

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

FRIENDS OF LOS RANCHOS INC., A New
Mexico Nonprofit Corporation

Appellant,

v.

No. D-202-CV-2023-07688

VILLAGE OF LOS RANCHOS DE
ALBUQUERQUE, a New Mexico Municipal
Corporation,

Appellee,

and

PALINDROME COMMUNITIES, LLC, a Nevada
Limited Liability Company,

Real Party in Interest

MEMORANDUM OPINION AND ORDER

THIS MATTER an appeal pursuant to Rule 1-074 NMRA; NMSA 1978, Section 3-21-9; and NMSA 1978, Section 39-3-1.1 of three (3) decisions of the Village of Los Ranchos de Albuquerque (the “Village”) Board of Trustees (the “Board”) upholding the approval of site plans submitted by Real Party in Interest Palindrome Communities, LLC (“Palindrome”). The decisions of the Board are **REVERSED**.

BACKGROUND

This appeal concerns the Board’s decisions to uphold the approval of Palindrome’s site plans, preliminary plat, and final plat for the Village Center Zone.

A. The Creation of the Village Center Zone Project Area

On March 14, 2007, the Board passed a resolution approving redevelopment of the area located at the southeast corner of Osuna and 4th Street, also referred to as the Village Center Zone Project Area. [RP 7-8] On March 14, 2018, the Board adopted a development plan for the Village Center. [RP 11] On April 16, 2018, the Village issued a Request for Proposals to identify and select a developer for the project. [RP 47-120] Palindrome submitted the successful proposal.

B. The Purchase, Sale, and Development Agreement between the Board and Palindrome

On October 14, 2020, a quorum of the Board voted to approve, and the Village Mayor executed a Purchase, Sale, and Development Agreement (“PSDA”) with Palindrome. [RP 480-508] Article 3.3 of the PSDA provides:

Plans, Permits. Developer at its own cost, with the assistance of the Village, shall submit any and all design and site plans, elevations and construction specifications to the Planning and Zoning Director and Village Administrator for approval in accordance with Section 9.2.14 of the Village Code of Ordinances. Any proposed changes by the Developer to the plans and specifications thereafter, which create material design differences causing substantial or practical differences in the plans and specifications for the Project, shall require additional submission, review and approval of the Planning and Zoning Director and the Village Administrator. Notwithstanding the foregoing, to the extent Developer seeks a variance from Section 9.2.14 of the Village Code of Ordinances, such variance will require the approval of the Planning and Zoning Commission.

[RP 487]

On April 21, 2021, the Director of Planning and Zoning (the “P&Z Director”) wrote a letter to Palindrome “to clarify the required documents and the approval process for said documents” as outlined in Article 3.3 of the PSDA. [RP 509-516] The Board was cc’d on the letter. [RP 515] As to plat requirements, the P&Z Director wrote: “Per § 9.2.14(L) Application and Approval Process, the process outlined below shall replace the approval requirements for Major Subdivisions for each (re)plat.” [RP 511] The letter stated that the P&Z “Director and Village Administrator shall sign the application approving the Sketch Plat, after which the Developer can make

corrections and obtain utility signatures.” [RP 511] Following utility signatures and review for corrections, “[t]he Director and Village Administrator shall sign the application approving the Final Plat.” [RP 512] Finally, the P&Z Director stated: “As noted in (E)(1), design will be determined in the Site Development Plan application and approval process subject to Planning & Zoning Director and Village Administrator approval. The Director and Administrator shall review and ensure compliance of this section.” [RP 513] On July 7 and 14, 2021, the Mayor and Palindrome signed the letter “acknowledg[ing] and agree[ing] to the requirements stated in th[e] letter, which shall be an attachment to the [PDSA]” [RP 516]

C. Palindrome’s Site Development Applications

On March 28, 2022, George Radnovich, on behalf of Palindrome, signed and filed with the Village, three (3) site development applications. [RP 875 (Parcel 1), 895 (Parcel 2), 915 (Parcel 3)]

D. The Approval of Palindrome’s Sketch Plat

On May 24, 2022, the P&Z Director and the Village Administrator sent a letter to Palindrome. [RP 538-541] The letter stated: “This letter serve as administrative approval with conditions of the sketch plat submittal dated May 20, 2022 submitted by High Mesa Consulting Group on behalf of Palindrome Communities and the following property owners: The Village of Los Ranchos de Albuquerque, Paul Rael, and Pablo Rael” [RP 538] The letter further stated:

As no further requirements are noted for the sketch plat in §9.1, the submittal suffices for the sketch plat. Subsequent submittals (including but limited to a preliminary and final play) will be required to abide by §9.1, *excepting the public notice and hearing process*, as further detailed in the conditions of approval.

Per §9.1.5(BB) and (CC) the proposed subdivision is a major subdivision, and the requirements of §9.1 must be met, *except that the sketch plat, preliminary plat, and final plat (among other things) may be administratively approved per Article 3.3 of the [PSDA] dated October 16, 2020 without public notice nor public hearing before the Commission and/or Board. As the application will not go before the*

Commission or Board, any reference to the Commission or Board approval, conditions, or other requirements will instead be required, reviewed and approved by the Village administrator and Planning and Zoning Director.

The major subdivision process requires a pre-application meeting, sketch plat submittal, preliminary plat submittal, and final plat submittal, which includes the appropriate application forms and supplemental documents, prior to filing the plat and additional documents with Bernalillo County Clerk's Office. *This letter is in lieu of a pre-application meeting* as the requirements of Village Code are detailed herein and this classifies the proposed subdivision as a major subdivision.

[RP 539 (emphasis added, footnote omitted)]

E. The Approval of Palindrome's Preliminary Plat

On July 29, 2022, the P&Z Director and the Village Administrator sent another letter to Palindrome. [RP 710-715] The letter stated: "This letter serves as administrative approval with conditions of the preliminary plat submittal dated June 16, 2022 submitted by High Mesa Consulting Group on behalf of Palindrome Communities and the following property owners: The Village of Los Ranchos de Albuquerque, Paul Rael, and Pablo Rael" [RP 710] The letter further stated:

Compliance with §9.1.5:

Per §9.1.5(BB) and (CC) the proposed subdivision is a major subdivision, and the requirements of §9.1 must be met, except that the sketch plat, preliminary plat, and final plat (among other things) may be administratively approved per Article 3.3 of the [PSDA] dated October 16, 2022 without public notice nor public hearing before the Commission and/or Board. As the application will not go before the Commission or Board, any reference to the Commission or Board approval, conditions, or other requirements will instead be required, reviewed, and approved by the Village Administrator and Planning and Zoning Director.

[RP 711 (emphasis added)]

F. The Approval of Palindrome's Final Plat

On August 19, 2022, the Village Administrator issued an Administrative Planning Report. [Suppl. RP 1968] The subject of the report was Palindrome's request for approval of Palindrome's

final plat. [Suppl. RP 1968] The Village Administrator found that “[t]he submittal meets the requirements for a final plat for a major subdivision” [Suppl. RP 1972]

G. Approval of Palindrome’s Site Development Plans

On February 15, 2023, the P&Z Director and Village Administrator issued three (3) Official Notifications of Decision stating that the P&Z Director and Village Administrator had approved Palindrome’s site development plans. [RP 728-729 (SDP 23-01), 742-743 (SDP 23-02), 756-757 (SDP 23-03)]

H. Appellant’s Appeal to the Planning and Zoning Commission

On May 9, 2023, the Planning and Zoning Commission (the “Commission”) heard Appellant’s appeal of the site plan approvals. [RP 1071-1074] The Commission voted three (3) to (2) with one (1) recusal to approve the appeals. [RP 1073-1074]

On May 18, 2023, the Commission issued Official Notifications of Decision. [RP 1076-1084] The Commission recommended to the Board that the Village’s approval of the site development plans be vacated. [RP 1076, 1079, 1082]

I. The Written Notice of Claimed Open Meetings Act Violation and the Village’s Response

On July 19, 2023, counsel for Joe Craig provided the Village written notice of alleged Open Meetings Act (“OMA”) violations with regard to the approvals of Palindrome’s preliminary plat and final plat applications.¹ [RP 1442-1447] On August 2, 2023, counsel for the Village responded to the notice of OMA violation disputing the allegations. [RP 1435-1441]

J. Palindrome’s Appeal to the Board

¹ See NMSA 1978, § 10-15-3(B) (“[N]othing in th[e] act shall prevent an individual from independently applying for enforcement through the district courts, provided that the individual first provides written notice of the claimed violation to the public body and that the public body has denied or not acted on the claim within fifteen days of receiving it.”).

On August 19, 2023, the P&Z Director submitted a report regarding the appeals. [**2d Suppl. RP 2026–2037**] On August 22, 2023, Appellant filed an Emergency Motion to Disqualify and Request for Deferral of Appeal Hearing arguing the report was ex parte. [**RP 1973-1983**] On August 23, 2023, the Board held a hearing on Palindrome’s appeal. [**RP 1844-1967**] The Board declined to consider Appellant’s emergency motion. [**RP 1858**] On September 7, 2023, the Board issued Official Notifications of Decisions approving Palindrome’s appeals. [**Notice of Appeal Ex. 1-3**]

K. Appellant’s Appeal to District Court

On September 27, 2023, Appellant filed a Notice of Appeal. The Record on Appeal was filed on October 27, 2023. On December 15, 2023, Appellee filed a Supplementation of the Record on Appeal. On December 21, 2023, Appellee filed a Second Supplementation of the Record on Appeal.

On December 27, 2023, Appellant filed a Rule 1-074(I) Motion to Correct the Record on Appeal. Appellant moved to admit (1) a screenshot of the October 14, 2020, Board hearing where the PSDA was considered and approved, (2) minutes from the July 14, 2021, Board meeting, (3) the Board’s 2023 Open Meetings Act Resolution, and (4) Appellant’s PowerPoint presentation from the August 23, 2023, appeal hearing before the Board. On January 8, 2024, the Village filed a response to Appellant’s motion. On January 11, 2024, Palindrome filed a response to Appellant’s motion. On January 26, 2024, Appellant filed a reply. The Court held a hearing on the motion on March 11, 2024. On March 18, 2024, the Court issued an Order Granting Appellant’s Rule 1-074(I) Motion to Correct the Record on Appeal. The Court directed Appellee to correct the omission of Exhibits 1-4 in the Record on Appeal no later than fifteen (15) days. Finally, the Court

ordered that Exhibit 4 shall be considered only as evidence of the Board's alleged bias against Appellant.

On December 27, 2023, Appellant filed a Statement of Appellate Issues. On January 17, 2024, the Village filed a Response to Appellant's Statement of Appellate Issues. On February 5, 2024, Appellant filed a reply to the Village's Response. This matter is now ready for a decision.

STANDARD OF REVIEW

The district court shall apply the following standards of review: (1) whether the Board acted fraudulently, arbitrarily, or capriciously; (2) whether based upon the whole record on appeal, the decision of the Board is supported by substantial evidence; (3) whether the action of the Board was outside the scope of its authority; or (4) whether the action of the Board was otherwise not in accordance with law. Rule 1-074(R).

DISCUSSION

Appellant raises three (3) issues on appeal. First, Appellant argues that the approvals of the site development plans, preliminary plat, and final plat by the Village Administrator and the P&Z Director violated the OMA. Second, Appellant argues that the Village Administrator and the Planning and Zoning Director lacked the legal authority to approve the site development plans. Finally, Appellant argues that in reversing the Commission, the Board violated Appellant's due process rights. The Court holds that the decision of the Board to uphold the approvals of Palindrome's preliminary plat, final plat, and site plans was contrary to law for two reasons. First, the P&Z Director and Village Administrator lacked the legal authority to approve the preliminary plat, final plat, and site plans. Second, the approval of the preliminary plat, final plat, and site plans should have occurred in an open public meeting.

In enacting the OMA, NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013), the Legislature declared:

In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body . . . shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.

§ 10-15-1(A). In order words: “The purpose of the Act is to open the conduct of the business of government to the scrutiny of the public and to ban decision-making in secret.” *Kleinberg v. Board of Educ. of Albuquerque Pub. Schs.*, 1988-NMCA-014, ¶ 18, 107 N.M. 38, 751 P.2d 722 (internal quotation marks omitted).

Thus, under the OMA:

All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of . . . any agency or authority of any . . . municipality . . . held for the purpose of formulating public policy, . . . discussing public business or taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the [OMA].

§ 10-15-1(B). “No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1” § 10-15-3(A).

“In considering whether an entity or proceeding is subject to OMA, it is the nature of the act performed by the committee, not its makeup or proximity to the final decision, which determines whether an advisory committee or other comparable entity is subject to open meetings statutes.” *Benavidez v. Bernalillo Cnty. Bd. of Cnty. Comm’rs*, 2021-NMCA-029, ¶ 51, 493 P.3d 1024 (internal quotation marks omitted). “A public body may not evade its obligations under the

OMA by delegating its responsibilities for making decisions and taking final action to a committee.” *Id.* (internal quotation marks omitted).

This is true even when the public body delegates its authority for holding a meeting or hearing to a single individual. If a hearing would be subject to the Act if convened by the public body, the hearing cannot be closed simply because the public body appoints a single hearing officer to hold the hearing in its place.

N.M. Dep’t of Justice, *New Mexico Open Meetings Act Compliance Guide* 9 (8th ed. 2015).

In order to determine whether the approvals of the site development plans by the P&Z Director and the Village Administrator were required to be discussed and voted on in a properly noticed public meeting, the Court must determine whether the P&Z Director and the Village Administrator were “taking any action within the authority of or the delegated authority” of the Board. *See* § 10-15-1(B).

A. **The P&Z Director and Village Administrator lacked the legal authority to approve Palindrome’s preliminary plat and final plat and the approval of Palindrome’s preliminary plat and final plat should have occurred in an open public meeting.**

Under state law a municipality is a planning authority. *See* NMSA 1978, § 3-19-1. “Each municipality shall have planning and platting jurisdiction within its municipal boundary.” NMSA 1978, § 3-19-5(A). “A municipality . . . may, by ordinance . . . establish a planning commission” and “delegate to the planning commission . . . the power, authority, jurisdiction and duty to enforce and carry out the provisions of law relating to planning, *platting* and zoning.” § 3-19-1.

The Village, by ordinance, created a Planning and Zoning Commission. *See* Los Ranchos de Albuquerque, N.M., Code of Ordinances (“Village Code”) § 9.2.2. According to the Village Code, “On matters reserved for the Board of Trustees, the Commission shall hold hearings and make recommendations to the Board of Trustees. *The Board specifically reserves final action on*

applications for major subdivision approval, zoning map and code changes and site development plans.” Village Code § 9.2.2(D)(3) (emphasis added).

1. *Preliminary plats must be submitted to the Commission for recommendation and to the Board for approval.*

Pursuant to Article 3.2 of PSDA, Palindrome was required to re-plat the entire property. [RP 486] Article 3.2 provides, in relevant part: “Developer shall make such application in conformance with Village Code” [RP 486]

Under the Village Code there are different procedures and submission requirements for plats depending on if the subdivision is classified as “major” or “minor”. See Village Code § 9.1.7(B) (minor subdivisions), (C) (major subdivisions). The Record on Appeal indicates that Palindrome’s preliminary plat application was treated as major subdivisions. [RP 710]

The Village Code prescribes the following procedures and submission requirements for major subdivision preliminary plats:

Upon receipt of written confirmation from the Planning Director that the sketch plat, or as heard by the Commission, appears to be in substantial conformance with applicable regulations and policies, the subdivider may apply for a preliminary plat hearing by the Commission. The subdivider shall submit a written application along with copies as required by the Planning Director of the preliminary plat and any supplementary material that may be required. Applications that are not complete by the meeting deadline, or where applicant has not met the regulatory public notice requirements shall not be placed on the meeting agenda for action. The preliminary plat shall meet the standards specified in § 9.1.8 of this Article. Upon recommendation of approval of the preliminary plat by the Commission, the subdivider will be scheduled for a hearing before the Board for approval of the final preliminary plat.

Village Code § 9.1.7(C)(3) (emphasis added). Section 9.1.8 sets forth the following standards:

Any person or party proposing to subdivide land shall complete and submit a preliminary plat application, along with copies required by the Planning Director of all application materials as required in this Section for review by the Planning Director, the Village Designated Engineer, the Village Attorney, and the Commission, and the required preliminary plat subdivision processing fees.

Village Code § 9.1.8(A)(1)(a) (emphasis added). “The preliminary plat application and submittal materials shall be filed at least thirty (30) days prior to the regularly scheduled Commission meeting at which the preliminary plat application shall be heard.” Village Code § 9.1.8(A)(1)(b). “The Commission shall hold a hearing upon the preliminary plat application and proposal not later than sixty (60) days following submission of a completed application as determined by the Planning Director.” Village Code § 9.1.8(A)(3) (“Preliminary Plat Hearing.”). “If upon conclusion of the hearing the Commission shall find that such preliminary plat satisfies the requirements of this Section, the Commission shall forward the plat to the Board of Trustees with recommendations for action.” Village Code § 9.1.8(4)(a). “The Board of Trustees shall hold a public hearing on the preliminary plat application. If upon conclusion of the hearing, the Board approves the preliminary plat, the Mayor shall sign and date approval thereof” *Id.*

“The Record on Appeal indicates that the Planning Director approved the sketch plat with conditions on May 24, 2022. [RP 538] Therefore, pursuant to the Village Code, Palindrome was required to submit a preliminary plat application to the Commission, which was required to hold a public hearing on the application. *See* Village Code §§ 9.1.7(C)(3); 9.1.8(A)(3). Following the hearing, the Commission was required to make a recommendation to the Board. *See* Village Code §§ 9.1.7(C)(3); 9.1.8(4)(a). If the Commission recommended approval then Palindrome would be scheduled for a hearing before the Board. *See* Village Code §§ 9.1.7(C)(3); 9.1.8(4)(a). The Board has specifically reserved final action on applications for major subdivision approval. *See* Village Code § 9.2.2(D)(3).

However, instead of following the foregoing process, the P&Z Director and the Village Administrator approved Palindrome’s preliminary plat on July 29, 2022. [RP 710-715] As a preliminary matter, the P&Z Director and the Village Administrator lacked the legal authority to

approve Palindrome’s preliminary plat. In addition, the P&Z Director and the Village Administrator took action within the authority of both the Commission and the Board. Under the OMA, such action was required to be taken in a public meeting. *See* § 10-15-1(B). The approval of Palindrome’s preliminary plat was not taken in a public meeting. Therefore, the P&Z Director and Village Administrator’s approval of Palindrome’s preliminary plat is invalid. *See* § 10-15-3(A).

2. *Final plats must be approved by the Commission.*

The Village Code prescribes the following procedures and submission requirements for major subdivision final plats. “Once the approval conditions as specified by the Commission or Board are fulfilled, the subdivider may apply to the Commission for Final Plat Approval.” § 9.1.7(C)(4). “Applicant shall prepare a final plat application upon proof of compliance with the terms of the Commission’s preliminary plat approval, all Village standards . . . and any subdivision improvement agreements and private agreements which the subdivider may have entered into for the purposes of receiving preliminary plat approval.” Village Code § 9.1.8(B)(1). “[T]he subdivider shall . . . submit a final plat application and copies as required by the Planning Director, of all application materials . . . for review by the Planning Director, and the Village Designated Engineer, the Village Attorney, and the Commission.” Village Code § 9.1.8(B)(2)(a). “The Commission shall review the final plat, supplementary material, and findings of the Board and comments by Village Consultants and other governmental agencies as may be appropriate.” Village Code § 9.1.8(A)(2) (“Review.”). “The Commission shall hold a hearing on the final plat application not later than thirty five (35) days following the submittal of a completed final plat application.” Village Code § 9.1.8(B)(2)(b). “If the final plat is approved by the Commission, an

Official Notice of Decision shall be mailed to the subdivider stating the decision, conditions and findings.” Village Code § 9.1.8(A)(4) (“Decision.”).

Instead of following the foregoing process, it appears that the Village Administrator approved Palindrome’s final plat on August 19, 2022. [Suppl. RP 1968] As a preliminary matter, the Village Administrator lacked the legal authority to approve Palindrome’s final plat. In addition, the Village Administrator took action within the authority of the Commission. Under the OMA, such action was required to be taken in a public meeting. *See* § 10-15-1(B). The approval of Palindrome’s final plat was not taken in a public meeting. Therefore, the Village Administrator’s approval of Palindrome’s final plat is invalid. *See* § 10-15-3(A).

B. The P&Z Director and Village Administrator lacked the legal authority to approve Palindrome’s site plans and the approval of Palindrome’s site plans should have occurred in an open public meeting.

“Approval of a Site Development Plan by the Commission and the Board of Trustees is required for major subdivisions” Village Code § 9.2.25(E)(4). “The applicant shall request and have scheduled a Sketch Plat review at which time the Commission will discuss the proposal and provide direction in the form of comments without formal action.” Village Code § 9.2.25(E)(4)(c)(1). “After the Sketch Plat Review, the Planning Director shall schedule a hearing for preliminary approval before the Commission.” Village Code § 9.2.25(E)(4)(c)(2). “The Commission may set conditions and forward a recommendation to the Board of Trustees for final approval.” Village Code § 9.2.25(E)(4)(c)(3). “The final approval application for Site Development Plan shall be heard by the Board of Trustees when all requirements have been met.” Village Code § 9.2.25(E)(4)(c)(6). “The Board specifically reserves final action on applications for . . . site development plans.” Village Code § 9.2.2(D)(3).

Instead of following the foregoing process, the P&Z Director and Village Administrator approved Palindrome’s site development plans on February 15, 2023. [RP 728-729 (SDP 23-01), 742-743 (SDP 23-02), 756-757 (SDP 23-03)] As a preliminary matter, the P&Z Director and Village Administrator lacked the legal authority to approve Palindrome’s site development plans. In addition, the P&Z Director and the Village Administrator took action within the authority of both the Commission and the Board. Under the OMA, such action was required to be taken in a public meeting. *See* § 10-15-1(B). The approval of Palindrome’s site development plans was not taken in a public meeting. Therefore, the P&Z Director and the Village Administrator’s approval of Palindrome’s site development plans is invalid. *See* § 10-15-3(A).

C. The Village’s arguments are not persuasive.

1. *The Village improperly delegated final action to the P&Z Director and Village Administrator.*

The Village argues that the approval of the site development plans by the Village Administrator and Planning Director did not entail the formation of public policy, “but rather, executing the policy put in place from 2016- through 2020.” (Resp. 8) The Court disagrees.

As a preliminary matter, the OMA does not apply solely to the formulation of public policy. The OMA also applies to the taking of any action within the authority of or the delegated authority of any board or commission. *See* § 10-15-1(B). As pointed out by Appellant, the Village Administrator and the P&Z Director took the final actions of the public body themselves. (Reply 13)

2. *Section 9.2.14 VC(L) does not support a deviation from the Village Code in this case.*

The Village contends that the approval process in this case is governed by Section 9.2.14 VC of the Village Code which allows the Village to deviate from the Village's normal approval process. The Court disagrees.

Section 9.2.14 VC pertains specifically to the Village Center Zone. "The Village Center Project Area includes land within the Village Center Zone, but does not include all of the land within the Village Center Zone." *Id.* "In this Project Area, the Village . . . may control development parameters by . . . entering into development agreements . . ." *Id.* "All applications for development requiring platting actions *other than the Project Area* shall be approved in the manner set forth in § 9.2.25 of the Zoning Code." § 9.2.14 VC(L).

A plain reading of Section 9.2.14 VC(L) indicates that applications for development requiring platting within the Village Center Zone, but not inside the Project Area, are approved under Section 9.2.25 of the Village Code. If this reading is correct, then Section 9.2.14 is silent as to how applications for development requiring platting within the Project Area should be handled.

The Village contends that the language Section 9.2.14 VC that allows the Village to "control development parameters by . . . entering into development agreements" means that the PSDA controls the approval of site development plans within the Project Area. The Court disagrees.


As a preliminary matter, the term "development parameters" is not defined in the Village Code. Second, Section 9.2.2(D)(3) specifically provides that "[t]he Board specifically reserves final action on applications for major subdivision approval, zoning map and code changes and site development plans." Therefore, to the extent that there is a conflict between Section 9.2.14 VC(L) (purportedly incorporating the PSDA) and Section 9.2.2(D)(3), both state law and the Village Code provide that the higher standard governs. *See* NMSA 1978, § 3-21-11(D) ("If any . . . local

ordinance, resolution or regulation adopted under authority of Sections 3-21-1 through 3-21-14 . . . is applicable to the same premises, the provision shall govern which requires . . . or imposes, other higher standards.”); Village Code § 9.1.4 (“Whenever any of the provisions of these Regulations are more or less restrictive than other laws, covenants, or ordinances, then whichever is more restrictive shall govern.”). Finally, a contract that preempts a municipality’s power to zone according to prescribed legislative procedures constitutes an illegal zoning contract. *See Dacy v. Village of Ruidoso*, 1992-NMSC-066, ¶¶ 15-17, 114 N.M. 699, 845 P.2d 793.

CONCLUSION

For the foregoing reasons, the decisions of the Board in SDP 23-01, SDP 23-02, and SDP 23-03 are **REVERSED**.

IT IS SO ORDERED.



The Honorable Denise Barela Shepherd
District Court Judge