



Most people do not equate zoning entitlements with economic development, yet most understand that “Time is Money.” As our region competes nationally to attract business and industry, time to market becomes a major factor in the decision-making process for site selectors and industry. Proactively thinking about zoning entitlements will help our region be more competitive in economic development by cutting the time it takes for new businesses to build and be successful.

Why Zoning Matters

No matter how excited we may be to attract new business, the business must comply with the local zoning and land-use codes. The use must be “permitted,” including meeting height, setbacks, and other regulations. Site selectors for major companies know that confirming zoning is one of the first steps in the process of identifying opportunities for a company. If the zoning is in place, then confirmation of zoning can take 30 days or less and zoning is not an obstacle. If the use is not contemplated in the zoning code but is similar to other permitted uses or can otherwise be deemed “permitted” within the current zoning entitlements through a zoning

interpretation, a local jurisdiction can take 30–60 days to provide that interpretation. These timeframes are generally acceptable and do not dissuade new businesses from locating to our region.

But zoning can make or break an opportunity for our region if property owner(s) and the local jurisdiction have not contemplated a new industry/business as part of their planning and zoning of the targeted property. If the zoning needs to be modified to permit a use, a 6–9 month Rezoning public process is required. If the jurisdiction has not established in its General/Comprehensive Plans economic development/business growth policies for the economic development area where the use wants to locate, then a Major General Plan Amendment may also be required before the rezoning can occur. A Major General Plan Amendment and Rezoning public process could take a combined 12–18 months. Some jurisdictions will allow Minor General Plan amendments to run concurrently with rezoning, which can take it back to 6–9 months. Either way, a 6–9-month or 12–18-month public process to know if the use will be permitted on a property risks losing that opportunity—even if the region really wants it!

“What Can We Do?”

Jurisdictions, through long-range planning and cooperation with property owners, can create opportunities for economic development by proactively and flexibly zoning property to attract business. “Shovel-ready” is a concept wherein property owners along with the local jurisdiction work together to acknowledge an area appropriate for economic development and work to establish the policy, zoning and land-use approvals to ensure that when a user comes in, the site is ready to be developed. Our region has experience doing just that. Port of Tucson worked for years with Pima County to establish “shovel-ready” options for attracting businesses near rail and the Tucson International Airport. Arizona State Land Department and the City of Tucson have recently worked together on policy changes to facilitate economic development opportunities in the Southlands area near the Sonoran Corridor. Other large landowners, like Bourn Companies and Diamond Ventures, have also worked with the City and County on similar strategies. Some keys to creating shovel ready projects include:

Set up the policy. Every jurisdiction in Southern Arizona is currently working to update Comprehensive/General Plans. Jurisdictions must spend time with their constituent property owners—particularly the larger property owners—to identify areas where growth should occur, and where infrastructure exists or should be built for the future. Jurisdictions must determine what kinds of industry are desired and establish policies that will permit those industries, using flexible language that allows next-generation industries. Comprehensive and General Plans allow and offer flexibility for economic development.

Proactively establish economic development zoning. There are tools available to owners and jurisdictions within zoning to provide flexibility in entitlements when an exact user is not yet identified. These include Specific Plans in the County/Town of Marana and Planned Area Developments (“PAD”) or Planned Community Development (“PCD”) in the cities and towns. These zoning categories can be flexible with uses while identifying appropriate setbacks, boundary treatments and even on-site approaches to floodplain/wildlife corridors. The property owner and local jurisdiction can go through the public process in anticipation of the end user, thereby removing the uncertainty of a long public process for that user. The key is in the drafting of the zoning document to provide enough flexibility for unknown users!

Another tool in the zoning toolbox is overlay districts. These are adopted by the local jurisdictions in a geographic area and permit the property owner(s) to choose between retaining underlying zoning OR use the overlay. The overlay can be established to permit economic development/business growth in a targeted area of the jurisdiction. Overlay Districts must be established through the public zoning process. Again, that is accomplished in anticipation of an end-user. So, when a business/economic development opportunity arises, that geographic area is incentivized for that business growth, and the user could move straight through administrative building processes.

Create “shovel-ready” opportunities. Once the zoning is in place, a property owner can work with the jurisdiction to process a block or other plat, establish grading limits and ensure utilities and infrastructure are extended to an area so that the end-user is ready to process development permits. This can be harder to achieve and riskier for the property owner/jurisdiction without an end-user. This involves additional investment in the property without having a timeframe in which recovery of that investment would occur. But it can also provide a significant incentive for a new business to choose a site, knowing it can start almost immediately on construction. Port of Tucson is a great example of this effort with some land still available.

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Conclusion

Our region has improved significantly (in my humble opinion) in working together to attract regional economic development opportunities. We have also learned (sometimes the hard way) that zoning DOES matter. Economic development has become a major topic as part of the current General Plan/Comprehensive Plan updates. At the end of the day, zoning should NOT be the reason we cannot attract new business opportunities. Let us plan and be prepared!

Ms. Silvyn has been practicing zoning and land use law in Southern Arizona for almost 20 years. Her practice emphasizes sustainable development and appropriate and responsible growth. Her work focuses on advising private developers and local governments on application of zoning codes, compliance with state statutes, compliance with current land use case law, and effective public/private partnerships. Greater Tucson Leadership Selected Keri as the Tucson Woman of the Year for 2013. Keri has been listed annually as one of America’s Leading Business Lawyers in the category of Real Estate: Zoning/Land Use since the 2012 edition of *Chambers USA* by Chambers and Partners Publishers. Keri’s clients’ goal is sustainable, appropriate, economically feasible and responsible growth. Ms. Silvyn’s representation has included medical campuses, retail developers, industrial complexes, office developments, mixed use developments, continuing care retirement communities, local cities and towns and tax increment financing districts. Contact her at KSilvyn@LSLaw.com.

