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HAND DELIVERED

January 31, 2008

Hon. Jack Sullivan
Chairman
Santa Fe County Commission
102 Grant Ave.
Santa Fe, New Mexico 87501

Hon. Virginia Vigil
Santa Fe County Commission
102 Grant Ave.
Santa Fe, New Mexico 87501

Hon. Mike D. Anaya
Santa Fe County Commission
102 Grant Ave.
Santa Fe, New Mexico 87501

Hon. Paul Campos
Santa Fe County Commission
102 Grant Ave.
Santa Fe, New Mexico 87501

Hon. Harry B. Montoya
Santa Fe County Commission
102 Grant Ave.
Santa Fe, New Mexico 87501

Re: **Proposed Santa Fe County Courthouse**

Dear County Commissioners:

As you may know, I publicly supported the bond issue for the construction of a new Santa Fe County Courthouse in the Santa Fe downtown area. I lent my support because I believe that a Courthouse is a central component of a vibrant, community based, and active downtown area.

I have followed with increasing concern and alarm as the design and plans for the 52 foot high Santa Fe County courthouse have been publicized. It is clear to me that the design and height for the new Courthouse violates the spirit, intent, and provisions of the City of Santa Fe's Historic Design Review Ordinance and the very specific Height provisions and restrictions of that ordinance.

I express those civic concerns, as a former District II, Santa Fe City Councilor, because it had been my expectation, and I believe that of many of those who approved the County Bond issue, that Santa Fe County, and the proponents of the new Santa Fe County Courthouse, would follow the rule of law and controlling City of Santa Fe ordinances regarding height and design elements.

My particular civic interest in this project stems from the fact that in 1992 I was the City Councilor who was the author of the Amendment to the Historic Design Review Ordinance which gave discretion to the Historic Design Review Board to limit heights within the Historic zoning districts. That Amendment, and the right of the Historic Design Review Board, to limit heights within the historic districts, was upheld in the case of **Mandel v. City of Santa Fe**, 119 N.M. 685 (Ct. App. 1995)(Copy attached).

In 1996 I was again the principal City Council sponsor of the reenactment of the comprehensive Historic Design Review Ordinance, with its more specific height restrictions, for the Historic zoning districts within the City of Santa Fe.

I believe that I am in a particularly unique position to know the meaning and clear intent of the history and requirements of the City of Santa Fe Historic District Ordinance and its Height restrictions and allowances.

The proposed courthouse is simply too high, too large, too intrusive, and too massive for its location. Among other considerations, the current courthouse design and height will block the views of the mountains. It will create shadows that will block sunlight and keep ice and snow on streets for long periods of time. It does not fit.

The existing design and proposed height of the structure violates both the height and design criteria that are explicitly stated in the Historic Design Review Ordinance and its Height restriction sections.

Now is not the time for the submission of a full brief setting out the legal arguments against the existing design and proposed height of the new courthouse. Those arguments will be submitted at the proper time and in the proper forum. Nevertheless, it is important to point out herein some significant legal considerations so that lengthy delays in the construction will not result from disputes about the application of the existing ordinance provisions.

There have been comments made that the Historic Design Review Ordinance does not apply to Santa Fe County and its projects within the historic zoning districts. That is not true. There are erroneous claims that the old State Land Office pump jack case, **City of Santa Fe v. Armijo,** 96 N.M. 663 (1981)(Copy attached), exempts Santa Fe County from following the requirements of the Historic Design Review Ordinance. That is a misreading of that case and its holding. Santa Fe County is bound by the City of Santa Fe Zoning ordinances, including the Historic Design and Height limitations.

First, in **City of Santa Fe v. Armijo,** 96 N.M. 663 (1981) it is clear that the Court was specifically limiting its discussion of the application of the Santa Fe Historic zoning ordinances to "state land". **Id.** at 664-665. The County of Santa Fe is a local governmental subdivision of the State of New Mexico. It is not the State of New Mexico. The County of Santa Fe has a separate legal standing than does the State of New Mexico. **City of Santa Fe v. Armijo,** 96 N.M. 663 (1981) does not apply to local governmental entities. That case only discusses the application of the then historic zoning ordinances to the State of New Mexico.

In addition, it is clear that **City of Santa Fe v. Armijo**, 96 N.M. 663 (1981) is outdated. Its holding was premised upon facts that have changed since that decision. Indeed, it is apparent that now the current City of Santa Fe historic zoning ordinances also apply to state land under the statutory zoning powers given the City pursuant to **NMSA 2007, 3-21-1 et seq.** and **NMSA 2007, {3-22-1 et seq.**

The holding in **City of Santa Fe v. Armijo,** 96 N.M. 663 (1981) that the Santa Fe historic zoning ordinances did not apply to state land was premised upon the timing of the enactment of the prior Santa Fe historic zoning ordinances. **See, City of Santa Fe v. Armijo,** 96 N.M. 663, 665 (1981). Now there are new ordinances and amendments properly enacted and in place which govern and control zoning and height within Santa Fe's historic zoning districts. **Mandel v. City of Santa Fe,** 119 N.M. 685, 687-688(Ct. App. 1995).

As further support regarding the limited applicability of the **Armijo** decision, the Specially Concurring Opinion of Justice Sosa pointed out, **Id.** at 665, "There is nothing in the statute [Historic District Act] which limits its applicability only to private land." As noted herein, since the decision in **Armijo** the City of Santa Fe has reenacted and enacted zoning ordinances governing the design features and height of structures within the City's historic zoning districts.

As I pointed out, now is not the time for full legal briefing of these issues. As this project proceeds, and if it is not in compliance with the appropriate and applicable ordinances, it may very well be necessary for these issues to be presented in a legal proceeding. However, it is my hope that this project will be reconsidered, that the height will be lowered to conform to the Height Ordinance, and that the County will continue to allow public citizen input so that we will have a new courthouse that will comply with the law and with which we can all be proud.

The proposed design and height must be revised to be consistent with the Historic Design Review Ordinance and its Height restriction sections.

Sincerely yours,

Steven G. Farber

SGF/c
Cc: Roman Abeyta, Santa Fe County Manager
Stephen C. Ross, Santa Fe County Attorney
City of Santa Fe Mayor and City Councilors
City of Santa Fe Attorney Frank Katz
City of Santa Fe Historic Design Review Board
Old Santa Fe Association

MANDEL V. CITY OF SANTA FE, 119 N.M. 685, 894 P.2d 1041 (Ct. App. 1995)

HENRY MANDEL, Plaintiff-Appellee/Cross-Appellant,

vs.

CITY OF SANTA FE, SANTA FE CITY COUNCIL, MAYOR SAM PICK, COUNCILOR OUIDA MacGREGOR, COUNCILOR PHILLIP GRIEGO, COUNCILOR FRANK MONTANO, COUNCILOR LARRY DELGADO, COUNCILOR ARTHUR SANCHEZ, COUNCILOR STEVEN FARBER, COUNCILOR DEBBIE JARAMILLO, and COUNCILOR PESO CHAVEZ,

Defendants-Appellants/Cross-Appellees.

No. 15,679
COURT OF APPEALS OF NEW MEXICO
119 N.M. 685, 894 P.2d 1041
April 24, 1995, Filed
APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY, ART ENCINIAS, District Judge

Petition for Writ of Certiorari Denied May 31, 1995. Reported at 895 P.2d 671.

COUNSEL

KARL H. SOMMER, SOMMER, FOX, UDALL, OTHMER, HARDWICK & WISE, P.A., Santa Fe, New Mexico.

MacDONNELL GORDON, GORDON & LARSON, Santa Fe, New Mexico, Attorneys for Plaintiff-Appellee/Cross-appellant.

JANET E. CLOW, CAROLYN R. GLICK, WHITE, KOCH, KELLY, & McCARTHY, P.A., Santa Fe, New Mexico, Attorneys for Defendants-Appellants/Cross-appellees.

JUDGES

PICKARD, Judge. ALARID, BUSTAMANTE, Judges, concur.

AUTHOR: PICKARD

OPINION

*{*686}* This case concerns the development of two-story residences in the Westside-Guadalupe historic district of Santa Fe. The developer's (Mandel) plan was denied by the City of Santa Fe's zoning authorities and the City Council (City). The district court reversed the City's denial of permits on the basis that "by changing the rules in the middle of the game, the City played unfairly," thereby denying Mandel his right to due process. The City appeals. Mandel cross-appeals, seeking to support the district court's decision on alternative grounds and alleging certain errors in the district court's decision. We reverse the district court's decision and uphold the City's action.

FACTS

At the time that Mandel first sought approval for his construction project from the Historic Design Review Board (Board), the Santa Fe City Code prohibited the Board from limiting the height of any building in the historic district to a lesser height than that allowed by the underlying zoning. Mandel's proposal was twice tabled by the Board in order to allow Mandel to revise his proposal to satisfy stylistic concerns and neighbors' concerns. During the time that Mandel's proposal was tabled, the City amended the Code to permit the Board to limit the height of structures within certain historic districts to lesser heights than that allowed by the underlying zoning (the Height Amendment). *{*687}* Several months thereafter, the Board again considered Mandel's proposal and denied it, pursuant to the Height Amendment, based on the existence of inappropriate second-story structures. The City affirmed the denial.

On petition for writ of certiorari to the district court, Mandel argued that the Height Amendment could not be applied to his proposal for three reasons: (1) it unlawfully delegated the City's zoning authority to the Board; (2) it violated his right to equal protection because a similar development was later permitted under the Amendment; and (3) it violated his right to due process because it constituted an unlawful down-zoning and it retroactively applied the Height Amendment to his proposal. The district court found Mandel's first two arguments without merit, but determined that due process had been violated by the application of the Height Amendment to Mandel's proposal.

APPEAL

The City appeals contending that the district court erred in holding that the Height Amendment could not be applied to Mandel's proposal. We agree with the City that this case is controlled by **Brazos Land, Inc. v. Board of County Commissioners** , 115 N.M. 168, 848 P.2d 1095 (Ct. App. 1993), and we decline to revisit that case. In a case whose operative facts were nearly identical to those here, this Court held that an unapproved proposal was not a "pending case," within the meaning of the New Mexico Constitution, article IV, section 34, which states that "[n]o act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case." We stated that the submission of a subdivision plat application did not achieve pending case status. **Brazos** , 115 N.M. at 171, 848 P.2d at 1098.

We further stated in **Brazos** that "for purposes of determining which regulations apply to a subdivision plat application, we believe that a vested rights analysis is the better reasoned approach rather than further semantic refinement of the meaning of "pending' for purposes of a rigid article IV, section 34 analysis." **Id.** Therefore, the proper analysis here should not be whether the proposal was a "pending case," but whether Mandel had a "vested right" in his development pursuant to the ordinance prior to the Height Amendment. Since the project had not been approved, Mandel had no vested right in having the less restrictive height requirement applied to his project. **See In re Sundance Mountain Ranches, Inc.** , 107 N.M. 192, 194, 754

P.2d 1211, 1213 (Ct. App.) (issuance of written approval for building permit, together with substantial change in position in reliance thereon, is required before vested rights arise), **cert. denied** , 107 N.M. 267, 755 P.2d 605

Mandel argues that **State ex rel. Edwards v. City of Clovis** , 94 N.M. 136, 607 P.2d 1154 (1980), rather than **Brazos** , controls this case. He contends that **Edwards** was not, and could not have been, overruled by **Brazos** and that **Edwards** supports his argument that the City could not change its ordinances and then apply them to his project. In **Edwards** , a petition for writ of mandamus was filed with the district court in an attempt to force the City to apply an existing ordinance. Thereafter, the City adopted a new ordinance and then used the new ordinance as the basis of its argument against issuance of the writ. In **Brazos** and this case, the new ordinance was applied to an unapproved application for a project. **Brazos** did not overrule **Edwards** , and it is still good law under those facts. However, **Edwards** does not apply here.

We hold that the district court erred in finding that the City "played unfairly" in applying the Height Amendment to Mandel's project. An application for approval is not a pending case, and Mandel did not have a vested right in having the old ordinance applied to him. Moreover, chaos would occur if it would be "unfair" to apply land-use regulations to people who had merely submitted their first application for approval. Upon hearing of the possible enactment of new regulations, people would rush to city hall to file applications and preserve their right to proceed under an old law. Such a result would thwart an orderly governmental process. The **Brazos** formulation protects people in their rights without unnecessarily tying government's hands. Therefore, the City *{*688}* acted lawfully in applying the Height Amendment to Mandel's proposed development.

CROSS-APPEAL

Mandel appeals the district court's determination that his unlawful delegation and equal protection arguments were without merit. He also contends that the district court erred in failing to find that the application of the Height Amendment was an unlawful down-zoning of his property.

Mandel argues that permitting the Board to apply the Height Amendment to his property effectively permitted the Board to engage in zoning and rezoning, which are outside the Board's delegated authority. We disagree. In **City of Santa Fe v. Gamble-Skogmo, Inc.** , 73 N.M. 410, 389 P.2d 13 (1964), the Supreme Court upheld the general concept of historic districts and permitted the "style committee" to pass on details concerning building within those districts, within broadly-stated standards. Consistent with the approval in **Gamble-Skogmo** , the Height Amendment here permits the Board to limit the height of buildings, as well as to require set-backs of different floor levels, to conform to the streetscape in the historic district. Therefore, the Board had the authority to enforce the Height Amendment.

Mandel claims that enforcement of the Height Amendment changed the governing zoning

designation for his property, which could not be done by the Board. The premise of Mandel's argument is that, if the underlying zoning permits a certain height, any lessening of that height is, in effect, a change in the zoning. Again, we disagree. Enforcement of the Height Amendment was not a rezone. The property was zoned RM-1, but it was also located in an historic district. Therefore, it was subject to the more restrictive requirements of the historic district. The fact that the Board is now permitted to restrict height does not mean the property has been rezoned. **See Viti v. Zoning Bd. of Review** , 166 A.2d 211, 213-14 (R.I. 1960). In fact, the property remains zoned RM-1 in an historic district.

Mandel also argues that he was denied equal protection because another's application to build two-story residences in the same historic district was approved shortly after the Board denied his application. A different result in another case without more is not a showing of unlawful discrimination. **See State ex rel. Bingaman v. Valley Sav. & Loan Ass'n** , 97 N.M. 8, 9 n.2, 636 P.2d 279, 280 n.2 (1981). We find no error in the district court's conclusion that there was no evidentiary support in the record for Mandel's equal protection argument.

Finally, Mandel argues that the application of the Height Amendment to his project was an unlawful down-zoning of his property. This argument was raised below as a variation of his due process and fairness argument, an argument upon which he prevailed below. Therefore, we treat this issue as an alternative ground to affirm the decision of the district court. **See** SCRA 1986, 12-201(C) (Repl. 1992). We reject Mandel's argument because acceptance of it in the context of this case, which involves an amendment to the zoning laws that has city-wide application, would be inconsistent with the rationale of **Brazos** .

Down-zoning is defined as rezoning property to a more restrictive use. **See Davis v. City of Albuquerque** , 98 N.M. 319, 321, 648 P.2d 777, 779 (1982); **Miller v. City of Albuquerque** , 89 N.M. 503, 506, 554 P.2d 665, 668 (1976). Mandel's argument is that, by applying the Height Amendment to his property, the City has rezoned his property to a more restrictive use. For purposes of evaluating Mandel's argument concerning fairness, we accept the notion that the allowable use of his property has been restricted and therefore the general principles of **Davis** and **Miller** would apply.

However, we do not agree that there has been a down-zoning here as would be prohibited under **Davis** and **Miller** . In both of those cases, the City of Albuquerque made a piecemeal change to its comprehensive zoning ordinance. In **Miller** , only a single landowner was affected. **Miller** held that a "piecemeal zoning change" to a more restrictive classification must be supported by a showing of mistake in the original zoning or change in the character of the neighborhood. **Id.** at 506, 554 P.2d at 668. In **Davis** , *{*689}* only an eight-block area of a particular neighborhood was adversely affected. The Supreme Court in **Davis** stated that the **Miller** holding must be considered in its context, which was an unreasonable zoning of a small piece of land, and it held that the facts of that case were insufficient to distinguish it from **Miller** . **Davis** , 98 N.M. at 321, 648 P.2d at 779.

Here, there was no rezoning that affected only Mandel's property or even Mandel's neighborhood. Rather, the City adopted a height restriction that could be generally applied to all properties in historic districts in the City. There is no contention that the City did not give adequate notice in compliance with applicable statutes for its adoption of the Height Amendment. Once a law is adopted, we know of no authority that would require the government to give specific notice to citizens that it intends to apply the law to them. Therefore, without ruling on the precise boundaries of **Davis** and **Miller** , we can confidently say that they are not controlling in this case in which the Height Amendment was enacted on a city-wide basis. There was no unlawful down-zoning here as that term is used in **Davis** and **Miller** . There was also no unfair failure to play by the rules. **See Brazos** , 115 N.M. at 170-71, 848 P.2d at 1097-98.

CONCLUSION

We hold that the City could properly apply the Height Amendment to Mandel's application, and we reverse the order of the district court and remand for entry of an order affirming the decision of the City denying Mandel's development application.

IT IS SO ORDERED.

CITY OF SANTA FE V. ARMIJO, 96 N.M. 663, 634 P.2d 685 (S. Ct. 1981)

CITY OF SANTA FE, HISTORIC NEIGHBORHOOD ASSOCIATION, SOUTHEAST NEIGHBORHOOD ASSOCIATION, OLD DON GASPAR NEIGHBORHOOD ASSOCIATION, HISTORIC HILLSIDE AREA NEIGHBORS, TANO ROAD ASSOCIATION, RODEO ROAD ASSOCIATION,
Plaintiffs-Appellees,
vs.
ALEX ARMIJO, THE COMMISSIONER OF PUBLIC LANDS, STATE OF NEW MEXICO, Defendant-Appellant.

No. 13388
SUPREME COURT OF NEW MEXICO
96 N.M. 663, 634 P.2d 685
October 05, 1981
APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY, Lorenzo F. Garcia, District Judge.

COUNSEL

Jeff Bingaman, Attorney General, Thomas L. Dunigan, Deputy Attorney General, Santa Fe, New Mexico, for Defendant-Appellant.
Coppler & Walter, Frank Coppler, Richard C. Bosson, Santa Fe, New Mexico, for Plaintiffs-Appellees.

JUDGES

Riordan, J., wrote the opinion. WE CONCUR: WILLIAM R. FEDERICI, Justice. DAN SOSA, JR., Senior Justice, Specially Concurring
AUTHOR: RIORDAN

OPINION

*{*664}* RIORDAN, Justice.

The City of Santa Fe (city) and several private neighborhood associations brought an action against the Commissioner of Public Lands seeking to enjoin the Commissioner from maintaining an oil field pumping rig on the premises of the State Land Office Building in violation of Santa Fe's historical district zoning ordinances (ordinances). Santa Fe, N.M., Code ch. 36, art. XXVI, §§ 36-312 through 36-324 (1973). The plaintiffs alleged that the Commissioner failed to comply with the ordinances by not obtaining a permit before placing the pumping rig on the premises. The district court found in favor of plaintiffs and held that the Commissioner was to comply with the ordinances because New Mexico's Historic District Act (Act), §§ 3-22-1 through 3-22-5, N.M.S.A. 1978, empowered the city to apply its ordinances to state agencies, institutions and officials. The Commissioner appeals. We reverse.

A number of issues are raised on appeal; however, one is dispositive: Do Santa Fe's historical zoning ordinances apply to the Commissioner of Public Lands' building?

There are a number of general principles governing a municipality's authority to apply zoning requirements to state land. A state governmental body is not subject to local zoning regulations or restrictions. **Matter of Suntide Inn Motel**, 563 P.2d 125, 127 (Okl. 1977). A city has no inherent right to exercise control over state land. **See City of Santa Fe v. Gamble-Skogmo, Inc.**, 73 N.M. 410, 413, 389 P.2d 13, 15 (1964); **Town of Mesilla v. Mesilla Design Center & Book Store**, 71 N.M. 124, 376 P.2d 183 (1962). A city's power to zone state property must be delegated to the city by state statute. Statutes granting power to cities are strictly construed, and any fair or reasonable doubt concerning the existence of an asserted power is resolved against the city. **Village of River Forest v. Midwest Bank & Trust Co.**, 12 Ill. App.3d 136, 139, 297 N.E.2d 775, 777 (1973). Cities have only such power as statutes expressly confer without resort to implication. **Sanchez v. City of Santa Fe**, 82 N.M. 322, 481 P.2d 401 (1971). Thus, no power or authority may be claimed by a municipality by inference or implication from a statute. Municipalities have only those powers **expressly** delegated by state statute.

In applying the above principles, we must determine which state statute authorized Santa Fe's historical district zoning ordinances. *{*665}* The ordinances were enacted October 30, 1957. The only state statutes authorizing municipality zoning at that time were the "Zoning Regulations," §§ 14-28-9, 14-28-10 and 14-28-11, N.M.S.A. 1953, which were first enacted in 1927. These statutes were repealed by 1965 N.M. Laws Ch. 300 and were replaced by the same 1965 Act as §§ 14-20-1 and 14-20-2, N.M.S.A. 1953 (Cum. Supp. 1965) (now codified as §§ 3-21-1 and 3-21-2, N.M.S.A. 1978). We held in **City of Santa Fe v. Gamble-Skogmo, Inc., supra**, that Santa Fe's historical district zoning ordinances were enacted under these statutes.

These "Zoning Regulations" gave the municipality a general grant of zoning powers. However, the regulations do not give the municipalities express power to apply zoning regulations to state land. Therefore, the city's ordinances as originally enacted do not apply to state land. The trial court found, however, that the state's Historic District Act authorized the city's ordinances.

The state's Historic District Act was enacted in 1961, (1961 N.M. Laws ch. 92, §§ 1 through 5, codified as §§ 14-50-1 through 14-50-5, N.M.S.A. 1953 (Cum. Supp. 1961); repealed by 1965 N.M. Laws ch. 300 and reenacted by the 1965 Act as §§ 14-21-1 through 14-21-5, N.M.S.A. 1953 (Cum. Supp. 1965) (now codified as § 3-22-1 through § 3-22-5) four years after the enactment of the Santa Fe ordinances. The only way in which the Act could have authorized, validated or extended the ordinances' application to state property, is by ratification. In order to validate or extend by ratification the application of a previously enacted municipal ordinance, two requirements must be satisfied.

The first requirement is that there must have been some previously existing state statute which authorized the enactment of the particular municipal ordinance. Curative statutes can validate irregular exercise of power where the initial power to enact such an ordinance has already been granted. However, a curative statute cannot ratify a void municipal ordinance nor

validate an application of an ordinance where there was no power to enact the ordinance in the first instance. **209 Lake Shore Drive Bldg. Corp. v. City of Chicago**, 3 Ill. App.3d 46, 51, 278 N.E.2d 216, 220 (1971); **Village of River Forest v. Midwest Bank & Trust Co., supra**. This requirement was not satisfied. When the city enacted its historical district zoning ordinances, there were no state statutes authorizing the application of such an ordinance to state property. There were general zoning laws at the time authorizing the enactment of the ordinances, **City of Santa Fe v. Gamble-Skogmo Inc., supra**, but these laws did not permit application of ordinances to state property. Any attempted application of such ordinances to state property prior to the enactment of the Historic District Act would have been invalid.

The second requirement is that the state statute must name or in some way identify the ordinance which is intended to be validated or extended by ratification. **State ex rel. Brelsford v. Retirement Board**, 41 Wis.2d 77, 84, 163 N.W.2d 153, 156 (1968); **Village of River Forest v. Midwest Bank & Trust Co., supra**. The state Act does not expressly refer to the historical district zoning ordinances of the City of Santa Fe nor does it refer generally to historical district zoning ordinances promulgated by municipalities prior to its enactment. This requirement is not met.

Further, the City of Santa Fe argues that in 1973 it "readopted" its historical zoning ordinances under the authority of the Historic District Act and thereby cured the invalidity of the ordinance with respect to its purported application to state property. This argument ignores the stated intention of the city in adopting the 1974 code. The intent of the council was clearly stated in Santa Fe, N.M., Code ch. 1, § 1-3 (1973).

Sec. 1-3. Provisions considered as continuations **of existing ordinances.**

The provisions appearing in this Code, so far as they are in substance the same as those of the 1953 Code and all ordinances adopted subsequent to the 1953 Code and included herein, shall be considered as *{*666}* continuations thereof and not as new enactments.

Thus, in accordance with Section 1-3 of the City Code, the ordinances were merely continued unaffected by the 1973 codification and were not "reenacted" or "readopted" by the council in 1973.

It is true that a municipality may cure the invalid application of a city's ordinance by subsequent council enactment. The proceedings to cure such a defect must be undertaken with the full knowledge of the invalidity and with an intent to remedy the invalidity by the council's legislative action. 5 E. McQuillin, **Municipal Corporations**, 16.93 (3rd rev. ed. 1969). "Ratification [of an invalid municipal ordinance] to be effective, must be made with full knowledge of all the facts relating to the act ratified." **McCracken v. City of San Francisco**, 16 Cal. 591, 626 (1860). There is no evidence that the city council was aware of the defect in the historical district ordinances and intended to cure them by their actions in 1973.

We do not need to address the question as to whether the wording of the Historic District Act

allows the regulation of state land by a municipality. However, as we have already stated, a city has only such power as a state statute **expressly** confers without resorting to implication. **Sanchez v. City of Santa Fe, supra.** If the state's Act is to include the regulation of state land, then it will be up to the municipality to show where **express** authority was conferred on them.

The decision of the district court is reversed.

IT IS SO ORDERED.

FEDERICI, Justice, concur.

SPECIAL CONCURRENCE

SOSA, Senior Justice, Specially concurring.

I concur only in the result reached by the majority opinion. I agree that, under the facts of this case, the City of Santa Fe had no zoning ordinances applicable to state property. This is true, however, not because they lacked the requisite authority to enact historical district zoning ordinances applicable to state property, but because they lacked a valid ordinance with which to do so. The City's 1973 recodification was not a reenactment of the City's zoning ordinances enacted in 1957 pursuant to the statutory predecessor of §§ 3-21-1 and 3-21-2, which did not apply to state land. If the City had reenacted its ordinances subsequent to 1961 when the state authorized, in broad and general plenary language, the power of municipalities to regulate **all** lands, the City's ordinances would apply to the State Land Office.

Once the Santa Fe City Council reenacts the ordinances, they will apply to state land pursuant to the Historic District Act. Section 3-22-2 of the Act makes it very clear that municipalities have full and complete power to regulate **historical** districts in furtherance of the historical heritage of this state.

The legislature of the state of New Mexico hereby declares that the historical heritage of this state is among its most valued and important assets, and that it is the intention of Sections 3-22-1 through 3-22-5 NMSA 1978, to **empower * * * municipalities * * * with as full and complete powers to preserve * * * the historic areas * * * as it is possible for this legislature to permit under the constitution * * *.** (Emphasis added.)

There is nothing in the statute which limits its applicability only to private land. Indeed, had the Legislature intended for municipalities to be able to zone only private land, there would have been no need to enact the Historic District Act, because §§ 3-21-2 and 3-21-2 already enabled municipalities to zone private land. "Full and complete powers" includes the power over state land lying within historic areas.