

Mark Reynolds

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Opinion Number: _____

Filing Date: **AUGUST 22, 2018**

No. A-1-CA-35927

**PROVISIONAL GOVERNMENT OF
SANTA TERESA and MARY GONZALEZ,**

Plaintiffs-Petitioners,

v.

**DOÑA ANA COUNTY BOARD OF
COUNTY COMMISSIONERS,**

Defendant-Respondent,

and

CITY OF SUNLAND PARK,

Intervenor.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

Mary Rosner, District Judge

Robles, Rael & Anaya, P.C.

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for Petitioners

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10 for Intervenor

1 **OPINION**

2 **BOHNHOFF, Judge.**

3 {1} In this appeal we are called upon to consider the counterintuitive proposition
4 that, under New Mexico law, residents of territory who wish to incorporate the
5 territory as a new municipality in order to avoid being annexed by an existing
6 neighboring municipality must first petition the existing municipality to annex the
7 territory. The Provisional Government of Santa Teresa (PGST), a New Mexico non-
8 profit corporation consisting of owners of land in the Santa Teresa area in Doña Ana
9 County, New Mexico, seeks to incorporate the area as a municipality, separate from
10 neighboring City of Sunland Park (Sunland Park). PGST contends that, because
11 Sunland Park in 2014 informally expressed an intent to annex Santa Teresa, pursuant
12 to NMSA 1978, Section 3-2-3(B)(3) (1995), PGST could petition the Doña Ana
13 Board of County Commissioners (DABOCC) to incorporate as a separate
14 municipality. DABOCC denied the petition based on its determination that Section
15 3-2-3(B)(3) required PGST first to submit a formal petition asking Sunland Park to
16 annex the subject territory. PGST appealed that decision to the district court, which
17 agreed with DABOCC. PGST now appeals to this Court. We reverse.

1 **MUNICIPAL ANNEXATION AND INCORPORATION STATUTES**

2 **Annexation**

3 {2} NMSA 1978, Sections 3-7-1 to -18 (1965, as amended through 2003), provides
4 three general methods for an existing municipality to annex territory. First, under the
5 arbitration method, an existing municipality can pass a resolution stating its desire to
6 annex the territory and declaring that “the benefits of municipal government are or
7 can be made available within a reasonable time to the territory.” Section 3-7-5. An
8 arbitration board is created, with three members representing the municipality, three
9 members representing the territory to be annexed, and one independent member
10 selected by the other six. Section 3-7-6; Section 3-7-9. The board meets, investigates,
11 and decides whether the benefits can be made available and whether annexation
12 should take place. Section 3-7-10. Second, under the commission method, either the
13 existing municipality or a majority of the landowners in the territory to be annexed
14 can submit a petition to the Municipal Boundary Commission (MBC). Section 3-7-11.
15 If the MBC determines that the territory is contiguous and “may be provided with
16 municipal services,” it orders the annexation. Section 3-7-15(A)(2). Third, under the
17 petition method, the owners of a majority of the land in the subject territory submit
18 a petition to the municipality, and the municipality either consents to or rejects the
19 petition. Section 3-7-17.

1 {3} Section 3-7-17.1 establishes special requirements for annexation petitions
2 submitted to existing municipalities with a population of less than 300,000 persons
3 and located in Class A counties, which are counties having an assessed valuation of
4 over \$75,000,000 and a population of 100,000 or more persons. NMSA 1978,
5 § 4-44-1(B) (2018). Doña Ana County is a Class A county. If the petition is signed
6 by the owners of a majority of the number of acres in the area proposed for
7 annexation, the petition must be submitted to the board of county commissioners of
8 the county in which the municipality is located for comment by the board. Section 3-
9 7-17.1(B). If the petition is not signed by owners of a majority of the number of acres,
10 under certain circumstances the extraterritorial land use commission, *see* NMSA
11 1978, Section 3-21-3.2 (2003), also must approve the petition. Section 3-7-17.1(C),
12 (D).

13 **Incorporation**

14 {4} NMSA 1978, Sections 3-2-1 to -9 (1976, as amended through 2018), governs
15 incorporation of new municipalities. Residents of the territory in question may
16 petition the board of county commissioners in which the territory is located to
17 incorporate. Section 3-2-1(A). The petition must be signed by at least 200 residents
18 of the territory or the owners of at least 60 percent of the land within the territory. *Id.*
19 The petition must include a “municipal services and revenue plan.” Section 3-2-1(B).

1 Section 3-2-5 provides that the board will determine if the statutory requirements are
2 met; if they are met, the board conducts an election in which residents of the territory
3 vote on whether to incorporate.

4 {5} Section 3-2-3 places limits on incorporation within “urbanized territory.”
5 “Urbanized territory is that territory within the same county and within five miles of
6 the boundary of any municipality having a population of five thousand or more
7 persons and that territory within the same county and within three miles of a
8 municipality having a population of less than five thousand persons[.]” *Id.* § 3-2-
9 3(A). The parties herein agree that the territory that PGST seeks to incorporate is
10 urbanized territory.

11 {6} Section 3-2-3(B) provides that:

12 No territory within an urbanized territory shall be incorporated as
13 a municipality unless [in addition to satisfying the other requirements of
14 Sections 3-2-1 to -9] the:

15 (1) municipality or municipalities causing the urbanized
16 territory approve, by resolution, the incorporation of the territory as a
17 municipality;

18 (2) residents of the territory proposed to be incorporated have
19 filed with the municipality a valid petition to annex the territory
20 proposed to be incorporated and the municipality fails, within one
21 hundred twenty days after the filing of the annexation petition, to annex
22 the territory proposed to be incorporated; or

23 (3) residents of the territory proposed to be annexed
24 conclusively prove that the municipality is unable to provide municipal

1 services within the territory proposed to be incorporated within the same
2 period of time that the proposed municipality could provide municipal
3 service.

4 **BACKGROUND**

5 **1980s-1990s Annexation and Incorporation Efforts**

6 {7} As is recounted in *City of Sunland Park v. Santa Teresa Concerned Citizens*
7 *Ass'n, Inc.*, 1990-NMSC-050, ¶ 2, 110 N.M. 95, 792 P.2d 1138, in June 1986,
8 Sunland Park expressed an interest in annexing Santa Teresa by sending letters to
9 certain Santa Teresa landowners encouraging them to seek annexation into the
10 municipality. In August of that year, property owners who had formed themselves
11 into the Santa Teresa Concerned Citizens Association, Inc. (Association), petitioned
12 DABOCC to incorporate the area as a separate municipality. *Id.* ¶ 3. Later that month,
13 Sunland Park petitioned the MBC to approve its proposed annexation. *Id.* In October
14 1986, following hearings, DABOCC ruled that, pursuant to Section 3-2-3(B)(3), the
15 Association had conclusively proven that it could provide municipal services more
16 quickly than Sunland Park. *City of Sunland Park*, 1990-NMSC-050, ¶ 3. Sunland
17 Park appealed to the district court. Although the district court rejected Sunland Park's
18 argument that Section 3-2-3(B)(3) required the Association to seek annexation of the
19 territory by Sunland Park, pursuant to Section 3-2-3(B)(2), before seeking
20 incorporation, it reversed DABOCC's decision on the ground that the Association

1 had not proven conclusively that it could provide municipal services more quickly
2 than Sunland Park. *See id.* ¶ 4.

3 {8} Our Supreme Court affirmed the district court. *Id.* ¶¶ 13-27. Three aspects of
4 the *Sunland Park* opinion are relevant here. First, the Court articulated the purpose
5 behind the 1965 amendment to Section 3-2-3(B)(3) to require “conclusive proof” of
6 the proposed municipality’s ability to provide services sooner than the existing
7 municipality can:

8 The policy reasons for this requirement are easy to discern. The
9 [L]egislature has, in effect, declared the public policy of this state to be
10 that the growth of municipalities and of their contiguous and urbanized
11 areas shall take place in a planned and orderly manner. Further, it is the
12 state’s policy to discourage splinter communities or a proliferation of
13 neighboring, independent municipal bodies, whose competing needs
14 would divide tax revenues, multiply services, create confusion and
15 factionalism among our citizens, and destroy the harmony that should
16 exist between peoples of diverse backgrounds and socioeconomic strata
17 within our state.

18 *City of Sunland Park*, 1990-NMSC-050, ¶ 20. Second, the Court determined that the
19 Association in fact had not conclusively proven that its proposed new municipality
20 could provide services sooner than Sunland Park. *Id.* ¶¶ 21-25. Third, the Court
21 declined to address, as unnecessary, the interplay between Sections 3-2-3(B)(2) and
22 (3), i.e., whether the Association had to petition Sunland Park to annex Santa Teresa,
23 pursuant to Section 3-2-3(B)(2), before it could invoke Section 3-2-3(B)(3) and seek
24 DABOCC’s permission to incorporate. *City of Sunland Park*, 1990-NMSC-050, ¶ 26.

1 Sunland Park's contemplated annexation of the Santa Teresa territory was never
2 completed.

3 **Recent Annexation and Incorporation Efforts**

4 {9} Beginning in the late summer of 2014, Sunland Park's City Council undertook
5 a series of steps that expressed the municipality's renewed interest in pursuing
6 annexation of the Santa Teresa territory. Following lengthy discussion at its August
7 19 and September 16, 2014, meetings about annexing the Santa Teresa area, the City
8 Council passed a resolution on October 7, 2014, stating that: "[T]he City of Sunland
9 Park would like to extend a hand to the residents of Santa [Teresa] and open a
10 discussion regarding the possible annexation of the Santa [Teresa], New Mexico,
11 area. . . . [T]he City of Sunland Park and the Santa [Teresa] area can grow and benefit
12 from such annexation as the area can improve their infrastructure and economic
13 development"; on the basis of these considerations, the City Council resolved to
14 authorize the mayor and City Council "to establish dialogue with the Santa [Teresa]
15 residents of the home owners associations of Santa [Teresa] and its residents
16 concerning the possible methods of annexation."

17 {10} In July 2015, and pursuant to Section 3-2-5, PGST filed a petition with
18 DABOCC to incorporate approximately 4,000 acres as a new municipality. At a
19 meeting on November 24, 2015, DABOCC voted 4-0 to deny the petition (DABOCC

1 Order). The Board interpreted Section 3-2-3(B)(3) to require the residents to first
2 comply with Section 3-2-3(B)(2) and file an annexation petition with Sunland Park:
3 The DABOCC “interprets the use of the term ‘residents of the territory proposed to
4 be annexed’ to require a petition for annexation be made prior to determining the
5 issues related to the providing of municipal services.” Accordingly, DABOCC
6 declined to proceed with the incorporation petition, in particular, to address whether
7 the proposed new municipality could provide services sooner than could Sunland
8 Park.

9 {11} PGST appealed the DABOCC order to the district court. The district court
10 initially ruled in favor of PGST but then, following a motion for reconsideration filed
11 by Sunland Park, reversed itself. In its September 19, 2016 order, the court
12 acknowledged that “it does not make sense to this Court that the entity (Santa Teresa)
13 which seeks to become its own incorporated municipality must first ask Sunland Park
14 to annex it which the evidence shows is precisely what the citizens of Santa Teresa
15 do not want.” Nevertheless, the court ruled that Section 3-2-3(B)(2) “requires, as a
16 condition of incorporation, for Santa Teresa to deliver to the City of Sunland Park,
17 a valid petition for annexation. It has not done so.” The district court concluded that,
18 “When the Dona Ana County Board of County Commissioners, dismissed Santa
19 Teresa’s motion to become incorporated, it correctly interpreted the law.”

1 **DISCUSSION**

2 {12} On appeal, the parties advocate the same construction of Section 3-2-3(B) that
3 they did to DABOCC and the district court. PGST contends that the three subparts
4 of Section 3-2-3(B) are independent, “stand-alone” paths to municipal incorporation,
5 and in particular Section 3-2-3(B)(3) is the path that is available to a group of
6 residents in unincorporated territory who oppose annexation by an adjoining or
7 nearby municipality. PGST further argues that the plain meaning of the phrase
8 “proposed to be annexed” in Section 3-2-3(B)(3) encompasses informal expressions
9 of a municipality’s desire or intention to annex the territory. PGST concludes that the
10 Sunland Park City Council’s 2014 resolution satisfied this predicate requirement for
11 acting, pursuant to Section 3-2-3(B)(3), and PGST therefore was entitled to submit
12 its incorporation petition to and have it considered by DABOCC.

13 {13} DABOCC and Sunland Park contend that the phrase “proposed to be annexed”
14 in Section 3-2-3(B)(3) refers to the formal annexation petition described in Section
15 3-2-3(B)(2). PGST therefore must file a petition with Sunland Park seeking Sunland
16 Park’s annexation of PGST’s territory, and conclusively prove in the context of that
17 proceeding that it can provide municipal services sooner than can Sunland Park,
18 before PGST can file a petition with DABOCC to incorporate as a new municipality.
19 DABOCC and Sunland Park reason that this construction of Section 3-2-3(B)(3)

1 furthers the underlying legislative purpose, as articulated in *City of Sunland Park*, of
2 discouraging splintering of communities and instead promoting their orderly
3 development.

4 {14} We note initially that DABOCC and Sunland Park do not dispute that Section
5 3-2-3(B) creates three approaches to incorporation. Rather, their argument focuses on
6 the meaning of “proposed to be annexed” in Section 3-2-3(B)(3), in particular,
7 whether the proposal to which the phrase refers is the formal annexation petition that
8 is described in Section 3-2-3(B)(2). In other words, Sections 3-2-3(B)(2) and (3) are
9 not stand-alone approaches and instead are interrelated, a position the district court
10 adopted below.

11 {15} As the issue before this Court is one of statutory construction, the standard of
12 review is de novo. *Cobb v. State Canvassing Bd.*, 2006-NMSC-034, ¶ 33, 140 N.M.
13 77, 140 P.3d 498. We consider, in turn, Section 3-2-3(B)(3)’s plain meaning; its
14 construction in harmony with Section 3-2-3(B)(2) as well as other, related statutes;
15 and whether the parties’ respective proposed constructions of Section 3-2-3(B)(3)
16 lead to an absurd result.

17 **A. Plain Meaning**

18 {16} Statutes are to be construed in accordance with their plain meaning. *Oldham*
19 *v. Oldham*, 2011-NMSC-007, ¶ 10, 149 N.M. 215, 247 P.3d 736 (“[A court should]

1 look first to the plain language of the statute, giving the words their ordinary
2 meaning[.]” (internal quotation marks and citation omitted)); *Cummings v. X-Ray*
3 *Assocs. of N.M., P.C.*, 1996-NMSC-035, ¶ 44, 121 N.M. 821, 918 P.2d 1321 (“When
4 interpreting statutes, . . . [the Courts’] responsibility is to search for and give effect
5 to the intent of the [L]egislature. . . . Our understanding of legislative intent is based
6 primarily on the language of the statute, and we will first consider and apply the plain
7 meaning of such language.” (citation omitted)). “We may depart from the plain
8 language only under rare and exceptional circumstances.” *State v. Padilla*, 2008-
9 NMSC-006, ¶ 41, 143 N.M. 310, 176 P.3d 299 (Chavez, J., dissenting) (internal
10 quotation marks and citation omitted).

11 {17} The plain meaning of “propose” is not limited to a formal proposal. As defined
12 in *Webster’s Third New International Dictionary* 1819 (unabr. 1986), “propose”
13 means “to offer for consideration, discussion, acceptance, or adoption.” Thus, in the
14 context of Section 3-2-3(B)(3), “proposed to be annexed” encompasses informal
15 proposals to consider annexation such as 2014 Sunland Park resolution. In the
16 absence of some statutory construction consideration that requires us to do so, we do
17 not read into a statute language—here, “formally proposed to be annexed” or
18 “petitioned to be annexed”—that the Legislature has not included. *Id.*; *High Ridge*
19 *Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5, 126 N.M. 413,

1 970 P.2d 599 (“[A] court will not read into a statute or ordinance language which is
2 not there, particularly if it makes sense as written.”).

3 **B. Related Statutes**

4 {18} A statute also is to be construed in harmony with other, related statutes. “[W]e
5 analyze a statute’s function within a comprehensive legislative scheme. . . . [A
6 statute] must be considered in reference to . . . statutes dealing with the same general
7 subject matter.” *In re Grace H.*, 2014-NMSC-034, ¶ 34, 335 P.3d 746 (internal
8 quotation marks and citation omitted). “Whenever possible, . . . we must read
9 different legislative enactments as harmonious instead of as contradicting one
10 another. . . . Statutes which relate to the same class of things are considered to be in
11 *pari materia*[.]” *State v. Tafoya*, 2010-NMSC-019, ¶ 10, 148 N.M. 391, 237 P.3d 693
12 (omission, internal quotation marks, and citations omitted). For several reasons,
13 DABOCC’s and Sunland Park’s construction of Section 3-2-3(B)(3) is not compatible
14 with related statutes.

15 **1. Reconciling Section 3-2-3(B)(3) With Section 3-2-3(B)(2)**

16 {19} We first must reconcile Section 3-2-3(B)(3) with Section 3-2-3(B)(2). As
17 discussed above, Section 3-2-3(B)(2) authorizes incorporation of “urbanized
18 territory” where the proponents of incorporation have filed an annexation petition
19 with the existing municipality and the municipality fails to annex the territory in

1 question within 120 days. Section 3-2-3(B)(3) authorizes such incorporation where
2 the proponents prove that the existing municipality is unable to provide municipal
3 services within “the territory proposed to be annexed” within the same period of time
4 that the proposed municipality would provide the services. If the Legislature intended
5 “proposed to be annexed” in Section 3-2-3(B)(3) to refer to the annexation petition
6 described in Section 3-2-3(B)(2), we would expect it at minimum to use the same
7 term: “petitioned” as opposed to “proposed”; the Legislature would have no reason
8 to use a different term unless it intended a different meaning. Alternatively, the
9 Legislature would have structured Section 3-2-3(B) to make clear that the annexation
10 petition that is the subject of Section 3-2-3(B)(2) is also the predicate or precondition
11 to proceeding pursuant to Section 3-2-3(B)(3). DABOCC and Sunland Park propose
12 such a construction of Section 3-2-3(B)(3): one that effectively combines Sections
13 3-2-3(B)(2) and (3) into one subsection with two subparts, both of which require the
14 filing of an annexation petition with the municipality. However, the statute is not
15 written in that manner. As structured and worded by the Legislature, the most logical
16 construction of Section 3-2-3(B) is that advocated by PGST: it provides three stand-
17 alone alternative approaches to incorporation.

18 {20} In support of its argument that the district court did not err, Sunland Park also
19 invokes the “last antecedent” rule. *See In re Goldsworthy’s Estate*, 1941-NMSC-036,

1 ¶ 21, 45 N.M. 406, 115 P.2d 627 (“[R]elative and qualifying words, phrases, and
2 clauses [here, “proposed to be annexed”] are to be applied to the words or phrase
3 immediately preceding, and are not to be construed extending to or including others
4 more remote.” (internal quotation marks and citation omitted)). We disagree that the
5 last antecedent rule applies here. First, the reference to a formal annexation petition
6 does not immediately precede the phrase that it supposedly qualifies, “proposed to be
7 annexed.” See 2A Norman J. Singer & Shambie Singer, *Statutes and Statutory*
8 *Construction* § 47:33, at 498-99 (rev’d 7th ed. 2014) (“[A] proviso usually applies to
9 the provision or clause *immediately* preceding it.” (Emphasis added.)) Instead, the
10 reference to a formal annexation petition is found in a separate, disjunctive subpart
11 of the statute. Second, the preceding phrase is entirely different: again, DABOCC and
12 Sunland Park provide no basis for inferring that the Legislature intended “proposed”
13 to refer back to “petition,” particularly where the Legislature just as easily could have
14 used the phrase “petitioned to be annexed” if that was its intent.

15 **2. Reconciling Section 3-2-3(B)(3) With Other, Related Statutes**

16 {21} We next consider whether the parties’ competing constructions of Section 3-2-
17 3(B)(3) are consistent with Sections 3-2-5, 3-7-17, and 3-7-17.1. As stated above,
18 Section 3-2-5 provides for the board of county commissioners of the county within
19 which the subject territory is located to determine if the conditions of Section 3-2-

1 3—including whether, under Section 3-2-3(B)(3), the territory’s residents can prove
2 “conclusively” that the new municipality can provide services more quickly than the
3 existing municipality—are met as part of the board’s review of an *incorporation*
4 petition and determination to hold an election. This is consistent with PGST’s stand-
5 alone construction of Section 3-2-3(B)(3). However, DABOCC’s and Sunland Park’s
6 construction of Section 3-2-3(B)(3) necessitates that the question be addressed in the
7 context of a Section 3-7-17 or Section 3-7-17.1 *annexation* petition proceeding filed
8 with the municipality. Neither Section 3-7-17 nor Section 3-7-17.1 provides for the
9 municipality to address the Section 3-2-3(B)(3) question, and we perceive no other
10 statutory basis for inferring any legislative intent that, where residents are seeking to
11 incorporate a new municipality as an alternative to annexation by an existing
12 municipality, the existing municipality itself should be the arbiter of whether it can
13 provide municipal services more quickly than the proposed new municipality.¹

14 ¹Section 3-7-17.1(B) does provide for the municipality to submit the
15 annexation petition to the board of county commissioners *for comment*, but only if the
16 petition is signed by the owners of a majority of the number of acres in the territory
17 proposed for annexation. *See id.* Further, even assuming that this provision could be
18 construed to permit the municipality in that situation to seek the board’s input on the
19 Section 3-2-3(B)(3) question, the municipality would be free—inconsistent with the
20 apparent intent of Section 3-2-3(B)(3)—to disregard the board’s determination and
21 either annex or decline to annex as the municipality wished.

1 **3. Prior jurisdiction and related timing issues**

2 {22} DABOCC attempts to meet this last objection to its construction of Section 3-
3 2-3(B)(3) by suggesting that the municipality will seek the county's input during the
4 course of the annexation proceeding. DABOCC describes the decision-making
5 process (in a scenario in which PGST prevails) thus: "The Incorporators [PGST]
6 petition Sunland Park for annexation, Sunland Park begins the process and when that
7 process is underway, the Incorporators request [DA]BOCC to hold a [Section 3-2-
8 3(B)] hearing, which is held, and the Incorporators prevail on the provision of
9 municipal services issue. . . . [A] favorable [Section 3-2-3(B)] hearing outcome for
10 the Incorporators would trump and displace the Sunland Park annexation process."
11 Not only is such a procedure not authorized by either Section 3-2-5 or Section 3-7-17
12 (or Section 3-7-17.1), as PGST argues, it is incompatible with the prior jurisdiction
13 doctrine.

14 {23} The common law prior jurisdiction doctrine provides that "the court first
15 obtaining jurisdiction retains it as against a court of concurrent jurisdiction in which
16 a similar action is subsequently instituted between the same parties seeking similar
17 remedies involving the same subject matter." *In re Doe*, 1982-NMCA-115, ¶ 13, 98
18 N.M. 442, 649 P.2d 510, *overruled on other grounds by State v. Roper*,
19 1996-NMCA-073, ¶ 12 n.3, 122 N.M. 126, 921 P.2d 322. New Mexico courts have

1 extended the doctrine to municipal annexation disputes. *Amrep Sw., Inc. v. Town of*
2 *Bernalillo*, 1991-NMCA-110, ¶ 8, 113 N.M. 19, 821 P.2d 357 (applying doctrine and
3 determining that, because it was filed first in time, annexation petition proceeding
4 filed with MBC had prior jurisdiction over annexation petition proceedings filed with
5 municipalities). Courts in other jurisdictions have extended the doctrine to conflicting
6 municipal annexation and incorporation disputes. *See generally* 2 McQuillin, *The*
7 *Law of Municipal Corporations* § 7.39.3 (July 2018 Update) (“The general rules
8 governing the acquisition of jurisdiction are usually applied where there are
9 competing incorporation and annexation proceedings. A proceeding for the
10 annexation of territory to a municipal corporation is ineffectual when instituted after
11 the institution of a proceeding for the organization of the territory into a village or
12 city, and while that proceeding is pending and undetermined. Conversely, if
13 annexation proceedings were instituted before municipal organization proceedings,
14 the latter are ineffectual.” (footnotes omitted)). The rule is longstanding. *See, e.g.,*
15 *State ex rel. Winn v. City of San Antonio*, 259 S.W.2d 248, 250 (Tex. Civ. App.
16 1953).

17 {24} DABOCC’s suggested procedure cannot be squared with the aforementioned
18 statutes and the dictates of prior jurisdiction. DABOCC has authority to hold a
19 Section 3-2-3(B)(3) hearing only pursuant to Section 3-2-5, i.e., only after a

1 incorporation petition is filed. However, once filed, the Section 3-7-17.1 annexation
2 proceeding would invalidate any incorporation petition. That is, PGST's right to
3 proceed with incorporation following a favorable ruling on the Section 3-2-3(B)(3)
4 question would be "trumped" by Sunland Park's annexation proceeding, not the other
5 way around. Quite simply, if residents of territory who propose to incorporate a new
6 municipality must first file "a valid petition to annex the territory" to an existing
7 municipality, then the residents would lose any control over their fate and instead
8 would subject themselves to the municipality's unfettered ability to accept the
9 petition and annex the territory into the municipality. Absent some expression of
10 legislative intent, not present here, to override the prior jurisdiction doctrine, *see, e.g.,*
11 *City of Greenwood v. Petitioners for the Proposed City of Centennial*, 3 P.3d 427,
12 434-36 (Colo. 2000) (en banc), we are not inclined to endorse a construction of
13 Section 3-2-3(B)(3) that requires residents of territory who wish to incorporate as a
14 means of *avoiding* annexation to take steps that expose themselves to the unavoidable
15 possibility if not probability of such a result.

16 {25} As PGST points out, a related timing problem arises from DABOCC's and
17 Sunland Park's construction of Section 3-2-3(B)(3). If PGST were to file an
18 annexation petition with Sunland Park, Section 3-7-17.1(B) requires Sunland Park to
19 approve or disapprove the petition within sixty days. In contrast, during the

1 incorporation process described in Section 3-2-1 and Section 3-2-5: DABOCC would
2 conduct an initial review of the application within thirty days for compliance with the
3 requirements of Section 3-2-1; assuming such compliance is found, a census would
4 be conducted; the local government division of the New Mexico Department of
5 Finance and Administration would review the municipal services plan (with PGST
6 to respond within three months if the review identified any deficiencies); following
7 completion of those tasks, DABOCC would “determine if the conditions for
8 incorporation of the territory as a municipality have been met as required in Sections
9 3-2-1 through 3-2-3.” Section 3-2-5(D). Only at that point would DABOCC make the
10 determination called for in Section 3-2-3(B)(3). As a practical matter it likely would
11 be impossible for PGST to complete the incorporation process—or even get to the
12 point of obtaining DABOCC’s decision whether Sunland Park or the proposed new
13 Santa Teresa municipality can deliver services more quickly—within Section 3-7-
14 17.1(B)’s sixty-day period for Sunland Park to act on the annexation petition. Either
15 Sunland Park would fail to comply with the sixty-day deadline (and arguably Section
16 3-2-3(B)(2)’s 120-day deadline as well), or it would simply approve PGST’s
17 annexation petition and thereby moot the incorporation petition. DABOCC and
18 Sunland Park’s construction of Section 3-2-3(B)(3) effectively would nullify any
19 meaningful opportunity for residents of unincorporated territory to utilize Section 3-

1 2-3(B)(3) to avoid unwanted annexation, which opportunity seems to be the basic
2 purpose of the statute.

3 {26} To summarize, DABOCC and Sunland Park advocate without any statutory
4 basis superimposing on top of annexation proceedings a procedure that is authorized
5 only for incorporation proceedings. This hybrid scheme raises seemingly
6 insurmountable prior jurisdiction and practical timing problems. Particularly given
7 the absence of any language in any of the affected statutes, it is difficult to accept the
8 proposition that the Legislature intended such a scheme.

9 **C. Absurd Construction**

10 {27} Courts will not construe a statute in a manner that leads to an absurd result.
11 *Trujillo v. Romero*, 1971-NMSC-020, ¶ 18, 82 N.M. 301, 481 P.2d 89. This rule is
12 most often invoked when applying the plain or literal meaning of the words of the
13 statute leads to an absurd result, *see Progressive Nw. Ins. Co. v. Weed Warrior Servs.*,
14 2010-NMSC-050, ¶ 6, 149 N.M. 157, 245 P.3d 1209 (“We do not depart from the
15 plain language of a statute unless we must resolve an ambiguity, correct a mistake or
16 absurdity, or deal with a conflict between different statutory provisions.” (internal
17 quotation marks and citation omitted)), but it is equally if not more applicable as a
18 ground for insisting on application of the words’ plain meaning to *avoid* an absurdity.

1 {28} As the district court effectively acknowledged, it is absurd to construe Section
2 3-2-3(B)(3) to require residents of a territory who oppose annexation by an existing,
3 adjoining municipality to file a petition asking that municipality to annex their
4 territory. Conversely, it is reasonable to construe “proposed to be annexed” to
5 encompass an informal expression by the municipality of its intent to annex the
6 territory. Indeed, such a construction is consistent with the apparent intent of Section
7 3-2-3(B)(3) to permit residents of adjoining territory who oppose such an
8 announcement of contemplated annexation to respond with a petition for
9 incorporation as an alternative to the anticipated annexation, just as occurred in Doña
10 Ana County in 2014.

11 **D. Legislative Intent**

12 {29} Relying on the language from *City of Sunland Park* quoted above, DABOCC
13 and Sunland Park argue that requiring residents living within five miles of a
14 municipality in an urbanized county “to petition the urbanized municipality for
15 annexation into that municipality, thus affording the municipality the option to annex
16 or not, before resort to a [Section 3-2-3(B)] hearing, fosters the State’s public policy.”

17 {30} If a statute is not ambiguous, then it is unnecessary to discern the policy that
18 underlies the statute and instead we construe it by applying the plain meaning of the
19 statute’s words. *See Weed Warrior Servs.*, 2010-NMSC-050, ¶ 11. Here, the district

1 court found that Section 3-2-3(B)(3) was not ambiguous, none of the parties contend
2 to the contrary on appeal, and we concur. Therefore, it is not necessary to engage in
3 a public policy analysis. *Cf. Ortiz v. Overland Express*, 2010-NMSC-021, ¶ 18, 148
4 N.M. 405, 237 P.3d 707 (“When a statute’s language is ambiguous or unclear, we
5 look to legislative intent to inform our interpretation of the statute.”); *Helen G. v.*
6 *Mark J.H.*, 2008-NMSC-002, ¶¶ 37-38, 143 N.M. 246, 175 P.3d 914 (noting that
7 ambiguous provisions require the court to ascertain statute’s legislative purpose).

8 **E. Summary**


9 {31} An existing municipality has the right to pursue annexation, pursuant to
10 Sections 3-7-1 to -18, independent of any action taken by the residents of the territory
11 in question; if the municipality initiates such action, it will have prior jurisdiction. In
12 addition, Section 3-2-3(B)(1), (2) effectively grant an existing municipality limited
13 first rights of refusal in connection with efforts to incorporate neighboring
14 “urbanized” territory. Section 3-2-3(B)(3) is most reasonably construed to grant a
15 narrow path to incorporation to residents of the territory who oppose annexation by
16 the municipality. While the Legislature has imposed the hurdle of requiring the
17 residents to prove “conclusively” that the proposed new municipality will be able to
18 deliver municipal services more quickly than could the existing municipality, we do
19 not believe it intended to make the process unreasonable. We hold that Section 3-2-

1 3(B)(3) does not require residents of a territory to first formally petition the existing
2 municipality to annex the territory before they can file a petition to incorporate as a
3 municipality; such residents may file an incorporation petition pursuant to Section
4 3-2-1 and Section 3-2-5 if the municipality informally proposes to consider or
5 otherwise expresses an interest in annexing the territory, short of actually initiating
6 formal annexation proceedings. We conclude that the aforementioned actions taken
7 by Sunland Park in 2014 amounted to such an informal proposal.

8 **CONCLUSION**

9 {32} We reverse the district court's September 19, 2016 amended final appellate
10 order from an administrative hearing. We remand this action to the district court to
11 reverse DABOCC's decision and instruct DABOCC to address PGST's claim that it
12 can provide municipal services more quickly than Sunland Park, and whether PGST's
13 petition otherwise satisfies the requirements of Sections 3-2-1 to -9.

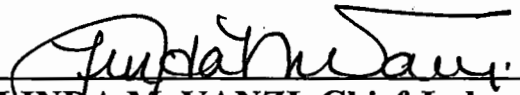
14 {33} **IT IS SO ORDERED.**

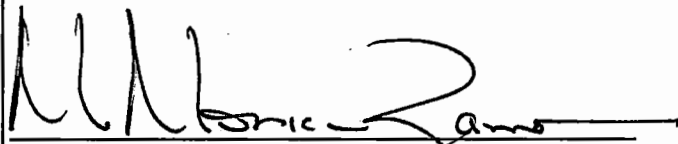
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16

HENRY M. BOHNHOFF, Judge

1 WE CONCUR:

2 
3 LINDA M. VANZI, Chief Judge

4 
5 M. MONICA ZAMORA, Judge