Extraterritorial zoning… two sides of the coin

You don’t want to mess around with “extraterrestrial” zoning! Violators will be beamed up!

EDITOR’S NOTE: In the past several weeks, the presence or lack of a fully established ETZ – beyond the usual permitting and platting jurisdiction, that is – has had an impact in southeast New Mexico. Two sides of the ETZ coin involve Carlsbad, without an ETZ in Eddy County, and county residents concerned with the possible use of recently purchased land. In Chaves County, however, they have had a functioning ETZ for 31 years! Residents who opposed a nightclub in a residential area prevailed because of the well-established ETZ, some of them even commenting that the presence of an ETZ was the reason they chose to purchase the property they own. I found it extremely interesting to see the differences in official and constituent comments.

In a third case, staff had made specific recommendations to the Santa Fe County Commission to approve a request for a temple in a residential area. According to the staff, requirements were met and there was no reason for the church not to be allowed. Yet residents in the area were very emotional in their desire not to have this congregation in their backyard. This is, in my opinion, a “FAIL” in that the commission voted to deny the lawful and compliant request because of pressure from dissenting residents. There is much to ponder and learn from all three cases. Santa Fe and Carlsbad accounts are reprinted with permission from the respective local newspapers, in their entirety. Republishing is not an expressed or implied endorsement.
Residents concerned over actions on property

By Stella Davis  
Current-Argus Staff Writer
Posted: 06/08/2011

CARLSBAD — Some residents on Weleka Lane in the north end of La Huerta voiced concern to the Eddy County Commission Tuesday over a parcel of land they say could potentially have a negative impact on their subdivision without county governance. The commission said it understands their concerns, but there is little the county can do. The county does not have zoning regulations and the property in question is not only privately owned, it also falls into the city's extraterritorial zone.

Duane and Marcia Cunningham said the property, owned by Branson Properties LLC and located on the northeast corner of North Canal Street and Weleka Lane, has been backfilled. They are concerned about flood zone issues and what will be built on it. "There have been several dump trucks of backfill brought in," said Marcia Cunningham. "There could be a water runoff. The contour of the land has been changed. How will it affect the highway, and what is the purpose for the land? Whatever is going to be built there, will it affect property values in the Roberts subdivision?"

County Attorney Cass Tabor told the couple that the county has no regulations or enforcement power when it comes to planning and zoning issues outside the city limits or in the extraterritorial zone. He advised that their concerns may be able to be addressed by the city since it is responsible for issuing building permits.

Commissioners Jack Volpato and Guy Lutman said although they favor zoning regulations, they will not pursue the issue unless their constituents have a change of heart and support zoning. Jack Volpato said: "If it is to be laid out as a subdivision, I do know the lots have to be 1 acre lots. I don't know what is going to go in there. The simple thing would be to ask the owners. But they don't have to tell you if they haven't filed a permit with the city to build out there."

Owner of the property, Valerie Branson, expressed anger over the rumors that have been circulating about the property and what she plans to build on it. "I have not decided what I'm going to do with it," she said, adding that no one had contacted her directly on the issue. "It's our land. We bought it. If they don't want something out there they should have bought it. But I bought it. I have no intention of making something ugly out there."

Branson told the commission that she received a call from an individual asking her what she planned to build on the property. She also alleged that the caller made a racial comment that she took offense to. On hearing the allegation, Duane Cunningham came before the commission and identified himself as the caller. "I made no racial comment nor am I into class warfare," he said, "I have nothing personal against Ms. Branson. I don't know her. All I had to go on was the name of the construction company. I did ask her what she plans to put in there. I will not be accused of racial slur, and I want no part in class warfare." Cunningham said he was among the residents in Roberts subdivision who worked successfully with the county and an oil company a few years ago to get the company to relocate its proposed drilling operation and well that it had proposed inside the subdivision.

Lutman said if the commission had the authority to govern zoning issues, he would be the first to step up. However, since the county does not have zoning regulations, there is little that can be done. He recalled during his first four-year term on the commission when the commission attempted to establish an extraterritorial zone authority comprised of city and county members and was unsuccessful. He said it came across loud and clear to county leaders that zoning regulations that would have come along with the extraterritorial zoning was not wanted by people living outside the city limits. ...continued on following page
"The issue is dead, unless times have changed and people have had a change of heart," Lutman said. "Basically, it's a free for all in the county. When we brought the issue of extraterritorial zoning to the people, they made it clear to us they didn't want it. We had to listen to them."

Volpato said there will come a time when the county will need to have zoning regulations. He said it was disappointing five years ago when extraterritorial zoning was defeated. "Then-city councilman Ned Elkins and I got together because we felt there needed to be a good way for orderly growth in the Carlsbad and Eddy County. "We just about got run out of town on a rail," Volpato said. "It's a tough issue. I have no answer for it."

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The City of Carlsbad’s extraterritorial zoning jurisdiction extends two miles from City limits. In this area, there are zoning regulations related to allowed uses, setbacks and density. The three extraterritorial zones are RC-1, RC-2 and RC-3.

The City’s Planning and Platting jurisdiction extends five miles from the City limits. In this area, the City reviews all subdivisions and conducts building permitting and inspections.

Stephanie Shumsky, AICP, CFM
City of Carlsbad Planning Supervisor

Paperwork – the bane of the land use official!
Zoning... in action

Marlin Johnson
Planning & Zoning Director
Chaves County

The Roswell-Chaves County Extraterritorial Zoning Ordinance was established in 1980 and includes an area roughly 2 miles around the Roswell city limits. The ETZ Commission is a 7 member board with 3 appointed by the County Board of Commissioners, 3 by the Mayor and 1 person elected by those 6 from beyond the Zone. (After all, this is Roswell!) The ETZ Authority includes 3 County Commissioners and 2 City Council members. The County Planning Department administrates all applications for public hearings in this Zone, including Rezones, Special Use Permits, Variances and Subdivisions.

Recently, we had a request to rezone a parcel to Commercial, from Multiple Family Residential, and a simultaneous request for a Special Use Permit for a "nightclub". The Chaves County Comprehensive Plan includes a Land Use Plan Map that identified the property as an area for future Commercial, Light Industrial and/or Mid Density Residential development, primarily because it is located on the Bypass and at an intersection on a Section Line. The nearest Commercial zoning is approximately one mile away with the surrounding lands being a mix of agricultural uses and low and mid-density residential uses. The Planning Office recommended approval of the rezone per the Comprehensive Plan and supported the Special Use Permit because it would allow conditions to be placed on the use of the property that included self-buffering that would not apply with the rezone only. The parcel is 9 acres in size.

Over 100 people, primarily landowners within 1-2 miles of the proposal, objected, many strenuously, to the rezone and to the "nightclub" and to the Sunday package liquor sales that would accompany any liquor license. Interestingly, if the City of Roswell did not prohibit package liquor sales on Sunday, our Commercial Rezone requests in the County would not be so volatile.

The history of the property includes the Rezone to Multiple Family Residential in 2000, which was also strenuously objected to by many of the same parties. The ETZ Commission recommended denial of that rezone, but it was approved by the ETZ Authority, primarily because the best use of the property was deemed Commercial per the Comprehensive Plan and this was deemed a lesser impact. This matter was appealed by the neighborhood to District Court with one of their arguments being that this was spot zoning. This was the first and only Multiple Family Residential Zoning in the County but the Court upheld the rezone per the legal argument/response of the County Attorney.

This time around the ETZ Commission denied the request to Rezone to Commercial, which meant the Special Use Permit was not even heard. (Note that our process changed in 2005 and the ETZ Commission now has authority to make decisions, and hearings only proceed to the ETZ Authority if appealed.) The applicant did appeal to the Authority, but at that hearing, he withdrew the request for the Special Use Permit. There was an overflow audience and the subsequent turmoil created by this change in the land use request caused the Authority to remand the matter back to the Commission to be treated as a new application, in essence. (This was a new one for me!)

Two months later the "amended" Rezone to Commercial was heard again by the Commission, with the site plan indicating office buildings and rental storage units. The Special Use Permit for the "nightclub" was requested on an already Commercially zoned parcel about a mile to the north in an area that has some established commercial and industrial uses. The neighborhood again objected to the Rezone, but with only 50-some people in attendance, most were satisfied with the deletion of the "nightclub", and the attendant liquor license. The Commission asked Staff if they could stipulate the allowed uses if the Rezone to Commercial was approved.
I answered that it is not typical and that if they did I would prefer they used a surgical approach to limiting uses rather than a broad brush approach, also adding that they could do as they wished. The Commission asked the applicant if they were amenable to restricting the rezone to office building uses and rental storage units and he agreed. As each objector to the rezone took their turn to speak the Commission would ask if they would accept the rezone with the restricted uses, and though some were reluctant, this method appeased most objections and the rezone to Commercial was approved with said stipulations, including that a new hearing would be required to add or change any uses. Surprisingly, there were no objections to the “nightclub” and the Special Use Permit was approved with essentially no stipulations.

Had the two “nightclub” locations been compared straight up, the second location was clearly the more appropriate location but the Comprehensive Plan clearly supported both locations. I feel that the wholesale restriction of uses on a Commercial rezone undermines the intent of zoning and that such an approach might be more akin to a Special Use Permit. However, in this instance it might have been the only approach that kept the matter from being appealed, probably all the way to District Court, by one side or the other. I did tease the County Attorney who defended the approval of the 2000 rezone with the statement that commercial is the best use of the property about the possibility of having to argue a denial of a rezone to Commercial 11 years later. Anyway, the approval does also seem to set the stage, or at least grease the stage axles, for the next request to rezone to Commercial in the vicinity of that intersection. (At the time of submission of this article there were still 20 days for an appeal to be submitted.)

Having zoning allows the public to have significant impact on the process. Having an Extraterritorial Zone allows the City, through its appointment of members of the hearing boards, to have more say in development beyond, yet near, the city limits. In my hours and hours of discussion with the public on these requests, many of them disgruntled with County and City Staff recommendations, I reminded some of the more adamant parties that they were fortunate Chaves County has zoning, as none of our neighbors do. I would note that without zoning they would not know what was happening in their neighborhood until the building was under construction and that they would have no say even then. At least one party retorted that they bought their 5 acres where they did because the County had zoning.

Having worked most of my planning career in jurisdictions with joint City-County Planning offices, I am pleased that there is an Extraterritorial Zone and that I am able to be the primary administrator of the process. As a Joint Town-County Planning Director for 7 years I was able to review and consider cases with both jurisdictions in mind even though there was no formal ETZ or Town-County agreement.

Feel free to contact me if you have any questions about our ETZ or this article at mjohnson@co.chaves.nm.us, 575-624-6606, www.co.chaves.nm.us/county/departments/pz/.
RENEW YOUR NMLZO MEMBERSHIP OR BECOME A NEW NMLZO MEMBER!!

By: Linda Alire-Naranjo
Program Development & Training Director
New Mexico Municipal League

In order to be eligible to run for the NMLZO Board of Directors, or to serve on any Committee, or to vote on any issue, or to apply for scholarships, or to acquire certification and recertification, etc., you must be a full dues paying member of the NMLZO for Fiscal Year 2011-2012.

The New Mexico Municipal League recently sent out renewal statements for Fiscal Year 2011-2012 NMLZO Membership dues. If you have not received a statement, please consider joining or renewing your membership by filling out the NMLZO membership application form and sending it real soon to the NM Municipal League Office with your check payable to the NMLZO.

If you are unsure whether your Membership Dues Renewal Invoice of July 1, 2011 was paid or whether you are a member or not, please refer to the current Membership List to see if your name is on it.

Act Fast! Complete the NMLZO membership application form if your name does not appear on the Membership List.

SPECIAL NOTE: If you know someone who may be interested in joining, please feel free to sign them up! Don’t forget, you can accumulate points toward your certification for membership recruitment.

A NMLZO Membership list and Application form can be obtained online at www.nmml.org click on Subsections then on Zoning Officials.

Should you have any questions, please call me at 800-432-2036, Ext. 513.
County rejects temple for UDV

Neighbors opposing church applaud vote; officials say development met all codes

Phaedra Haywood | The New Mexican
Posted: Tuesday, July 12, 2011

The Santa Fe County Commission voted 3 to 2 on Tuesday to deny an application from a religious group seeking to build a temple in the Arroyo Hondo area.

Neighbors in the area had fiercely opposed the application from the O Centro Espírita Beneficente União do Vegetal (commonly referred to as UDV), a Christian-based religion that uses a hallucinogenic tea made from two Amazonian plants at its sacrament.

In the two years that the project has been under review, neighbors have cited traffic and water issues as reasons for opposition.

Most of all, they said, the temple — which would have hosted services that lasted into the wee hours of the morning — was not compatible with the neighborhood's character.

Commissioner Robert Anaya said he was opposing the project for that reason. Commissioner Kathleen Holian, who also voted against it, said, "This is in my district, and I will just simply say I cannot support this development." Joining them in opposition was Daniel Mayfield.

Commissioners Liz Stefanics and Virginia Vigil supported the church.

The decision was made in spite of the county staff's recommendation that the project be approved because it met county code. A consultant hired by the county also testified that water experts who spoke on behalf of the opposition had misrepresented some facts.

The consultant, Jay Lazarus of Glorieta Geo-Science, said the application met code, that the UDV had proven sufficient water availability and that it was unlikely the use of the tea would have any impact on the groundwater.

Stefanics wondered about the grounds for denying an application under those circumstances before casting her vote. "If they are meeting code requirements, do we have a valid reason to deny?" she asked.

The hearing started last month and recessed after six hours, then reconvened Tuesday.

Opponents of the project — who had to be gavled into silence by Vigil several times — greeted the decision with applause and joyful hugs.

Several members of the UDV — including Jeffrey Bronfman, who owned the land where the temple would have been built — had tears in their eyes after the vote.

The UDV attorney didn't know yet whether the group would appeal.

Contact Phaedra Haywood at 986-3068 or phaywood@sfnewmexican.com.

EDITOR'S NOTE: Other articles relating to this issue are available at the web site by searching 'UDV' or other relevant key words. Web address is http://www.santafenewmexican.com/