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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-38252

RALPH MARQUEZ,

Appellant-Petitioner,

v.

CITY OF LAS VEGAS,

Appellee-Respondent,

and

GILBERTO LORENZO MARTINEZ,

Applicant/Appellee-Respondent.

APPEAL FROM THE DISTRICT COURT OF SAN MIGUEL COUNTY
Abigail Aragon, District Judge

Atler Law Firm, P.C.
Timothy L. Atler
Jazmine J. Johnston
Albuquerque, NM

for Petitioner

City of Las Vegas
Scott Aaron, City Attorney
Esther M. Garduno Montoya, City Attorney
Las Vegas, NM

for Respondent City of Las Vegas

MEMORANDUM OPINION

HANISEE, Chief Judge.

{1} Petitioner Ralph Marquez petitioned this Court for writ of certiorari seeking reversal of the district court's order upholding the rezoning of Applicant Martinez's residence. We granted the writ of certiorari and proposed to reverse the district court in our notice of proposed disposition. No memorandum in opposition was ever filed, but Petitioner filed a memorandum in support, which agreed with our proposed reversal. Having considered the memorandum in support, we reverse and remand this matter to the district court.

{2} In our calendar notice, we proposed to conclude that actual notice to the Petitioner in the instant case is not sufficient, in and of itself, to resolve Petitioner's claim that insufficient public notice under NMSA 1978, Section 3-21-6(B) (1981) was prejudicial to the community as a whole, and thus we proposed to reverse the district court's order and remand for reconsideration on the issue of substantial compliance with the applicable notice requirements. [CN 5-6] This Court has received no memorandum in opposition to the rationale for reversal proposed in our notice of proposed disposition, and thus we proceed with reversal based on our proposed rationale.

{3} Petitioner contends in his memorandum in support that, while he agrees with our proposed reversal, sufficient facts exist in the record to allow this Court to independently determine that the notice provided in this matter was insufficient, making remand to the district court unnecessary. [MIO 1] Because the district court concluded that Petitioner's actual notice was sufficient, it did not reach the issue of whether the notice in this matter was adequately provided to the general public. We decline to review a matter that has not been addressed in the first instance by the district court. See *Peña Blanca P'ship v. San Jose Cmty. Ditch*, 2009-NMCA-016, ¶ 8, 145 N.M. 555, 202 P.3d 814 (noting that there is a preference for having legal issues decided by the district court in the first instance). Accordingly, for the reasons stated herein and in our notice of proposed disposition, we reverse and remand this matter to the district court.

{4} IT IS SO ORDERED.

J. MILES HANISEE, Chief Judge

WE CONCUR:

KRISTINA BOGARDUS, Judge

BRIANA H. ZAMORA, Judge