IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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No. A-1-CA-41954

BRUCE THRONE, ANNIE CAMPBELL, MARK BAKER, ROBERT JOSEPHS, CHRISTOPHER WORLAND, STEVEN CLARK, SOL Y LOMAS HOMEOWNER ASSOCIATION, INC., and PLAZAS AT PECOS TRAIL HOMEOWNERS ASSOCIATION, INC.,

Plaintiffs-Petitioners,

v.

THE GOVERNING BODY OF THE CITY OF SANTA FE,

Defendant-Respondent,

and

PIERRE AMESTOY,

Real Party in Interest-Respondent.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
Bryan Biedscheid, District Court Judge

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OPINION

WRAY, Judge.

{1} Multiple community members and community organizations (the Community) appeal the decision (the Decision) to approve a request from Pierre Amestoy (Developer) to rezone a piece of property (the Property) from one residential unit per gross acre (R1) to three residential units per gross acre (R3). The Property is adjacent to Old Pecos Trail, which the City of Santa Fe, N.M. General Plan (the SF General Plan, the General Plan, or the general plan) describes as "an unspoiled entryway into downtown." SF General Plan, ch. 3, § 3.5 at 3-13 (1999). The Community opposed the rezoning and maintained that when the SF General Plan was adopted in 1999, the Governing Body of the City of Santa Fe (the Governing Body) had committed to (1) designating an area that included the Property as a scenic corridor, and (2) developing land use, density, and design control standards for that area through a public participation process. On appeal in this Court, the Community maintains that the Governing Body disregarded the promise for a public participation process regarding Old Pecos Trail that was expressed in the SF General Plan and that as a result, the decision to approve the rezoning (the Decision) misapplied the legal requirements for rezoning, was not based on substantial evidence, and was arbitrary and capricious. The Community additionally contends that it did not receive due process from the City of Santa Fe

(the City) during the rezoning proceedings. After careful attention to the record, the relevant law, and the arguments made by the parties in briefing and at oral argument, we affirm.

BACKGROUND

{2} To understand the particulars of the appeal, it is necessary to begin with the structure and relevant contours of the SF General Plan and the rezoning ordinances before turning to the facts of the present case.

The SF General Plan

{3} In 1999, the City passed what is titled, "A Resolution Adopting the Santa Fe General Plan Update, Pursuant to [NMSA 1978,] Section 3-19-10 [(1965)]." Resolution No. 1999-45, Governing Body (Santa Fe, N.M. Apr. 14, 1999). By this resolution, the City adopted the SF General Plan, which is organized into ten chapters that each address a general topic. The first chapter, "Introduction and General Plan Themes," explains that the SF General Plan is "at the heart of community decision[-]making" and "provides guidance for development proposals" as well as other considerations impacting the City. *See* SF General Plan, ch. 1, § 1.1 at 1-1 (1999). Also included in the first chapter is a detailed provision about public participation and provisions outlining "General Plan Themes," which include creating affordable housing, ensuring sustainable growth, maintaining the City's

unique character, and promoting a compact urban form and infill.[1] *See* SF General Plan, ch. 1, §§ 1.6 at 1-6 to -7; 1.7.1 at 1-10; 1.7.5 at 1-11; 1.7.8 at 1-12; 1.7.9 at 1-12 to -13 (1999). In the final paragraph of the first chapter, the SF General Plan states:

> With this General Plan, the [C]ity is committing itself to consistency between the General Plan and the implementing programs and regulations, including zoning and subdivision regulations and the [Capital Improvements Program]. Criteria and procedures to ensure consistency between the General Plan and Zoning Ordinance are also established, including an orderly process for General Plan amendments.

See SF General Plan, ch. 1, § 1.7.14 at 1-14 (1999). The nine remaining chapters include "Land Use" and "Community Services and Development." *See* SF General Plan, Table of Contents at i, vi (1999). Each chapter begins with a section titled, "Themes," followed by sections titled, "Guiding Policies" and ending with "Implementing Policies." *Id.*; *see* SF General Plan, ch. 1, § 1.3 at 1-4 (1999) (describing the plan organization). The SF General Plan explains that "Guiding Policies" set forth the City's "goals and philosophy" and "describe ways or methods that the themes listed in each chapter can be achieved." SF General Plan, ch. 1, § 1.3 at 1-4 (1999). The "Implementing Policies" provisions "represent commitments to

[1] The Santa Fe, N.M., City Code (SF Code) defines "infill" as "[t]he development of more intensive land uses on vacant or underutilized sites." SF Code, ch. 14, art. 12, § 14-12.1, Infill (2025).

specific actions" and "may refer to existing programs or call for establishment of new ones." *Id.*

{4} The Land Use chapter opens with the following introduction:

> The text and policies of the Land Use chapter are expressed through the Themes, Guiding Policies, and Implementing Policies. Land Policy Overlays (Figure 3-1), and Future Land Use (Figure 3-2) are graphic representations of these policies, designating only the proposed general location, distribution, and extent of land uses; they are not by themselves "the General Plan." They should be used only in conjunction with other figures and text in the Plan.

SF General Plan, ch. 3 at 3-1 (1999). The themes for the Land Use chapter repeat many of the first chapter's themes: affordable housing, sustainable growth, and maintaining the City's "unique personality." *Id.* The Guiding Policies section repeats the City's commitment to affordable housing and infill, SF General Plan, ch. 3, § 3-G-3 at 3-2 (1999), and sets forth defined use classes for land, including "Very Low Density Residential," of one to three units per gross acre (R1-R3), and "Low Density Residential," of three to seven units per gross acre (R3-R7). SF General Plan, ch. 3, § 3.5 at 3-10 (1999).

{5} Another recognized use class is the "Old Pecos Trail Scenic Corridor," which the Land Use chapter designates "as a scenic roadway," recognizing "its importance as an unspoiled entryway into downtown" (the OPTSC Use Classification). SF General Plan, ch. 3, § 3.5 at 3-10, -13 (1999). The OPTSC Use Classification directs that "[d]evelopment standards, including land uses, density, and design controls, will

be developed through a public participation process." *Id.* at 3-13. The Implementing Policies section, which again the SF General Plan described as "commitments to specific actions," *see* SF General Plan, ch. 1, § 1.3 at 1-4 (1999), expressly lists the following: "Adopt an Old Pecos Trail 'Scenic Corridor' designation and development standards for Old Pecos Trail between Cordova Road and I-25." SF General Plan, ch. 3, § 3.6(3-I-9) at 3-15 (1999) (OPTSC Implementing Policy). We refer to the OPTSC Use Classification and the OPTSC Implementing Policy collectively as the OPTSC Policies. Though efforts were made to implement the OPTSC Policies, attempts at a draft ordinance stalled.

{6} In 2015, the City adopted Resolution No. 2015-92, Governing Body (Santa Fe, N.M. Oct. 14, 2015) (Resolution 2015-92), which directed City staff (Staff) "to complete the Old Pecos Trail Scenic Corridor Plan by following the necessary public process." The parties agree that the OPTSC Policies and the directive in Resolution 2015-92 were never accomplished.

The City's Rezoning Criteria

{7} The Santa Fe, N.M., City Code (SF Code), ch. 14, § 14-3.5 (2025),[2] governs rezoning requests. The City "shall review all rezoning proposals" based on the criteria set forth in SF Code, ch. 14, § 14-3.5 (2025), and "make complete findings

[2]The parties identify no relevant differences between the SF Code that was in effect at the time of the application and the current code, and we therefore cite the current code.

of fact sufficient to show" the criteria are met "before recommending or approving any rezoning." SF Code, ch. 14, § 14-3.5(C)(1) (2025). Three of the criteria are relevant to this appeal. First, rezoning requires that "one or more" of three conditions must be met, and for the present case, the disputed condition is whether "a different use category is more advantageous to the community, as articulated in the general plan or other adopted city plans." *See* SF Code, ch. 14, § 14-3.5(C)(1)(a)(iii) (2025) (Requirement 1a). Second, the rezoning must be "consistent with the applicable policies of the general plan, including the future land use map." SF Code, ch. 14, § 14-3.5(C)(1)(c) (2025) (Requirement 1c). Third, "[u]nless the proposed rezoning is consistent with applicable general plan policies, the planning commission and the governing body shall not recommend or approve any rezoning, the practical effect of which is to":

> (a) allow uses or a change in character significantly different from or inconsistent with the prevailing use and character in the area;
>
> (b) affect an area of less than two acres, unless adjusting boundaries between districts; or
>
> (c) benefit one or a few landowners at the expense of the surrounding landowners or general public.

SF Code, ch. 14, § 14-3.5(C)(2) (2025) (Requirement 2).

The Planning Commission and Governing Body Process in the Present Case

{8} It was in this context that Developer applied for the rezoning, from R1 to R3, of nearly ten acres of land located adjacent to Old Pecos Trail, "in order to allow "a residential low-density development." The rezoning request proceeded through several steps. Developer, as required by the SF Code, first participated in early neighborhood notification meetings with the public before submitting the rezoning application to the planning commission. *See* SF Code, ch. 14, § 14-3.1(F)(2)(a)(iii) (2025) (addressing early neighborhood notification); SF Code, ch. 14, § 14-3.5(B)(1)(a) (2025) (requiring that "[a]ll proposed rezonings shall be submitted to the planning commission for review and recommendation at a public hearing"). The planning commission received extensive public comment on the application, held public hearings, and recommended that the Governing Body approve the rezoning request. *See* SF Code, ch. 14, § 14-3.5(B)(1) (2025).

{9} For its review of the rezoning application, the Governing Body received additional extensive public comment as well as over one thousand pages from the planning commission, which included a memorandum, supporting documents, meeting minutes, and the written public comment submitted during that proceeding. Before the first public hearing in front of the Governing Body, one of the Community members, Mr. Throne, requested and was denied the opportunity to cross-examine both Developer and the City land use staff. The first public

meeting included presentations from Developer and Staff as well as two-minute statements from individual members of the public. The second public meeting included questions by the Governing Body to Staff, Developer, and members of the public. In the third hearing, the Governing Body continued questioning, debated the issue, and ultimately, approved the rezoning request.

{10} The Governing Body adopted findings of fact and conclusions of law related to Requirements 1a, 1c, and 2. To approve the rezoning, the Governing Body relied on Requirement 1a and found as follows:

> [T]he proposed use category of R-3 is more advantageous to the community than R-1 for the following reasons:
>
> (1) The proposed rezoning conforms with the 1999 General Plan's policy of adding infill housing at a denser rate than the already built surrounding areas while still maintaining the residential character of the neighborhood; and
>
> (2) Allowing 25 units of housing with five affordable units is more advantageous than a maximum of nine housing units on the same amount of land; and
>
> (3) The proposed rezoning aligns with the designation on the General Plan Future Land Use map that this property should be Low Density Residential, with 3 to 7 dwelling units per acre.

In accordance with Requirement 1c, the Governing Body found that the rezoning proposal

> aligns with the City's General Plan policies, including by making efficient use of vacant residentially designated land within the city limits by having higher densities on infill sites than on already buil[t] surrounding areas. The Governing Body further concludes that

> [Developer]'s rezoning request with a proposed density of R-3 follows the General Plan Future Land Use Map policy adopted in 1999, which designates this Property as Low Density Residential, appropriate for 3 to 7 dwelling units per acre and resolves a conflict between the General Plan's Future Land Use Map designation and the existing R-1 zoning on the Property.

Relating to Requirement 2, the Governing Body found that "this change in density aligns the Property with the General Plan for the benefit of the City. By adding to the city community housing pool, the density increase will result in the benefit of additional housing for the general public."

{11} The Community appealed the Decision to the district court under Rule 1-074 NMRA, and argued that (1) the Decision did not comply with the SF Code or the SF General Plan; and (2) the Governing Body's procedures for considering Developer's rezoning application violated due process protections. The district court affirmed. This Court then granted the Community's petition to review the district court's decision. *See* Rule 1-074(V); Rule12-505(A) NMRA.

DISCUSSION

{12} The Community raises the same two categories of issues on appeal. The Community challenges the correctness of the Decision to approve Developer's rezoning request and the processes used to consider the application. We review the Decision and the Governing Body's approval of the rezoning application to determine whether it was contrary to law, arbitrary and capricious, or unsupported by the evidence. *See Shook v. Governing Body of City of Santa Fe*, 2023-NMCA-

086, ¶ 18, 538 P.3d 466; *see also* NMSA 1978, § 39-3-1.1(D) (1999) (outlining the standard of review for administrative appeals to the district court); *Gallup Westside Dev., LLC v. City of Gallup*, 2004-NMCA-010, ¶ 10, 135 N.M. 30, 84 P.3d 78 (applying the same standard of review on appeal as the district court). We consider de novo whether the process afforded to the Community was constitutionally adequate. *See Shook*, 2023-NMCA-086, ¶¶ 18, 21. We begin our analysis with the merits of the rezoning decision.

I. The Decision Approving Developer's Rezoning Application

{13} The Community maintains that the Governing Body's approval of the rezoning application was contrary to SF Code, ch. 14, § 14-3.5 (2025) because the Governing Body did not make complete findings of fact showing that the rezoning request satisfied Requirement 1a and was more "advantageous to the community, as articulated in the general plan or other adopted city plans." *See* SF Code, ch. 14, § 14-3.5(C)(1)(a)(iii) (2025). In this regard, the Governing Body found, in relevant part, that rezoning would be more "advantageous to the community" because (1) the future land use map (the Map)[3] designated the property as "Low Density Residential, with 3 to 7 dwelling units per acre" and the existing R-1 zoning on the Property conflicted with the Map's R3-R7 designation; and (2) R-3 zoning

[3]By the term "the Map," we refer to the Map that the Governing Body considered in this proceeding, dated July 2003.

"conforms with the 1999 General Plan's policy of adding infill housing at a denser rate than the already built surrounding areas while still maintaining the residential character of the neighborhood" and 25 houses with some affordable units are "more advantageous" than nine houses on the same land. The Community argues that these findings improperly rely entirely on the Map, disregard the OPTSC Policies, create a conflict with the SF General Plan, and are therefore contrary to law, arbitrary and capricious, and unsupported by the evidence. *See Shook*, 2023-NMCA-086, ¶ 18 (setting forth the standard for review of administrative decisions).

A. The Map

{14} The Community argues that as a matter of statutory interpretation, the Governing Body's reliance on the Map did not satisfy Requirement 1a, because the Map cannot by itself establish policy; the Map is relevant only to determinations under Requirement 1c; and the R3-R7 density indicated on the Map is not otherwise supported by the text of the SF General Plan. As to the first argument, the Governing Body's findings explicitly indicate that rezoning is consistent with the SF General Plan policies for infill, affordable housing, and maintaining the character of the area. *See* SF General Plan, ch. 3 at 3-1 (1999); SF General Plan, ch. 3, § 3-G-3 at 3-2 (1999); *see also* SF General Plan, ch. 3, § 3.6 at 3-14 to -15 (1999) (identifying similar implementing policies). Thus, the Governing Body did not rely solely on the Map in order to satisfy Requirement 1a.

{15} Nor are we persuaded that the Governing Body improperly considered the Map as a factor in the Requirement 1a balance. The Community maintains that the Governing Body improperly used the Map in two respects. First, the Community argues that the Map was exclusively relevant to Requirement 1c, because only that criteria directly refers to the Map. *Compare* SF Code, ch. 14, § 14-3.5(C)(1)(a)(iii) (2025), *with* SF Code, ch. 14, § 14-3.5(C)(1)(c) (2025). Second, the Community points to the limitations imposed on the use of the Map by the SF General Plan. *See* SF General Plan, ch. 3, § 3.4 at 3-9 (1999) (explaining that the Map "is a graphic representation of policies contained in the General Plan" and "is to be used and interpreted only in conjunction with the text and other figures contained in the General Plan"); SF General Plan, ch. 3, § 3 at 3-1 (1999) (same). We do not read the Governing Body's finding that referenced the Map to incorporate irrelevant information or disregard the SF General Plan's limitations. The Governing Body found that the SF General Plan—as indicated on the Map—expressed a policy in favor of R3-R7 density for the Property. That SF General Plan policy in turn relates the Map to the Requirement 1a criteria—that the rezoning be "more advantageous to the community, as articulated in the general plan." *See* SF Code, ch. 14, § 14-3.5(C)(1)(a)(iii) (2025). The Map was further "used only in conjunction with other figures and text in the Plan" because the findings also refer to the SF General Plan policies favoring infill, density, character, and affordable units. SF General Plan, ch.

3 at 3-1 (1999). In combination, the Governing Body's findings regarding the Map and the other identified SF General Plan policies satisfied Requirement 1a.

{16} The Community counters that in light of the OPTSC Policies and Resolution 2015-92, the Map was an insufficient basis on which to find that the SF General Plan included a policy favoring R3-R7 density for the Property. Before we turn to this question of sufficiency of the evidence, we consider the Community's argument that the findings did not legally satisfy SF Code, ch. 14, § 14-3.5 (2025), because they did not address either the OPTSC Policies or Resolution 2015-92.

B. The OPTSC Policies

{17} The Community rests its second statutory construction challenge on the absence from the Decision of any discussion of the OPTSC Policies or Resolution 2015-92, which establish a specific policy for the creation of development standards for the area including the Property. Based on this silence, the Community argues that the Decision (1) did not satisfy Requirement 1a, which required the Governing Body to make "complete findings" that the rezoning was "more advantageous to the community, as articulated in the general plan," or Requirement 1c, which mandated that rezoning be "consistent with the applicable policies of the general plan," *see* SF Code, ch. 14, § 14-3.5(C)(1)(a)(iii), (c) (2025); and (2) effectuated an amendment to the policy of the SF General Plan without using the required procedures. To address these arguments, we return to the rezoning ordinance.

{18} We disagree that the SF Code requires an explicit finding that a rezoning aligns with every policy asserted in the SF General Plan. As we have explained, the Decision describes the ways in which Developer's application meets Requirements 1a and 1c—how the rezoning "is more advantageous to the community, as articulated in the general plan" and "is consistent with the applicable policies of the general plan," by articulating SF General Plan policies in favor of infill, higher density, maintaining character, and affordable housing. Requirement 1a does not state that the Governing Body must identify and describe all SF General Plan policies, nor does Requirement 1c mandate that rezoning be "consistent with [all of] the applicable policies of the SF General Plan." For the purposes of these two Requirements, the Decision's findings were legally sufficient to be "complete findings of fact sufficient to show that the[] criteria have been met," SF Code, ch. 14, § 14-3.5(C)(1) (2025), even though the findings did not address all of the "articulated" or "applicable policies."

{19} The Community contends that not only did the Governing Body not address the OPTSC Policies in the findings and conclusions but that the City attorney advised the Governing Body to not include these policies in the balance—specifically Resolution 2015-92. This, the Community argues, was arbitrary and capricious. The extensive record in this case suggests to the contrary. During one exchange, a City councilor asked whether Resolution 2015-92 could be considered

an "other adopted city plan" for the purposes of Requirement 1a, and the City attorney responded that Resolution 2015-92 was a "future plan," suggesting that Resolution 2015-92 was not an "other adopted city plan." Later in the conversation, the same City councilor stated, in relation to Resolution 2015-92, that "we can't refer to that as why this application does or doesn't meet the third criteria," Requirement 1a, for rezoning. The City attorney provided a reason why Resolution 2015-92 was not relevant to Requirement 1a, and this exchange therefore was not arbitrary and capricious. *See Behles v. N.M. Pub. Serv. Co.* (*In re Application of Timberon Water Co.*), 1992-NMSC-047, ¶ 8, 114 N.M. 154, 836 P.2d 73 ("For administrative agencies, arbitrary and capricious action has been defined as willful and unreasonable action, without consideration and in disregard of facts or circumstances." (internal quotation marks and citation omitted)).

{20} Nevertheless, the Community asserts that because the Decision did not explicitly address the OPTSC Policies, the result was an implicit and improper amendment to the SF General Plan. The SF Code, however, in Requirement 2, contemplates that a rezoning decision might not be entirely consistent with the SF General Plan.

> Unless the proposed change is consistent with applicable general plan policies, the planning commission and the governing body shall not recommend or approve any rezoning, the practical effect of which is to:

> (a) allow uses or a change in character significantly different from or inconsistent with the prevailing use and character in the area;
>
> (b) affect an area of less than two acres, unless adjusting boundaries between districts; or
>
> (c) benefit one or a few landowners at the expense of the surrounding landowners or general public.

SF Code, ch. 14, § 14-3.5(C)(2) (2025). In this way, if a rezoning request meets Requirement 1a and 1c because the request aligns with some SF General Plan policies but is still inconsistent with other SF General Plan policies, as in the present case, the rezoning may still be approved under the circumstances outlined in Requirement 2. *Id.* The Governing Body made those findings in the Decision, and the Community does not challenge them.

{21} Instead, the Community argues that Requirement 2 does not justify the Decision, and a SF General Plan amendment was required to approve the rezoning. Specifically, the Community argues that Requirement 2 is not satisfied because the Decision contains no finding that the rezoning is "inconsistent" with the OPTSC Policies and because the OPTSC Policies are not inconsistent with the affordable housing policies. To the contrary, however, the evidence presented supports a reasonable inference that the rezoning conflicted with some portion of the SF General Plan. *See Baca v. Emp. Servs. Div. of Hum. Servs. Dep't of N.M.*, 1982-NMSC-096, ¶ 4, 98 N.M. 617, 651 P.2d 1261 (reviewing findings for substantial

evidence and explaining that the standard of review for administrative decisions requires a reviewing court to indulge "all reasonable inferences" in support of a conclusion (internal quotation marks and citation omitted)).

{22} Although, as we have explained, the rezoning request was consistent with certain aspects of the SF General Plan, it was inconsistent with others. Requirement 2 contemplates whether the rezoning request is consistent "with applicable general plan policies." S.F.Code, ch. 14, § 14-3.5(C)(2) (2025). The Community, rather than considering inconsistency between the rezoning application and the SF General Plan, focuses on the consistency within the SF General Plan—the OPTSC Policies and the affordable housing policies—and maintains that the policy to have a public process to generate development standards is not inconsistent with the affordable housing policies. This may be true, but importantly for Requirement 2, the application to rezone a single property was not consistent with the OPTSC Policies that provided for a public participation process to determine the development standards for an area that encompassed multiple properties, including the Property at issue. As a result, even though the SF General Plan policies may be consistent with each other, the rezoning application was not consistent with both of the SF General Plan policies. For these reasons, the findings in the Decision that satisfy Requirement 2 were sufficient bases on which to grant the rezoning request. Because the Code permits rezoning that is not consistent with the SF General Plan, an

amendment to the SF General Plan was not the only pathway to approving the application.

{23} Throughout the proceedings, the Governing Body was provided with substantial information about the OPTSC Policies from the public and Staff. During deliberations, more than one Governing Body member referenced aspects of the OPTSC Policies, the need to set standards for the area, and the unfulfilled promise for a public participation process to set development standards. The record demonstrates that the Governing Body weighed and considered the OPTSC Policies. Although the written Decision does not reflect either the extent of the evidence received or all of the arguments made, the findings of fact and conclusions of law include the findings necessary to support the legal requirements for rezoning that are set forth in SF Code, ch. 14, § 14-3.5 (2025). As a result, we conclude that the Decision is not contrary to law. *See Gallup Westside Dev., LLC*, 2004-NMCA-010, ¶ 10 (noting in part that this Court "may reverse an administrative decision," if the decision-maker "did not act in accordance with the law").

C. Conflict With the SF General Plan

{24} We return to the Community's argument that the evidence did not support a finding that the SF General Plan, based on the Map alone, expressed an intent for R3-R7 zoning. "Substantial evidence supporting administrative agency action is relevant evidence that a reasonable mind might accept as adequate to support a

conclusion." *See id.* ¶¶ 10-11. Before we turn to the evidence, however, we address a threshold issue to the Community's argument.

{25} The Community asserts that the Governing Body made no factual finding that the SF General Plan incorporated a policy for R3-R7 zoning, but instead "treat[ed] this as an issue of law." This argument is apparently based on the placement of the language in the "Conclusions of Law" section of the Decision rather than the section titled "Findings of Fact." We, however, are not bound by the labels attached to findings of fact and conclusions of law, *Comm'r of Motor Vehicles v. McCain* (*In re McCain*), 1973-NMSC-023, ¶ 5, 84 N.M. 657, 506 P.2d 1204, and "the question of whether a particular issue is a question of fact or a question of law is itself a legal issue upon which we are free to make our own determination," *State ex rel. Martinez v. Lewis*, 1993-NMCA-063, ¶ 25, 116 N.M. 194, 861 P.2d 235.

{26} In the present case, the Map has generated both factual and legal disputes regarding the intent of the SF General Plan. Factually, the record shows that the parties disputed whether the SF General Plan, when it was adopted in 1999, actually incorporated the Map, which is dated 2003. We understand the Community to argue that if the Map was not adopted by the SF General Plan, the Map could not inform the SF General Plan's intent. The Governing Body's Decision resolves this factual dispute, and we therefore view the Decision's reference to the intent expressed by

the Map as a factual finding, which we review for substantial evidence. *See Gallup Westside Dev., LLC*, 2004-NMCA-010, ¶¶ 10-11.

{27} The Governing Body heard evidence to support the finding that the Map was part of the SF General Plan when it was adopted in 1999. Staff's report to the Governing Body stated that

> [t]he property zoning is R-1 (Residential—one dwelling unit per acre), established at the time of annexation (1961). The General Plan was adopted in 1997 and revised in 1999. The General Plan identified a higher residential density for the property and the properties to the southeast along Old Pecos Trail; that of three to seven dwelling units per acre (R-3 to R-7), characterized as "Low Density." The General Plan maintained the land west of the Project site (Sol y Lomas Subdivision) at one dwelling unit per acre (R-1) or "Very Low Density."

This statement in the report reflects Staff's interpretation of the Map. Staff explained that (1) the Map does not depict, and the SF General Plan does not otherwise state, actual dimensions for the area that was intended to be the Old Pecos Trail Scenic Corridor; (2) the Map depicts different zoning preferences for different areas along Old Pecos Trail; and (3) in the project site area, the Map shows R3-R7 zoning. At the third hearing before the Governing Body, Staff produced a large color map, dated 1999, that shows the "Low Density Residential" designation (R3-R7) as it also appears to be represented on the Map. Staff's view of the evidence is implicit in the Decision's determination about the Map. The Community maintains that this determination, based on Staff's view of the Map, contradicts the text of the SF

General Plan—specifically, the OPTSC Policies and Resolution 2015-92—because the SF General Plan adopted no density standards for the area to be designated as the Old Pecos Trail Scenic Corridor and anticipated a public process to create such development standards.

{28} The difficulty with the Community's argument is that the SF General Plan did not designate a specific area to be the Old Pecos Trail Scenic Corridor. The OPTSC Policies identify points on Old Pecos Trail that signify the beginning and the ending of what would be the Old Pecos Trail Scenic Corridor. The Map appears to extend the Old Pecos Trail Scenic Corridor onto the properties that abut Old Pecos Trail, but no width for the Old Pecos Trail Scenic Corridor is stated in the SF General Plan or is discernable from the Map. Nor does Resolution 2015-92 provide any clarity. Instead, Resolution 2015-92 observes that the OPTSC Use Classification designated the Old Pecos Trail Scenic Corridor as a "scenic roadway," describes how the width of another scenic corridor protection district was defined by feet from the roadway and inclusion on a zoning map, notes that "more specific standards" for the Old Pecos Trail Scenic Corridor were not adopted during a public process "in the early 2000's," and expresses concern that the lack of specificity has "imperiled" the Old Pecos Trail Scenic Corridor. In this way, Resolution 2015-92 highlights the ambiguity in the OPTSC Policies—because the area that the Old Pecos Trail Scenic Corridor was intended to encompass was left largely undefined.

{29} Nevertheless, the ambiguously defined area for the Old Pecos Trail Scenic Corridor easily coexists with the Map's R3-R7 density standard and the OPTSC Policies. The Map shows that the Old Pecos Trail Scenic Corridor would have abutted the Property, which the Map also shows as an area with R3-R7 zoning. The OPTSC Policies state a directive to engage in a public process to set standards for an unknown area that might include some or all of the Property. Had the public process designated the Old Pecos Trail Scenic Corridor and established development standards, the Old Pecos Trail Scenic Corridor would still have abutted an area with R3-R7 zoning—the boundaries of both would simply be delineated. Thus, the Map does not create a conflict with the SF General Plan. Instead, the policy expressed is that the Old Pecos Trail Scenic Corridor exists and that at least some of the area abutting should be zoned R3-R7.[4]

{30} Staff's view that the Map reflects a policy for R3-R7 zoning is otherwise supported by the SF General Plan's text. The SF General Plan specifically encourages minimum density standards "of at least five units per acre" to support

[4]For the same reason, the Community's arguments for the application of the general/specific rule of statutory interpretation are of little assistance. The general/specific rule directs that a more specific statute prevails over a general statute. *See Cerrillos Gravel Prods., Inc. v. Bd. of Cnty. Comm'rs of Santa Fe Cnty.*, 2005-NMSC-023, ¶ 11, 138 N.M. 126, 117 P.3d 932. The Community argues that the OPTSC Policies are more specific policies that create a carve out from other more general policies and therefore should prevail. We do not apply the general/specific rule, however, if "it is possible to harmonize" the relevant provisions, *see id.*, which we have done.

affordable housing. *See* SF General Plan, ch. 9, § 9.1.6 at 9-7 (1999) (providing that "[t]he most important element of planning for affordable housing is higher density" and directs that "[a]long with mandatory minimum densities of at least five units per acre, design and development guidelines should be created"). This section of the SF General Plan is directly referenced in the Land Use chapter's Guiding Policies. *See* SF General Plan, ch. 3, at 3-1 (1999) (incorporating SF General Plan, ch. 9, §§ 9.1, 9.2 at 9-4, -8 (1999) into the Land Use "Guiding Policies"). As a result, Staff's interpretation of the Map is in line with "[t]he text and policies of the Land Use chapter" that "are expressed through the Themes, Guiding Policies, and Implementing Policies." *See* SF General Plan, ch. 3, at 3-1 (1999).

{31} The Governing Body adopted Staff's view of the Map, and in this regard, we do not reweigh or reassess the evidence. *See City of Sunland Park v. Harris News, Inc.*, 2005-NMCA-128, ¶ 21, 138 N.M. 588, 124 P.3d 566 ("We do not reweigh the evidence."). Staff's interpretation of the Map did not otherwise contradict the SF General Plan. For these reasons, we conclude that the Governing Body's Decision was supported by substantial evidence.

D. The Decision to Approve

{32} To summarize, the Decision is not contrary to the SF Code. The application satisfied Requirements 1a and 1c because the requested rezoning was "more advantageous to the community, as articulated in the general plan" and was

"consistent with" the SF General Plan based on policies regarding affordable housing, infill, and the R3-R7 designation that is articulated on the Map. *See* SF Code, ch. 14, § 14-3.5(C)(1) (2025). Nevertheless, rezoning for a single property could be inconsistent with the OPTSC Policies, which envisioned development standards being created by public process for an entire area designated as the Old Pecos Trail Scenic Corridor. Because the Governing Body's Decision made findings under Requirement 2, which the Community does not challenge, the rezoning application could be approved despite the inconsistency. *See* SF Code, ch. 14, § 14-3.5(C)(2) (2025). The record demonstrates that the Governing Body considered the evidence presented by Developer, Staff, and the Community and voted to approve the rezoning. We have examined the entire record, and considering the evidence in the light most favorable to the Decision, we affirm. *See Gallup Westside Dev., LLC*, 2004-NMCA-010, ¶ 11.

II. The Procedures Afforded to the Community by the City

{33} The Community argues that reversal is nevertheless required because its members were not afforded due process during the rezoning proceedings. *See Albuquerque Commons P'ship v. City Council of Albuquerque*, 2008-NMSC-025, ¶ 34, 144 N.M. 99, 184 P.3d 411 ("[I]n addition to the right to individual notice, interested parties in a quasi-judicial zoning matter are entitled to an opportunity to be heard, to an opportunity to present and rebut evidence, to a tribunal which is

impartial in the matter—i.e., having had no pre-hearing or ex parte contacts concerning the question at issue—and to a record made and adequate findings executed." (internal quotation marks and citation omitted)). The Community and the Governing Body agree that to evaluate the adequacy of the process afforded, we consider the balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), as this Court explained in *Shook*, 2023-NMCA-086, ¶¶ 21-22.

{34} The *Mathews* test balances three elements:

> (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Shook, 2023-NMCA-086, ¶ 21 (internal quotation marks and citation omitted). The Governing Body does not contest that the Community has a "property interest" that would be affected by the rezoning. Instead, the Governing Body contends that the Community has not shown that the procedures afforded deprived the Community of the private interest, how additional safeguards would have protected the private interest, or that the protections afforded by the procedures that the Community seeks would outweigh any administrative burden on the City in providing them. As we explain, we agree with the Governing Body in the final balance. Under the circumstances of the present case, the administrative burden that would result from

the additional protections sought by the Community would not have reduced the risk that the Community would be erroneously deprived of rights.

{35} The additional protections that the Community seeks arose from the following circumstances: (1) one of its members was not permitted to intervene in the proceedings; (2) not all witnesses were sworn before they provided testimony; (3) the Governing Body permitted Staff, but not the public, to submit additional evidence after a prehearing deadline; and (4) the Governing Body allowed Staff to present evidence that the Community did not have an opportunity to rebut or cross-examine. "In conducting quasi[-]judicial hearings an administrative body is not required to observe the same evidentiary standards applied by a court, nevertheless administrative adjudicatory proceedings involving substantial rights of an applicant must adhere to fundamental principles of justice and procedural due process." *State ex rel. Battershell v. City of Albuquerque*, 1989-NMCA-045, ¶ 17, 108 N.M. 658, 777 P.2d 386; *see id.* ("In administrative proceedings due process is flexible in nature and may adhere to such requisite procedural protections as the particular situation demands."). With these precepts in mind, we consider the facts and circumstances of the request for intervention, the late administration of the oath, the submission of evidence, and the ability to cross-examine.

{36} The intervention of a member of the public would not have provided sufficient additional protection for the rights of the Community to justify the administrative

burden that would result. The Community argues that the Governing Body should have permitted Mr. Throne to intervene as a party, with additional rights to cross-examine, submit evidence, and object to evidence and procedures. The video record of the three hearing days, however, demonstrates that the Community was able to present evidence, raise questions, and answer inquiries from the Governing Body. Apart from the slide presentation and some testimony at the second hearing day, which we address separately, the Community had notice of the arguments and evidence that would be presented and was able to admirably shape responsive testimony, both in writing and at the hearing. At the time that Mr. Throne moved to intervene, hundreds of community members had submitted public comment to the planning commission. The Community does not acknowledge the administrative burden that would accompany a constitutional requirement to permit public intervention or explain how the City would accommodate such a requirement. The structure of the public hearings involves written submission, testimony from the applicant, Staff, and the public, and questioning by the Governing Body. *See Albuquerque Commons P'ship*, 2008-NMSC-025, ¶ 34 (instructing that to satisfy due process, interested parties have a right to be heard by an impartial tribunal, present and rebut evidence, have a record made, and receive adequate findings). Under these circumstances, the Governing Body's refusal to permit Mr. Throne's intervention did not violate due process protections.

{37} Nor did the Governing Body's failure to consistently place witnesses under oath before they testified violate the Community's right to due process under the circumstances. We pause to note that the Governing Body argues that no requirement existed "that the Governing Body decision be based on sworn testimony." During the hearings, however, the Governing Body asserted that all of the witnesses would be sworn, the City attorney referenced concerns about unsworn testimony, and generally, the witnesses were systematically sworn. The Governing Body created the perception that the oath was necessary and "fundamental principles of justice" do not allow the Governing Body to disavow a procedure that it adopted. *See Battershell*, 1989-NMCA-045, ¶ 17 (noting that adherence "to fundamental principles of justice" is required when "substantial rights" are involved in a quasi-judicial administrative proceeding); *see also id.* ¶ 20 ("The general rule with respect to zoning hearings is that witnesses should be sworn, and their testimony taken only on oath, unless the administration of the oath to witnesses has been waived." (alterations, internal quotation marks, and citation omitted)).

{38} Nevertheless, we agree with the Governing body that the Community has not identified a substantial right affected by the late provision of the oath to the two Staff witnesses on whom the Community focuses (Witness 1 and Witness 2). At the initial hearing, Witness 1 was not sworn before testifying. At the second hearing, Witness 2 testified about the factual history of the OPTSC Policies and Resolution 2015-92

but was not sworn until a few minutes into the testimony. At the third hearing, Witness 1 was sworn because the City attorney anticipated that the testimony he would give would be "going to stuff that's outside anything" from Witness 1's "record from the proceedings below." The record thus reflects that the oath was eventually administered to both witnesses. The Community does not acknowledge that the impact of the late-administered oaths is a complicated legal question that implicates conflicting policies. *See, e.g.*, Charles Alan Wright, Arthur R. Miller & Victor J. Gold, 27 *Federal Practice & Procedure* § 6045 (2d ed. 2025) (describing conflicting policies); *cf. State v. Arellano*, 1998-NMSC-026, ¶¶ 8-9, 125 N.M. 709, 965 P.2d 293 (noting that "irregularities in the swearing of the jury may be waived and do not necessarily constitute reversible error" (internal quotations marks and citation omitted)). The Staff witnesses heard the oath repeated multiple times by other witnesses, were present for the explanation of the procedures and goals for the quasi-judicial hearing, and they themselves swore to tell the truth during the proceedings. *Cf. Arellano*, 1998-NMSC-026, ¶¶ 11-13 (distinguishing "a complete failure to swear the jury" from administering the oath late and observing that the jury instructions "impressed upon" them "the solemnity of the jury selection process and its important purpose to find impartial persons to try the case" (internal quotation marks and citation omitted)). The record therefore suggests that the Staff appreciated the solemnity of the hearing or were otherwise aware of the consequences of

dishonesty. As a result, although the impact on the City to require oaths before Staff testimony would have been minimal, the failure to do so under these circumstances did not violate the substantial rights of the Community so as to implicate due process protections.

{39} The Community's final two due process arguments relate to evidence submitted during the Governing Body process. Between the first and second hearings before the Governing Body, Mr. Throne asked the City to include minutes from an April 14, 1999 City council meeting, which Mr. Throne asserted "directly address[ed]" the Map and the R3-R7 indication. Mr. Throne acknowledged that the time for public comment had expired but argued that the minutes were relevant to arguments that had been made in the first hearing. The City attorney responded that the period of time to submit written documents had expired, but "if the Governing Body members ask a question that relates to information in a written document, the person(s) responding to such questions are welcome to include information they know based on reviewing written documents in their responses." Throne replied by pointing out that it was not certain such an opportunity to answer questions would arise and maintained an objection to the procedure. During the second hearing and in response to Governing Body questions, Staff was permitted to present slides that had previously not been shared with the public. The slides set forth a rough outline of the history of the OPTSC Policies, including the Map. On appeal, the Community

argues that (1) the City unfairly rejected Mr. Throne's documentary submission but accepted Staff's slides; and (2) because the slides were not previously disclosed, the Community had no opportunity to challenge that evidence. Though we acknowledge the initial appearance of unfairness, on closer examination, we conclude that the Community had an opportunity to be heard before the Governing Body on these issues and due process was therefore not denied.

{40} First, the documents offered by Mr. Throne were of a different character than the slides presented by Staff. The slides were not submitted by Staff as documentary evidence and were used as a demonstrative throughout Staff's presentation and exchange with the Governing Body. During the public comment phase, the Governing Body also permitted the public to display slides and videos that had not been submitted as written public comment. The City attorney explained the policy during the third hearing—although the deadline had passed for written submissions, witnesses were permitted to display materials when they spoke with the Governing Body. Thus, permitting Staff to use the slides did not run afoul of the time deadlines the City had set. Indeed, as we have noted, the City attorney had already intimated as much to Mr. Throne when he sought to submit the meeting minutes as written public comment. At the hearing, the City attorney again suggested that Mr. Throne could display the minutes while he was answering the Governing Body's questions.

Mr. Throne therefore had the opportunity to use the minutes as a demonstrative exhibit during questioning with the Governing Body.

{41} Mr. Throne also had the opportunity to comment on Staff's slides, even though the slides had not been disclosed before the close of public comment. During the third day of the hearings, a City councilor asked Mr. Throne a question, and Mr. Throne took the opportunity to comment fairly extensively on the Map and the R3-R7 indication that Staff had used the slides to explain. The Community protests that Mr. Throne was cutoff, and he was. But not before he expressed his view of the intent in 1999 for the SF General Plan, the inconsistency of the R3-R7 indication with that intent, his attempt to add the meeting minutes to the materials, and what those materials contained. Later in the hearing, Mr. Throne was asked additional questions that allowed him to further expand on the Map, the Governing Body's intent, and the defects in Developer's application.

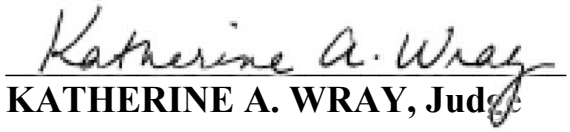
{42} In this regard, the record shows that the Community had an opportunity to be heard by the Governing Body. "Procedural due process is ultimately about fairness, ensuring that the public is notified about a proposed government action and afforded the opportunity to make its voice heard before that action takes effect." *Rayellen Res., Inc. v. N.M. Cultural Properties Rev. Comm.*, 2014-NMSC-006, ¶ 28, 319 P.3d 639. In this way, due process is not limited to the opportunity to speak, but instead affords the opportunity to be meaningfully heard by those who make decisions that

could result in a deprivation of protected rights. *See Cerrillos Gravel Prods., Inc. v. Bd. of Cnty. Comm'rs of Santa Fe Cnty.*, 2005-NMSC-023, ¶ 28, 138 N.M. 126, 117 P.3d 932 ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner."). The Governing Body heard from all participants in a quasi-judicial hearing, and the participants were able to respond to the points that were made by those with opposing views. Considering the circumstances of the hearings, due process was not denied.

CONCLUSION

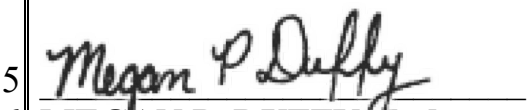
{43} The unfulfilled promises of the OPTSC Policies are the source of the Community's discontent, because the Community believed it would have the opportunity to shape the development standards for an area that all agreed is entitled to "special protections." As a matter of law, our role in the controversy is narrow—to apply the standard of review to ensure that the Governing Body complied with the law, including constitutional protections, and that evidence was presented to support the Decision. *See Gallup Westside Dev., LLC*, 2004-NMCA-010, ¶ 11 ("We may, if we were fact-finders in this case, come to a different conclusion than the [c]ity; but we may only evaluate whether the record supports the result reached, not whether a different result could have been reached."). We have reviewed the record and the law, and considering the issues raised in the light of our standard of review, we affirm.

{44} **IT IS SO ORDERED.**



KATHERINE A. WRAY, Judge

WE CONCUR:



MEGAN P. DUFFY, Judge

GERALD E. BACA, Judge