ORIGINAL

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

PROVISIONAL GOVERNMENT OF SANTA TERESA, and MARY GONZALEZ,

Plaintiffs/Appellants,

v.

No. 35,927
Doña Ana County
D-307-CV-2015-02653

DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS,

Defendant/Appellee,

and

THE CITY OF SUNLAND PARK,

Intervenor/Appellee.

APPELLANTS' BRIEF IN CHIEF

Civil Appeal from the Third Judicial District Court, Doña Ana County
The Honorable Mary Rosner, District Court Judge

ROBLES, RAEL & ANAYA, P.C.

Robert M. White, Esq.
Randy M. Autio, Esq.
Lance D. Hough, Esq.
Attorneys for Appellants
500 Marquette Ave., NW, Suite 700
Albuquerque, New Mexico 87102
(505) 242-2228 (telephone)
(505) 242-1106 (facsimile)
Robert@roblesrael.com
Randy@roblesrael.com
Attorneys for Plaintiffs/Appellants

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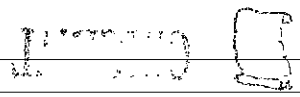

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SUMMARY OF PROCEEDINGS

I. NATURE OF THE CASE

This case involves a long running dispute between two distinct communities in southernmost Doña Ana County. Intervenor/Appellee, the City of Sunland Park (*hereinafter* "City" or "Sunland Park") has attempted to annex the unincorporated community of Santa Teresa (*hereinafter* "Santa Teresa") since the 1980s. During the same time, Santa Teresa citizens have attempted to create a new municipality. The dispute has come to focus on the rights of citizens in a distinct community within in an urbanized county, like Doña Ana County, to retain their independent community status and incorporate to provide a greater level of municipal services verses the desire of a neighboring City to annex the small community without an ability to timely provide the needed services. The legal issue at the center of this decades long dispute concerns conflicting interpretations of a statute governing incorporation in urbanized counties.

In the instant case, Sunland Park passed resolutions to initiate annexation discussions with Santa Teresa citizens. In response, he residents of Santa Teresa formed the Provisional Government of Santa Teresa, a non-profit corporation led by Mary Gonzalez (*hereinafter collectively* "Appellants"). Appellants petitioned Defendant/Appellee Doña Ana County Board of County Commissioners (*hereinafter* "BOCC") to incorporate Santa Teresa into a new municipality, but the BOCC decided Appellants missed a step in the process. The BOCC reasoned that Appellants needed to petition Sunland Park for annexation before petitioning the BOCC for incorporation. Appellants then appealed the BOCC decision to the district court, which affirmed. The principal issue presented in this appeal is whether the legislature intended, under NMSA 1978, Section 3-2-3 (1995), for all three Subsections of 3-2-3(B) separated by an "or" to be three distinct avenues for incorporation in an urban county. Conversely, the issue is whether the district court

erred in ruling that one must file an annexation petition under Subsection 3-2-3(B)(2) before proceeding with a petition for incorporation under Subsection 3-2-3(B)(3).

II. SUMMARY OF FACTS AND COURSE OF PROCEEDINGS

The 30 years of dispute between these two communities derives primarily from the Sunland Park's annexation attempts. Beginning in June of 1986, Sunland Park sought agreement from Santa Teresa residents on its proposed annexation of the distinct community of Santa Teresa, and the BOCC opposed the annexation. In response, Santa Teresa residents formed an association to petition for incorporation under Subsection 3-2-3(B)(3) and prove it could provide municipal services sooner than Sunland Park. In 1986, neither the BOCC nor any court on appeal had required the association to preliminary petition to Sunland Park for annexation under Subsection 3-2-3(B)(2) prior to consideration by the BOCC. In the challenge to the 1986 petition for incorporation, the court of appeals specifically held that such a preliminary annexation petition was not required. The above 1986 dispute continued to the New Mexico Supreme Court where the Court declined to consider whether such petition for annexation is required; rather, it found that the association did not meet its burden of conclusively proving it could provide services sooner under Subsection 3-2-3(B)(3).[1] [**RP 000320 – 000326, 000480**].

Later, in December of 1991, Sunland Park filed a petition with the Municipal Boundary Commission (*hereinafter* "MBC") to annex part of Santa Teresa, pursuant to NMSA 1978, Section 3-7-11 (1995). The MBC approved the annexation, but on appeal, the district court ordered the MBC to scrutinize Sunland Park's motives. However, the court of appeals in that case held the district court utilized the wrong standard of review and remanded to the district court.[2] Following remand, the district court again ordered the MBC to hold a new hearing and send new notice. After

[1] City of Sunland Park v. Santa Teresa Concerned Citizens Ass'n, Inc., 1990-NMSC-050, 110 N.M. 95.
[2] Cox v. Mun. Boundary Comm'n, 1995-NMCA-120, 120 N.M. 703.

another appeal from the MBC and Sunland Park, the court of appeals reversed the district court and affirmed the MBC decision.[3] Accordingly, Sunland Park's petition for annexation was granted. **[RP 000482 – 000483]**.

In the instant case, on August 19, 2014, a Sunland Park city councilor introduced a resolution to annex unspecified areas contiguous to the City, despite the fact that city council members conceded the City could not assist contiguous areas with repairing streets, installing street lights, or implementing infrastructure improvements. **[RP 000116]**. On September 16, 2014, Sunland Park adopted Resolution No. 2014-40 authorizing "the Mayor and Council to establish a dialogue with the residents of the home owners associations of Santa Theresa [sic] and its residents concerning the possible methods of annexation." **[RP 000441 – 000443, 000483, 000556]**. On October 7, 2014, the City passed Resolution No. 2014-44 agreeing "that the governing body will use the methods available under the New Mexico States [sic] Statutes to annex any and all territories it perceives are in its best interest." **[RP 000116, 000445, 000556]**.

The majority of those who live in Santa Teresa rejected the notion that expanding Sunland Park through annexation, with its long history of unstable leadership and fiscal mismanagement, would contribute to an improvement in the living conditions of its residents and to an increase in business opportunities for the region. **[RP 000116 – 0001117, 000122 – 000126]**. The residents of Santa Teresa discussed the fact that Sunland Park and Doña Ana County have previously declined to assist them with infrastructure repairs, and that Sunland Park does not have sufficient funds to contribute to the Santa Teresa community. **[RP 000030 – 000031]**. In the face of the proposed annexation, the residents of Santa Teresa believed the only way to improve their community would be to incorporate a new municipality. **[RP 000118]**.

[3] Cox v. Mun. Boundary Comm'n, 1998-NMCA-025, 124 N.M. 709.

On January 27, 2015, April 17, 2015, and July 14, 2015, in response to Sunland Park's efforts towards annexation, the Appellants filed with Doña Ana County petitions to the BOCC for incorporation of the Santa Teresa "territory proposed to be annexed" by Sunland Park, which they believed met the requirements of NMSA 1978, Sections 3-2-1 (2013) and 3-2-3(B) (1995). **[RP 000082 – 000300]**. Complying with Section 3-2-1, Appellants filed a complete petition that included signatures from no less than 200 qualified electors residing in Santa Teresa, maps showing the boundary of the territory proposed for incorporation, and a description of municipal service and revenue plans for the proposed municipality. **[RP 000009 – 000300]**. Relying on the 1986 case between these communities, the Appellants did not seek approval for incorporation or annexation from Sunland Park before proceeding directly through Subsection 3-2-3(B)(3). **[RP 000076 – 000077, 000120, 000344]**. On October 27, 2015, the BOCC accepted Appellants' completed petition filed on July 14, 2015 and scheduled a hearing. **[RP 000301 – 00305, 000485]**.

In the petition, Appellants clearly expressed their own intent and what they believed was the legislature's intent in this situation:

> The voters and residents of Santa Teresa . . . have also made it clear that they want to incorporate as a separate and distinct city. . . . [T]he legislature could not have intended for Sunland Park—with its documented history of corruption, fraud, waste, and abuse, and admitted inability to maintain its own infrastructure, much less the existing infrastructure within Santa Teresa—to use state annexation laws as a sword to subject the unwilling residents of the adjacent Santa Teresa to its governance, or to use the state incorporation laws as a shield to prevent the residents of Santa Teresa from incorporating.

[RP 000120 – 000121]. This intent has been apparent throughout the 30 years of dispute between Sunland Park and the Santa Teresa community. **[RP 000320]**. Santa Teresa is a distinct community with rich Spanish heritage, an industrial park, a rail station, a school system, utility infrastructure, and more. **[RP 000095 – 000103]**. The Appellants' petition explained that the Santa Teresa territory already has many municipal services (fire and safety services, water, wastewater

treatment, electricity, gas, security, and recreational facilities), and they would use an elaborate five year service plan to establish all other municipal services, as well as a transparent and responsive government. [**RP 000119, 000103 – 000126**]. Just as the Town of Mesilla is to the City of Las Cruces, Santa Teresa is a distinct neighboring community to Sunland Park. In short, the Appellants are a separate and distinct community, and wish not to be subjected to annexation by Sunland Park because of a record indicating a strong potential for mismanagement by the City, and an inability to provide timely services.

At a public hearing on November 24, 2015, the BOCC decided that, in a departure from its 1986 interpretation of Section 3-2-3(B), Appellants did not comply with the requirements under this Section. [**RP 000340**]. Section 3-2-3(B) provides the following:

> No territory within an urbanized territory shall be incorporated as a municipality unless the:
>
> (1) municipality or municipalities causing the urbanized territory approve, by resolution, the incorporation of the territory as a municipality;
>
> (2) residents of the territory proposed to be incorporated have filed with the municipality a valid petition to annex the territory proposed to be incorporated and the municipality fails, within one hundred twenty days after the filing of the annexation petition, to annex the territory proposed to be incorporated;
>
> *or*
>
> (3) residents of the territory proposed to be annexed conclusively prove that the municipality is unable to provide municipal services within the territory proposed to be incorporated within the same period of time that the proposed municipality could provide municipal service.

(Emphasis added). [**RP 000118 – 00019, 000314 – 000315**]. During the hearing and in the petition, the Appellants argued that filing a petition for annexation is not required to proceed under Subsection 3-2-3(B)(3), [**RP 000077 – 00078**], and explained that "[a]t a meeting between [Appellants] and Sunland Park officials on May 21, 2015, New Mexico Municipal League General

Counsel Randy Van Vleck noted these phrases are in the disjunctive, and the plain meaning of the statute is that residents of Santa Teresa may proceed with incorporation without the consent of Sunland Park."[**RP 000119**]. In their petition, Appellants also provided the BOCC the 1986 case where the BOCC allowed proceeding directly under Subsection 3-2-3(B)(3) without annexation. [**RP 000320 – 000326, 000480**]. Santa Teresa relied on the precedent of their 1986 petition for incorporation under Section 3-2-3(B)(3) that the BOCC had held was the proper process. Contrary to its 1986 interpretation, the BOCC interpreted Subsections (B)(1), (2), and (3) of Section 3-2-3 in the conjunctive to require the owners of a majority of the 3,984 acres of land within the urbanized territory, designated for incorporation as the City of Santa Teresa to petition Sunland Park for annexation, pursuant to NMSA 1978, Sections 3-7-17.1 (2003) and 3-2-3(B)(2), as a condition precedent to incorporating as a separate City of Santa Teresa, pursuant to Sections 3-2-1 and 3-2-3(B)(3). [**RP 000077 – 000079**].

In other words, because a majority of landowners had not petitioned Sunland Park for annexation (and, alternatively, Sunland Park had not approved incorporation by resolution), the BOCC determined it was "unable to take evidence and determine whether Sunland Park is unable to provide municipal services within the same period of time that the proposed City of Santa Teresa could provide municipal services[.]" [**RP 000338, 000343 – 000344**]. The BOCC took no further action on the Appellants' petition for incorporation. On December 30, 2015, Appellants appealed the BOCC's findings and determination to the Third Judicial District Court. [**RP 000001 – 000025**]. Subsequent to that appeal, Sunland Park received a petition for annexation on May 6, 2016 and adopted Ordinance 2016-5 on July 19, 2016, approving annexation and zoning part of the Santa Teresa territory. That subsequent annexation was appealed by Appellants in Provisional

Government of Santa Teresa, et al. v. Sunland Park, et al., Case No. D-307-CV-2016-02087, and is currently pending.

III. DISPOSITION BELOW

The district court initially reversed the BOCC's decision. On May 20, 2016, the district court filed an Appellate Order from Administrate Hearing. [**RP 000412 – 000418**]. It held the BOCC should allow Appellants to proceed with their petition for incorporation and present evidence, [**RP 000417**]. The Court found that Section 3-2-3 is not ambiguous and this situation fits squarely within Section 3-2-3(B)(3). [**RP 000414**]. However, on July 14, 2016, the District Court granted Sunland Park's Motion for Re-Hearing. [**RP 000474 – 000475**]. All parties filed supplemental briefings. [**RP 000478 – 000545**]. A hearing was set on September 26, 2016. [**RP 000548**].

On September 19, 2016, the district court issued its Amended Final Appellate Order from an Administrative Hearing, reversing itself and vacating the hearing scheduled seven days later. [**RP 000550 – 000558**]. In its second determination, the district court interpreted Section 3-2-3(B) to require an actual resolution for annexation by Sunland Park, and found that there was actually "no evidence that a Resolution for Annexation was ever passed by Sunland Park". [**RP 000557**]. The court found only evidence that Sunland Park passed two resolutions authorizing the City to use methods available to annex and establish a dialogue regarding annexation with Santa Teresa residents. [**RP 000556**]. Ultimately, the district court affirmed the BOCC's interpretation of the law, holding "the statutory language of NMSA 1978 [Section] 3-2-3(B)(2) requires, as a condition of incorporation, for [Appellants] to deliver to the City of Sunland Park, a valid petition for annexation." [**RP 000557**].

STANDARD OF REVIEW

The district court's interpretation of Section 3-2-3(B) should be reviewed *de novo*. "When an agency addresses a question of law by construing or applying a particular statute, courts will grant some deference to legal determinations that fall within agency expertise." Chavez v. Mountain States Constructors, 1996-NMSC-070, ¶ 21, 122 N.M. 579. However when reviewing administrative decisions, "it is the function of the courts to interpret the law, and courts are in no way bound by the agency's legal interpretation." Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm'n, 2003-NMSC-005, ¶ 13, 133 N.M. 97. Generally, "[i]nterpretation of a statute is a matter of law, which [appellate courts] review de novo." State v. Rivera, 2004-NMSC-001, ¶ 9, 134 N.M. 768; Cobb v. State Canvassing Board, 2006-NMSC-034, ¶ 33, 140 N.M. 77. Likewise, "[t]he determination of whether the language of a statute is ambiguous is a question of law," which courts also review de novo. State v. Rivera, 2004-NMSC-001, ¶ 9, 134 N.M. 768. "Certainly, where the question is simply one of construction, the courts may pass upon it as an issue 'solely of law.' " High Ridge Hinkle Joint Venture v. City of Albuquerque, 1998-NMSC-050, ¶ 4, 126 N.M. 413 (quoting Pan American Petroleum Corp. v. El Paso Natural Gas Co., 1966-NMSC-271, ¶ 10, 77 N.M. 481) (internal quotations omitted). Consequently, this Court should apply *de novo* review in this instance because this is strictly a question of statutory interpretation—a question of law.

PRESERVATION OF ERROR

Appellants preserved the question on the interpretation of Section 3-2-3 during the BOCC hearing on November 14, 2015, [**RP 000077**], in their appeal to the district court, [**RP 000001 – 000043**], in their supplemental briefing to the district court, [**RP 000478 – 000516**], and during oral arguments [**06/29/16 Tr. 2:19:06 – 2:24:23**].

ARGUMENT

The issue presented to the Court is whether NMSA 1978, Section 3-2-3(B) requires a municipal incorporator in an urban area to deliver to the nearest existing municipality a petition for annexation under Section 3-2-3(B)(2), as a condition precedent, before proceeding under Section 3-2-3(B)(3) with its petition of incorporation to a county commission. Stated simply, this Court must determine whether petitioning the closest municipality for annexation is a prerequisite to petitioning for incorporation of a new municipality. As included before, Section 3-2-3(B) states the following:

> No territory within an urbanized territory shall be incorporated as a municipality unless the:
>
> (1) municipality or municipalities causing the urbanized territory approve, by resolution, the incorporation of the territory as a municipality;
>
> (2) residents of the territory proposed to be incorporated have filed with the municipality a valid petition to annex the territory proposed to be incorporated and the municipality fails, within one hundred twenty days after the filing of the annexation petition, to annex the territory proposed to be incorporated;
>
> or
>
> (3) residents of the territory proposed to be annexed conclusively prove that the municipality is unable to provide municipal services within the territory proposed to be incorporated within the same period of time that the proposed municipality could provide municipal service.

The district court erred in holding that, pursuant to Section 3-2-3(B), Appellants needed to petition Sunland Park for annexation before petitioning to the BOCC for incorporation. Section 3-2-3(B) provides three options for incorporating an urbanized territory separated by an "or", a disjunctive term. Id. Yet, the district court held there are only two options.

Looking to other jurisdictions for guidance on the meaning of Section 3-2-3(B), Appellants have discovered no general rule throughout the country for incorporations to occur in urbanized

counties and that a myriad of statutory procedures exist.[4] Nor have Appellants found another jurisdiction with a similarly drafted statute that would provide insight into the language in Subsection 3-2-3(B)(3). However, other statutes are explicitly clear on when approval of incorporation or an annexation petition is required prior to petitioning for incorporation.

The district court decision needs to be reversed because Subsection 3-2-3(B)(3) is a stand-alone option, not requiring a petition for annexation, because the first two options for incorporation in an urban county apply to circumstances where the citizens of an unincorporated area wish to be annexed by the neighboring city and that city can provide municipal services. Option three of Section 3-2-3 offers an independent path to incorporation when there is conclusive evidence that the neighboring city cannot timely provide municipal services to the citizens wishing to incorporate. The Legislature offered this third option to avoid a needless petition for annexation when, as has been repeatedly demonstrated in this case, the neighboring city cannot provide timely municipals services. In the 1986 dispute between these parties, the BOCC, the district court, and the court of appeals have already held that Section 3-2-3(B)(3) is a stand-alone option. City of Sunland Park, 1990-NMSC-050, ¶¶ 2-11. This long standing battle over incorporation or annexation of the community of Santa Teresa is the embodiment of the situation the Legislature intended for Section 3-2-3(B)(3) to provide a direct avenue to petition for incorporation in situations of such conflict and inability of a municipality to provide services.

Moreover, the district court decision needs to be reversed because Section 3-2-3(B)(3) is a stand-alone option for incorporation under four principles of statutory construction: (1) using a plain reading of the text; (2) not making Subsections superfluous; (3) following legislative intent; and, (4) considering public policy. First, Section 3-2-3(B)(3) should be interpreted according to its

[4] See 1 Local Government Law § 8:9 (2016).

plain meaning. New Mexico courts have long applied traditional canons of statutory interpretation, with the first being reading statutes according to the plain meaning of the text. Oldham v. Oldham, 2011-NMSC-007, ¶ 10, 149 N.M. 215. When the text is unambiguous, actual interpretation is not necessary because the language clearly indicates the legislative intent of the statute. State v. Rivera, 2004-NMSC-001, ¶ 10, 134 N.M. 768. In this case, the use of "or" has a plain disjunctive meaning that needs no further interpretation. Second, interpreting Section 3-2-3 contrary to Appellants' explanation makes language in the statute superfluous, nullifying part of Section 3-2-3(B). Statutes shall not be read to make portions superfluous because such reading makes statutory language null and void. Sec. Trust v. Smith, 1979-NMSC-024, ¶ 11, 93 N.M. 35. Here, requiring potential incorporators to deliver an actual petition for annexation voids Subsection 3-2-3(B)(3). Third, the legislature's intent for Section 3-2-3(B) is that Subsection (B)(3) is a standalone option. Although our Supreme Court has stated the Legislature's general intent is to *deter* fracturing of urban areas, the legislature did not intend to *prevent* incorporation to avoid inappropriate annexations of distinct communities. City of Sunland Park, 1990-NMSC-050, ¶ 20. Here, the division among two communities is a clear example of why the legislature used a disjunctive "or" to create an option for residents to seek incorporation in the face of an unwanted annexation. Lastly, public policy supports reading Subsection 3-2-3(B)(3) as a stand-alone option because the BOCC has previously allowed proceeding in such manner and the alternative reading does not allow citizens a way to avoid unwanted annexation.

Ultimately, this matter needs to be remanded to be heard on the merits and decided by the best suited authority—the BOCC. An urbanized county is exactly the venue that should decide whether the citizens petitioning for incorporation of Santa Teresa should be able to incorporate. The district court should be reversed in order to give this urbanized county incorporation statute,

Section 3-2-3, the meaning intended by the Legislature. The citizens of Santa Teresa should be allowed to proceed and present evidence to meet the burden of conclusively proving that Sunland Park cannot provide municipal services in the same timeframe as the new municipality could.

I. While there is no nationwide general rule for requiring approval or petitioning for annexation before petitioning for incorporation of an urbanized territory, the jurisdictions that do require prior approval or annexation petitions are explicitly clear on such, unlike to the language in Section 3-2-3(B).

Appellants have not discovered a general rule throughout the country for incorporations to occur in urbanized counties because a myriad of statutory requirements are used,[5] nor have Appellants found another statute with the same language as Subsection 3-2-3(B)(3). However, New Mexico has been recognized as distinct from jurisdictions that require consent from neighboring cities: "[i]n several states, the consent of adjacent municipalities is required for a valid new incorporation. . . . In New Mexico, would-be incorporators must show conclusively that a municipality seeking to annex the area could not provide municipal services to the area within the same time frame as the proposed new municipality." 1 Local Government Law § 8:9 (citing In re Proposed Incorporation of Village of Frankfort Square, Will County, 166 Ill. App. 3d 146, 519 N.E.2d 721 (3d Dist. 1988); Friendship Village v. State, 738 S.W.2d 12 (Tex. App. 1987); City of Sunland Park, 1990-NMSC-050). In jurisdictions that require approval from the closest municipality, such as Texas[6] and Illinois,[7] the statute explicitly requires the petitioner to seek approval before filing a petition for incorporation. Here, the ordinary meaning of Section 3-2-3(B)

[5] See 1 Local Government Law § 8:9.

[6] 65 ILL. COMP. STAT. 5/2-3-5 (2010) ("If the area contains fewer than 7,500 residents and lies within 1 ½ miles of the boundary line of any existing municipality, the consent of the existing municipality must be obtained before the area may be incorporated.").

[7] TEX. LOC. GOV'T CODE ANN. § 42.041 (West 2005) ("A municipality may not be incorporated in the extraterritorial jurisdiction of an existing municipality unless the governing body of the existing municipality gives its written consent by ordinance or resolution. . . . If the governing body of the existing municipality refuses to give its consent . . . [voters] may petition the governing body to annex the area. If the governing body fails or refuses to annex the area within six months . . . that failure . . . constitutes the governing body's consent to the incorporation.").

does not *require* consent; rather, the language of Section 3-2-3(B) provides three *options* with consent being one and conclusively proving an ability to provide municipal services being another.

More importantly, Arizona's statute for incorporating an urbanized territory sheds light on the New Mexico Legislature's intent when including a third option not requiring a petition for annexation. ARIZ. REV. STAT. ANN. § 9-101.01 (2011) states:

> [N]o territory within an urbanized area shall hereafter be incorporated as a city or town, and the board of supervisors shall have no jurisdiction to take any action on a petition to incorporate a city or town within such area, unless either:
>
> 1. There is submitted with the petition for incorporation a resolution adopted by the city or town causing the urbanized area to exist approving the proposed incorporation.
>
> 2. There is filed with the board of supervisors an affidavit stating that a proper and legal petition has been presented to the city or town causing the urbanized area to exist requesting annexation of the area proposed for incorporation and such petition has not been approved by a valid ordinance of annexation within one hundred twenty days of its presentation.

As is apparent, Arizona's statute is substantively identical except for the lack of a third option. Arizona only allows incorporation if approved by the adjacent urbanized city or if petitioners sought annexation from it. Arizona does not provide a third option. In New Mexico, Section 3-2-3 provides Subsection (B)(3) as a third option for a petitioner to conclusively prove it can provide services more quickly, instead of seeking approval. Guidance from other jurisdictions suggests that Section 3-2-3 is sufficiently distinct from statutes *requiring* annexation or consent because it provides a clear third option.

II. The Legislature intended that a unique community in an urban county be given an opportunity to incorporate a new municipality when the neighboring city, creating the urban area, cannot provide municipal services to the community and when incorporation is deemed appropriate by the Board of County Commissioners of that urban county.

a. Subsection 3-2-3(B)(3) provides an alternative to the general limits on incorporation of municipalities in urban counties when unique factors are met.

The BOCC, the district court, and the court of appeals have all previously interpreted Section 3-2-3(B) to not require incorporators to petition to the city for annexation before petitioning to a county commission for incorporation, and the New Mexico Supreme Court did not reverse such rulings. In City of Sunland Park v. Santa Teresa Concerned Citizens Ass'n, Inc., 1990-NMSC-050, 110 N.M. 95, an association of citizens, on behalf of Santa Teresa residents, petitioned for incorporation in 1986 after receiving letters from Sunland Park sent to various property owners in southern Doña Ana County encouraging them to seek annexation into the City[,]" even though the BOCC unanimously disapproved the planned annexation. Id. ¶ 2. The Santa Teresa residents quickly formed the association specifically to petition for incorporation under NMSA 1978, Sections 3-2-1 and 3-2-3. Nine days later, the City petitioned for annexation of the same territory.

The BOCC held a hearing pursuant to Section 3-2-3(B)(3) to determine if the association could conclusively prove that it could provide services to the territory quicker than Sunland Park. The BOCC ruled in favor of the association, which the district court reversed. Id. ¶¶ 3 – 4. Although the court of appeals reversed the district court's holding that the incorporator met their burden of proving municipal services, it agreed with the BOCC and the district court "that the association was entitled to ***proceed with its petition for incorporation as it had done***—presenting evidence pursuant to Subsection (B)(3) to prove conclusively that it could provide services sooner than could the city—***without first adhering to the requirements of Subsections (B)(1) and (2)***." Id. ¶ 5 (emphasis added). Ultimately, the Supreme Court reversed on the merits of the petition, holding the association failed to "conclusively prove" it could provide services quicker than Sunland Park. Id. ¶ 27. The Supreme Court recognized that the Legislature's intent to deter splintering of communities in urban counties was satisfied by the "conclusively prove" requirement of

Subsection 3-2-3(B)(3), and it specifically declined to decide how the three Subsections interact. Id. ¶ 20, 26. As a result, the interpretation of the BOCC, the district court, and the court of appeal on Section 3-2-3(B) instructs potential incorporators to proceed under Subsection (B)(3) without first complying with Subsections (B)(1) and (B)(2).

Here, Appellants are simply asking the Court to follow this prior interpretation which were reasonably relied upon. Appellants are in this predicament because they followed precedent. Appellants petitioned according to the status quo—the prior interpretation from the BOCC, district court, and court of appeals. Historic interpretations should not be ignored because they create a de facto policy that landowners should be able to justifiably rely upon. See High Ridge Hinkle Joint Venture v. City of Albuquerque, 1998-NMSC-050, ¶ 9, 126 N.M. 413 (holding that a city could not interpret a zoning code differently from prior zoning officials' decisions because such interpretations created a de facto policy which the city could not change non-legislatively). As a result of the prior interpretations in City of Sunland Park from three levels of authority, it was at the least reasonable to rely upon such interpretations; and therefore, the Appellants should be allowed to proceed directly before the BOCC with their petition under Subsection 3-2-3(B)(3).

b. Subsection 3-2-3(B)(3) is a standalone option, not requiring a petition for annexation, based on the Legislature's intent that is evident from a prior legal dispute between these communities.

In City of Sunland Park, the Court quotes the 1965 Amendment of Section 3-2-3(B) as amended from the prior 1963 version (the strike throughs are deletions and the underlined text is new language):

> ~~[Section 1.]~~ A. Urbanized territory ~~[area]~~ is that territory within five miles of the boundary of any ~~[incorporated]~~ municipality having a population of five thousand or more persons and that territory ~~[area]~~ within three miles of ~~[the boundary of any incorporated]~~ a municipality having a population of less than five thousand persons. ~~[Section 2.]~~ B. No territory ~~[part of]~~ within an urbanized territory ~~[area]~~ shall be incorporated as a municipality ~~[as provided under Section 14-3-1~~

~~through 14-3-5, 14-4-1 through 14-4-3, 14-23-15 and 16, New Mexico Statutes Annotated, 1953 compilation]~~ unless the:

~~[A.]~~ (1) ~~[The]~~ municipality or municipalities causing the ~~[within whose]~~ urbanized territory ~~[area the area proposed to be incorporated is situated]~~ shall approve ~~[of the incorporation]~~ by resolution the incorporation of the territory as a municipality, ~~[or]~~

~~[B.]~~ (2) ~~[The area]~~ residents of the territory proposed to be incorporated ~~[has legally petitioned each]~~ have filed with the municipality ~~[within whose urbanized area the area]~~ a valid petition to annex the territory proposed to be incorporated ~~[is situated, for annexation, and the petition for annexation has not been approved by a valid ordinance of annexation]~~ and the municipality fails, within one hundred twenty days ~~[of its presentation]~~ after the filing of the annexation petition, to annex the territory proposed to be incorporated or

~~[C.]~~ (3) residents of the territory proposed to be annexed conclusively prove that ~~[T]~~ the ~~[incorporated]~~ municipality is unable to provide municipal services ~~[in the annexed area]~~ within the territory proposed to be incorporated within the same period of time that the proposed ~~[incorporated]~~ municipality could provide ~~[the same]~~ municipal services.

1990-NMSC-050, ¶ 16. Most significantly, the Legislature decided to remove the "or" between Subsections (B)(1) and (B)(2), and leave only an "or" between Subsections (B)(2) and (B)(3). This is an indication that the legislature intended to keep at least Subsection (B)(3) a separate option because it is significantly distinct from Subsections (B)(1) and (B)(2).

Subsection 3-2-3(B)(3) is significantly distinct from Subsections (B)(1) and (B)(2) because it is the only process of incorporation that is appropriate when *citizens of the unincorporated area* are in conflict with the closest municipality—the situation at hand. Subsections 3-2-3(B)(1) and (B)(2) involve seeking approval from the closest municipality. Subsection (B)(3) involves situations where incorporators of a distinct community specifically do not want to be annexed by the adjacent city. The Legislature specifically left Subsection 3-2-3(B)(3) as a standalone option, not requiring consent of a city or petitioning for annexation, by separating it with an "or" and creating a different process for the BOCC to determine if a proposed incorporator can conclusively

prove a city that could annex cannot provide municipal services as quickly as the proposed incorporator.

In the case at hand, a historical community has been in conflict with a municipality for over 30 years. Residents of Santa Teresa have long sought to incorporate separately from Sunland Park because the territory has a separate identity with separate interests. Conflict among these two communities has continued to reach our courts for over 30 years because of irreconcilable differences between them. The Legislature included Subsection 3-2-3(B)(3) to resolve disputes in this situation, to have the BOCC hear the merits on who can provide services the quickest. Without Subsection 3-2-3(B)(3) standing for such a proposition, the Legislature would have failed to include a mechanism to resolve the 30 years of disputes presented here. The inclusion of Subsection 3-2-3(B)(3) creates a mechanism to solve cases like the one presented to the Court in this case. A community seeking municipal services has an option, rather than only seeking consent or petitioning a city for annexation, when it does not want to be a part of that city.

Moreover, the Legislature likely intended Subsection 3-2-3(B)(3) to be separated from Subsections (B)(1) and (B)(2) because proceeding under Subsections (B)(1) and (B)(2) would be futile and a waste of resources when a municipality cannot provide municipal services timely to the area seeking to be incorporated. Subsection 3-2-3(B)(3) provides potential incorporators opportunity to petition for incorporation and demonstrate to the BOCC that it can provide services quicker than the neighboring municipality. This is the mechanism for proving to the BOCC that the incorporation of a new municipality is the appropriate decision because of a lack of services from the neighboring municipality. Here, Sunland Park has clearly demonstrated through resolutions its intent to annex Santa Teresa but admitted it cannot provide municipal services to the Santa Teresa residents. The Appellants should not be forced to request approval from or submit

a petition for annexation to Sunland Park when it is evident that Sunland Park cannot provide municipal services and Appellants do not want annexation. Rather, as the Legislature intended, Appellants should be allowed to proceed directly through Subsection 3-2-3(B)(3) without having to complete Subsection (B)(1) or (B)(2). The Appellants' petition should be heard by the BOCC without potentially futile process before Sunland Park; the BOCC, as an urbanized county, is the local authority best situated to determine whether a new municipality should be incorporated in Doña Ana County.

III. The district court decision needs to be reversed because Subsection 3-2-3(B)(3) is a stand-alone option for incorporation under four principles of statutory construction: (1) using a plain reading of the text; (2) not making Subsections superfluous; (3) following legislative intent; and, (4) considering public policy.

a. Under the plain meaning of Section 3-2-3 read as a whole, Subsection (B)(3) is a stand-alone option because it is separated from Subsections (B)(1) and (B)(2) with an "or", a disjunctive term that links alternative options.

The foremost canon for statutory interpretation is looking at the plain meaning of the language. The fact is, "[s]tatutory interpretation is driven primarily by the language in a statute." Herald v. Bd. of Regents of Univ. of New Mexico, 2015-NMCA-104, ¶ 25. "A court should look 'first to the plain language of the statute, giving the words their *ordinary meaning*. . . .'" Oldham v. Oldham, 2011-NMSC-007, ¶ 10, 149 N.M. 215 (emphasis added). The court shall "not read into a statute or ordinance language which is not there, particularly if it makes sense as written." High Ridge Hinkle Joint Venture v. City of Albuquerque, 1998-NMSC-050, ¶ 5, 126 N.M. 413. Rather, "[c]ourts are to give the words used in the statute their ordinary meaning unless the legislature indicates a different intent." Id. In order to give the rule its plain meaning, a court must "closely examine the overall structure of the statute [it is] interpreting[.]" State v. Rivera, 2004-NMSC-001, ¶ 13, 134 N.M. 768.

New Mexico's courts have already held "the word 'or' should be given its normal disjunctive meaning unless the context of a statute demands otherwise." Hale v. Basin Motor Co., 1990-NMSC-068, ¶ 9, 110 N.M. 314; see also, e.g., State v. Downey, 2008-NMSC-061, ¶ 26, 145 N.M. 232 ("The use of the disjunctive 'or' in Rule 11-702 permits a witness to be qualified under a wide variety of bases, knowledge, skill, experience, training, or education"); State v. Tsosie, 2011-NMCA-115, ¶ 27, 150 N.M. 754 ("The Legislature's use of the word 'or' indicates that any of the listed definitions [in NMSA 1978, Section 30-3-9.2(A)(1) (2006)] brings a facility within the definition of a health facility."); Schneider Nat., Inc. v. State, Taxation & Revenue Dep't, 2006-NMCA-128, ¶ 10, 140 N.M. 561 ("The statute [NMSA 1978, Section 7-1-26(B)(1) (2015)] uses the disjunctive 'or' to indicate that mailing and delivery are alternative acts"). In High Ridge Hinkle Joint Venture v. City of Albuquerque, 1998-NMSC-050, a municipality and developer disputed the meaning of "outside storage or activity" in the context of a zoning code. The court held that "use of the word 'or' indicates the intent to *distinguish* 'storage' from other subjects." Id. ¶ 6 (emphasis added). Therefore, the Supreme Court has already acknowledged that use of "or" has a common disjunctive purpose for distinguishing two options.

Here, a plain reading of Section 3-2-3(B) is necessary because it is unambiguous and clearly uses "or" in a disjunctive manner. Merriam-Webster Dictionary's primary definition for "or" is "used as a function word to indicate an alternative <*coffee or tea*> <*sink or swim*>, the equivalent or substitutive character of two words or phrases <*lessen or abate*>, or approximation or uncertainty <*in five or six days*>. *Or Definition*, MERRIAM-WEBSTER.COM, http://www.merriam-webster.com/dictionary/or (last visited January 27, 2017). Oxford Dictionary's primary definition for "or" is "used to link alternatives." *Or Definition*, OXFORDDICTIONARIES.COM, https://en.oxforddictionaries.com/definition/or (last visited January

27, 2017). To be clear, Merriam-Webster Dictionary's primary definition for "disjunctive" includes "expressing an alternative or opposition between the meanings of the words connected *<the disjunctive conjunction or>*." *Disjunctive Definition*, MERRIAM-WEBSTER.COM, http://www.merriam-webster.com/dictionary/disjunctive (last visited January 27, 2017). Thus, it is overwhelming clear that "or" has a disjunctive role of breaking up mutually exclusive options.

The district court in the case at hand substantially departed from the express terms to interpret it otherwise. There is no language under Section 3-2-3(B) that specifically would require a petitioner to complete the procedures under another subsection before proceeding under subsection (B)(3). Just as in High Ridge Hinkle Joint Venture, where "or" had a plain disjunctive purpose, here, the use of "or" in Section 3-2-3(B) indicates that there are three *completely separate options* available for incorporating in an urbanized territory. Interpreting "or" in any other manner is contrary to the plain meaning of "or" in New Mexico. The district court's interpretation of Section 3-2-3(B) neither gives the words their ordinary meaning nor follows the rules of logic and grammar. Furthermore, Santa Teresa avers that the BOCC's interpretation of Section 3-2-3(B) would lead to injustice, absurdity or contradiction. Courts must interpret Section 3-2-3(B) as a whole and recognize the obvious disjunctive effect that "or" has on the subsections, rather than concluding that approval or annexation is a requisite without consideration of Subsection 3-2-3(B)(3)'s role. See, e.g., Citizens for Incorporation, Inc. v. Bd. of Cty. Comm'rs of Cty. of Bernalillo, 1993-NMCA-069, ¶ 28, 115 N.M. 710. As discussed immediately below, following the plain meaning is necessary because a departure in search of some alternative and conjectural intent renders statutory language void.

b. The district court's erroneous interpretation of Section 3-2-3 renders Subsection 3-2-3(B)(3) superfluous and void because an annexation proceeding initiated before an incorporation proceeding will finish well before the incorporation is heard.

"[Appellate courts do] not depart from the plain wording of a statute, unless it is necessary to resolve an ambiguity, correct a mistake or an absurdity that the Legislature could not have intended, or to deal with an irreconcilable conflict among statutory provisions." Regents of Univ. of New Mexico v. New Mexico Fed'n of Teachers, 1998-NMSC-020, ¶ 28, 125 N.M. 401. "A statute must be construed so that no part of the statute is rendered surplusage or superfluous." State v. Javier M., 2001-NMSC-030, ¶ 32, 131 N.M. 1. The reasoning for such rule is to ensure provisions of a statute are not nullified by the court. Sec. Trust v. Smith, 1979-NMSC-024, ¶ 11, 93 N.M. 35. In order to ensure a nullification does not occur, the court must again interpret "the entire statute as a whole so that all the provisions will be considered in relation to one another." Regents of Univ. of New Mexico v. New Mexico Fed'n of Teachers, 1998-NMSC-020, ¶ 28, 125 N.M. 401.

Here, requiring an annexation petition under Section 3-7-17.1(b)(2), prior to a petition for incorporation under Section 3-2-3(B)(3), would create an absurdity and render Section 3-2-3(B)(3) meaningless because the annexation process would be completed before the BOCC could take final action on the petition for incorporation. When a petition for annexation is filed with a city, the city council must approve or disapprove the annexation "not less than thirty days nor more than sixty days after receiving the petition." NMSA 1978, Section 3-7-17.1(B)(2). Meanwhile, a petition for incorporation takes much longer. First, petitioners must gather signatures from at least 200 qualified electors or 60% of the territory owners. NMSA 1978, Section 3-2-1(A)(4). Second, the petitioners must obtain an accurate map and devise a municipal services plan before filing. Section 3-2-1(B). Once filed, a census must be completed. Section 3-2-1(B)(3). Once the census

is completed, the county must forward all documents to the New Mexico Department of Finance and Administration for evaluation and recommendation. Section 3-2-1(E). The Department of Finance then reports its findings and recommendation to the BOCC. Id. Only after all these steps are complete may the BOCC determine an incorporation proceeding. Indeed, an incorporator could compile all necessary documents prior to requesting annexation, but the annexation process would still end well before a hearing on incorporation is held. Thus, an annexation proceeding that is contrary to the wishes of the incorporators would be completed long before a petition for incorporation even gets before the BOCC.

The district court's interpretation of Section 3-2-3(B)(3) would leave petitioners with no genuine option for incorporation because the annexation proceeding would have prior jurisdiction. Matter of Doe, 1982-NMCA-115, ¶ 13, 98 N.M. 442; Amrep Sw, Inc. v. Town of Bernalillo, 1991-NMCA-110, ¶¶ 7-8, 113 N.M. 19; Landis v. City of Roseburg, 243 Or. 44, 51, 411 P.2d 282 (1966); Borghi v. Bd. of Sup'rs of Alameda Cty., 133 Cal. App. 2d 463, 465, 284 P.2d 537 (1955) ("[B]etween an incorporation proceeding and an annexation proceeding, the legislative body which first obtains jurisdiction retains it exclusively until the final determination of the particular proceeding."). Subsection 3-2-3(B)(3) is intended to address situations, such as this instance, where an adjoining city has expressed an intent to annex an urban area but the distinct community in such urban area does not desire annexation. The Appellants contend Subsection 3-2-3(B)(3) contemplated the phrase "proposed to be annexed" to include at least clear notice of intent to annex – which Santa Teresa received from Sunland Park. As discussed above, the annexation proceeding would take less time to complete. Unlike some jurisdictions, New Mexico does not have any special legislation that would prioritize an incorporation petition. See, e.g., COLO. REV. STAT. ANN.

§ 31-12-118(4) (West 1999); City of Greenwood Vill. v. Petitioners for Proposed City of Centennial, 3 P.3d 427, 446 (Colo. 2000).

The only way to overcome this issue would be to initiate an incorporation proceeding prior to the proposed annexation proceeding, and thus establishing prior jurisdiction over the proposed annexation. Nothing in this statute indicates that such an annexation proceeding would be stopped by a petition for incorporation or Section 3-2-3(B)(3) hearing, nor does Section 3-2-3(B)(3) even provide language that requesting a hearing serves as a petition for incorporation. In sum, Section 3-2-3 does not provide any language that would preserve a petition for incorporation filed after a petition for annexation; the incorporation would be defeated upon completion of the annexation, irrespective of Subsection 3-2-3(B)(3). Requiring an annexation petition first would effectively void an incorporation petition and render Subsection 3-2-3(B)(3) superfluous.

In addition, the Legislature could not have intended for Subsection 3-2-3(B)(2) to be a prerequisite to Subsection 3-2-3(B)(3) because petitioning for annexation is drastically distinct from petitioning for incorporation, which would effectively change the standards for incorporating under Section 3-2-1. Nothing in Section 3-2-3 relieves a petitioner for annexation of the requirements under Section 3-7-17.1. Under Section 3-2-1(A)(4), incorporation petitioners need signatures from only 200 qualified electors *or* owners of 60% of the territory, but under Section 3-7-17.1(A)(2), annexation petitioners must obtain signatures from owners of at least 50% of the territory, which could be a much larger number of people. Section 3-2-1 clearly provides a petitioner the right to obtain only 200 signature to incorporate. Holding that a petitioner must meet both the annexation and incorporation requirements would amount to requiring well in excess of 200 signatures to petition for incorporation, thus changing the incorporation requirements—potentially precluding an ability to incorporate under Sections 3-2-1 and 3-2-3(B)(3).

c. The legislature's intent for Section 3-2-3 is that Subsection 3-2-3(B)(3) is a standalone option because the unambiguous use of "or", the harmony among Subsections, the lack of contrary language, and the effect on potential incorporators.

"[An appellate court's] primary goal when interpreting statutory language is to give effect to the intent of the Legislature." State v. Smith, 2009-NMCA-028, ¶ 8, 145 N.M. 757. "It is the policy of New Mexico courts to determine legislative intent primarily from the legislation itself . . . If the intentions of the Legislature cannot be determined from the actual language of a statute, then we resort to rules of statutory construction, not legislative history." Regents of Univ. of New Mexico v. New Mexico Fed'n of Teachers, 1998-NMSC-020, ¶ 30, 125 N.M. 401. In addition, our courts have held that history and background may be considered, however such information is of "questionable probity" and "may be very tenuous[.]" See id. ¶ 31; State v. Rivera, 2004-NMSC-001, ¶ 11.

As evidenced by the language, and discussed above, the Legislature intended Subsection 3-2-3(B)(3) to stand alone. Otherwise citizens have no way to incorporate when they do not want to be annexed. The City of Sunland Park Court referred to legislative policy specific to Subsection 3-2-3(B)(3) that discourages incorporation, but it does not bar incorporation when necessary. In this prior dispute between Sunland Park and the citizens of Santa Teresa, the Court stated:

> The legislature has, in effect, declared the public policy of this state to be that the growth of municipalities and of their contiguous and urbanized areas shall take place in a planned and orderly manner. Further, it is the state's policy to discourage splinter communities or a proliferation of neighboring, independent municipal bodies, whose competing needs would divide tax revenues, multiply services, create confusion and factionalism among our citizens, and destroy the harmony that should exist between peoples of diverse backgrounds and socioeconomic strata within our state.

City of Sunland Park, 1990-NMSC-050, ¶ 20. This policy explains why the Legislature required "conclusive proof" under Subsection (B)(3); the Court specifically did not extend its holding to

how Subsections (B)(2) and (B)(3) interact. Id. ¶ 26 ("Nothing in our opinion is to be read as approving either [interpretation from the lower courts regarding an interaction between the Subsections.]"). The hurdle of conclusively proving a petitioner can provide municipal services quicker maintains this policy—discouraging splintering—while still allowing citizens to seek incorporation in the face of unwanted annexation. Even if the policy applied to the statute as a whole, the policy is not intended to "prevent" incorporation of neighboring municipalities. The policy is to "discourage" "splintering" and "proliferation" of multiple municipal governments. Thus, this language allows incorporation when appropriate, while deterring it with a conclusive proof burden.

Here, there is no risk of additional splintering or a proliferation of municipalities. The fact that the parties have participated in multiple lawsuits involving the incorporation or annexation of Santa Teresa indicates that these communities have long been separate and could not further splinter. See, e.g., City of Sunland Park, 1990-NMSC-050; Cox v. Mun. Boundary Comm'n, 1995-NMCA-120, 120 N.M. 703; Cox v. Mun. Boundary Comm'n, 1998-NMCA-025, 124 N.M. 709. Santa Teresa has been attempting incorporation since 1986 and not wishing to be annexed by neighboring urbanized territories. Santa Teresa is attempting to incorporate under Sections 3-2-1 and 3-2-3(B)(3) to avoid annexation by Sunland Park. This is likely the reason why the legislature intended to deter but not bar, and ultimately, to leave a third option under Subsection 3-2-3(B)(3) for those groups of citizens who do not wish to be annexed. The requisite for incorporation petitioners to meet the high burden of "conclusively prove" preserves the Legislature's policy when the matter is before the BOCC. Meanwhile, just as explained earlier regarding the 1965 amendments, the Legislature drafted Subsection 3-2-3(B)(3) to be a direct avenue for citizens situated like Appellants to seek incorporation when facing imminent annexation from city like

Sunland Park, a municipality that timely cannot provide services to the Appellants. Thus, the Legislature intended Subsection 3-2-3(B)(3) to be a standalone option with a high burden of proof as a safeguard to prevent communal splintering.

d. Public policy supports reading Subsection 3-2-3(B)(3) as a stand-alone option because the BOCC has previously allowed proceeding in such manner and the alternative reading does not allow citizens a way to avoid inappropriate annexation.

The BOCC has already allowed incorporation proceedings under Subsection 3-2-3(B)(3) without petitions for annexation first. On October 6, 1986, the BOCC allowed voters in Santa Teresa to proceed under Section 3-2-3(B)(3) after the mayor of Sunland Park wrote letters to the landowners encouraging them to seek annexation into the city. City of Sunland Park, 1990-NMSC-050, ¶ 3. In City of Sunland Park, the Supreme Court examined only the burden in Section 3-2-3(B)(3); there was never a requirement to petition for annexation first. Here, the BOCC has changed its mind. Allowing the BOCC to reverse its interpretations negatively affects stability and may potentially create distrust among the public. The BOCC's prior decision to allow the same parties to proceed under Section 3-2-3(B)(3) creates agency precedent and should be have been followed in this case. See High Ridge Hinkle Joint Venture, 1998-NMSC-050, ¶ 9. Moreover, Section 3-2-3(B)(3) is intended to allow citizens to avoid unwanted annexation, and public policy generally favors the protection of citizens' rights to incorporate. Thus, reversing the District Court supports proper public policy by providing a viable option for citizens to avoid undesired annexation.

The Legislature's intent and the public's best interest is placing the decision of whether a new municipality should be formed in the hands of the authority best suited to make the decision – the BOCC. This Court's determination on the statutory language will ultimately decide whether potential incorporators can get before a County Commission without petitioning for annexation; it

does not determine whether a new municipality will be created. The BOCC is the proper authority to decide if there is room in Doña Ana County for another municipality. The BOCC is the local authority that will decide the merits of the Appellant's request. Just like in a zoning case, it is not up to the Court to decide local matters, it is up to the local authority, see, e.g., High Ridge Hinkle Joint Venture v. City of Albuquerque, 1994-NMCA-139, ¶ 48, 119 N.M. 29 ("We remand to the district court with instructions to remand to the City Council for a new public hearing regarding whether go-carts and bumper boats are conditional uses with a C-2 zoned site"). This Court should hold that Section 3-2-3(B) provides a third option that does not require petitioning for annexation in order to get before the BOCC on the merits, and then the BOCC with proper jurisdiction will make the ultimate determination of whether another municipality could be incorporated.

CONCLUSION

For the foregoing reasons, this Honorable Court should reverse the district court's decision, reverse the BOCC's decision, and remand this case to allow Appellants to proceed with its incorporation petition before the BOCC. Santa Teresa is a unique community separate from Sunland Park, just as Mesilla is to Las Cruces. The friction between the Santa Teresa residents and Sunland Park is the reason Section 3-2-3(B) needs to be read in the disjunctive and why the Legislature did not write this statute in the conjunctive. Moreover, regardless of this Court's interpretation, this Court must remand to the BOCC to complete the hearing process. If this Court interprets Section 3-2-3 as explained by the Appellants, this Court must remand to the BOCC with instructions for a hearing on the merits. If this Court interprets Section 3-2-3 according to the Appellees argument, this Court still must remand to the BOCC for completion of incorporation process, i.e., to hear an amended petition from Appellants because Appellants timely filed and a wrong step was used only because of plain language and reliance on precedent by the Appellants.

The Appellants deserve an opportunity to proceed before the BOCC for consideration, rather than another proceeding such as an annexation taking affect, because of their reasonable reliance on a prior BOCC decision and court interpretation in City of Sunland Park.

STATEMENT REGARDING ORAL ARGUMENT

In the event that this Court has any questions regarding the merits of this appeal, Appellants requests oral argument.

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

By: _____

Robert M. White, Esq.
Randy M. Autio, Esq.
Lance D. Hough, Esq.
Attorneys for Appellants
500 Marquette Ave., NW, Suite 700
Albuquerque, New Mexico 87102
(505) 242-2228
(505) 242-1106 (facsimile)
Robert@roblesrael.com
Randy@roblesrael.com

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of February 2017, the foregoing Petition was sent via email to the following counsel of record:

Tom Figart
Nelson J. Goodwin
845 N. Motel Blvd
Las Cruces, NM 88007
nelsong@donaanacounty.org
tomf@donaanacount.org
Attorneys for Doña Ana County

Bradley A. Springer
Holt Mynatt Martinez, PC
P.O. Box 2699
Las Cruces, NM 88004
bas@hmm-law.com
Attorney for City of Sunland Park

Enrique Palomares
7362 Remcon Circle
El Paso, TX 79912
Txatty2001@yahoo.com
Attorney for Provisional Government of Santa Teresa in the District Court

_____

Randy M. Autio, Esq.