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KTAO a case study in balancing business and residential interests

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This is the first in a periodic series of stories about Taos County's planned overhaul to its existing land use code.

For a business like the KTAOS Solar Center, customer experience is everything. The well-manicured back lawn offers an unrivaled view of Taos Mountain, and it's a favorite local venue to watch live music outside ... as long as the noise doesn't irk the neighbors.

Balancing commercial and residential needs is at the heart of many zoning debates. In KTAO's case, the owners argue the outdoor shows are a big boost for their bottom line and could improve Taos' economy by making it a well-known music destination. But neighbors counter the loud concerts don't fit within the quiet character of the nearby residential areas.

In considering an overhaul to the existing land use regulations, county officials are faced with a dilemma: promoting economic development to create jobs and tax revenue for public services while respecting the rights of residents who live in Taos for the beauty and solitude.

Under Taos County's existing land use regulations, any activity on private land that goes beyond building a house and doing agriculture requires a "special use permit." To get the permit, property owners must first get dozens of approvals from various agencies to ensure things like water quality or safe access to public roads won't be affected.

Once the application gets the OK from the county's planning department, the applicant must then go before the county planning commission where the public gets a chance to comment. If that decision is appealed, the application goes on to the county commission for another public hearing. Again, appeals to that decision can go to court.

Even the most basic application often takes months and can cost tens of thousands of dollars. And in the end, there is no guarantee that it will pass.

Numbers from the Taos County Planning Department show that of the 29 commercial permit applications submitted between 2008 and 2011, only one was denied. Still, the permit is widely considered cumbersome and subject to political caprice.

Under the proposed regulations, neighborhood associations would be able to enact zoning to control where business and residential development happen. By zoning an area for commercial use, businesses wouldn't be expected to jump through as many hoops before being allowed to open.

The problem is that neighbors don't always agree where non-residential development should occur and what limits (on things like maximum allowable noise) should be in place.

In 2009, one of KTAO's neighbors and the Upper Las Colonias Neighborhood Association complained about the noise from the outdoor concert. County staff agreed the shows violated the business' existing permit. The current regulations in Upper Las Colonias limit sound to 60 dB — about the volume of a normal conversation. A typical rock concert is about 16 times as loud.

Rather than quarrel with the neighborhood and go through what was sure to be an ugly fight for a new special use permit, KTAO relented. The outdoor concerts ceased and a pavilion was erected to try to contain the noise from future shows.

KTAO co-owner Kate Black says at one point she and the other owners looked into annexing into the town to get past the county regulations. She says the station has considered building an earthen berm or digging a modern, amphitheater-style stage below ground level to contain the noise. But those options are expensive, and Black says she's hesitant to spend the money only to get shut down again. "We could invest \$100,000 to host a better outdoor show, but we're worried it could be taken away on a whim," she says.

Black says the pavilion is fine, but it lacks the ambiance of the backyard. Plus, she says it severely limits the kinds of crowds they can attract.

The pavilion typically fits between 80 and 250 people per show, while the backyard can handle several times that many and more comfortably. "We know what people want," she says. "They want to kick back under the stars on a picnic blanket and let the kids play."

Plus, Black says booking bands is all about volume: the bigger the crowd you can host, the bigger the acts you can bring in. If KTAO spends \$10,000 to hire a band like Los Lonely Boys, there is a potential for a big payoff.

But Black says right now they are often wary of taking that risk. "It's handicapped our ability to keep moving forward," she says.

Even if the noise issue is resolved, KTAO still has a problem with parking. Black said concerts are now capped at about 600 tickets to ensure that parking doesn't swell onto the highway.

Gary Feuerman with Taos Mesa Brewing says that if his company and KTAO can establish themselves as attractive venues for touring bands, it's better for everyone.

"There's a magnetism to booking," Feuerman says, noting that developing Taos' music scene is going to take a cooperative effort. Black agrees. "We want to make more concert-goers rather than fighting for the same 500 people every weekend," she says. "We want to make the pie bigger."

Taos Mesa went through its own harrowing permit process before it opened. It took a year and a half to get a special use permit and another several years to get a brewers license because of delays at the county.

This summer, KTAO got a provisional second chance. After extensive lobbying by Black and others, the county approved a temporary event permit ordinance that opened the door for more than a dozen outside shows this summer.

Black has also become a board member of the Upper Las Colonias Neighborhood Association — the same group that fought the concerts in 2009. Eugenia Hauber, president of the Association, says KTAO is following the “good neighbor policy” — a key to reaching a compromise everyone can live with.

The county has said it will create a separate ordinance to control sound rather than include such a limit in the land use regulations. Zoning put forward by Upper Las Colonias last year made no mention of noise restrictions and wasn’t clear about whether concerts would be allowed in the commercial corridor near the Old Blinking Light.

Black said she’s still negotiating with neighbors about the specifics going into updated zoning. “We want it in detail so we know explicitly what is and isn’t permitted,” she says.