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HOUSE BILL 464

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Patsy G. Trujillo

AN ACT

**RELATING TO LAND USE; REQUIRING LAND USE DECISIONS TO BE
CONSISTENT WITH COMPREHENSIVE PLANS; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 3-19-1 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-18-1) is amended to read:**

**"3-19-1. CREATION OF PLANNING COMMISSION. -- A
municipality is a planning authority and may, by ordinance:**

A. establish a planning commission;

B. delegate to the planning commission:

**(1) the power, authority, jurisdiction and
duty to enforce and carry out the provisions of law relating
to planning, platting and zoning; and**

(2) other power, authority, jurisdiction and

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1 duty incidental and necessary to carry out the purpose of
2 [~~Sections 14-18-1 through 14-18-12 New Mexico Statutes~~
3 ~~Annotated, 1953 Compilation~~] Chapter 3, Article 19 NMSA 1978;

4 C. retain to the governing body as much of this
5 power, authority, jurisdiction and duty as it desires; and

6 D. adopt, amend, extend and carry out a [~~general~~
7 ~~municipal or master~~] comprehensive plan, which may be referred
8 to as the comprehensive plan, general plan or master plan. "

9 Section 2. Section 3-19-8 NMSA 1978 (being Laws 1965,
10 Chapter 300, Section 14-18-8, as amended) is amended to read:

11 "3-19-8. APPEAL. --

12 A. Any person in interest dissatisfied with an
13 order or determination of the planning commission, after
14 review of the order or determination by the governing body of
15 the municipality, may commence an appeal in the district court
16 pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

17 B. If the district court determines that an order
18 or determination is inconsistent with the municipality's
19 comprehensive plan, the order or determination is void."

20 Section 3. Section 3-19-9 NMSA 1978 (being Laws 1965,
21 Chapter 300, Section 14-18-9, as amended) is amended to read:

22 "3-19-9. [~~MASTER~~] COMPREHENSIVE PLAN--PURPOSES. --

23 A. The planning commission shall prepare and adopt
24 a [~~master~~] comprehensive plan for the physical development of
25 the municipality and the area within the planning and platting

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1 jurisdiction of the municipality [~~which~~] that in the planning
2 commission's judgment bears a relationship to the planning of
3 the municipality. [~~The planning commission may amend, extend~~
4 ~~or add to the plan or carry any part or subject matter into~~
5 ~~greater detail.~~] In preparing the [~~master~~] comprehensive
6 plan, the planning commission shall make careful and
7 comprehensive surveys and studies of existing conditions and
8 probable future growth of the municipality and its environs.
9 The comprehensive plan shall be made [~~with the general purpose~~
10 ~~of guiding and accomplishing~~] to guide and accomplish a
11 coordinated, adjusted and harmonious development of the
12 municipality [~~which~~] that will, in accordance with existing
13 and future needs, best promote health, safety, morals, order,
14 convenience, prosperity or the general welfare as well as
15 efficiency and economy in the process of development.

16 B. Among other things, the [~~master~~] comprehensive
17 plan with accompanying maps, plats and charts and descriptive
18 and explanatory matter [~~and recommendations of the planning~~
19 ~~commission~~] for the physical development of the municipality
20 and for its planning jurisdiction may include:

21 (1) the general location, character and
22 extent of streets, bridges, viaducts and parkways, parks and
23 playgrounds, floodways, waterways and waterfront development,
24 airports and other ways, grounds, places and spaces;

25 (2) the general location of public schools,

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1 public buildings and other public property;

2 (3) the general location and extent of public
3 utilities and terminals, whether publicly or privately owned;

4 (4) the general location, character, layout
5 and extent of community centers and neighborhood units and the
6 replanning of blighted districts and slum areas; and

7 (5) the acceptance, widening, removal,
8 extension, relocation, narrowing, vacation, abandonment or
9 change of use of any of the foregoing public ways, grounds,
10 places, spaces, buildings, properties, utilities or terminals.

11 C. The planning commission shall submit the
12 comprehensive plan to the governing body for adoption by
13 ordinance. The governing body may amend the proposed
14 ordinance in the same manner as other proposed ordinances are
15 amended. When adopted as an ordinance, the comprehensive plan
16 shall govern all land use decisions of the municipality.

17 [~~C.~~] D. Copies of the master plan shall be
18 available at the office of the municipal clerk and may be
19 purchased at a reasonable price. "

20 Section 4. Section 3-19-10 NMSA 1978 (being Laws 1965,
21 Chapter 300, Section 14-18-10) is amended to read:

22 "3-19-10. ADOPTION OF A [~~MASTER~~] COMPREHENSIVE PLAN. --

23 A. The [~~planning commission~~] governing body may
24 adopt:

25 (1) the [~~master~~] comprehensive plan by a

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1 single ~~[resolution]~~ ordinance; or

2 (2) part of the ~~[master]~~ comprehensive plan
3 as work progresses on the ~~[master]~~ comprehensive plan;
4 provided the part corresponds with one of the functional
5 subdivisions of the subject matter of the plan.

6 B. Before adoption of the ~~[master]~~ comprehensive
7 plan or any part thereof, the ~~[planning commission]~~ governing
8 body shall hold at least one public hearing. Notice of the
9 time and place of the hearing shall be published ~~[one time at~~
10 ~~least fifteen days before the day of the hearing]~~ as required
11 in Section 3-17-3 NMSA 1978. Prior to the publication of the
12 notice, copies of the ~~[master]~~ comprehensive plan shall be
13 made available ~~[to any citizen]~~ in the office of the municipal
14 clerk.

15 ~~[B.]~~ C. Adoption of the ~~[master]~~ comprehensive
16 plan or any part, amendment or addition to the ~~[master]~~
17 comprehensive plan shall be by ~~[a resolution approved by a~~
18 ~~majority of the members of the planning commission]~~ ordinance.
19 The ~~[resolution]~~ ordinance shall refer expressly to the maps,
20 descriptive matter and other matters ~~[which]~~ that the
21 ~~[planning commission]~~ governing body intends to form a part or
22 the whole of the ~~[master]~~ comprehensive plan. ~~[The action~~
23 ~~taken by the planning commission shall be recorded on the~~
24 ~~master plan or the part of the plan and shall be endorsed by~~
25 ~~the chairman and the secretary of the planning commission. A~~

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1 ~~certified copy of the master plan or any part thereof approved~~
2 ~~by the planning commission shall be given to the governing~~
3 ~~body of the municipality.]"~~

4 Section 5. Section 3-19-11 NMSA 1978 (being Laws 1965,
5 Chapter 300, Section 14-18-11, as amended) is amended to read:

6 "3-19-11. LEGAL STATUS OF ~~[MASTER]~~ COMPREHENSIVE PLAN. --

7 A. After a ~~[master]~~ comprehensive plan or any part
8 ~~[thereof]~~ of the plan has been approved and within the area of
9 the ~~[master]~~ comprehensive plan or any part ~~[thereof]~~ of the
10 plan so approved, the approval of the planning commission is
11 necessary to construct, authorize, accept, widen, narrow,
12 remove, extend, relocate, vacate, abandon, acquire or change
13 the use of any:

14 (1) park, street or other public way, ground,
15 place or space;

16 (2) public building or structure; or

17 (3) utility, whether publicly or privately
18 owned.

19 B. The failure of the planning commission to act
20 within sixty-five days after the submission of a proposal to
21 it constitutes approval of the proposal unless the proponent
22 agrees to an extension of time. ~~[If the planning commission~~
23 ~~disapproves a proposal, it must state its reasons to the~~
24 ~~governing body.]~~ The planning commission shall state the
25 reasons for its decision and how the decision is consistent

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1 with the comprehensive plan. The governing body may overrule
2 the planning commission [~~and approve the proposal~~] by a [~~two-~~
3 ~~thirds~~] two-thirds' vote of all its members. The governing
4 body shall state the reasons for its decision and how its
5 decision is consistent with the comprehensive plan.

6 C. None of the provisions of Chapter 3, Article 19
7 NMSA 1978 shall apply to any existing building, structure,
8 plant or other equipment owned or used by [~~any~~] a public
9 utility or the right to its continued use or its reasonable
10 repair or alteration for the purpose for which it was used at
11 the time the [~~master~~] comprehensive plan or any part [~~thereof~~]
12 of the plan affecting the property takes effect. After the
13 adoption of the [~~master~~] comprehensive plan or any part
14 [~~thereof~~] of the plan affecting the property, all extensions,
15 betterments or additions to buildings, structures, plants or
16 other equipment of [~~any~~] a public utility shall be made [~~in~~
17 ~~conformity~~] consistent with the [~~master~~] comprehensive plan or
18 [~~any~~] part [~~thereof~~] of the plan affecting the property, and
19 upon the approval of the planning commission. After a public
20 hearing, the [~~state corporation commission or the New Mexico~~
21 ~~public utility commission or the regulatory agency having~~
22 ~~jurisdiction or their successors having jurisdiction, as the~~
23 ~~ease may be~~] public regulation commission may order that the
24 extensions, betterments or additions to buildings, structures,
25 plants or other equipment are reasonable and that the

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1 extensions, betterments or additions may be made [~~even though~~
2 ~~they conflict with the adopted master plan or any part thereof~~
3 ~~affecting the property~~].

4 D. [~~Any~~] A public agency or official, not under
5 the jurisdiction of the governing body of the municipality,
6 authorizing or financing a public way, ground, place, space,
7 building, structure or utility shall submit the proposal to
8 the planning commission. If the planning commission
9 disapproves the proposal, the board of the public agency by a
10 [~~two-thirds~~] two-thirds' vote of all its members or the
11 official may overrule the planning commission and proceed with
12 the proposal [~~subject to the provisions of Subsection C of~~
13 ~~this section~~]. "

14 Section 6. A new section of Chapter 3, Article 19 NMSA
15 1978 is enacted to read:

16 "[NEW MATERIAL] CONSISTENCY REQUIRED. --

17 A. Beginning January 1, 2003, any program,
18 regulation or land use action that affects land use shall be
19 consistent with the comprehensive plan, including:

- 20 (1) annexation procedures;
- 21 (2) subdivision regulations;
- 22 (3) zoning regulations;
- 23 (4) manufactured housing and zoning;
- 24 (5) historic districts and landmarks;
- 25 (6) planning and platting;

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- 1 (7) local economic development;
- 2 (8) development fees;
- 3 (9) infrastructure capital improvement plans;
- 4 (10) public works expenditures;
- 5 (11) development agreements;
- 6 (12) transfer of development rights programs;
- 7 (13) community plans, neighborhood plans and
- 8 sector plans; and
- 9 (14) any other ordinance, plan or regulation
- 10 of the municipality that relates to land use.

11 B. As used in this section, "land use action"

12 means preliminary or final approval of a subdivision plat;

13 approval of a site plan; approval of a planned unit

14 development; approval of a conditional use; granting of a

15 variance; a decision by the municipality to construct a

16 capital improvement or to acquire land for community

17 facilities, including transportation facilities; and any other

18 action that may affect land use.

19 C. A land development regulation existing at the

20 time of adoption or amendment of the comprehensive plan that

21 is inconsistent with the comprehensive plan shall be amended

22 to be consistent no later than six months after adoption or

23 amendment of the comprehensive plan.

24 D. A land development regulation, a proposed

25 amendment to an existing land development regulation or a

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1 proposed land use action is consistent with the comprehensive
2 plan if the regulation, amendment or action:

3 (1) furthers the goals and policies contained
4 in the comprehensive plan;

5 (2) is compatible with the proposed future
6 land uses and densities and intensities of use contained in
7 the comprehensive plan; or

8 (3) carries out, as applicable, specific
9 proposals for community facilities, including transportation
10 facilities, that are contained in the comprehensive plan.

11 E. In determining whether a land development
12 regulation, a proposed amendment to an existing land
13 development regulation or a proposed land use action meets the
14 requirements of Subsection C of this section, the planning
15 commission may take into account any relevant guidelines
16 contained in the comprehensive plan.

17 F. If the planning commission determines that a
18 land development regulation, a proposed amendment to an
19 existing land development regulation or a proposed land use
20 action is not consistent with the comprehensive plan, it:

21 (1) shall state in a written report to the
22 governing body what changes or revisions are necessary to make
23 it consistent; and

24 (2) may state in the written report what
25 amendments to the comprehensive plan are necessary to

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1 eliminate an inconsistency.

2 G. The governing body shall:

3 (1) adopt the report;

4 (2) reject the report; or

5 (3) adopt the report in part and reject the
6 report in part.

7 H. If the governing body rejects the report in
8 whole or in part, it shall adopt changes to the comprehensive
9 plan or instruct the planning commission to make changes to
10 the land development regulation, proposed amendment to the
11 existing land development regulation or proposed land use
12 action to ensure consistency. "

13 Section 7. Section 3-21-5 NMSA 1978 (being Laws 1965,
14 Chapter 300, Section 14-20-3, as amended) is amended to read:

15 "3-21-5. ZONING-- CONFORMANCE TO COMPREHENSIVE PLAN. --

16 A. The regulations and restrictions of the county
17 or municipal zoning authority are to be [~~in accordance~~]
18 consistent with a comprehensive plan and be designed to:

19 (1) lessen congestion in the streets and
20 public ways;

21 (2) secure safety from fire, flood waters,
22 panic and other dangers;

23 (3) promote health and the general welfare;

24 (4) provide adequate light and air;

25 (5) prevent the overcrowding of land;

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1 (6) avoid undue concentration of population;

2 (7) facilitate adequate provision for

3 transportation, water, sewerage, schools, parks and other

4 public requirements; and

5 (8) control and abate the unsightly use of

6 buildings or land.

7 B. The zoning authority in adopting regulations

8 and restrictions shall comply with the comprehensive plan and

9 give reasonable consideration, among other things, to the

10 character of the district and its peculiar suitability for

11 particular uses and to conserving the value of buildings and

12 land and encouraging the most appropriate use of land

13 throughout its jurisdiction. "

14 Section 8. Section 3-21-8 NMSA 1978 (being Laws 1965,
15 Chapter 300, Section 14-20-6, as amended) is amended to read:

16 "3-21-8. APPEALS TO ZONING AUTHORITY-- GROUNDS-- STAY OF
17 PROCEEDINGS. --

18 A. The zoning authority shall provide by
19 [~~resolution~~] ordinance the procedure to be followed in
20 considering appeals allowed by this section.

21 B. [~~Any~~] An aggrieved person or any officer,
22 department, board or bureau of the zoning authority affected
23 by a decision of an administrative officer, ~~commission~~ or
24 committee in the enforcement of Sections 3-21-1 through
25 3-21-14 NMSA 1978 or ordinance, resolution, rule or regulation

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1 adopted pursuant to these sections may appeal to the zoning
2 authority. An appeal shall stay all proceedings in
3 furtherance of the action appealed unless the officer,
4 commission or committee from whom the appeal is taken
5 certifies that by reason of facts stated in the certificate, a
6 stay would cause imminent peril of life or property. Upon
7 certification, the proceedings shall not be stayed except by
8 order of district court after notice to the official,
9 commission or committee from whom the appeal is taken and on
10 due cause shown.

11 C. When an appeal alleges that there is error in
12 any order, requirement, decision or determination by an
13 administrative official, commission or committee in the
14 enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or
15 any ordinance, resolution, rule or regulation adopted pursuant
16 to these sections, the zoning authority by a majority vote of
17 all its members may, consistent with the municipal or county
18 comprehensive plan:

19 (1) authorize, in appropriate cases and
20 subject to appropriate conditions and safeguards variances
21 from the terms of the zoning ordinance or resolution:

22 (a) [~~which~~] that are not contrary to
23 the public interest;

24 (b) where, owing to special conditions,
25 a literal enforcement of the zoning ordinance [~~with~~] would

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1 result in unnecessary hardship; and

2 (c) so that the spirit of the zoning
3 ordinance is observed and substantial justice done; or

4 (2) in conformity with Sections 3-21-1
5 through 3-21-14 NMSA 1978:

6 (a) reverse any order, requirement,
7 decision or determination of an administrative official,
8 commission or committee;

9 (b) decide in favor of the appellant;
10 or

11 (c) make any change in any order,
12 requirement, decision or determination of an administrative
13 official, commission or committee. "

14 Section 9. Section 3-21-9 NMSA 1978 (being Laws 1965,
15 Chapter 300, Section 14-20-7, as amended) is amended to read:

16 "3-21-9. ZONING--APPEAL. --

17 A. A person aggrieved by a decision of the zoning
18 authority or any officer, department, board or bureau of the
19 zoning authority may appeal the decision pursuant to the
20 provisions of Section 39-3-1.1 NMSA 1978.

21 B. If the district court determines that a
22 decision of the zoning authority or an officer, department,
23 board or bureau of the zoning authority is inconsistent with
24 the municipal or county comprehensive plan, the decision is
25 void. "

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1 Section 10. A new section of Chapter 4, Article 57 NMSA
2 1978 is enacted to read:

3 " [NEW MATERIAL] COMPREHENSIVE PLAN--CONSISTENCY
4 REQUIRED. --

5 A. A county may, by ordinance, adopt, amend,
6 extend and carry out a comprehensive plan, which may be
7 referred to as the comprehensive plan, general plan or master
8 plan.

9 B. Beginning January 1, 2003, any program,
10 regulation or land use action that affects land use shall be
11 consistent with the comprehensive plan, including:

- 12 (1) annexation procedures;
- 13 (2) subdivision regulations;
- 14 (3) zoning regulations;
- 15 (4) manufactured housing and zoning;
- 16 (5) historic districts and landmarks;
- 17 (6) planning and platting;
- 18 (7) local economic development;
- 19 (8) development fees;
- 20 (9) infrastructure capital improvement plans;
- 21 (10) public works expenditures;
- 22 (11) development agreements;
- 23 (12) transfer of development rights programs;
- 24 (13) community plans, neighborhood plans and
25 sector plans; and

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1 (14) any other ordinance, plan or regulation
2 of the county that relates to land use.

3 C. As used in this section, "land use action"
4 means preliminary or final approval of a subdivision plat;
5 approval of a site plan; approval of a planned unit
6 development; approval of a conditional use; granting of a
7 variance; a decision by the county to construct a capital
8 improvement or to acquire land for community facilities,
9 including transportation facilities; and any other action that
10 may affect land use.

11 D. A land development regulation existing at the
12 time of adoption or amendment of the comprehensive plan that
13 is inconsistent with the comprehensive plan shall be amended
14 to be consistent no later than six months after adoption or
15 amendment of the comprehensive plan.

16 E. A land development regulation, a proposed
17 amendment to an existing land development regulation or a
18 proposed land use action is consistent with the comprehensive
19 plan if the regulation, amendment or action:

20 (1) furthers the goals and policies contained
21 in the comprehensive plan;

22 (2) is compatible with the proposed future
23 land uses and densities and intensities of use contained in
24 the comprehensive plan; or

25 (3) carries out, as applicable, specific

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1 proposals for community facilities, including transportation
2 facilities, that are contained in the comprehensive plan.

3 F. In determining whether a land development
4 regulation, a proposed amendment to an existing land
5 development regulation or a proposed land use action meets the
6 requirements of Subsection D of this section, the planning
7 commission may take into account any relevant guidelines
8 contained in the comprehensive plan.

9 G. If the planning commission determines that a
10 land development regulation, a proposed amendment to an
11 existing land development regulation or a proposed land use
12 action is not consistent with the comprehensive plan, it:

13 (1) shall state in a written report to the
14 governing body what changes or revisions are necessary to make
15 it consistent; and

16 (2) may state in the written report what
17 amendments to the comprehensive plan are necessary to
18 eliminate an inconsistency.

19 H. The governing body shall:

20 (1) adopt the report;

21 (2) reject the report; or

22 (3) adopt the report in part and reject the
23 report in part.

24 I. If the governing body rejects the report in
25 whole or in part, it shall adopt changes to the comprehensive

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1 plan or instruct the planning commission to make changes to
2 the land development regulation, proposed amendment to the
3 existing land development regulation or proposed land use
4 action to ensure consistency. "

5 Section 11. APPROPRIATION. --

6 A. Three million dollars (\$3,000,000) is
7 appropriated from the general fund to the local government
8 division of the department of finance and administration for
9 expenditure in fiscal years 2002 through 2004 to provide
10 grants to counties and municipalities to:

11 (1) develop comprehensive plans and revise
12 regulations to comply with the comprehensive plans;

13 (2) revise regulations to comply with
14 existing comprehensive plans; and

15 (3) provide grants for infrastructure needs
16 related to the comprehensive plans.

17 B. This appropriation shall be expended based on
18 application to and approval by the New Mexico community
19 development council.

20 C. Any unexpended or unencumbered balance
21 remaining at the end of fiscal year 2004 shall revert to the
22 general fund.

23 Section 12. REPEAL. -- Section 3-19-12 NMSA 1978 (being
24 Laws 1965, Chapter 300, Section 14-18-12) is repealed.

25 Section 13. EFFECTIVE DATE. -- The effective date of the

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provisions of this act is July 1, 2001.