

Past and Present Land Use Control Issues in the Irvine Business Complex

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INTRODUCTION

I am providing the following history and recommendations to the City of Irvine as agreed with Douglas Williford, Director of Community Development for the City. The work reflects my training, research, and teaching in urban planning, as well as my service on the City of Irvine Planning Commission and City Council. While I intend the assessment to be as objective as possible, my involvement in the City's regulation of the Irvine Business Complex inevitably affects my views. I trust you will keep this circumstance in mind when considering the following.

I thank Victor Carniglia (City of Antioch, formerly City of Irvine), Douglas Williford (City of Irvine), Brian Fisk (City of Irvine), Anthony Petros (LSA), Timothy Strader (StarpoinTE Ventures), Larry Agran (IBC Task Force), and Sukhee Kang (Chair, IBC Taskforce) for answering my questions regarding the 1984 and 1992 zoning, as well as the current circumstances in IBC. I, however, am solely responsible for the opinions expressed in this report.

HISTORY

Background and Zoning Strategies

The area now referred to as the Irvine Business Complex (i.e., IBC) has attracted much investment because its location promises high return to those who best anticipate costs and returns of development options. This attraction, however, has raised the cost of land in IBC, forcing developers to aggressively manage risks when bringing uses to market. Part of the risk developers must confront comes from land use regulations devised to minimize externalities of development rather than maximize return on investment.

Irvine has attracted many residents who paid a premium to live in a well-planned community. The City of Irvine has, therefore, had to reconcile high expectations from both developers and residents when devising regulations

for IBC. Investors want the City to reduce their risk by allowing developers to respond quickly to opportunities presented by the market. Residents want the traffic, noise, and other potentially adverse effects on residential areas held to levels generally understood and accepted when making the choice to live in Irvine.

The City's attempt to reconcile these often competing demands led to two important reforms of the original IBC controls inherited from the County of Orange at incorporation. I provide a non-technical history of these reforms because the circumstances leading to, and following from, them explain the dilemma the City now faces.

The most common form of zoning regulates the use, lot coverage, and massing of improvements that developers put on the land. The logic connecting this "use" zoning with health, safety, and welfare has traditionally been that a given land use, industrial for example, generates a more or less knowable amount of traffic, noise, pollution, fire risk and so on per unit of space (e.g., square foot). These "performance characteristics," in turn, have more or less measurable effects on public health, safety, and welfare. Regulating use and intensity, therefore, has the end effect of protecting health, safety, and welfare because regulating use regulates performance.

This static "use" regulation, however, does not respond well to changes in market realities and severely restricts the options available to developers. These regulations may not allow the most profitable use even when it affects public health, safety, and welfare no differently, or even less, than the allowed use.

The Irvine Industrial Complex West Industrial Use Zoning

The City of Irvine, upon its incorporation in 1971, inherited "use" regulations of what we then knew as the Irvine Industrial Complex West (i.e., IICW)

from the County of Orange. The regulations reflected good planning practices for their era but made uses other than industry possible only through arduous and time consuming general plan and zone changes.

By the early 80's, the growing regional economy had diversified and the demand for office space near John Wayne Airport increased dramatically. Office space generated more profit per square foot than industrial space. Land owners, developers, and investors began appealing to the City for exceptions to the industrial use requirement. These appeals made the argument that the performance characteristics of a square foot of office would affect health, safety, and welfare less than a square foot of industrial space. The public, therefore, should have no objection to an amount of office space that generated the same health and safety effects as the previously permitted industrial use.

This argument became problematic when applied to traffic effects or "trip generation." The Orange County General Plan and first Irvine General Plan called for a road system in and around the IICW that would service the originally permitted uses. The capacity of the system, in other words, fit manufacturing uses. While offices may generate fewer health and safety risks than an equivalent amount of manufacturing, the former generates more "peak hour trips" and, therefore, more traffic congestion. The courts had long included such congestion among the threats to public welfare that the state could regulate.

Early applicants for relief from the IICW use zoning noted that at the time of their request, the existing road system had capacity to service their projects even if the project would generate more trips than the previously permitted use. Much to the chagrin of land owners not in the appeals "queue," the City granted several early appeals. These decisions triggered a "permit rush" because entrepreneurs understood that the limited capacity of the road system would soon be "used up" leaving all remaining applicants with no argument for relief from the industrial use zoning. The City staff also

expressed concern that the IICW would become a mix of uncoordinated uses frozen in place when the capacity of the planned road system had been fully committed.

The 1984 IBC Performance Zone

The permit rush in IICW led to a 1983 moratorium on zone changes and a "crash" program to reform IICW land use regulations. This program yielded a landmark zoning code that shifted the logic of regulation from "use" to "performance" management. If protecting public health, safety, and welfare provided the legal justification for zoning, why not regulate the performance characteristics of development rather than land uses?

Regulating performance characteristics would protect the public and allow developers to respond to their understanding of market cues. Developers could use whatever technology or means available to make uses fit within performance criteria set by the City and other regulatory agencies responsible for environmental quality and health.

Finding mechanisms to manage the traffic, or "trip generating," effects of land uses impeded quick implementation of performance zoning in IICW. After much analysis and debate, the City decided that the 1984 zoning reforms would manage the trip generation problem with two mechanisms. The first converted the industrial entitlement owners had under the original County zoning to "trip rights." Owners could, in theory, ask for any use that generated trips less than or equal to their rights. Assuming the proposed use did not violate any other performance criterion, the project would be approved. The sum of all projects each generating the trips assumed by the original industrial zoning would have effects on the remainder of the city no greater than the original zoning. In other words, if every land owner asked for uses within their trip rights, the regional road system assumed by the original industrial use zone would be adequate although it served a much more diverse pattern of land uses than originally envisioned by the County.

Of course, at least several developers wanted to develop office commercial uses at intensities well beyond their entitled trip rights. To do so required that they either buy rights not used by other owners, or contribute to a fund that would be used to upgrade the County-planned road system. The City organized an effort to identify and price regional transportation upgrades that could serve IICW development above the entitled level without adding congestion to surrounding residential areas. The cost of these upgrades was converted to a per trip fee. Developers who requested approval for uses that generated more trips than their own and purchased rights had to pay the fee for each trip over the entitled allotment.

The combination of the performance zoning and the two trip management schemes described above solved, at least temporarily, the problems faced by the City in 1984. No land owner need rush to get permitting for uses other than industrial because congestion rights equivalent to those under the original zoning could be held, used for any development that fit performance criteria, or sold. Developers who wanted to go beyond their entitled trip rights had to meet all performance criteria and pay substantial fees to fund improvements that ensured congestion outside IICW would not exceed that expected from the original zoning. The residential community in Irvine could be assured that the effects of IICW development, regardless of the actual uses, would not exceed those they had expected from the industrial zoning.

I have simplified the zoning in several ways. The system did not actually allocate trips but rather used trip-based "points" to create a token economy that could be used not only to manage traffic congestion but also encourage specific uses such as schools, clinics, child care facilities, and the like. I also simplified the timing of fee collection and transportation improvements. As might be imagined, the issue of phasing of road improvements raised questions regarding when a developer had to pay the fees levied against a project.

Despite these complexities, the new land use regulations earned the unanimous support of the Planning Commission, Transportation Commission, and City Council. No affected party testified against the regulations although several expressed concern over the complexity and novelty of the scheme. The area name became the Irvine Business Complex (i.e., IBC) to signal a new era. The IBC rules allowed Irvine land owners, developers, and investors to respond creatively to what they read as market demand. The residential communities in and around Irvine did not have to bear effects greater than those expected under the pre-existing zoning. Irvine, in no small part due to IBC, became an example of prosperity, entrepreneurship, and quality of life envied publicly and privately by all those who knew it.

The 1992 Reforms

When developing the 1984 IBC performance zoning, we understood that requests for residential development would eventually become more common than the single application (i.e., "Douglas Plaza Condominiums") to that date. Residential uses would presumably have brought benefits including a reduction of peak hour trips by allowing those who worked in IBC to live there, a demand for evening activities that would make IBC a more interesting place that could "hold" trips in the area during the evening traffic peak, and an increase in sales tax from commercial uses that served IBC residents and others. Having residents in IBC would also create a political constituency for good planning in the area.

We also understood that residential uses would bring challenges. Three stood out. First, how would the City and affected School Districts finance and locate schools? Second, how would the City meet recreation needs in an area where parks would be difficult to establish? And third, how would the City assess and resolve issues of intra-IBC compatibility among residential, industrial, office, and commercial uses?

Many of us who worked on the 1984 performance zoning suspected that the issue of compatibility between IBC industrial facilities and residential use would eventually come to the fore. That suspicion proved correct when, in the early 1990's, applications for residential uses in the IBC increased dramatically. Approximately 3,500 units of housing had been approved or proposed by 1992 and owners of industrial facilities began to fear encroachment of neighbors who would complain to regulators about noise, pollution, and other real or imagined threats to well being. School and park policies had not, moreover, been formulated for the area.

In addition to the above issues, another problem had emerged. The 1984 assessment of the potential capacity of regional transportation systems appeared obsolete. Many of the regional transportation improvements anticipated by the 1984 zoning had been superseded by more ambitious projects or made impossible by other developments.

The City tried to remedy these problems in 1992 through two changes to the IBC zoning. First, the new zoning "capped" residential use at the sum of units then approved or in the approval process. The cap allowed fewer than 4,000 units in IBC regardless of the performance characteristics of additional units.

Second, the City commissioned a new transportation study. Results included a new list of upgrades (ranked by how quickly they would most likely be needed), as well as the finding that more trips than those unallocated from the 1984 zoning could be awarded to IBC land owners willing to pay fees. The 1992 traffic study estimated that the City had allocated or entitled approximately 52% of the trips that the upgraded road system could accommodate. The 1992 zone change substituted the new upgrades, trip estimates, and fees for those of the 1984 zoning. Land owners received a fraction of the remaining 48% of the "trip budget" equal to their fraction of IBC land area. These trips could not be

used for residential projects unless an owner successfully applied for a general plan amendment and zone change.

While the 1992 reform of the transportation plan and trip allocation system improved upon the 1984 zoning, I can find no compelling argument in the public record for the decision to stop residential development in the IBC. The City and region lost the obvious benefits of having residential units in those areas of IBC with no compatibility problems, and the restraint inevitably created a regulatory impediment to good land use management.

The Current Circumstance

As history would predict, developers eventually responded to market cues by asking permission to build more housing in IBC. Their arguments typically reduced to a simple question. Why can I not build housing if I have the trips; the proposed housing affects the remainder of Irvine less than would industrial use; and intra-IBC compatibility issues either do not apply or have been solved in my case? Lacking a compelling answer to this question, the City has approved several of these requests. Doing so, however, has induced the fear, if not reality, of a new "permit rush." This fear, in my opinion, has much less justification than in the early 80's when the fact of a limited supply of road capacity required no analysis to comprehend. The current concern appears, in contrast, to arise from vaguer circumstances. First, some unknown fraction of the now unused trips allocated in 1992 may have been "absorbed" by development outside IBC unanticipated by the 1992 analyses. Second, the regional road upgrades assumed by the 1992 analyses to occur in the then "out years" will soon be needed and their feasibility remains unclear. The long anticipated policies regarding school and recreation facilities in IBC, moreover, remain unformulated. The uncertainty arising from these circumstances has not only induced the fear of a "permit rush," but also has been cited, perhaps opportunistically, by nearby cities as justification for litigation to stop further permitting in IBC.

The City understands that approving more requests for general plan amendments and zone changes to allow housing would raise important regulatory questions in Irvine and elsewhere. Should, for example, Irvine continue these approvals without formally addressing the issues of parks and schools? Does Irvine have a process to resolve disputes over the compatibility of proposed residential and existing manufacturing uses? Do the 1992 assumptions regarding trip generation, infrastructure upgrades, and fee structure remain sufficiently sound to guide current decisions? The last of these has to be answered definitively because, as noted above, neighboring cities have sued to stop Irvine from issuing more approvals without first assessing the validity of these assumptions.

The City has responded in three ways to these circumstances. First, it has appointed a task force, chaired by Councilman Sukhee Kang, to develop options and recommendations for changes in IBC land use regulations. Second, it has begun traffic and environmental assessments of options developed by the Task Force. Third, it has reached out to those who live in IBC to better assess how their experiences might help in planning the environment and services that additional residents would encounter in the area.

I understand that efforts continue to reach agreement among the school districts that serve the IBC for the provision of facilities including a possible tri-district school. I also understand that the Task Force has creative and feasible plans to provide recreation opportunities to existing and future IBC residents. These opportunities would apparently be supported in whole or in part with fees collected from residential developers under the permitting process. The issue of the current validity of the 1992 traffic studies remains the principal impediment, in my opinion, to the orderly build out of IBC.

RECOMMENDATIONS

The City of Irvine has the experience, talent, and resources to manage the challenges presented by the maturation of IBC into a remarkably successful center of entrepreneurial activity. All involved should, moreover, celebrate that this success has been enjoyed without sacrificing the quality of Irvine's residential communities. The recommendations I make below sum to small, but important, adjustments in the course charted nearly 25 years ago and since followed by several generations of community, business, and staff leaders.

Based on the above understanding of the current circumstances in IBC, I recommend the following actions by the City of Irvine.

1. Reaffirm the policy that the City regulates land uses in the Irvine Business Complex with performance, not use, based controls. Returning to use regulations would ensure that every real or perceived change in market opportunities will bring a cascade of applications for general plan amendments and zone changes in IBC. This circumstance would not only unnecessarily impede the orderly supercession of uses in the Complex without benefit to Irvine residents, but also again invite litigation from neighboring cities and others. It would also imply that a City made famous for sound planning had lost its compass and lurches from one crisis to another.
2. Raise the cap on housing units in the IBC to the highest level allowable under the pending environmental and traffic assessments. The cap made little sense in 1992, makes none now, and has hindered IBC evolution by requiring developers to ask for general plan amendments for projects everyone acknowledges would not make congestion worse

and would improve the jobs to housing ratios. Remember that the trips associated with these residential units would substitute for, not add to, those that would have been generated by the industrial, office, or commercial development foregone to build housing.

3. Any new scheme for allocating trip rights to owners should recognize that location within I BC should influence the allocation of trips. These schemes should also allow for adjustment of congestion rights at the time a developer proposes a use because morning and evening peak hour effects could differ by use.
4. The City should require persons renting or buying housing in IBC to sign material informing them that they live in area in which the City regulates development by effects and not by use. I am sure that many new IBC residents believe that their neighborhood has been planned to the same level of physical detail as the remainder of Irvine. Learning otherwise may lead many to needlessly fear that the City has less interest in their well-being than in that of other Irvine citizens. Understanding that performance zoning actually protects residents as well as, or better than, use zoning should allay this fear.
5. Provide the IBC a new name and identity that reminds residents and businesses alike of the dynamic nature of this special place.
6. Encourage I BC residents to participate in the governance of their neighborhood and of the City as a whole.
7. Do not attempt now to force the formation of residential centers based on idealized notions of neighborhoods in IBC. Doing so will simply lead to the costs of use zoning without its meager benefits. If the placement of schools, parks, and other public services requires some anticipation

of residential concentration, wait as long as possible before committing. Time and the aggregation of resident behavior informs such decisions better than theories of neighborhood that come and go among us academic planners and architects.

8. Do not confuse regulation of design features with sound planning. We planners tend to obsess over, for example, street and landscape designs while ignoring more technically demanding tasks such as modeling traffic and fiscal effects. This problem particularly vexes the implementation of performance zones because their success depends more on continuity in the enforcement performance criteria than on compliance with design standards.

9. Devise a process for assessing compatibility between existing industrial facilities and proposed residential uses in the very few cases in which problems may arise. These procedures could be specified in pending environmental impact assessments as mitigating measures where potential incompatibilities arise. Unless industry has withheld information regarding health or safety threats emanating from their properties, I doubt the City will face many difficult decisions regarding adjacency. I assume that industry would cooperate with the City by providing information regarding threats that might emanate from existing industrial facilities.