

For the August 5th, 2020 DRB hearing

Regarding the Wintergreen Apts.

Dear DRB Board members,

I am the Land Use Director for the Westside Coalition. I receive the notifications of west side projects. I have attended two online facilitated meetings regarding the Wintergreen apartment proposal.

Here are my Comments regarding the proposed Four Story Wintergreen Apartments:

1) Solar Access: The Westside has received a lot of applications for Apartments, recently. These applications are proposing 3 to 4 story apartments; mostly 4 stories. If we don't do this right, we end up with very incompatible apartments adjacent to single family residents, which is creating a lot of conflicts with the neighbors. The size of a building adjacent to single family homes does affect the quality of life for the existing residents in terms of privacy and solar access. In the case of the wintergreen Apts., solar access for the neighbors will especially be affected when the afternoon sun goes down.

2) Neighborhood scale and Character: One of the biggest concerns regarding the proposed Winter Green Apartments is the size of the four story building behind single family neighborhoods. Four stories is completely out of scale and character for the surrounding area. There are no other 4 story buildings along this stretch of Golf Course, heading into Rio Rancho, that are this tall. This site is completely surrounded by single family homes. Four stories will appear out of place, as if a mistake was made in the zoning. Would this be called spot zoning? I'm sure this was not the original intent for this site.

3) Prior C-2 zoning: The prior zone code listed this site as a C-2 zone, Community Commercial. Apartments were a conditional use, under the C-2 Zoning. At the time it had to consider 3 criteria: school capacity, jobs to housing balance, and meeting the usable open space requirement. The residents who purchased their homes, were expecting commercial type businesses similar in scale as the other businesses up the road from them. They did not expect a large apartment complex behind their homes. We do not want this project to set a bad precedent that undermines the scale and character of the surrounding area, upsetting the community.

4) IDO MXM zoning: The IDO is a new zoning ordinance. This site was changed to a MXM zone in the IDO. It now allows apartments permissively, buildings can go up to 45 ft. high. Does this mean that a 45 ft. high building is allowed at all locations? Shouldn't an application meet the goals policies of the ABC-Z Comp Plan which promotes development to blend with the scale and character of the surrounding area? Also note most of the apartments in the area, are near Activity Centers and have transit nearby. Ex: The apartments near the North west Area command are 2 to 3 story buildings, not 4 story. There is a lot of activity around that area, including the cottonwood shopping area, Cibola high school and a bus transit system. Note: The Wintergreen site is in an Area of Consistency, 2) it is not in an Activity Center, 3) It does not have transit service on Golf Course. All these things need to be considered when evaluating this proposal.

The ABC-Z Comp Plan goals and policies are to guide development to fit with the surrounding area:

5) ABC-Z Comp Plan: Pg. 5-23 5.1.2.5 CITY OF ALBUQUERQUE DEVELOPMENT AREAS: Directing growth to Areas of Change is intended to help preserve and protect established neighborhoods in Areas of Consistency. ***Areas of Change and Consistency are designed to be complementary to protect the scale and character of distinctive neighborhoods while accommodating new residents and jobs in areas already well served by infrastructure and transit.***

Areas of Consistency: Pg. 5-23 (City only) Neighborhoods designated as Areas of Consistency will be protected by policies to limit densities, new uses, and negative impacts from nearby development. While these areas may see some infill development and new uses, new development or redevelopment will need to be compatible in scale and character with the surrounding area

NOTE: The development proposal should fit with the above goals and policies of the ABC-Z Comp Plan. It needs to limit its size and height to avoid privacy issues, solar access issues, and blend with the surrounding area. I recommend further evaluation of this apartment complex to meet these goals and policies, by going down in height to two stories, to protect the neighbors privacy, solar access, and blend with the community.

I am including the State Statute (below): It emphasizes that the Zoning and the Comprehensive Plan, go together in meeting the goals and the vision of the community to obtain complementary and compatible developments adjacent to one another to preserve the quality of life for our citizens.

2019 New Mexico Statutes

Chapter 3 - Municipalities

Article 21 - Zoning Regulations

Section 3-21-5 - Zoning; conformance to comprehensive plan.

Universal Citation: NM Stat § 3-21-5 (2019)

A. The regulations and restrictions of the county or municipal zoning authority are to be in accordance with a comprehensive plan and be designed to:

- (1) lessen congestion in the streets and public ways;
- (2) secure safety from fire, flood waters, panic and other dangers;
- (3) promote health and the general welfare;
- (4) provide adequate light and air;

- (5) prevent the overcrowding of land;
- (6) avoid undue concentration of population;
- (7) facilitate adequate provision for transportation, water, sewerage, schools, parks and other public requirements; and
- (8) control and abate the unsightly use of buildings or land.

B. The zoning authority in adopting regulations and restrictions shall give reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and to conserving the value of buildings and land and encouraging the most appropriate use of land throughout its jurisdiction.

History: 1953 Comp., § 14-20-3, enacted by Laws 1965, ch. 300; 1970, ch. 52, § 2.

ANNOTATIONS

Comprehensive planning. — A comprehensive plan need not be contained in one document. It may be comprised of several or no documents. It may be found within the ordinance itself where the zoning authority has not enacted a prior comprehensive plan and that absence of a formally adopted comprehensive plan does substantially weaken the presumption of regularity of any zoning ordinance enacted without it. *Watson v. Town Council of Town of Bernalillo*, 1991-NMCA-009, 111 N.M. 374, 805 P.2d 641.

Comprehensive plan may be found within zoning ordinance itself where the zoning authority has not enacted a prior comprehensive plan. *Board of Cnty. Comm'rs v. City of Las Vegas*, 1980-NMSC-137, 95 N.M. 387, 622 P.2d 695.

Major reason for requiring comprehensive plan is to ensure that there will not be loose determinations of land utilization of comparatively small sections of the community. *Board of Cnty. Comm'rs v. City of Las Vegas*, 1980-NMSC-137, 95 N.M. 387, 622 P.2d 695.

Advisory nature of master plan. — The phrase "in accordance with", in Subsection A, requires land use planning regulations to be guided by, and consistent with, a master plan, but it does not mean that the legislature intended city master plans to be strictly adhered to in the same manner as a statute, ordinance, or agency regulation. *West Bluff Neighborhood Ass'n v. City of Albuquerque*, 2002-NMCA-075, 132 N.M. 433, 50 P.3d 182, *overruled by Rio Grande Chapter of Sierra Club v. N.M. Mining Comm'n*, 2003-NMSC-005, 133 N.M. 97, 61 P.3d 806.

Absence of adopted plan weakens presumption of zoning regularity. — Absence of a formally adopted comprehensive plan does substantially weaken the presumption of regularity of any zoning ordinance enacted without it. *Board of Cnty. Comm'rs v. City of Las Vegas*, 1980-NMSC-137, 95 N.M. 387, 622 P.2d 695.

Ordinance invalid absent evidence of plan. — Where there was no evidence before the trial court demonstrating that a county land fill ordinance included a comprehensive plan, but, to the contrary, both the express statements in the ordinance and the evidence before the trial court show that the disputed ordinance was not enacted in accordance with such a plan, the ordinance was struck down as invalid. *Board of County Comm'rs v. City of Las Vegas*, 1980-NMSC-137, 95 N.M. 387, 622 P.2d 695.

Comprehensive planning. — A county zoning ordinance was valid where the county had a comprehensive plan in substance if not form at the time the ordinance was enacted. *Bogan v. Sandoval Cnty. Planning and Zoning Comm'n*, 1994-NMCA-157, 119 N.M. 334, 890 P.2d 395, cert. denied, 119 N.M. 168, 889 P.2d 203.

Presumption of validity. — A zoning ordinance is attached with a presumption of validity. The burden is on a sign owner to overcome this presumption by proving that an ordinance is not reasonably related to its stated purpose. *Temple Baptist Church, Inc. v. City of Albuquerque*, 1982-NMSC-055, 98 N.M. 138, 646 P.2d 565.

Presumption of correctness regarding initial zoning. — There is a presumption that the initial determination of the type of zoning for a given property is the correct one. *Miller v. City of Albuquerque*, 1976-NMSC-052, 89 N.M. 503, 554 P.2d 665.

There is a substantial distinction between amendments to a zoning ordinance as contrasted to ordinances enacting comprehensive zoning; the fundamental justification for an amendatory or repealing zoning ordinance is a change of conditions making the amendment or repeal reasonably necessary to protect the public interest, with another function being the covering and perfecting of previous defective ordinances or correcting mistakes or injustices therein. *Miller v. City of Albuquerque*, 1976-NMSC-052, 89 N.M. 503, 554 P.2d 665.

Ordinance establishing exceptions. — A county ordinance which among other things establishes certain limited special exceptions is an integral part of the plan required under this section, and the main objectives of requiring that a special permit be obtained before a use of land is commenced are to protect adjoining property and to insure the orderly and efficient development of the community. *Burroughs v. Board of Cnty. Comm'rs*, 1975-NMSC-051, 88 N.M. 303, 540 P.2d 233.

Aesthetics justify exercise of police power. — Aesthetic considerations alone justify the exercise of the police power. Ordinances must still, however, be construed for their reasonableness in relation to aesthetic purposes. Moreover, if the ordinance in question impinges on a fundamental right, then the ordinance must "directly advance" the interests of aesthetics. *Temple Baptist Church, Inc. v. City of Albuquerque*, 1982-NMSC-055, 98 N.M. 138, 646 P.2d 565.

Sign ordinance held reasonably related to proper governmental goals. — A sign ordinance regulating the size, height and number of signs is reasonably related to the proper governmental goals of aesthetics and traffic safety. *Temple Baptist Church, Inc. v. City of Albuquerque*, 1982-NMSC-055, 98 N.M. 138, 646 P.2d 565 (1982).

Purpose of a municipal historical zoning ordinance was within the term "general welfare," as used in municipal zoning enabling legislation. *City of Santa Fe v. Gamble-Skogmo, Inc.*, 1964-NMSC-016, 73 N.M. 410, 389 P.2d 13.

Judicial review. — The district court may not substitute its judgment for that of the board of commissioners, but when it was made to appear by the affidavits and other matters in the record that **the board may have improperly failed to consider the matters which it was required to consider in making the zoning change**, then a question of fact was presented on the issue of the arbitrariness of the board in granting the special use permit, and it was improper for the court to grant summary judgment and thereby resolve this issue as a matter of law. *Cinelli v. Whitfield Transp., Inc.*, 1971-NMSC-103, 83 N.M. 205, 490 P.2d 463.

Law reviews. — For note, "County Regulation of Land Use and Development," see 9 Nat. Resources J. 266 (1969).

For article, "Existing Legislation and Proposed Model Flood Plain Ordinance for New Mexico Municipalities," see 9 Nat. Resources J. 629 (1969).

For note, "Subdivision Planning Through Water Regulation in New Mexico," see 12 Nat. Resources J. 286 (1972).

For article, **"Solar Rights and Their Effect on Solar Heating and Cooling,"** see 16 Nat. Resources J. 363 (1976).

For article, "Survey of New Mexico Law, 1982-83: Land Use Planning/Zoning," see 14 N.M.L. Rev. 183 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Requirement that zoning variances or exceptions be made in accordance with comprehensive plan, 40 A.L.R.3d 372.

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See photo on next page:

A friend sent me a picture of this Westside neighborhood below. These recently built apartments now block homeowners view at the edge of the City to the West. He said homeowners don't even want to use their backyards anymore due to the feeling of being watched from the looming apartments.

We don't want to see this type development to happen again.

Thank you.
Rene' Horvath
WSCONA Land use Director

