

# **NEW MEXICO LAND USE CASES**

**2013-2014**

# **Albuquerque v. Panagaea Cinema, LLC.,**

**No. 33,693, September 12, 2013**

Pornotopia is a pornographic film festival, shown one weekend a year at the Guild Theatre. Is it an “Adult Use” and thus a violation of a constitutional Adult Use Ordinance?

Answer: NO!

# **Robinson v. City of Albuquerque**

**No: CD 2013-06792**

- Should Johnny tear down his addition if the City's building permit and renewal were issued in error, Johnny's 2-story addition violates setback requirements, and perhaps he should have known better?
- What role should the press play in ongoing litigation?

# **Town of Edgewood v. State Municipal Boundary Commission, No. 30,768, NMCA**

- How far may New Mexico's Municipal Boundary Commission go in its review of a petition for annexation?
- Does the Commission have more power than was originally acknowledged?

# **Amethyst Land Co., Inc. v. Terhune, 304 P. 3d 434 (N.M. App. 2013)**

- Is Amethyst bound by an Agreement terminating an access?
- Answer: No, since the Agreement was never properly recorded for Amethyst to be on notice of its existence!

# **Board of County Commissioners of Bernalillo v. Benavidez, 292 P. 3d 482 , (N.M. App. 2012)**

- Can cattle run at large outside of a municipality?
- Answer: Yes. A County lacks authority to prohibit cattle running at large because of state free range statutes, except in conservancy districts or military reservations.

# **Estates at Desert Ridge Homeowners Association v. Vasquez, 300 P. 3d 736(N.M. App. 2013)**

- When there's no specific covenant banning short term rentals in a subdivision, if the covenants require unanimous approval of Homeowners Association members to amend them, then the owner can go ahead with his short term rentals.

# **Moongate Water Co. v. City of Las Cruces, 302 P. 3d 405 (N.M. 2013)**

- The Public Regulations Commission of New Mexico only has authority over municipalities with a population of over 200,000, which Las Cruces did not have, so its issuance of a Certificate of Convenience and Necessity (CCN) to Moongate had no effect when the City annexed land served by Moongate which would now be served by City water.
- There was no taking by Las Cruces when it terminated Moongate and began serving the annexed land with City services since Moongate had no tangible assets or infrastructure on the area it had formerly served.



# **Pecos River Open Spaces v. County of San Miguel, 2013-NMCA-029**

- Is a non-profit conservation corporation exempt from property taxes as a charitable use?
- Answer: Yes, since as an important habitat area also containing natural open space, it's contributing to the environmental preservation and beautification of the County and State, thus benefitting the public.

# Yurcic v. City of Gallup, 298 P. 3d 500 (N.M. App. 2013)

- Defendant's summary judgment under the Statute of Limitations was precluded since it was not clear when Plaintiff was put on notice that seepage of water on City property was damaging her private property.
- Plaintiff had been put on notice that seepage was damaging her building, but since there were still disputed material facts regarding whether her property was damaged by the seepage, it wasn't clear whether some of her claims were time-barred., requiring more evidence.

# **Zuni Indian Tribe v. McKinley County Bd. Of County Commissioners, 300 P. 3d 133 (N.M. App. 2013)**

- Issue: Was preliminary plat approval a “final” appealable action?
- Answer: Yes. The Tribe could appeal a preliminary plat approval, since final plat approval is merely “administrative”
- The tribe’s appeal of the preliminary plat approval was not rendered moot by the County’s approval of the final plat.

- Questions??





