

Realtors challenge restrictions in land code

By J.R. Logan

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Guidelines dictating the use of agricultural land in Taos County's proposed land use code have sparked a debate between those who say they are preserving tradition and open space, and those who argue that limiting development hurts landowners and decreases property values. The disagreement comes as Taos County fast-tracks the implementation of its draft zoning rules, which were years in the making. Depending on the county commission's schedule, the new code could be in place as soon as early October.

To download a copy of the land use code, visit www.taosnews.com/downloads/landusereqs.pdf.

The flashpoint of the current debate is the "Irrigated Agricultural (IA) Land and Acequias" section of the code, which outlines what percentage of a parcel within an Irrigated Agricultural zone can be used for building.

The code specifies that structures must be placed in a contiguous "buildable area," meaning structures would be clustered at one end of the property to preserve open areas on the rest of the lot.

According to the new code, buildable areas in Irrigated Agricultural zones vary depending on lot size:

- There can be no building on lots smaller than one acre.
- Only 30 percent of lots between 1 and 5.99 acres can be used as a buildable area.
- Only 25 percent of lots 6 acres or bigger can be used as a buildable area.

To get approval to build in an agricultural zone, property owners must put a deed restriction on the property or provide proof of a conservation easement.

In the draft code, Irrigated Agricultural zones appear primarily around waterways, in areas long used for farming, and along acequias. Essentially all of the Ca-òn neighborhood is zoned as Irrigated Agricultural, and the agricultural classification also pops up in zoning maps of Las Colonias West Mesa, Lower Des Montes, Ranchos de Taos, and Cerro de Guadalupe.

Though the land-use code states that development limitations will preserve open space, protect watersheds and protect traditionally agrarian lands, some — like the Taos County Association of Realtors — argue that the proposed agricultural zoning criteria will lead to a substantial drop in property values. “Our concerns are that it’s an attack on the wealth and the property rights of a lot of Taos’ longtime historic families,” said John Kejr, president of the Realtor association.

Kejr said local appraisers have told him that the value of a lot with limited building rights can be worth half as much as a lot with no limitations. A lot with no building rights can be worth as little as only 20 percent of a lot with no restrictions.

The association is also concerned that property owners will be forced to incur costs associated with surveys and legal preparation to determine the “buildable area” of their land.

Kejr said the Taos County Association of Realtors has sent the draft land-use code to the National Association of Realtors for legal review. He and others have suggested that the language in the agricultural-irrigation section of the Taos County code amounts to a “taking” —the removal of economic value on a property by a governmental act. But as criticism from the local real estate industry mounts, county officials are staunchly defending the code and the agricultural zoning section.

Deputy county manager and planning director Rick Bellis suspects that those who claim to be defending property owners are really looking out for themselves. “It’s totally selfish,” said Bellis in an interview Monday (July 25). “It’s only a couple of Realtors saying ‘Hey, we ought to be able to mark up the value of any property we can so we can get as much as we personally want out of that property. That may be (the Realtors’) personal desire, but that’s not the desire of the people that live there and own that land.”

Bellis pointed out that specific zoning decisions were not made by the county but by local neighborhood associations who spent years preparing the draft plans. He said these local groups created the “blueprints” for their communities by prioritizing where and how development should occur.

Bellis also said that property owners are already limited in where and how they build. In the case of Irrigated Agricultural land, Bellis said existing environmental regulations, standardized building codes and current land use regulations already prevent entire lots in agricultural areas from being fully developed.

Instead, he said the language describing the Irrigated Agricultural zones essentially explains why such restrictions are desirable. “I would say (the Irrigated Agricultural zoning) is more of a philosophical statement than it is an actual landuse tool at this point.”

Bellis also dismissed suggestions that Irrigated Agricultural zoning as presented in the code is a “taking.” “Maybe what (the Realtors) mean is that it’s taking money out of their pockets that they foresee that they might want to make one day,” Bellis said.

Even if the code is adopted as written, Bellis said there is room for property owners to ask for exceptions to the rules.

Despite disagreements over a single zoning definition, the county and Realtors agree some kind of zoning is good for the community.

The county held a work study Tuesday (July 26) to present the finished draft to commissioners and hear public comments. The commission will set a date Aug. 2 to adopt the regulations. If approved, the new code would take effect 30 days after a vote takes place.



Image provided

This diagram, included in Taos County’s draft land-use code, shows a parcel zoned Irrigated Agricultural. The purple line indicates the “buildable area” of the lot, and the red line shows the land that must be left open for agricultural purposes. The yellow line is an example of how a parcel split or subdivision would occur.