst for the passage of the Tinsley ordinance.

Both Hansen and Bowe cheerfully allow that in the past they have built projects that would now be illegal. Like Bowe, Hansen says he hasn't heard about any problems with the ordinance or its administration. Where problems might arise, he is less sympathetic to other developers than one might expect. Says Hansen, "I think any quality developer wouldn't be afraid of these rules. Requiring a 10-foot setback in residential areas is really not a lot to ask. Houston has too many examples of overbuilding - cramming eight townhouses onto a lot where there should be only three. The effect of the Tinsley ordinance is to do away with that, and that's good. Overbuilding may benefit the developer, but it doesn't benefit the city. In most cases, a responsible developer wouldn't have that problem in the first place."

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Shady Side Residences Townhouses, 1983. A project that predates implementation of the development ordinance. (Photo by Paul Hester)

Other developers disagree, some in the most strenuous terms.

"I think the Tinsley development ordinance is confiscatory and illegal," says architect-developer Howard Barnstone. "It's just like condemning property for streets. I don't question that the city has the right to do that, but when they do it, the city is required to compensate property owners for their lost property. That's not being done under the Tinsley development ordinance. I suspect that the U.S. Constitution doesn't allow taking property without compensation. Perhaps it's something the [Tinsley] should go to jail for."

Barnstone says he decided against challenging the ordinance's legality in court, even after a project he planned in the Montrose area was blocked by the Planning Commission. "I have heard that various people have considered suing the city over the ordinance. Of course, an architect who did that would never get another client," he explains.

However, even some developers more comfortable with the statutory authority of the city under the ordinance express reservations about the way it has been administered.

The most common complaint, voiced primarily by those trying to put up high-density housing projects inside the loop, is that the new rules combined with the nonstandard shape of many residential lots — lots sometimes already purchased, often at real estate boom prices — make it impossible to build townhouses for a marketable price in many areas. An ordinance intended to control traffic congestion and commercial overdevelopment is having the side effect of fostering stagnation in inner-city neighborhoods and sprawl outside the loop, they charge.

"I think the intent of the ordinance is appropriate," says architect William Stern of William F. Stern and Associates. "The problem is that it's a blanket ordinance, treating Montrose the same as the Galleria. As a result, I think the ordinance is having unforeseen, unwelcome consequences. The effect has been to redline whole blocks of Montrose and the Heights, where you can no longer build high-density residential projects. That needs to be questioned if we are to keep people moving back into the parts of the city inside the loop."

The Planning Commission's Keeland denies that the Tinsley development ordinance is causing stagnation in inner-city neighborhoods.

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Developer Steve Flowers

"The motive behind the ordinance was to keep the city a place with trees and grass," says Keeland. "I think in 100 years the ordinance will have allowed for greater inner development, but it will make it look as if the density is still low. The city will be as it is now, with trees and lawns."

But others point out further problems with the ordinance that work against inside-the-loop development. Steve Flowers, of Steve Flowers Interests and president of the Houston Heights Association, says: "I support the intent of the Tinsley ordinance, to the extent that it has the interests of the city in mind. I would much rather have it in effect than nothing. I think that the people in the city agencies administering the ordinance are hardworking and reasonable. But in my experience, the Tinsley development ordinance is really something to contend with, and I think the problems I've encountered are going to come up again and again for projects inside the loop."

Flowers purchased a lot in the Heights, the site of an abandoned grocery store. He lined up a lender, enough sewer-connection permits to allow for a high-density townhouse project and worked with an architect to develop a plan he regards very enthusiastically.

"It was a project that I felt was going to improve the neighborhood — townhouse units for a marketable price, while still preserving considerable green space and adding a 65-foot swimming pool," Flowers says. "I tore down the abandoned store and ripped up an acre of asphalt, and took the 'footprint' of the plan to the planning department, and they sprinkled holy water on it."

But Flowers's project soon ran afoul of one of the ordinance's stranger loopholes. "We conformed to the 10-foot setback requirements, and we thought that was it," he says. "But the project had entrances to the garages through an alley, and we found out that having access for more than three parking spaces through an alley changes the project from a 'development' to a 'subdivi-

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sion.' That's absurd. Kingwood is a subdivision. A six-lot townhouse project in the Heights is not."

Flowers found that the rules had changed — subdivision rules require 20-foot setbacks. The discovery was made soon after former Planning Director Roscoe Jones resigned and before Efraim Garcia took the job as his successor, Flowers says. In the interim, the staff was playing everything by the book. It took visits with several staff members and two hearings by the Planning Commission before a variance was granted exempting Flowers from the subdivision rules.

"Meanwhile the interest clock was running on the \$2.5 million I had borrowed," Flowers says. "This was my only project at the time, so I could afford to spend all my time at city hall trying to clear it up. I couldn't have done that if I had other projects going. This kind of thing may not cause trouble for large companies with big staffs, but it really penalizes small companies."

Other developers echo Flowers's argument, and say that it is merely a symptom of the disorganization affecting city agencies who deal with development. "The Wastewater division doesn't know what Traffic and Transportation is doing, and neither of them informs Planning of what rules they're changing," says one.

Says another, "Traffic and Transportation just ruled, without any specific authorization, that all apartment units now have to have two parking spaces. That eliminates the one-bedroom-with-a-loft type of floor plan, which is in strong demand here, particularly in areas where there is good bus service to downtown. The Wastewater division just announced that 5,500-square-foot lots that used to count as possessing two sewer-connection permits, now count as possessing only one. Neither of these agencies informed Planning before they acted. The city administration is breaking into fiefdoms working against each other."

Burdette Keeland agrees that lines of communication between city agencies may have been crossed, but adds, "That's why we have the Planning Commission empowered to grant variances. I've formed a commission committee to review the development ordinance, to make minor changes, and get some of the lumps out of it. We're starting to refine the ordinance, and then we're going to go after the bigger issues."