

**IN THE THIRD JUDICIAL DISTRICT COURT
COUNTY OF DONA ANA
STATE OF NEW MEXICO**

DERRICK PACHECO

Petitioner

v.

No: D-307-CV-2025-2764

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

Respondent

RESPONDENT'S MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

Respondent, the Board of County Commissioners of Dona Ana County (“the County”), by and through its attorneys, NM Local Government Law (Randy Autio, Kevin Morrow and Dave Wesner) moves the Court to dismiss the Petition for Judicial Review pursuant to Rule 1-012(B) NMRA. Petitioner requests this court reverse the decision of the Dona Ana County Board of Commissioners decision to approve an “Industrial Revenue Bond package for a data-center project known as Project Jupiter.”

I. INTRODUCTION

Petitioner attempts to invoke Rule 1-074 NMRA to challenge the Board’s approval of an Industrial Revenue Bond ordinance adopted on September 19, 2025. Rule 1-074 provides judicial review only for final administrative decisions with a statutory right of review. An Industrial Revenue Bond approval is a legislative act that is not subject to Rule 1-074 review.

The Petition is brought under the wrong procedural mechanism and fails to state a cognizable claim under Rule 1-074 NMRA. Rule 1-074 governs appeals where there is a statutory right of district court review. However, Petitioner identifies no statute providing for district court

review. Because the petition invokes a procedure that does not apply to passing an IRB ordinance, the Court lacks subject matter jurisdiction and the petition must be dismissed with prejudice.

II. STANDARD OF REVIEW

A petition filed under Rule 1-074 NMRA must be dismissed when the challenged action is not an administrative adjudication or there is no statutorily provided right of appeal. “[L]ack of jurisdiction at any stage of the proceedings is a controlling consideration which must be resolved before going further.” *Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 10, 142 N.M. 786, 790, 171 P.3d 300, 304

III. ARGUMENT

A. Rule 1-074 Does Not Apply Because the IRB Approval Was a Legislative Action, Not an Administrative Decision.

Industrial Revenue Bond ordinances are adopted through the County’s legislative authority. Passing legislation is not subject to Rule 1-074 review.

The appropriate mechanism for challenging the passage of an ordinance is to seek declaratory judgment. See *Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 14, 142 N.M. 786, 791, 171 P.3d 300, 305 “the Declaratory Judgment Act is specifically designed to bring an action challenging the constitutionality or validity of local laws or ordinances.”

Although the district court's review of the City's action by writ of *certiorari* was improper, petitioners could have had the City's action reviewed in the same manner by which ordinances are generally reviewed—by filing an original action in district court based on the court's original jurisdiction. See, e.g., *Garcia v. Village of Tijeras*; cf. *Richardson v. Carnegie Library Restaurant, Inc.* In such an action, petitioners would have been limited to challenging either the constitutionality of Section 3–7–17 or its application. See *City of Roswell v. Bateman*.

Dugger v. City of Santa Fe, 1992-NMCA-022, ¶ 23, 114 N.M. 47, 54, 834 P.2d 424, 431, writ quashed, 113 N.M. 744, 832 P.2d 1223 (1992). “Therein, we concluded that a declaratory judgment action is an appropriate method for ‘challenging the constitutionality or validity of local

laws or ordinances' when it does not require fact-finding by the administrative agency." *Stennis v. City of Santa Fe*, 2008-NMSC-008, ¶ 14, 143 N.M. 320, 325, 176 P.3d 309, 314. Because Petitioner invokes Rule 1-074 to review a non-adjudicatory action, the Court lacks jurisdiction.

B. The Petition Fails Because There Is No Statutory Right to Judicial Review of an IRB Ordinance.

No statute authorizing judicial review of IRB approvals was identified by Petitioner and none has been identified by the Respondent in its review of New Mexico statutory authority. Neither the County's IRB ordinance nor the Industrial Revenue Bond Act contains any provision granting judicial review of a local government's economic development bond decisions. See Section 3-32-1 *et seq.* NMSA 1978. Absent statutory authority, courts may not review discretionary legislative fiscal decisions under a rule 1-074 appeal.

C. The Petition Asserts Procedural Bias in a Separate Quasi-Judicial Zoning Matter, Not in the IRB Approval That Is the Subject of the Petition.

Petitioner argues that the Board showed bias regarding a later zoning case (Z25-016) that was heard weeks after the IRB approval. These allegations relate to a separate Planning and Zoning Commission matter, not the IRB ordinance that is the subject of this Petition.

A Rule 1-074 petition must challenge a single final administrative decision. It cannot simultaneously challenge the IRB legislative act and a future zoning matter. Arguments about potential bias in a later zoning hearing do not convert a legislative bond approval into a quasi-judicial action. They also do not create jurisdiction where none exists.

D. The Petition Fails to State a Claim Because It Does Not Identify Any Cognizable Legal Error in the Legislative IRB Process.

Even if review were available, the petition identifies no defect in the IRB process. Allegations that the Board endorsed a project before zoning approval are political arguments, not legal grounds for overturning a legislative ordinance. ("[W]e will not question the wisdom, policy,

or justness of a statute, and the burden of establishing that the statute is invalid rests on the party challenging the constitutionality of the statute.” *Atencio v. State*, No. A-1-CA-42006, 2025 WL 1621659, at *5 (N.M. Ct. App. June 3, 2025). Legislative bodies are free to consider or approve IRBs irrespective of the status of related land-use applications. Passing IRB’s does not require a quasi-judicial hearing. There is no requirement that property be zoned prior to IRB approval, and Petitioner cites no authority to the contrary.

IV. DISMISSAL WITH PREJUDICE IS WARRANTED.

Where a court lacks jurisdiction due to the wrong procedural mechanism being invoked, dismissal with prejudice is appropriate because amendment cannot cure the defect. Petitioner cannot refile under Rule 1-074 and cannot obtain judicial review of a legislative IRB ordinance under any other New Mexico rule.

V. CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that the Court:

1. Dismiss the Petition for Judicial Review with prejudice.
2. Deny all requested relief.
3. Grant such other relief as the Court deems proper.

Respectfully submitted,

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Certificate of Service

I hereby certify that on November 17, 2025, I filed the foregoing pleading electronically through the Tyler Technologies, Odyssey® File & Serve, E-File System, which caused all parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing and a true and correct copy provided via email to the following:

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