

Taos County land use code

Zoning rule could impact conservation tax breaks

By J.R. Logan

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Serious questions are being raised about how much a new zoning rule could affect the value of properties that are considered "Irrigated Agricultural" under Taos County's proposed land use code.

The section defining Irrigated Agriculture states that landowners would be able to seek tax breaks by maintaining open areas for agricultural purposes, but some have pointed out that forcing property owners into restricting development means they would probably not be eligible for tax credits or exemptions.

Taos County has long been pushing for implementation of a new code, but after two tie votes at its Tuesday (Aug. 2) meeting, the county commission failed to set a date for a public hearing and a formal vote on adopting the new regulations. Scheduling a date will likely appear on the next meeting agenda.

The proposed Irrigated Agriculture zone in the new land use code limits how much of a parcel can be used for buildings within that zone:

- No building can take place if a lot is smaller than an acre.
 - Only 30 percent of a lot between 1 and 5.99 acres can be developed
 - Only 25 percent of a lot 6 acres or larger can be developed
- Maps of what areas are zoned Irrigated Agriculture are included in the draft code. To download a copy, visit taosnews.com/downloads/landusereqs.pdf

Copies of the proposed code are also available at the Taos Public Library, the Taos County Planning Department, and at several community centers.

The new land use regulations state that the purposes of the zoning designation is to "protect agricultural uses and cultural values while accommodating new development."

Among the incentives, the code states that landowners would be able to take advantage of tax credits and exemptions. But some say property owners would not be able to cash in on tax breaks while watching the appraised value of their properties drop dramatically.

Taos appraiser Mark Cowan told *The Taos News* Monday (Aug. 1) that the proposed zoning rules could have a big impact on the value of a property whether an owner intends to develop or not.

In general, landowners who wish to keep land vacant and seek some compensation can apply for a conservation easement. A conservation easement prevents a landowner from developing part or all of a property, and in return, the owner is eligible for a federal tax deduction and a state tax credit.

For example, an appraiser might value a 5-acre parcel with no restrictions at \$200,000. Once a landowner puts a conservation easement over 4 acres of that land, the appraiser might determine that the property is worth only \$80,000 because of the new restrictions.

The difference (in this example: \$120,000), is known as the “recognized charitable contribution.” The federal deduction is equal to the value of the land being forfeited by restricting building rights, and the state credit is worth half that amount.

Cowan notes that many landowners in Taos don’t benefit from state tax credits worth hundreds of thousands of dollars because their incomes are too small. In those cases, Cowan says landowners can sell the credits to others for as high as 87 cents on the dollar. For the example above, the landowner could take the \$60,000 tax credit and sell it for around \$52,000.

However, if the county landuse code is adopted with the current zoning definitions, properties that fall within the Irrigated Agricultural zone will likely miss out on those kinds of tax incentives.

The reason, according to Cowan, is that the zoning would already limit how much of a parcel can be developed; the development right has already been removed by the county.

If a landowner wanted to apply for a conservation easement on the part of the lot that the county declared unbuildable, the value assigned by an appraiser with or without the easement would likely be the same. Thus, no “recognized charitable contribution” and no tax breaks.

Because of the potential loss in value, Cowan suggested that landowners seek legal advice on whether the new regulations would affect their properties.

The Taos County Association of Realtors has already sent a copy of the draft land use code to the National Association of Realtors. The code is now undergoing legal review, and Taos County Association of Realtors President John Kejr said he expects to hear from the attorneys in about a week.

Kejr said the willingness of the national association to help review the rules suggests to him that there are “some serious concerns about the legality and economic impact of these regulations — especially pertaining to the Irrigated Lands section.”

Taos County Planning Director Rick Bellis wrote in an email to *The Taos News* that laws concerning conservation tax incentives have changed significantly in the last five years while the code was being put together. He said the county plans to “perfect the language” in the zoning to meet federal and state guidelines.

As an example, Bellis said the county is working with the Taos Land Trust on the conservation easement wording. He said another series of community meetings was being planned and will be scheduled within the next three weeks.