



THE GOOD INTENTIONS BEHIND THE HOUSING SHORTAGE

Why in the world do we have a housing shortage in California? This is a question that has really been bothering me lately. It's one of those things that everyone likes to talk about. And there's a lot of passion there but because it's a "political" and complex issue, no one really talks about the truth. I find myself getting tired of the surface level discussions on the issue.

I am generally wary of regulation. As a real estate developer in a blue state, I have just seen too much. Navigating the arcane and maddeningly complex series of rules and regulations that govern developing and building properties in Los Angeles is enough to drive you crazy.

At every stage, you risk making some costly procedural, administrative or legal error. Did you get your SB330 determination (a law related to rent control)? Did you use a certified arborist to assess the trees?

Not only is the process overly complex it is also seemingly deliberately confusing. There are things like Q-conditions (who came up with that?) or Historic Preservation Overlay Zones impacting your supposedly by-right zoning. There are requirements for Neighborhood Meetings, Traffic studies and Environment Impact Reports.

And then there's the never-ending list of requirements and necessary departmental sign-offs: Planning, Building and Safety, LADWP, Fire, Bureau of Engineering, Housing... A friend of mine just finished building his house and had to get 17 sign-offs to get his Certificate of Occupancy.

And then there's the brain damage of the process itself. At every stage you must engage intimately with the inefficiencies of an entrenched bureaucratic quagmire. There's nothing more frustrating, for example, than having your project stall out in a state of limbo simply because one city department won't talk to another. Aren't they all on the same team?

No wonder we have a housing shortage here!

At the same time, I am not someone inclined to accept the utopian idealism of laissez-faire capitalism either. Look, I think Adam Smith was essentially right. There is a sense in which the economy is self-regulating and the Invisible Hand is real. But the anti-regulation crowd tries to take the argument too far. First of all, there has never been an age where government wasn't heavily involved in the economy. There's no mythological moment in time where economic activity functioned without government. And secondly, we

can find almost an embarrassing number of instances where the market has failed to regulate itself. Just look at our record on the environment over the last few hundred years.

So, we are stuck with government and regulation.

As my regular readers know, I am convinced that one of the biggest problems of our era is our general unwillingness to accept the obligations of citizenship. By and large, we are too disengaged from the political process and too unwilling to subordinate the pursuit of our perceived self-interest for something greater. I use the phrase “perceived self-interest” because I think our apathy is a fundamental mistake. For what’s happening behind the curtain that we refuse to lift is absolutely impacting our lives. Whether we are paying attention or not, the government keeps on going and going, passing new laws, dreaming-up and implementing new regulations and adopting new policies. One day, the curtain is going to rip open by itself and we’re going to find ourselves staring at a world and a system that we do not like.

To demonstrate the point here, what I thought I would do today is go through one important real-world situation that shows so clearly why we all might want to be engaged in the fight for a better world.

A lot of times, what happens with regulation is that good intentions go wrong. One of the best examples of this is the impact that the California Environmental Quality Act (CEQA) has had on the development process. The intent behind CEQA, passed in 1970 in the early days of environmental activism (and signed into law by Reagan by the way!), was to make sure that proposed developments actually took into consideration their potential environmental impacts. It was essentially an attempt to address a persistent market failure by preventing environmental degradation outright, turning externalities into direct costs or, at the very least, calling for some kind of mitigation. Sounds pretty good, right?

So, what’s the problem? Under CEQA, depending on things like the size and type of the development and whether the project needs discretionary approval, developers are required to go through a public process to create something called an Environmental Impact Report (EIR). CEQA was written with broad language that gives standing to third party

individuals and organizations to pursue litigation against proposed developments. In other words, people who are not really involved in the proposed development have the right to sue the developer. Yes, you heard that right. From a legal standpoint, these lawsuits amount to a fight over the integrity of the EIR. Substantively, there’s not much to these cases but given the state of the California court system, they tend to be both expensive and time consuming. Many times, even just the threat of one is enough to prevent a development from going forward.



Here’s the really disheartening part. Something like 85% of all CEQA lawsuits are filed by organizations or individuals that have NO record of environmental advocacy. Think about that for a second. What in the world is going on here? Sadly, this is all about NIMBY-ism, corporate greed and union power politics. CEQA, originally passed with this noble environmental idea, has evolved really into a powerful offensive weapon of influence for interest groups to use to pursue their aims. A good intent gone seriously wrong.

CEQA has become the bane of ambitious development across the state and has evolved into one of the main causes of the affordable housing crisis. It’s used regularly to try block things like affordable and homeless housing projects and even just regular market rate projects that NIMBY groups don’t like for one reason or another. It’s used by unions to get project labor agreement mandates for big projects. And, of course, profit-seeking private equity funds are in the mix. I know of one high-profile instance where a private equity fund tried to extract a \$100M settlement payment in a CEQA case involving a public infrastructure project.

Clearly, CEQA isn’t quite working the way it was intended to work. And it’s not like people don’t know there’s a problem here. There are literally dozens and dozens of white papers, studies and articles on the issue and every year CEQA reform makes it on the list of priorities for state legislators in Sacramento. Yet, for some reason, CEQA reform never really gets addressed. Why? Well, it’s just too valuable a tool for the powerful interest groups that have almost complete control of our legislative system.

For me, this issue demonstrates clearly why civic engagement is so important to our future. Today, unless

you are a developer, a policy wonk or a civic activist you probably don't even know CEQA exists let alone understand the profound ways it's impacting California. The predatory use of CEQA continues unabated not because people think it's good policy but simply because not enough people are thinking about CEQA at all.

The way our democracy is functioning today legislators are just responding to the loudest, strongest and often only

voice in the room—i.e. the special interest groups—and if they don't address a problem like CEQA there are no consequences. Life just goes on and they get reelected year in and year out. Democracy doesn't so much "die in the darkness" as it does in plain sight. Problems like this aren't going to solve themselves. They demand the urgent attention of the entire citizenry. When responsibility like this calls, we've got to stop looking the other way. □

