

---

# 7.0 Planned Growth Regulatory Structure Approaches

## 7.1 Introduction

**T**he Planned Growth Strategy is a policy study designed to develop a vision for the pattern and nature of future growth in the Albuquerque/Bernalillo County region. The Planned Growth Strategy combines a series of public workshops and information from citizen surveys with technical studies that developed goals and policies for regional growth and tested the fiscal impacts of alternative growth scenarios. The Planned Growth Strategy has been a process for decision-making, supported by the information already available within key departments and members of the consultant team.

The Planned Growth Strategy is highly responsive to infrastructure issues in the region. Many of the policies identified in the Planned Growth Strategy have their basis in the need to provide infrastructure in a more efficient and cost-effective manner, and in locations that reinforce the desired pattern of urban growth. Closely related to infrastructure is the issue of community design—how development looks and performs.

The City and County, along with other agencies in the region, have a vast number of plans. These include the City/County Comprehensive Plan, numerous Area, Sector (neighborhood), and Corridor plans, and infrastructure plans such as the federally mandated Transportation Improvement Program. However, few of the plans have been followed through with a concerted implementation effort. This gap renders many of the plan policies unenforceable—in effect, nonbinding regulatory guidelines. The ability of private developers and public agencies to circumvent or ignore plan mandates creates a large gap between the vision for future growth established in the plans and the reality of public investment and the location, design, and timing of growth in the region.

The purpose of this chapter is to describe, in narrative form, some approaches to implementation of the Planned Growth Strategy. These approaches are related to the Preferred Alternative for future growth identified in this report. The Preferred Alternative is a combination of the “Balanced” Scenario and the “Downtown” Scenario identified in the study. These scenarios are counter to the Trend Scenario of scattered, dispersed growth that has characterized development in Albuquerque/Bernalillo County and other regions throughout the nation especially since 1950. The Trend Scenario reflects the status quo of relatively low-density development in the Northwest area and the far Northeast portion of the urban area and only 7% growth within the older, 1960 City Boundary of the City. The “Balanced” Scenario represents a more compact distribution of population and employment than the Trend, with employment growth and housing balanced to the east and west of the Rio Grande. Two transit-oriented corridors—an east/west corridor on Central Avenue and a north/south corridor along Isleta Boulevard and 4th Street—are priority areas for infill and redevelopment. The “Downtown” Scenario emphasizes higher density development in selected centers, with a major concentration of employment in the Downtown, University of New Mexico, and Uptown areas, east of the Rio Grande.

The existing laws and regulations governing capital improvement planning, land-use controls, and intergovernmental coordination either encourage dispersed development or fail to adequately address the growth issues identified by the public. Further, because some of the Planned Growth Strategy policies are new, innovative tools are needed in order to direct growth to the centers, corridors, redevelopment areas, and other subareas identified in the Preferred Alternative. This chapter provides approaches for the following issues:

- Linkages between land use and transportation
- Zoning and design standards
- Exactions/Impact Fees/Development Agreement policies
- Line Extension Policy
- Transfer of Development Rights
- Approaches to regionalism
- Housing affordability and mixed-income communities
- Other approaches and policies as appropriate

Land use/transportation linkages and related issues of variable levels of service, Capital Improvements Program revisions, Urban Service Areas, and Tier systems are addressed in Chapters 5, 6, and 8. Some topics addressed previously are covered below when a continuity of ideas is needed. In general, however, this portion of the Planned Growth Strategy, Part 2 – Preferred Alternative report does not repeat material presented elsewhere.

The author would like to acknowledge the contributions of Louis Colombo, Ph.D., Deputy Director for City Council Services, and Lora Lucero, Esq. Dr. Colombo wrote the section on housing affordability. Ms. Lucero wrote the sections of this report relating to transfer of development rights and consistency. Ms. Lucero also contributed sections on the Capital Improvements Program and Impact Fee policies as they related to regionalism. Their contributions made this report a significantly more useful product.

## 7.2 Land Use and Transportation Linkages

### 7.2.1 Planned Growth Strategy Policies

One of the fundamental purposes of the Planned Growth Strategy is to address the linkage between land use and transportation facilities. These policy preferences take sever-

al forms. First, the policies provide for linking new development to the timing and sequencing of transportation (and other infrastructure) improvements in the Capital Improvements Programs and capital investment plans. Second, the Planned Growth Strategy policies provide for development patterns that encourage alternative transportation modes, such as walking, bicycling, and transit. Finally, the Planned Growth Strategy policies call for connecting neighborhoods via linked transportation centers and with the heart of the urban area via multi-modal corridors.

### 7.2.2 Issues

A number of studies have found that the design and form of new development has a significant influence on travel modes, and new development impacts roadway capacity. Some of these studies were summarized in Section 5.5.1 above.

The Planned Growth Strategy study estimates that the annual private vehicle expenditure in Bernalillo County will be approximately \$2 billion dollars in 2020 (in current dollars).<sup>82</sup> This suggests that there are considerable private savings that can be achieved by reducing the number and length of vehicle trips.

### 7.2.3 Current Requirements

The City currently addresses the linkage between new development and transportation issues in its regulatory ordinances including the Subdivision Ordinance (Article 14-7), the Zoning Code (Article 14-16), and Section 23 of the City's Development Process Review Manual. The subdivision and zoning criteria are general, with most of the details addressed in the Development Process Review Manual. The Development Process Review Manual is a very comprehensive document, which addresses some of the transportation issues established in the Planned Growth Strategy. It includes some innovative criteria including single access restrictions, maximum block lengths for local streets, and bikeway location and design guidelines. The Development Process Review Manual also requires traffic

---

impact studies for developments that generate a large amount of vehicle trips.

The County also has zoning and subdivision regulations, with a traffic impact analysis requirement (County Code § 74-102) and a provision that encourages “alternative modes of transportation” in new subdivisions (§ 74-116). Neither section is tied to a level of service standard, and there are no specific criteria for mitigation. The traffic impact analysis requirements mention “infill development rates” and “pedestrian, equestrian and/or bicycle uses” without an explanation of the concepts or how they relate to the traffic impact analysis. The regulations are silent about other concepts such as connectivity, block lengths, or tight curb radii.

### 7.2.4 Suggested Approaches

In addition to the beneficial criteria in the Development Process Review Manual, the following revisions should be considered by the County and the City:

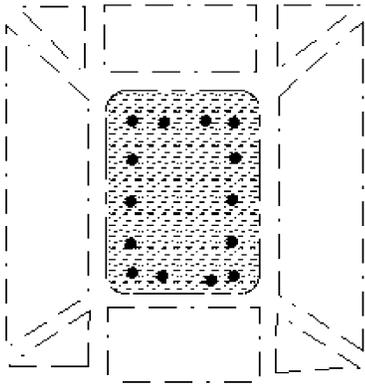
- Minimum densities should be established along transit corridors and in major activity centers and community activity centers in order to reduce automobile dependency by providing more efficient transit services.
- Block length restrictions should be reduced to a more pedestrian-friendly scale, such as 300–500 feet. This restriction could be waived for subdivisions that preserve a high degree of open space or environmentally sensitive areas and that fall outside of the corridors and centers identified in the Planned Growth Strategy.
- Local, collector, and minor arterial streets should be restricted to 2–4 lanes. New routes should be required where additional capacity is needed.
- The development rules should clarify the situations where sidewalks are required, instead of stating that they are “normally required.”

- The curb return radii should be modified to 5–10 foot radii in appropriate situations in order to assure safe pedestrian street crossings.
- On-street parking should be permitted along local streets with interconnected street systems in order to calm traffic and to provide a sense of enclosure
- Setbacks should be modified, with front setbacks reduced to orient buildings to the street. Maximum setbacks should be considered.
- An index should be considered in order to assure that streets provide a minimum level of connectivity. A “connectivity index” divides the number of street links by the number of intersections. An index of 2.5 produces a pure grid. Most communities adopting a connectivity standard have used a range of 1.4–1.6 in order to preserve connectivity while avoiding interference with market demand for cul-de-sacs and preserving design flexibility.
- Maximum, as opposed to minimum, parking requirements could be established. The standard should be reasonable and allow for vehicular access, while avoiding dead space and pedestrian conflicts.

## 7.3 Zoning and Design Standards

### 7.3.1 Zoning Code Revisions

Planned Growth Strategy Town Hall participants endorsed a new approach to urban form with the objective of building and sustaining community. The physical and social elements of this vision have been covered in “Fostering Community” in Section 1.3.4. Participants desired that this community outcome be achieved in undeveloped or partially developed areas on the urban fringe *and* within the developed urban area. Many of these elements are similar to those endorsed by New Urbanist (Traditional Neighborhood Development) standards discussed in this chapter and in Chapter 5.



Central plazas, such as the central plaza in Old Town, were prescribed by the Law of the Indies



“New Urbanism” is a planning and architectural movement that attempts to restore classic principles of civic design that predate the dispersed development patterns of modern suburban development. Leading contemporary spokespersons for New Urbanism, such as Andres Duany, Elizabeth Plater-Zyberk, and Peter Calthorpe, draw upon traditional principles of community design endorsed by Raymond Unwin (*Town Planning in Practice*), Camillo Sitte (*City Planning According to Artistic Principles*), Clarence Perry (*Housing for the Machine Age*), Clarence Stein (*Toward New Towns for America*), Christopher Alexander (*A Pattern Language*), and Jane Jacobs (*The Death and Life of Great American Cities*). The Laws of the Indies, which regulated settlement patterns in the Spanish Americas, used many of the design principles now espoused by New Urbanists. These include an interconnected street system, the use of civic buildings in prominent places, and

Live-work units facing a central square  
Vermillion, a New Urbanist community in  
Huntersville, North Carolina

a central plaza. These rules were issued as early as 1501 by King Ferdinand of Spain.

In *Towns and Town Making Principles*, William Lennertz stated: “Regulatory codes lie at the heart of Duany and Plater-Zyberk’s work. Early in their work they realized that existing zoning ordinances—more than economics or planning and design philosophies—were impediments to achieving more urbane communities.”<sup>83</sup> The Planned Growth Strategy (Traditional Neighborhood Development) codes by the City and County, though not necessarily all principles in all locations.

The more important elements of New Urbanism are as follows:<sup>84</sup>

- The neighborhood area is limited in size with clear edges and a focused center.
- There is a discernible center of the neighborhood that may be a plaza in order to foster a community gathering place. This center can include cultural, social, and religious places as well as shops, public transportation, schools, and offices.
- Most dwellings are within a five minute walk ( $\frac{1}{4}$  to  $\frac{1}{2}$  mile) from the center of the neighborhood such that walking destinations are within an area that may be served efficiently by transit.
- There is a variety of dwelling types integrated within each neighborhood, including detached houses, row houses, and apartments, such that younger and older



---

persons, single persons and families, and poorer and wealthier persons can find places to live.

- There is a variety of places to work in the neighborhood, including live-work units.
- Within or adjacent to the neighborhood, there are shops sufficiently varied to supply the minimum daily household needs.
- A small ancillary building is permitted in the backyard of dwellings for use as a rental apartment or a place to work.
- There is an elementary school or school site available, to which most children in the neighborhood could walk at a distance of less than one mile from their dwelling.



*Historic buildings terminate a vista in Downtown San Antonio, Texas*

- Parks and other gathering places should be distributed and designed as places for social activity and recreation.
- Civic buildings are well placed to act as symbols of community identity and provide places for purposeful assembly.
- Thoroughfares within the neighborhood form a connected network, providing a variety of itineraries, dispersing traffic, and connecting wherever possible to adjacent development.
- Thoroughfares within the neighborhood should be shaded by rows of trees and designed in a manner to slow traffic and

create an appropriate environment for pedestrians and bicyclists as well as automobiles. Internal streets are narrower and on-street parking and the use of alleys is encouraged. Curb radii are decreased to promote their use by pedestrians.

- Compatibility of buildings and other improvements is achieved as determined by their arrangement, bulk, form, design, character, and landscaping to establish a harmonious and diverse environment.
- Architecture and landscaping should respond to the unique character of the region and the place.

The different aspects of the community would be formed into “one complete whole”—the “street, the district [neighborhood], the town as larger wholes, and ... each plot and each house so ... that they shall contribute to some total effect.”<sup>85</sup>

Further principles are contained in *Best Development Practices: A Primer for Smart Growth*, by Reid Ewing, who was one of the presenters at the second Planned Growth Strategy Town Hall.<sup>86</sup> *Towns and Town-Making Principles* contains several model Traditional Neighborhood Development zoning codes from Seaside, Florida, the Avalon Park development in Orlando Florida, and Palm Beach County, Florida.<sup>87</sup>

In 1997, the City Planning Department conducted an assessment of whether Albuquerque development regulations and policies support or defeat the basic principles of Traditional Neighborhood Development. Each of these principles was discussed by an interagency staff group and a judgment made about the extent to which key development control documents supported these principles. The determinations were: Permissive, Mandatory, Discouraged, or Unaddressed. Table 54 contains the group’s findings, which lend support to adopting either new codes or amending existing codes to achieve the Planned Growth Strategy community development outcomes.

As Table 54 demonstrates, while many of the principles of New Urbanism are called for in the community's plans, they are often not addressed, or sometimes discouraged, by the community's land-use regulations.<sup>88</sup> The zoning and subdivision regulations are legally enforceable, but plans are not legally binding on most types of development approval. Accordingly, it should come as no surprise that few developments incorporate New Urbanist (Traditional Neighborhood Development) principles when these are not endorsed by the provisions of local land-use regulations.

## Related Experience in Albuquerque

The history of the West Side Strategic Plan provides a case in point concerning the need to bring zoning in line with community building goals. This Area Plan, adopted by the City Council in March 1997, contained a number of recommendations that are now reflected in the Planned Growth Strategy, including reconfiguring the West Side into Communities, Villages, and Neighborhoods; providing for mixed-use centers; supporting public transit and pedestrian-friendly development; and so on. The Plan indicated that "The public has

**Table 54 Development Controls**

New Urbanism Principle	Zoning Code	Subdivision Ordinance/ DPM Standards	Building Code	Metropolitan Transportation Plan	Planned Communities Criteria <sup>1</sup>
Limited neighborhood area with focused center	Permissive	Unaddressed	Unaddressed	Unaddressed	Mandatory
Shops, employment, and diverse housing in close proximity	Permissive	Unaddressed	Unaddressed	Permissive	Mandatory
Narrow streets sized to serve cars and pedestrians equally; short blocks in grid	Discouraged	Discouraged	Unaddressed	Unaddressed	Unaddressed
Buildings sized and located to define streets and squares; small setbacks	Permissive	Unaddressed	Discouraged	Unaddressed	Unaddressed
Public spaces distributed to encourage social activity	Unaddressed/ Permissive	Unaddressed	Unaddressed	Unaddressed	Mandatory
Civic buildings placed to encourage community identity and assembly	Unaddressed	Unaddressed	Unaddressed	Unaddressed	Mandatory
Compact land use promoting public transit	Permissive	Unaddressed	Unaddressed	Permissive	Mandatory
Houses with connections to the street (walks, porches)	Permissive	Unaddressed	Unaddressed	Unaddressed	Unaddressed
Accessory buildings behind homes and above shops	Permissive Conditionally	Unaddressed	Permissive	Unaddressed	Unaddressed
Alleys with driveways to rear garages	Permissive	Unaddressed	Permissive	Unaddressed	Unaddressed

1. Legally defined Planned Communities in Comprehensive Plan Rural and Reserve Areas.

---

repeatedly asked for a West Side Strategic Plan which 'has teeth,' is enforced, and cannot be easily ignored."<sup>89</sup> While the West Side Strategic Plan suggested that its adoption would address these concerns about implementation, it explicitly did not recommend any (site-specific) modifications of zoning, subdivision or site development approvals already granted.<sup>90</sup> Furthermore, it recommended specific approaches that only would be applied within the West Side.

Community and Village Centers are critical elements of the West Side Plan. The success of implementing these policies has been followed carefully since adoption of the Plan in 1997. In 1998, the City Planning Department stated: "A ... weakness, not of the West Side Plan but of existing zoning, is that the centers are not zoned to encourage mixed-use development and pedestrian and transit convenience or to discourage auto-oriented uses. Another weakness is that it doesn't speak to correcting non-residential zoning outside designated centers."<sup>91</sup> The following year, the Planning Department stated: "Unfortunately, not all non-residential developments are occurring only within the designated centers—there are quite a few sites outside of centers that are zoned for commercial or industrial use."<sup>92</sup>

A consulting firm later produced the West Side Community Center and Village Center Design Guidelines that contained recommended zoning changes to implement the Community and Village Centers.<sup>93</sup> However, this plan failed to make its way through the Planning Commission. The Department reported: "Upon testimony from numerous representatives of the development community and affected property owners it was deemed by the Planning Commission to be confusing in that it led the user to possibly conclude that it was recommending rezoning, in conflict with actual zoning."<sup>94</sup> The Planning Commission created a task force and asked them to prepare amendments to the Zoning Code to include new design principles for non-residential zone classification throughout the City. The work of this task force is in progress still.

The history of the West Side Strategic Plan indicates that the issue of modifying zoning needs to be faced squarely if plan recommendations are to be implemented. The deep-seated frustration that many members of the community feel related to the value of their participation in the planning process is directly related to the commitment of planning commissioners and elected officials to taking the perhaps difficult steps required to carry out plan recommendations. The alternative is to put up a false façade of planning. The history of the West Side Strategic Plan appears to indicate that it is unlikely that the well-conceived and desirable vision contained in the West Side Strategic Plan will be achieved without addressing zoning.

### **Implementing Traditional Neighborhood Development**

The City and County essentially have two ways to implement New Urbanist (Traditional Neighborhood Development) codes and processes: (1) as a replacement to existing zoning or (2) as an alternative to conventional zoning. For example, Austin, Texas adopted a Traditional Neighborhood Development code as a separate, optional zoning ordinance that applies to selected areas of the city.<sup>95</sup> Few communities have completely replaced conventional zoning with a New Urbanist code. Some communities, such as Cornelius, North Carolina; Concord/Cabarrus County, North Carolina; and Suffolk, Virginia have written limited New Urbanist concepts (such as connectivity ratios and block length restrictions) into all or most of their zoning districts.

The City of Albuquerque's approach to Downtown planning, in a number of ways, is a relevant example of applying New Urbanist principles to the design, zoning, and development approval processes. The Master Plan for the Alvarado Transportation Center Project Area uses New Urbanist principles to redesign (restore) the urban core.<sup>96</sup> The new zoning code for the Downtown and the new development approval process are contained in the Downtown 2010 Sector Development Plan,

---

adopted in May 2000. This plan makes it much simpler for a property owner to obtain development approval for a proposal that is consistent with the principles of the plan. In those situations, the property owner would request a building permit directly. This substitutes for the previous, more time consuming and uncertain process of seeking approvals in a series of steps beginning with the Planning Commission.<sup>97</sup>

The Planned Growth Strategy supports a general set of community building principles, encourages greater public participation in the planning process, and endorses a broad, renewed commitment to planning. The adoption of New Urbanist codes and processes should be undertaken through planning efforts involving all stakeholders within different areas of the community. This may occur through Area Plans for Community Planning Areas, Corridor Plans for the prioritized Planned Growth Strategy corridors, Sector Plans and Redevelopment Plans. Consequently, the City and County would implement the New Urbanist recommendations of the Planned Growth Strategy through future planning efforts in defined study areas.

The history of weak implementation of adopted plans in the Albuquerque area suggests that the specific New Urbanist zoning codes crafted in each area with the broad participation of the stakeholders either replace existing zoning or that very strong incentives for creating New Urbanist developments become part of the process. Such incentives should include, at a minimum, exemptions from transportation concurrency review and the permitting of New Urbanist neighborhoods “as of right.” The resultant effectiveness of the planning effort will encourage community participation.

### 7.3.2 Urban Design Standards

The Planned Growth Strategy, Part 2 – Preferred Alternative report contains an assessment of urban growth management practices in a number of other locations around the country conducted by Friedman Resources. A recurring theme of those inter-

viewed was that design standards should be incorporated into the Comprehensive Plan.<sup>98</sup> The Planned Growth Strategy supports this principal. However, the City/County Comprehensive Plan and other planning efforts already endorse many of these design principles, without incorporating them into land-use regulations. Unless design principles are clearly articulated in local land-use regulations and made enforceable, they will not be included in new developments.

Urban design standards often are incorporated into New Urbanist (Traditional Neighborhood Development) Codes. The elements addressed include the following, among others.

- Architectural compatibility with surroundings and with the unique character of the region
- Building forms and materials that are appropriate to the climate. Design with materials successfully used in the Southwest
- Compatible building massing
- Colors that create visual interest and are complemented by the strong shadows and bright light typical of our climate
- Integration of height with adjacent façades
- Division of facades into traditional increments
- Well-defined entrances near the sidewalk
- Human scale details including pattern and scale
- Landscaping, especially xeriscape, features
- Pedestrian scale lighting and signage
- Parallel parking along street frontages
- Pedestrian and bicycle access
- Parking lots behind and between lots

Two publications address these issues: West-side Community Center and Village Design, Design Guidelines by Design Collaborative

---

Southwest and Guidelines for Construction, Alteration, Demolition within Historic Huning Highland by Architectural Research Consultants.<sup>99</sup> Consistent with the approach described above, the Planned Growth Strategy suggests that urban design standards be incorporated into local land-use regulations which should be updated to implement the plans.

### **7.3.3 Legally Defined Planned Communities in Comprehensive Plan Reserve and Rural Areas**

In the second Planned Growth Strategy Town Hall, participants broadened the application of the term “Planned Community” to address “both new communities in undeveloped areas and to the planning of existing communities to make them more livable.”<sup>100</sup> Consequently the recommendations for legally defined Planned Communities in the Reserve and Rural areas merged with those for Albuquerque as a whole.

Specific recommendations related to Planned Communities in the Reserve and Rural areas are contained in “Fostering Community,” “Role of Government in Urban Growth Planning,” and “Suggestions for implementing the growth management recommendations” in Section 1.3.4. These specifically deal with eliminating the large minimum lot size requirement, increasing average densities, phasing and timing development approvals both among Planned Communities and within Planned Communities, establishing linkages between development approvals for the Planned Communities and the condition of existing neighborhoods, and other approaches.

### **7.3.4 Suggested Approaches**

The following summarizes the Planned Growth Strategy recommendations related to zoning and urban design standards.

1. The Planned Growth Strategy endorses a broad, renewed commitment to planning and encourages greater public participation in the planning process.

2. The adoption of New Urbanist (Traditional Neighborhood Development) codes and processes should be undertaken through a planning process involving all stakeholders within different areas of the community. This may be in the form of Area Plans for Community Planning Areas, Corridor Plans for prioritized Planned Growth Strategy corridors, Sector Plans, and Redevelopment Plans.
3. The Planned Growth Strategy strongly endorses urban design standards. These standards should be addressed in the planning efforts undertaken to implement New Urbanist codes.
4. The Planned Communities standards should be reviewed for consistency with Traditional Neighborhood Development principles. The code requirements for legally defined Planned Communities in the Comprehensive Plan Reserve and Rural Areas should be merged with those for New Urbanism (Traditional Neighborhood Development).

## **7.4 Exactions/Impact Fees/Development Agreement Policies**

### **7.4.1 Issues**

#### **Exactions**

Exactions are distinguishable from Impact Fees or Utility Expansion Charges in that they are computed on a case-by-case basis. Like Impact Fees or Utility Expansion Charges, however, exactions should be based on infrastructure level of service standards in order to avoid conflicts with state and federal takings cases and to promote the community’s land-use policies.

Dedication of public improvements is required for subdivision plats<sup>101</sup> and through site plans required by the zoning ordinance.<sup>102</sup> Under current practice in the City, developers are responsible for all on-site and adjacent-to-site

---

street improvements, mitigating off-site impacts on street networks, and providing one paved all-weather access to each development.<sup>103</sup> Regarding drainage, developers must design for a fully developed watershed and construct the improvements necessitated by the development.

The Subdivision Ordinance and Zoning Code do not establish level of service criteria from which to calculate exaction requirements. These details are left to the Development Process Review Manual that establishes level of service standards for water, sewer, transportation and drainage facilities. However, these standards are standard engineering criteria. They do not relate to the growth priorities established in the Planned Growth Strategy Preferred Alternative.

### **Impact Fees/Utility Expansion Charges**

The City assesses Impact Fees for water, wastewater, and parks facilities. The County assesses Impact Fees for park, open space, fire/EMS, roadway, and drainage facilities. While the City does not charge street Impact Fees, it has studied the issue. A series of 1995 Impact Fee studies for the City identified \$305 million in its capital improvements costs for roadway, fire, police, parks, open space, and drainage facilities over an eight-year period (1994–2002).

Utility Expansion Charges are one-time fees paid by new water and sewer customers to defray the cost of system capacity used by the customer.<sup>104</sup> Utility Expansion Charges are based on the calculated unit cost of capacity for major infrastructure elements that have been constructed and for projects planned to be constructed as part of the utility's capital plan. The charges do not pay for the cost of internal subdivision facilities, such as lines running down the street to customers, because the City's Line Extension Policy requires developers to pay for those smaller lines when services are extended to new growth areas.

All new water and sewer customers are required to pay Utility Expansion Charges, including schools, institutional users, and federal agencies and facilities. Utility Expansion Charges are proportional to the capacity that each user is requesting, depending on the size of metered service. The charges calculate the cost to replace the system, minus outstanding debt and contributions from the private sector and federal and state grants. Current water and sewer Utility Expansion Charges for the typical residential user total \$2,619, but represent only about 50% of the actual cost of extending service. The balance is recovered by monthly user fees paid by all customers. Utility Expansion Charge revenues range from \$6 million to \$12 million per year depending on development activity.

The limitations of the Utility Expansion Charges as presently applied have been documented in numerous studies. These include the following:

- The fees are based on the replacement cost of the current system, rather than the actual cost of adding new capacity. The fee structure ignores the fact that new capacity is more expensive to add because new development is generally more expensive to serve, subject to current engineering standards, and so on.<sup>105</sup>
- The fee structure is deliberately calculated to generate only a percentage of the full replacement cost. This distorts the market by forcing all ratepayers to bear costs that are avoided by developers and purchasers of new homes. Because developers do not have to bear the full costs of their actions, this encourages them to oversupply new housing.<sup>106</sup>
- The fees do not differentiate between infill and development in unserved areas, even though the actual expenditures required to serve the two locations are significantly different. In effect, the current system penalizes infill developers and subsidizes edge developers by charging everyone a single rate. This could be addressed by

---

creating multiple service areas based on the level of current infrastructure available; that way, higher Impact Fees could be charged in unserved areas to reflect higher service costs.

Utility Expansion Charges do not vary by location within the utility's service area. New development within areas served by existing collection and distribution systems pay the same Utility Expansion Charges as new development outside of the current service area.

The fees ignore the fact that the urban area over time cannot continue current levels of water consumption from the aquifer. In order to serve additional people, the utility must obtain additional water rights. The Development Fees Act expressly includes "water supply ... facilities" as an eligible capital improvement.<sup>107</sup> Accordingly, water supply facilities arguably fall within the purview of the existing legislation, although the issue has not been litigated. Water rights, as opposed to the facilities needed to bring the resource to the customer, are arguably not within the purview of the Act.

### Development Agreements

Development agreements, annexation agreements, and settlement agreements are emerging tools for negotiating development approvals. Under a development agreement, the local government agrees to "freeze" the regulations applicable to a particular property, often in consideration for contributions by the landowner to public infrastructure, environmental mitigation, and affordable housing. A number of states now expressly authorize development agreements.<sup>108</sup> A major advantage of development agreements is the ability to avoid successful takings challenges based upon the provision of infrastructure at the expense of private developers. Courts have also indicated a willingness to enforce infrastructure requirements attached to a negotiated agreement, as exactions imposed as part of an agreement voluntarily entered into between the local government and a developer are not subject to constitutional nexus standards.<sup>109</sup>

A similar tool is the use of annexation agreements. Annexation agreements are commonly used in New Mexico and other states. Some states recognize annexation agreements by statute.<sup>110</sup>

While no reported decision has addressed whether development agreement legislation abrogates the "reserved powers doctrine" which prohibits legislative bodies from bargaining away their police powers.<sup>111</sup> In addition, the leading cases have not addressed the effect of the zoning enabling legislation, which expressly grants the authority to amend the zoning ordinance, on agreements which purport to limit the governing body's ability to rezone.

Agreements that limit the exercise of zoning powers for a period of years have been upheld.<sup>112</sup> In *Geralnes*, the City annexed the Denver Technological Center and adopted a "Town Center" zoning classification. The Town Center classification was similar to a Planned Unit Development because it included mixed uses and utilized a procedure for overall density transfers throughout the project. The property was later disconnected as a result of a court decision and later reannexed. Prior to reannexation, the parties executed a preannexation agreement which provided for the sharing of infrastructure costs, streamlined permit processing, and the deletion or modification of certain standards and permitting procedures.<sup>113</sup> Following annexation, the property owner sued for breach of contract, inverse condemnation, impairment of the obligation of contract, vested rights, antitrust and intentional interference with prospective business advantage based on various delays and denials of required permits and attempts by the City to assert jurisdiction over some aspects of development. The City's obligations under the contract were to expire in approximately 23 years.

Noting that the City's obligations were limited to a definite period of time, the court rejected the City's argument that the agreement violated the reserved powers doctrine or amounted to illegal contract zoning. The court cited *City of Farmers Branch v. Hawnco, Inc.*, 435

---

S.W.2d 288 (Tex. App. 1968), in which the court suggested that a contract *never* to rezone would violate the reserved powers doctrine. The court held that the prohibition in *Farmers Branch* does not apply to a contract that does not completely surrender the City's ability to rezone and is of limited duration. The court in *Geralnes* classified the agreement as conditional rather than contract zoning, discussing a number of Colorado and national cases upholding the practice of rezoning pursuant to annexation. The court did not expressly sanction the use of agreements that *prohibit* rezoning for a certain period of time, nor did it discuss whether such a practice would violate the zoning enabling legislation

Similar agreements have received mixed reviews in other courts, including the New Mexico Supreme Court. Courts have upheld development agreements attached to a rezoning as valid conditional zoning.<sup>114</sup> However, in *Dacy v. Village of Ruidoso*, 845 P.2d 793 (N.M. 1992), the court ruled that contract zoning is illegal because it circumvents the mandatory procedures for zoning under the zoning enabling legislation, such as notice and a hearing.<sup>115</sup> However, the court limited its prohibition to contracts involving a “*promise* by a municipality to zone property in a certain way, i.e., when a municipality is either a party to a bilateral contract to zone or when a municipality is a party to a unilateral contract in which the municipality promises to rezone in return for some action or forbearance by the other contracting party.” This doctrine did not, however, apply to unilateral contracts in which a promise is made in return for the *act* of rezoning, where the City makes no promise and no contract arises until the rezoning is completed.<sup>116</sup> The court acknowledged that some courts have invalidated this form of rezoning on the grounds that it provides an improper motivation for the rezoning action.<sup>117</sup>

It appears from this discussion that development agreements and annexation agreements would probably be considered enforceable in New Mexico, depending on how they are structured. Similar agreements are already being used by the City of Albuquerque as part of the

annexation process.<sup>118</sup> The County has also incorporated development agreements into its policy for computing the net fiscal cost of discretionary development proposals for legally defined Planned Communities. In the Westland agreement, Westland Development Corporation agreed to design and construct a well, reservoir, pump station facilities, and various master planned water lines. The City agreed to reimburse Westland through its water/wastewater Utility Expansion Charges (Impact Fee) system revenues without hedging regarding best efforts. Westland will convey the facilities to the City upon completion.

As conditions precedent to the City's performance, Westland agreed to obtain annexation for the portion of the development serviced under the agreement, to implement water conservation measures, and to refrain from using other water suppliers or from becoming a water supplier itself for that portion of the development.

## 7.4.2 Suggested Approaches

1. In general, Impact Fees and Utility Expansion Charges should be revised to more closely reflect the true costs of development. Fees can be lowered for policy reasons within plan designated centers, corridors, and based on design criteria to reflect the more efficient use of public infrastructure. Impact Fees can be waived to support development priorities of the community as recognized in adopted plans.
2. Procedures for the adoption and implementation of development agreements (and annexation agreements) should be established.<sup>119</sup> These procedures are outlined in Chapter 6, which Growth Management Analysts Inc. prepared for the Planned Growth Strategy.

## 7.5 Line Extension Policy

### 7.5.1 Issues

The Westland Agreement discussed in Section 7.4.1 illustrates both the advantages of negoti-

---

ated infrastructure exactions and their potential shortfalls. The flexibility of the tool also creates the potential for infrastructure shortfalls or financial difficulties if the utility commits water and sewer revenues to reimburse developers for privately financed public infrastructure. The City currently uses a reimbursement approach in its Line Extension Policy. The Line Extension Policy is codified in § 3-5-10 *et seq.* of the City's Code of Resolutions.

Under the Line Extension Policy, property owners must pay the equivalent cost of accessible water and sewer lines if the present or future use of the property indicates the necessity of water and sewer service. The City will install lines 14 inches or larger to facilitate master plan facilities use. Petitioners who want to accelerate the installation of such master plan lines must advance the portion of estimated cost in excess of \$20,000. They will be reimbursed for the remaining cost upon receipt of 80% of the prorated design and construction cost of the line serving the intervening abutting property. Petitioners proposing developments that increase usage, require shoestring extensions not meeting utility service standards, or require construction of major facilities in advance of Capital Improvements Program funding must either design and construct the system improvements through the Turnkey procedure or advance funds for design and construction to the utility. In situations not otherwise covered by these policies, the cost of design and construction will be paid by the petitioner or property owner.

The Line Extension Policy as written has some advantages and disadvantages. The policy has the potential to encourage compact development because developers have a strong incentive to locate adjacent to existing infrastructure when they have to pay the costs up front. However, the policy can be questioned on the following grounds:

- It allows private development decisions, rather than community planning policies, to drive the Albuquerque metropolitan area's geographic size and growth pattern.

- It is not consistent with the "no net expense" principle in situations where the principle applies, because developers advancing limited increments of water and sewer systems are reimbursed 100% of the Utility Expansion Charges collected. Utility Expansion Charges are calculated on the basis of all major system costs. As a result, the application of Line Extension Policy can be seen as not assessing developers for their total project costs under "no net expense."
- More generally stated, if the City and County wish to discourage sprawl and low-density, peripheral development, a more effective policy would prohibit line extensions until local government is ready to install its own infrastructure as reflected in the Capital Improvements Programs.
- The Utility Expansion Charges do not reflect the current cost of providing the infrastructure.<sup>120</sup>
- The policy diverts Utility Expansion Charges from the Capital Improvements Program to new projects that are not reflected in the Capital Improvements Program.<sup>121</sup> This can lead to gaps in the funding of Capital Improvements Program projects that must be assumed by ratepayers.

### 7.5.2 Suggested Approaches

1. The Line Extension Policy should be revised to coordinate water and wastewater extensions with the long-term land-use plan contained within the Planned Growth Strategy Preferred Alternative.
2. The policy should be adopted by ordinance and folded into a Unified Development Code.
3. Express authority for denying service where capacity is unavailable should be clearly provided.
4. The policy should reserve and prioritize capacity for development consistent with the Planned Growth Strategy Preferred Alternative. While some courts have over-

---

turned the denial of utility service for growth management policy reasons, others have upheld the practice. There appear to be no cases addressing this issue in New Mexico.

## 7.6 Transfer of Development Rights

### 7.6.1 Introduction

The Transfer of Development Rights concept begins with the understanding that property owners have a “bundle” of different rights associated with ownership of their property, such as (1) the right to bequeath, (2) the right to exclude others, (3) the right to convey an easement, (4) the right to sell, and (5) the right to build or develop. All of these rights are subject to reasonable limitations. The right to build or develop is subject to the community’s zoning regulations. The Transfer of Development Rights concept evolved in the United States from zoning techniques.

The modern idea is that the right to develop land may be considered a quantifiable and transferable incident of land ownership. The next step in the modern notion is that quantified development rights may be separated from rigid and direct affixation to land—that is, that development rights may be severed. ... The modern idea further contemplates that ... rights ... may be made transferable.<sup>122</sup>

Transfer of Development Rights is a land-use regulatory mechanism (usually implemented through zoning ordinances) that allows property owners to transfer the right to develop one parcel of land to a different parcel of land. The parcel of land where the rights originate is called the “sending” parcel. The parcel of land to which the rights are transferred is called the “receiving” parcel. Once the development right is sold, a deed restriction is recorded on the sending property, permanently restricting future development on that site.

The goal of Transfer of Development Rights is to create a “win-win-win” situation. The owner of the sending site can continue the current use of the property and also benefit from the sale of the development right. The owner of the receiving site can develop at a greater density and greater profit, utilizing the development right he purchased. The City and County can realize some of their important planning goals—such as:

1. Keeping future growth within the capacity of existing master plan infrastructure.
2. Protecting environmentally sensitive areas from inappropriate development.
3. Protecting groundwater quality.
4. Eliminating antiquated subdivisions.
5. Preserving open space and rural character while encouraging development in areas suitable for more intensive development, such as in planned centers, corridors, redevelopment areas, and to achieve better jobs-housing balance.
6. Encouraging higher density nodes and corridors in appropriate locations for public transit.

A Transfer of Development Rights program, if successfully implemented, can provide permanence and greater certainty in accomplishing the community’s goals than can be achieved through the traditional Euclidean zoning because once the development rights have been transferred to a receiving parcel, future development on the sending parcel is permanently restricted through deed restrictions recorded on that parcel. Property owners are motivated to sell development rights by three basic methods: (1) land-use restrictions placed on the sending parcel, (2) physical constraints on the sending parcel which make development costly, and (3) incentives that can be provided to the property owner in the form of a transfer ratio.<sup>123</sup>

Developers are motivated to purchase development rights and transfer them to a receiving par-

---

cel because it allows them to achieve a higher, more profitable density in an area where the community wants the higher density. The community can provide additional incentives, such as exempting receiving parcels from certain fees or relaxing development standards on the receiving parcels (e.g., setback, lot coverage, and parking requirements).

The value of the Transfer of Development Rights is a product of a number of factors:

- The geographic area to which the Transfer of Development Rights may be transferred.
- The number of receiving parcels eligible to use the Transfer of Development Rights.
- The complexity and timing of the procedures required to consummate a transfer.
- The extent to which regulatory restrictions on the sending parcels generate a demand for Transfer of Development Rights.
- The level of discretion retained by local government in approving individual transfers.

### 7.6.2 Suggested Approaches

Appropriate sending areas should be identified within the Planned Growth Strategy Unserved Area tier. Receiving areas should be identified and located at specific nodes, corridors, and redevelopment areas, and to implement New Urbanist principles. The ordinances should make clear that development rights may be transferred across jurisdictional boundaries, from unincorporated to incorporated areas.

In addition, the community should consider whether development rights will rely exclusively on free market transactions, or whether a development rights “bank” will be created. A “banking” approach involves up-front expenditures and greater staff time to implement. However, this approach is more effective because the community can proactively purchase rights in sending areas, rather than

waiting for landowners to initiate the transaction. The bank can offset additional expenditures through the resale of development rights.

## 7.7 Regionalism

### 7.7.1 Consistency — Connecting Plans to Actions

There are many adopted plans prepared by the City, the County, other neighboring local jurisdictions, the MRGCOG, the State Highway and Transportation Department, the Albuquerque Metropolitan Arroyo Flood Control Authority, Albuquerque Public Schools, and other special districts. Each of these plans influences how growth and development will occur in the region. However, there is little coordination among the different planning activities, as well as a serious disconnect between the plans and the decisions (actions) that follow. Successful implementation of the Planned Growth Strategy policies will require that many of these disconnects be mended, either at the local, regional, or state levels.

Disconnects are gaps or conflicts in the planning and land-use regulatory scheme that hinder or impede sound planning. Given that the New Mexico enabling laws are based on model statutes written in the 1920s for a different era and different challenges, it is not surprising that there are disconnects today.

The situations in which disconnects arise are described below:

1. **Disconnect between plans, regulations, and decision-making.** Lack of consistency (internal consistency, vertical consistency, horizontal consistency, judicial review, monitoring).
  - Land use, facility, and funding plans should be internally consistent which means the various elements or components of the plan should support each other, i.e., the land-use element should be consistent with the transportation element.
  - Plans should also be vertically consistent. Perhaps most important for the successful

---

implementation of the Planned Growth Strategy policies is that a strong consistency or linkage be established between the Comprehensive Plan that incorporates the Planned Growth Strategy Preferred Alternative and the Capital Improvements Programs. The Comprehensive Plan and the Capital Improvements Programs should guide development, rather than respond or react to development pressures.

- Plans should be horizontally consistent. Disconnects can occur when a local government creates public policy objectives that are at serious cross-purposes. Within the region, plans of neighboring jurisdictions should support each other. A regional cross-acceptance process (see discussion below) facilitates this type of consistency.
- Vertical consistency also refers to the relationship between decision-making, the regulations, and the plan. Regulations should be consistent with the plans they are meant to implement. And decision-making should be consistent with the regulations.

Since plans may be merely advisory in New Mexico under a current judicial interpretation, the land-use regulations always trump the plan if there is a disconnect between them. Therefore, much of planning may be just wishful thinking and not tied to the realities of growth and development. Without a more sensitive judicial interpretation of the effect of adopted plans in the context of existing zoning, plans that are not supported by underlying zoning have little chance of being carried out.

Without plan implementation monitoring, there is no accountability and the implementation of the goals and policies within the plan become the exception rather than the rule.

- 2. Disconnect between the public and the planning process.** There is a flagging commitment to long-range planning as witnessed by the City's reduced engagement in Area and Sector Planning. The

opportunities for public participation in long-range planning processes, therefore, have been reduced. A commendable effort involving public meetings on the Comprehensive Plan concept of centers and corridors is being carried out by the Shared Vision organization with the City. However, this effort does not substitute for Area and Sector planning. Consequently, members of the public usually get involved late in the development process when they feel threatened and positions are antagonistic (the Not in My Backyard syndrome). On the flip side, the diminishing number of people who make substantial commitments to the planning process often feel thwarted when decision-makers do not follow the plans.

- 3. Disconnect between statutory requirements for the Comprehensive Plan and the plans that are adopted.** There is no clear statutory direction about what should be included in the Comprehensive Plan or the level of specificity required. The Albuquerque/Bernalillo County Comprehensive Plan should be the cornerstone (or the "constitution") for future growth and development decisions in the community. If the Plan is vague or ambiguous or lacks the specificity required to guide decisions, it will not be implemented. As suggested above, key parts of the Planned Growth Strategy should be adopted within the joint Albuquerque/Bernalillo County Comprehensive Plan. These elements include the Preferred Alternative, infrastructure funding commitments, tiers, level of service standards, design standards, Impact Fee and development agreement approaches, among others.

- 4. New Mexico's statutory framework does not address the state's role in planning.** While decisions about how, where, and when a community will grow should remain at the local level, state agencies unintentionally undermine the community's goals. Two examples currently may impact the Albuquerque/Bernalillo

---

County region. First, the State Highway and Transportation Department plans a loop road in the northwest quadrant of the County that will stimulate new development in areas that may be inconsistent with the community's plan for new growth and may not be fiscally prudent. Second, the New Mexico Environment Department is responsible for issuing septic tank permits. In most cases, if the parcel meets the minimum size required by New Mexico Environment Department, the permit will be issued, even though the parcel does not meet the minimum lot size established by Bernalillo County regulations.

**5. Disconnect between statutory authorization to plan and the tools that communities can use to implement those plans,** i.e., transfer of development rights and consistency. The Development Fees Act is a good example of the disconnect. Although communities are authorized to assess Impact Fees based upon a Capital Improvements Program that reflects population and employment land-use assumptions, these assumptions are not required by the Act to be consistent with the community's policies about growth and development, such as contained in the Comprehensive Plan or the Planned Growth Strategy Preferred Alternative.

**6. Disconnect between the plans, decision-making, and fiscal impacts.** Under the existing statutory framework in New Mexico, communities are not required to prepare plans that are financially constrained. The unintended consequence of this disconnect is that much of the financial burden for the decisions made today will be passed on to the future.

**7. Disconnect between water planning and planning for land use/development.** The Middle Rio Grande Water Assembly is undertaking a multiyear planning process to prepare a regional water plan that will encompass the Albuquerque/Bernalillo County region. This plan, when completed in 2003, should provide useful information about

the resource constraints as well as the demands on the resource. The regional water plan may also select a preferred scenario for future growth in the region that is disconnected from the adopted MRGCOG 2050 regional land-use plan and from the Preferred Alternative of the Planned Growth Strategy. Water resource planning and land-use planning are occurring at different levels of government, based on different assumptions, and there is presently no mechanism to tie them together.

**8. There is no method for interjurisdictional conflict resolution, which undermines the planning efforts of everyone and creates a contentious atmosphere for the development community.**

During the 45<sup>th</sup> Legislative Session, the New Mexico Legislature will be considering a bill that addresses some of the issues enumerated above.<sup>124</sup> The bill does not require any community to plan, but if a plan is adopted—the community must follow it.

The bill requires that:

- Land-use regulations (zoning, subdivision, Impact Fees, etc.) be consistent with the Comprehensive Plan;
- Development decisions (rezonings, subdivisions, special use permits, etc.) be consistent with the Comprehensive Plan;
- The Comprehensive Plan be adopted by ordinance rather than resolution; and
- The courts void inconsistent regulations and land-use actions.

The legislation provides almost two years for communities to bring their regulations into compliance (January 1, 2003) and requests an appropriation of \$3 million to provide grants to communities to assist them in coming into compliance. The consistency requirement can provide the Comprehensive Plan with more effective authority to guide development.<sup>125</sup> The City of Albuquerque should amend its

---

Charter to address the different forms of consistency mentioned above. The committee working on the proposed charter for the future City and County consolidation should also include a consistency provision.

### **7.7.2 Capital Improvements Program**

Bernalillo County works on a two-year Capital Improvements Program cycle that is very similar to the City's Capital Improvements Program process. Public input is gathered, departments prepare wish lists, and a committee prioritizes recommendations for the bond cycle. None of this process is tied by law to the City/County Comprehensive Plan or to a preferred alternative of urban development. Some informal staff review of Capital Improvements Program projects for consistency does occur. In the City, the Capital Improvements Program is directed by the "Major's Guidelines" issued for each two-year cycle such that the Capital Improvements Program varies from one administration to the next. There is no systematic examination of level of service standards, existing deficiencies, rehabilitation needs, and future growth requirements. Departments usually receive the same percentage of the total available funds from year to year with insufficient prioritization of overall spending needs. While the City's Capital Improvements Program has a 10-year element, there is only moderate consistency in this element across Capital Improvements Programs. There is currently no systematic process for coordinating the City's and County's Capital Improvement Programs to assure that the two jurisdictions are making the most cost-effective decisions. Finally, there is no process for monitoring or evaluating the Capital Improvements Program expenditures to determine if level of service standards have been maintained, if the extent of deficiencies has been reduced, and if rehabilitation needs are being systematically corrected.

A more coordinated approach to the City's and County's Capital Improvement Programs that implements the Planned Growth Strategy Preferred Alternative would better serve both the tax-

payer and the development community. Better coordination might accomplish the following:

1. Tax dollars, rate revenues, grants, and Impact Fees could be leveraged more efficiently on joint projects that avoid unnecessary duplication or a mismatch in the timing of service delivery.
2. Capital improvement projects could support the public's growth and development priorities rather than lagging behind.
3. Capital improvement projects could maintain explicit level of service standards rather than responding to critical deficiencies and service delivery problems.
4. A clear signal of where and when public investments will be made in the future (10 years and 25 years rather than 2 years) will provide greater stability for investment decisions in the private sector.

### **7.7.3 Impact Fee Policies**

The City and County should consider preparing a joint, seamless Impact Fee program with joint service areas that reflect the Planned Growth Strategy Preferred Alternative and a common Impact Fee administrator for both jurisdictions. A seamless program would ease compliance requirements on the development community, reduce the chance of an impermissible double-charging, and avoid "shopping" for lower Impact Fees.

### **7.7.4 Regional Revenue Sharing**

The competition for tax base is a significant motivation for zoning and land-use decisions. Local governments are in a perpetual cycle of seeking an increased revenue base in order to provide the public services that residents and new development require. The fiscally driven zoning decisions that flow from this competition for tax base are a significant deterrent to regional cooperation and growth management. This situation is exacerbated by the City's dependence on Gross Receipts Taxes (about 70% of General Fund budget revenues). An

---

equitable tax revenue sharing agreement between the City and County should be considered to reduce (if not eliminate) this cycle. Other jurisdictions within the region might be included in the revenue sharing agreement.

Minnesota has a partial tax base-sharing system that requires communities to contribute to a regional pool 40% of the growth of their commercial and industrial tax base acquired after 1971. Annually, the pool amounts to about 20% of the regional tax base. Money is then distributed from this pool on the basis of inverse net commercial tax capacity.<sup>126</sup>

### 7.7.5 Options in Regional Coordination

One of the fundamental policy issues in this process is the decision regarding how the Planned Growth Strategy will be adopted and which agencies will be assigned to implement it. This involves some very important decisions regarding how to structure the relationship between the jurisdictions regarding land-use issues in the community. The options for structuring the implementation of Planned Growth Strategy policies among jurisdictions can be divided into binding and nonbinding options, which are described in greater detail below, as follows:

#### **Nonbinding options**

- Model Ordinance
- Referral
- Cross-acceptance

#### **Binding options**

- Joint Planning Commission
- Joint Development Review Committee
- Joint Planning Areas
- Joint Powers Agreement
- Consolidated Planning Commission
- Consolidated Planning Department

## **Nonbinding Options**

### *Model Ordinance*

The Model Ordinance approach simply involves the voluntary adoption and separate administration of the Planned Growth Strategy by each jurisdiction. Neither the City nor the County would be obligated to adopt the Planned Growth Strategy, and the Planned Growth Strategy could be adopted in its entirety or in parts. This approach completely preserves local autonomy but raises the potential for individual jurisdictions to undermine the Planned Growth Strategy Preferred Alternative. It also raises the possibility of each jurisdiction adopting different versions of the Planned Growth Strategy, thereby undermining the objective of coordinating and simplifying the development ordinances.

There are several options for implementing the model ordinance:

1. The County or City could adopt the ordinance, with the other jurisdiction permitting the Planned Growth Strategy to apply within its territory pursuant to the Joint Powers Agreements Act, NMSA § 11-1-1 *et seq.* This permission could be withdrawn by providing notice to the other jurisdiction.
2. A nonbinding memorandum of understanding could be adopted that expresses each jurisdiction's intent to adopt and to implement the standards of a unified ordinance.

### *Referral*

A referral procedure involves an agreement between the jurisdictions that applications for development approval within designated areas of influence will be referred to designated jurisdictions. Those jurisdictions would then have an opportunity to comment on the development applications. However, the agency within which the application was submitted would retain final approval authority.

---

### *Cross-Acceptance*

Cross-acceptance, which is used by New Jersey to implement its State Development and Redevelopment Plan, involves a formal mechanism for assuring consistency among the jurisdictions' zoning and subdivision ordinances. Cross-acceptance would be effectuated by means of a Joint Powers Agreement between jurisdictions.<sup>127</sup>

## **Binding Options**

Binding intergovernmental planning options provide a legal basis for both local governments to commit, at some level, to the implementation of the Planned Growth Strategy. These include joint or consolidated planning commissions and/or development review committees, joint planning areas, and Joint Powers Agreements.

### *Joint or Consolidated Planning Commissions*

Joint or consolidated planning commissions involve the administration of a unified ordinance by a single agency. These mechanisms potentially provide the most powerful and effective mechanisms for accomplishing inter-jurisdictional land-use objectives, while at the same time surrendering local autonomy to a certain degree. The difference between the two approaches is as follows:

- A joint commission would consist of representatives from the Planning Commissions of each jurisdiction in the County, with some matters remaining within the exclusive jurisdiction of each agency.
- A consolidated commission approach would disband the separate planning commissions and/or planning departments for each jurisdiction, combining all land-use authority into one agency.

Several major policy decisions under these approaches are:

- The development of procedures for appointment of the Planning Commission members. Membership on joint municipi-

pal-county planning agencies may be agreed to by the City and County. A Development Review Board could be appointed with representatives from City and County staff.

- Delegating authority to the Planning Commission. The Planning Commission may have final review authority on designated matters or may simply submit a nonbinding recommendation for final review by the appropriate governing body (a joint governing body or the County Commission in the unincorporated area outside the extraterritorial jurisdiction, the Extraterritorial Land Use Authority in the extraterritorial jurisdiction, and the City Council in the City limits). For example, the Planning Commission could submit nonbinding recommendations on rezoning petitions but maintain final approval authority for subdivision plats.

### *Joint Planning Areas*

A Joint Planning Area uses any of the institutional approaches discussed in this report on a discrete, geographic basis. A starting point is the extraterritorial jurisdiction of cities as provided in NMSA §§ 3-19-5 (planning), 3-20-5 (subdivision plats), and 3-21-3.2 (zoning), which is now subject to a City/County Extraterritorial Land Use Authority. An example is the use of common development standards in the extraterritorial jurisdiction of local governments. The City and County have already implemented this approach with the appointment of the Extraterritorial Land Use Authority and the adoption of a joint zoning and subdivision ordinance. This has not resulted in the mutual engagement of City and County elected officials and staffs in planning and zoning decisions related to the extraterritorial jurisdiction. Rather, these decisions generally have continued to be extensions of County planning and zoning, as was the practice prior to the creation of the Extraterritorial Land Use Authority.

### *Joint Powers Agreements*

An intergovernmental agreement, known as a "Joint Powers Agreement" in New Mexico, is a

flexible approach whereby each jurisdiction would contractually adopt the Planned Growth Strategy, parts of a Planned Growth Strategy ordinance, development standards, joint or consolidated planning commission, development review bodies, or joint staff in order to implement the Planned Growth Strategy recommendations.

Alternative approaches for structuring a Joint Powers Agreements include:

- The Joint Powers Agreement could contractually bind each jurisdiction to the adoption and implementation of the Planned Growth Strategy.
- The Joint Powers Agreement could establish minimum standards throughout the County, with each jurisdiction retaining the authority to adopt stricter standards for all or parts of the Planned Growth Strategy. A similar approach is followed in the “critical areas” or “development of regional impact” legislation of some states such as Florida and Colorado, in which state and local governments share approval authority over large-scale development approvals or in environmentally constrained areas.

There are several frameworks for effectuating a Joint Powers Agreement in New Mexico. These include the following:

- A Joint Powers Agreement may be adopted pursuant to NMSA §§ 11-1-1 *et seq.*
- Joint Powers Agreements may be used for any powers common to the contracting parties, and joint agencies may be established. A Joint Powers Agreement must specify the purposes of the agreement, the method for accomplishing the purposes, and the manner in which powers will be exercised.

#### *Regional Planning Commission*

A Regional Planning Commission could be established by agreement between the City and County pursuant to the Regional Planning Act, NMSA § 3-56-1 *et seq.* The Regional Planning Commission is empowered to prepare a region-

al plan, which could be based upon the Planned Growth Strategy. A Regional Planning Commission may review zoning and subdivision regulations, as well as requests for capital project assistance, for consistency with a regional plan. The statute does not empower the Regional Planning Commission to review requests for land-use approval for compliance with the regional plan.<sup>128</sup> In other states, similar agencies may exercise any power “capable of exercise” by any of its member agencies.<sup>129</sup>

### **7.7.6 Ordinance Framework**

The Planned Growth Strategy could be adopted as a truly unified ordinance in which each jurisdiction works together to implement common goals and policies. Defined geographic policies for development may be a component of a growth management system. Policies based upon geographic designations can be either short term, for example, based on facility master plans, or long term, where the objective is to establish a permanent framework for growth in the community. An urban services tier system, discussed in Chapter 5, is an example of such a system that could be implemented on a countywide basis.

## **7.8 Housing Affordability and Mixed-Income Communities**

### **7.8.1 Policy Basis**

There are interrelated issues concerning the availability of affordable housing under the Albuquerque/Bernalillo County urban growth management plan. The first is the already adopted policy in the Albuquerque/Bernalillo County Comprehensive Plan (Policy D.5.a) of providing standard quality owner-occupied housing and rental housing at affordable prices for residents. The second issue is the support for mixed-income communities by participants in both Town Halls.<sup>130</sup> Achieving mixed-income communities, by definition, means that moderately priced housing is produced in the market. A third issue revolves around the concern that an undesirable side effect of the success of the Growth Strategy may be gentrification in older neighborhoods

---

and higher property values and taxes in those areas. The inverse side of gentrification is declining or stagnant property values in older neighborhoods within the 1960 City Boundary.<sup>131</sup>

Chapter 10 includes a report on “Growth Strategy Techniques Used in Other Locations” by Friedman Resources. This chapter identified the need to explicitly address housing affordability in the Planned Growth Strategy. It should be noted that producing affordably priced housing does not necessarily mean that mixed-income communities are being established. All of these issues should be addressed concurrently.

### **7.8.2 Housing Affordability in Albuquerque**

An analysis conducted by Growth Management Analysts indicated that relatively higher housing costs in the Albuquerque area were due primarily to developed lot prices that were significantly higher than in comparable markets, rather than to the cost of housing construction.<sup>132</sup> It may be that above-average lot prices are due to inadequately funding growth-related infrastructure in the past. Chapter 9.0 City and County Financial and Planning Requirements contains additional evidence that supports this suggestion.

If that is the case, the Planned Growth Strategy may not have an inflationary impact on lot prices. The Planned Growth Strategy assumes that sufficient funding should be made available to construct the infrastructure necessary to support the official population and employment growth projections for the urban area. Said another way, the Growth Strategy is concerned with improving the management of expected growth, in part by providing adequate infrastructure, rather than by reducing the rate of growth (or constraining supply in relation to housing demand). Chris Nelson of Growth Management Analysts, in addressing this situation, once wrote, “Ironically, Impact Fees finance the very facilities that expand the supply of buildable land.”<sup>133</sup>

It is not assumed that any possible increase in Impact Fees automatically will negatively affect housing affordability. The work conducted by both McKee and Nelson suggests that in competitive housing markets housing prices are set at the maximum the market will bear and that Impact Fee charges may not be easily passed along to the consumer.<sup>134</sup> In addition, several Planned Growth Strategy recommendations (e.g., waiving the cost of development fees for affordable housing, allocating infrastructure capacity to affordable housing, providing adequate funding to support growth, extending services in a phased and timed manner compatible with the Preferred Alternative, producing more compact development and better jobs-housing balance) will offset possible impacts on affordability. Implementing these recommendations will reduce the governmental charges for affordable housing in the local market and may actually increase its supply.

### **7.8.3 Achieving Housing Affordability and Mixed-Income Communities**

Affordable housing projects generally involve a patchwork of inducements and incentives that bridge the gap between the cost as determined by normal development practices and reduced cost to achieve various levels of affordability. These mechanisms in any given affordable housing project include some or a number of the following:

- Grants such as from the federal Community Development Block Grant, Home Investments Partnership Program (HOME), Emergency Shelter Grants Program, Housing and Urban Development Section 202 (elderly), and Housing and Urban Development Section 811 (disabled); private foundations like the Local Initiative Support Corporation; local government funding sources, and so on.
- Reduced interest rates on housing construction and mortgage borrowing, such as from Community Development Credit Unions, the New Mexico Mortgage Finance Authority, and private lending institutions

---

as part of Community Reinvestment Act agreements. Also reduced interest rates can result from federal agency mortgage guarantees as from Fannie Mae.

- Cost write-downs on land by government, religious organizations, and other sources.
- Property tax abatements, such as through the use of redevelopment bonds for financing.
- Equity production through the sale of low-income housing tax credits and historic renovation tax credits.
- Reduced or waived developer profits as a result of sponsorship by Community Development Corporations or nonprofits, such as Habitat for Humanity, the Home Education Livelihood Project, and the New Mexico Family Housing Development Corporation.
- Reduction of government fees, such as utility expansion charges and permit charges.
- Inclusionary zoning that trades regulatory incentives for set-asides of affordable dwelling units in new subdivisions.

The City and County make available a number of these incentives including direct and indirect grants and land cost write-downs supported by funds from the Community Development Block Grant, Home Investments Partnership Program (HOME), Emergency Shelter Grants Program, Metropolitan Redevelopment Fund (tax increment), Neighborhood Housing and Community Economic Development Fund (Urban Development Action Grant payback), Housing Trust Fund, and the Collateralize Mortgage Obligation Fund; a limited number of waivers from water and sewer Utility Expansion Charges (Impact Fees) and foregone park Impact Fees; waivers of various design review and building permit fees; fast track development reviews; and staff advocacy with federal and state assistance programs and local non-profit organizations. In 1998, the City adopted the Family Housing Development Ordinance<sup>135</sup>

in order to assure that at least 20% of the new housing units produced are affordable to low- and moderate-income residents.

Besides assuring that funding is adequate for infrastructure to support official growth projections, the Planned Growth Strategy proposes a broader program of Impact Fee waivers for affordable housing, redevelopment activities, and new construction in targeted areas, such as plan-approved centers and corridors.<sup>136</sup> In these situations, the Planned Growth Strategy also supports speedy development reviews, targeted infrastructure spending to correct deficiencies and address rehabilitation needs, and allocations of infrastructure capacity.<sup>137</sup>

Establishing mixed-income communities is supported explicitly in Traditional Neighborhood Development zoning codes by calling for mixed residential densities and housing types and local workplaces within new neighborhoods and developments. In *Towns and Town-Making Principles*, the authors state, “The full range of housing types and workplaces [in Traditional Neighborhood Development codes] helps to integrate all age groups and economic classes.”<sup>138</sup> The Planned Growth Strategy supports adopting Traditional Neighborhood Development ordinances as part of community planning efforts in different centers, corridors, Community Planning Areas, and neighborhoods.

It is generally assumed that these Planned Growth Strategy implementation efforts will result in the creation of affordable housing and an economically diverse community. It is noted that the housing cost index in the Albuquerque Metropolitan Statistical Area has fallen from 107 to 100.3 in the past two years. The principal housing affordability issue at present is that the earnings index in the Metropolitan Statistical Area is 91, making earnings about 9% lower than the national average. It can be argued that housing affordability locally is an issue of increasing wages through an effective economic development strategy. This also is consistent with Planned Growth Strategy Town Hall participants’ sup-

---

port for creating well paying, quality jobs based on a community-based strategic economic plan.<sup>139</sup>

The Planned Growth Strategy supports the City and County identifying quantitative objectives for housing affordability and for mixed-income communities. These objectives would be monitored regularly through Goals Progress Indicators that would be reported regularly in the Albuquerque Progress Report.<sup>140</sup>

#### **7.8.4 Avoiding Gentrification of Lower Income Neighborhoods**

Public housing policy generally begins with a classification of neighborhoods into Stable, Rising, and Declining categories. Different programs are called for within each of these types of neighborhoods.<sup>141</sup> The ideal situation endorsed by the Growth Planned Strategy is the establishment and maintenance of *stable* neighborhoods in which housing supply and demand factors are in balance. Such neighborhoods generally exhibit “incumbent upgrading” of housing and businesses with local residents making investments in the built environment. This is in contrast to improvements being made predominantly by individuals new to the neighborhood in rising neighborhoods and disinvestment, abandonment, and high vacancies in declining neighborhoods.

At this time, the Planned Growth Strategy is concerned about improving conditions in declining neighborhoods where physical and social conditions are becoming worse. As noted above, about 30% of Albuquerque residents in the 1999 Citizen Satisfaction Survey stated that they “noticed in the last year a decline in the appearance of [neighborhood] properties, or that owner-occupied homes are turning into rentals.”<sup>142</sup> It appears that the priority objective at this time is to prevent the loss of real housing and business value in older neighborhoods.

In “rising” or gentrifying neighborhoods, problems occur when housing values increase rap-

idly. This results in higher tax assessments, housing being purchased for speculative reasons, and possibly the displacement of residents. This negative consequence has been addressed by a New Mexico Constitutional amendment passed in November 1998 and the subsequent adoption of New Mexico House Bill 366 signed into law in February 2000. Beginning in tax year 2001, a property’s valuation for tax purposes only can increase a maximum of 3% per year—roughly similar to the inflation rate.

The New Mexico Constitutional amendment also allows the state legislature to enact legislation that can limit assessed residential property values on the basis of age, income, or home ownership. The Planned Growth Strategy supports monitoring property values on a neighborhood-by-neighborhood basis. Where gentrification appears to be a problem, the City and County should target programs for grant assistance to low-income individuals to purchase their dwelling. Local governments also should advocate before the state legislature in support of additional property tax controls for low-income individuals.

#### **7.8.5 Suggested Approaches**

1. It is not assumed that implementing the recommendations of the Planned Growth Strategy will cause an undesirable increase in housing prices. In the context of adopted public policy supporting the provision of standard owner-occupied housing and rental housing at affordable prices, housing prices and affordability should be monitored.
2. Adoption of a New Urbanist (Traditional Neighborhood Development) zoning code will facilitate the establishment of mixed-income communities. The Planned Growth Strategy objectives for neighborhoods that are diverse in terms of income, age, and ethnicity should be incorporated into Goals Progress Indicators and reported regularly in the Albuquerque Progress Report.

- 
3. The City and County should continue their existing programs to increase the supply of affordable housing. The Planned Growth Strategy also supports a broader program of Impact Fee waivers for affordable housing and supports speedy development reviews, targeted infrastructure spending to correct deficiencies and address rehabilitation needs in older neighborhoods, and the allocation of infrastructure capacity in order to increase the supply of affordable housing.
  4. Property values should be monitored on a neighborhood-by-neighborhood basis. Where gentrification appears to be a problem, the City and County should direct programs for grant assistance to low-income individuals to purchase their dwelling. In the event that gentrification becomes a community problem, the City and County should advocate before the state legislature for additional property tax controls for low-income individuals, which are allowed by the New Mexico Constitution.

## 7.9 Conclusion

This chapter provides a narrative of approaches to address various growth management issues relating to the Planned Growth Strategy. The Planned Growth Strategy provides a long-term framework for development within the region. This chapter together with Chapters 5 and 6 provide suggestions about how to configure infrastructure planning and regulatory approval to encourage development in the pattern suggested by the Planned Growth Strategy Preferred Alternative.

The next step in this study will be the development of an outline of these approaches. The outline will provide a regulatory structure for implementing the Planned Growth Strategy Preferred Alternative. The outline will not present regulatory language or draft legislation. It is hoped that the City and County will use these chapters and the outline as a basis for continued discussions about how to implement the Planned Growth Strategy, in a broad and inclusive fashion. The outline is contained in Chapter 11 below.

