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SENATE BILL 161

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO LAND USE; ESTABLISHING A VESTED PROPERTY RIGHT IN
CONDITIONALLY APPROVED AND APPROVED SUBDIVISION PLATS;
REQUIRING PREPARATION OF AN IMPACT STUDY BEFORE APPROVAL OF
SUBDIVISION AND LAND USE PROVISIONS.

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

Section 1. Section 3-19-6 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-18-6, as amended) is amended to read:

"3-19-6. SUBDIVISION REGULATIONS. --

A. The planning authority of a municipality shall
adopt regulations governing the subdivision of land within the
planning and platting jurisdiction of the municipality. The
subdivision regulations shall be approved by the governing
body before they become effective.

B. Prior to adoption, amendment or repeal of a

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1 subdivision regulation, the planning authority shall prepare
2 an impact study on the effect of the proposal on the estimated
3 increase or decrease in housing construction costs, New Mexico
4 mortgage finance authority income eligibility requirements and
5 affected businesses within the planning and platting
6 jurisdiction of the municipality.

7 C. The subdivision regulations may provide for:

8 (1) the harmonious development of the
9 municipality and its environs;

10 (2) the coordination of streets within the
11 subdivision with existing or planned streets or other features
12 of the master plan or official map of the municipality;

13 (3) adequate open space for traffic,
14 recreation, drainage, light and air; and

15 (4) the distribution of population and
16 traffic which [~~tend~~] tends to create conditions favorable to
17 the health, safety, convenience, prosperity or general welfare
18 of the residents of the municipality.

19 [~~B-~~] D. Subdivision regulations may govern:

20 (1) the width of streets;

21 (2) the width, depth and arrangement of lots;

22 (3) land use, including natural drainage;

23 (4) other matters necessary to carry out the
24 purposes of the Municipal Code; and

25 (5) the extent and manner in which:

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1 (a) streets are graded and improved;
2 and

3 (b) water, sewer and other utility
4 facilities are installed as a condition precedent to the
5 approval of a plat.

6 [~~E.~~] E. The subdivision regulations or the
7 practice of the planning commission may allow tentative
8 approval of the plat previous to the completion of
9 improvements and the installation of utility facilities, but
10 such tentative approval shall not be entered on a plat. In
11 lieu of the completion of improvements and the installation of
12 utility facilities previous to the final approval of a plat,
13 the subdivision regulations may provide for:

14 (1) assessment or other methods whereby the
15 municipality makes the improvements and installations at the
16 cost of the owner of property within the subdivision; or

17 (2) acceptance of a bond, in an amount and
18 with surety and conditions satisfactory to the planning
19 commission, securing to the municipality the actual
20 construction and installation of improvements and utility
21 facilities within a period of time specified by the planning
22 commission and expressed in the bond. A municipality may
23 enforce such a bond by all appropriate and legal remedies; or

24 (3) in lieu of a bond, the municipality may
25 enter into an agreement with a person seeking approval of a

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1 subdivision whereby the person seeking approval shall, within
2 two years following final approval of the plat, complete the
3 improvements and the installation of utility facilities
4 provided for in the person's application for subdivision
5 approval, except that the agreement set forth herein may
6 provide that the person seeking approval shall be permitted by
7 the municipality to sell or otherwise dispose of or improve
8 any lot within the subdivision to which improvements and
9 utility facilities have been provided by the person seeking
10 approval at any time within the two-year period. Any such
11 agreement shall be recorded with the county clerk at the time
12 of filing [~~said~~] the plat.

13 [~~D-~~] F. The governing body or planning commission
14 of the municipality shall hold a public hearing on the
15 adoption of a subdivision regulation or an amendment to it.
16 Notice of the time and place of the public hearing shall be
17 published once at least fifteen days prior to the date of the
18 public hearing.

19 [~~E-~~] G. If the requirement or restriction does not
20 violate the zoning ordinance, the governing body or planning
21 commission of the municipality may agree with a person seeking
22 approval of a subdivision upon the use, height, area or bulk
23 requirement or restriction governing buildings and premises
24 within the subdivision. The requirement or restriction shall:

25 (1) accompany the plat before it is approved

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1 and recorded;
2 (2) have the force of law;
3 (3) be enforced; and
4 (4) be subject to amendment or repeal as the
5 provisions of the zoning ordinance and map are enforced,
6 amended or repealed. "

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

9 "3-19-9. MASTER PLAN--PURPOSES. --

10 A. The planning commission shall prepare and adopt
11 a master plan for the physical development of the municipality
12 and the area within the planning and platting jurisdiction of
13 the municipality which in the planning commission's judgment
14 bears a relationship to the planning of the municipality. The
15 planning commission may amend, extend or add to the plan or
16 carry any part or subject matter into greater detail. The
17 planning commission shall prepare an impact study on the
18 effect of any plan on the estimated increase or decrease in
19 housing construction costs, New Mexico mortgage finance
20 authority income eligibility requirements and affected
21 businesses. In preparing the master plan, the planning
22 commission shall make careful and comprehensive surveys and
23 studies of existing conditions and probable future growth of
24 the municipality and its environs. The plan shall be made
25 with the general purpose of guiding and accomplishing a

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1 coordinated, adjusted and harmonious development of the
2 municipality which will, in accordance with existing and
3 future needs, best promote health, safety, morals, order,
4 convenience, prosperity or the general welfare as well as
5 efficiency and economy in the process of development.

6 B. Among other things, the master plan with
7 accompanying maps, plats and charts, descriptive and
8 explanatory matter and recommendations of the planning
9 commission for the physical development of the municipality
10 and for its planning jurisdiction may include:

11 (1) the general location, character and
12 extent of streets, bridges, viaducts and parkways, parks and
13 playgrounds, floodways, waterways and waterfront development,
14 airports and other ways, grounds, places and spaces;

15 (2) the general location of public schools,
16 public buildings and other public property;

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

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

22 (5) the acceptance, widening, removal,
23 extension, relocation, narrowing, vacation, abandonment or
24 change of use of any of the foregoing public ways, grounds,
25 places, spaces, buildings, properties, utilities or terminals.

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C. Copies of the master plan shall be available at the office of the municipal clerk and may be purchased at a reasonable price. "

Section 3. A new section of Chapter 3, Article 20 NMSA 1978 is enacted to read:

"[NEW MATERIAL] VESTED PROPERTY RIGHT-- ESTABLISHMENT. --

A. An owner of real property that has not yet been developed shall have a vested property right to develop that property upon approval or conditional approval of a subdivision plat by the appropriate county and municipal officials pursuant to the provisions of Chapter 3, Article 20 and Chapter 47, Article 6 NMSA 1978.

B. "Vested property right" means the right to undertake and complete the development and use of real property pursuant to the terms and conditions of a subdivision plat; a "vested property right" shall attach to and run with the applicable property.

C. Nothing in this section shall exempt a subdivision plat from subsequent reviews and approvals by the county and municipality to ensure compliance with the terms and conditions of the original approval.

D. A vested property right shall remain vested for a minimum of two years, or longer if determined to be necessary by the county and municipal officials who are authorized to approve or disapprove subdivision plats.

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1 E. In the event of judicial review, the vested
2 property right shall not exist until entry of a final court
3 order affirming the governing body's approval and the
4 expiration of the appeal period of the court's decision. "

5 Section 4. A new section of Chapter 3, Article 20 NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] SUBSEQUENT REGULATION OF APPROVED
8 SUBDIVISION PLAT PROHIBITED-- EXCEPTIONS. --

9 A. Once established, a vested property right
10 precludes any adoption, amendment or repeal of a land use
11 regulation by a county or municipality that would alter,
12 impair, prevent, diminish or otherwise delay the development
13 or use of the property as set forth in the approved
14 subdivision plat.

15 B. The establishment of a vested property right
16 shall not preclude the application of ordinances, rules or
17 regulations that are general in nature and are applicable to
18 all property subject to land use regulation by a county or
19 municipality. "

20 Section 5. Section 3-21-1 NMSA 1978 (being Laws 1965,
21 Chapter 300, Section 14-20-1, as amended by Laws 1995, Chapter
22 170, Section 4 and also by Laws 1995, Chapter 211, Section 3)
23 is amended to read:

24 "3-21-1. ZONING-- AUTHORITY OF COUNTY OR MUNICIPALITY. --

25 A. For the purpose of promoting health, safety,
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1 morals or the general welfare, a county or municipality is a
2 zoning authority and may regulate and restrict within its
3 jurisdiction the:

- 4 (1) height, number of stories and size of
5 buildings and other structures;
- 6 (2) percentage of a lot that may be occupied;
- 7 (3) size of yards, courts and other open
8 space;
- 9 (4) density of population; and
- 10 (5) location and use of buildings, structures
11 and land for trade, industry, residence or other purposes.

12 B. The county or municipal zoning authority may:

- 13 (1) divide the territory under its
14 jurisdiction into districts of such number, shape, area and
15 form as is necessary to carry out the purposes of Sections
16 3-21-1 through 3-21-14 NMSA 1978; and
- 17 (2) regulate or restrict the erection,
18 construction, reconstruction, alteration, repair or use of
19 buildings, structures or land in each district. All such
20 regulations shall be uniform for each class or kind of
21 buildings within each district, but regulation in one district
22 may differ from regulation in another district.

23 C. Prior to adopting, amending or repealing a
24 zoning regulation or restriction, the county or municipal
25 zoning authority shall prepare an impact study on the effect

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1 of the proposal on the estimated increase or decrease in
2 housing construction costs, New Mexico mortgage finance
3 authority income eligibility requirements and affected
4 businesses within its jurisdiction.

5 [C-] D. All state-licensed or state-operated
6 community residences for the mentally ill or developmentally
7 disabled serving ten or fewer persons may be considered a
8 residential use of property for purposes of zoning and may be
9 permitted use in all districts in which residential uses are
10 permitted generally, including particularly residential zones
11 for single-family dwellings.

12 [D-] E. A board of county commissioners of the
13 county in which the greatest portion of the territory of the
14 petitioning village, community, neighborhood or district lies
15 may declare by ordinance that a village, community,
16 neighborhood or district is a "traditional historic community"
17 upon petition by twenty-five percent or more of the registered
18 qualified electors of the territory within the village,
19 community, neighborhood or district requesting the
20 designation. The number of registered qualified electors
21 shall be based on county records as of the date of the last
22 general election.

23 [E-] F. Any village, community, neighborhood or
24 district that is declared a traditional historic village shall
25 be excluded from the extraterritorial zone and

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1 extraterritorial zoning authority of any municipality whose
2 extraterritorial zoning authority extends to include all or a
3 portion of the traditional historic community and shall be
4 subject to the zoning jurisdiction of the county in which the
5 greatest portion of the traditional historic community lies."

6 Section 6. Section 4-57-2 NMSA 1978 (being Laws 1967,
7 Chapter 150, Section 2) is amended to read:

8 "4-57-2. POWERS AND DUTIES OF COMMISSION. --

9 A. A county planning commission shall have such
10 powers as are necessary and proper to carry out and promote
11 county planning. Such planning shall be made with the general
12 purpose of guiding and accomplishing a coordinated, adjusted
13 and harmonious development of the county which will, in
14 accordance with existing and future needs, best promote
15 health, safety, morals, order, convenience, prosperity or the
16 general welfare, as well as efficiency and economy in the
17 process of development. The county plan and any changes to
18 the plan shall consider the effect of the plan on the
19 estimated increase or decrease in housing construction costs,
20 New Mexico mortgage finance authority income eligibility
21 requirements and affected businesses within the county.

22 B. A county planning commission may:

23 (1) make reports and recommendations for the
24 planning and development of the county to any other
25 individual, partnership, firm, public or private corporation,

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1 association, trust, estate, political subdivision or agency of
2 the state or any other legal entity or their legal
3 representatives, agents or assigns; and
4 (2) recommend to the administrative and
5 governing officials of the county programs for public
6 improvements and their financing."

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