UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Mesquite Grove Chapel, an Arizona not-for-profit corporation, et al., Plaintiffs, vs. Pima County Board of Adjustment District 4, et al., Defendant.	CV 4:10-CV-00769-JR **ORDER**

Pending before the Court are the following motions: (1) Plaintiffs' Motion for Partial Summary Judgment (Doc. 48 and 99); (2) Defendant Carmine DeBonis Jr.'s Cross-Motion for Summary Judgment on Federal Claims (Doc. 75); (3) Defendant Board of Adjustment District 4's Partial Motion for Summary Judgment (Doc. 77); (4) Defendant Carmine DeBonis Jr.'s Motion for Summary Judgment on Land-Use Appeal and Counts I-IV (Doc. 89); (3) and Defendant Board of Adjustment District 4's Motion for Summary Judgment on Counts I through IV (Doc. 91).

In the Plaintiffs' Third Amended Complaint, they allege that the Pima County Board of Adjustment District 4 and the County's Development Services Chief Zoning Inspector Tina Whittemore (for whom Carmine DeBonis was subsequently substituted) improperly denied a building permit for the construction of the proposed Mesquite Grove Chapel. Specifically, Plaintiffs allege that the Defendants deprived them of their civil rights in violation of 42 U.S.C. § 1983; interfered with their contractual rights; interfered with their business expectancies; interfered with their use of their property resulting in an unconstitutional taking; and violated their rights under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000. Through the various motions, Plaintiffs seek summary judgment on their RLUIPA-based claim and the Defendants seek summary judgment on all of the claims contained in the Plaintiffs' Third Amended Complaint.

I. Factual Background

In 2000, John Fazio, the husband of Plaintiff Debi Fazio, purchased a building in Oro Valley, Arizona, with the stated intention of creating a non-denominational church and ministry, the costs of which would be underwritten by tithes, offerings, and lease revenues derived from performing weddings on the property. (*PSOF*,[1] ¶ 3.) Unable to obtain financing for the ministry, the Fazios had the property rezoned into a commercial wedding venue known as Reflections at the Buttes ("Reflections").

[1] *PSOF* refers to Plaintiffs' statement of facts (Doc. 49).

(*PSOF*,¶ 5; *DDSOF*[2], Ex. 1 at 21:9-18). The Reflections at the Buttes, which has operated at the site since 2001, acts as a one-stop-shop of sorts for its clients by offering wedding packages for a fee – John Fazio administers the weddings, all the reception amenities are housed on-site, and catering services are arranged by Reflections. (*DDSOF*, Ex. 1 at 20:12-19).

In 2007, Debi Fazio purchased a second property (the "Tanque Verde Property") that is the subject of this action and which is located at 1902 N. Tanque Verde Loop Road in Tucson, Arizona. (*PSOF*, ¶6). The stated intention with the Tanque Verde Property was for John Fazio to develop a church suited to meet the needs of the handicapped and related ministerial purposes. (*Id*.)

In the years preceding the purchase of the Tanque Verde Property, John Fazio assisted the pastor from a church located adjacent to the Property, the Saguaro Buttes Community Church ("Saguaro Buttes"), obtain building permits. Reflections and Saguaro Buttes maintain a marketing and consulting agreement, but the Fazios have no other interest in Saguaro Buttes. (*PSOF* ¶ 7).

Foreshadowing the dispute that gives rise to the instant case, at the time of development, the Pima County Development Services Department questioned the designation of Saguaro Buttes as a church, but ultimately concluded the property qualified as a church. Any person wishing to be married at Saguaro Buttes was required to have the wedding administered by Reflections at Saguaro Buttes, LLC, a

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[2] *DDSOF* refers to Defendant Debonis' Statement of Facts (Doc. 76).

company owned by the Fazios. Reflections at Saguaro Buttes administered approximately 700 weddings at the Saguaro Buttes Community Church property. (*DDSOF*, Ex. 1 at 34:1-7). The basic wedding package provided by Reflections at Saguaro Buttes cost $7,995.00. (*DDSOF*, Ex. 2 at 16:15-17). Reflections at Saguaro Buttes was advertised on the Reflections at the Buttes' website as an east-side location of Reflections at the Buttes. (*Id.*)

In 2008, the Fazios turned their attention to the Tanque Verde Property which was zoned for residential use. The Fazios proposed to build a church, to be called the Mesquite Grove Chapel ("Mesquite Grove"), on the Tanque Verde Property. As a church, the construction of Mesquite Grove would be allowed in the residential area without rezoning under Pima County zoning code. In addition to operating as a church, the Fazios intended that the Mesquite Grove facility would act as an outdoor host site for state-funded recreation activities for mentally disabled adults. This operation was known as Least of These LLC.

In addition to Least of These LLC, John Fazio sought to establish Least of These Ministries, which would operate inside the church facility as a non-profit entity. (*PSOF'* Ex. 2). The Fazios submitted a development plan for Mesquite Grove to the Pima County Development Services Department. In response to the development plan, then-Chief Zoning Inspector Tina Whittemore determined that the proposed use did not qualify as a church pursuant to Pima County Code. (*DDSOF*, Ex. 9, Att. A).

"Church" is defined in the Pima County Code as "[a] building or group of buildings used primarily as a place of communication or worship." P.C.C. § 18.03.020(c)(6). Whittemore examined the functional time and financial income of the property and found the proposed facility to be more analogous with a commercial events center, and not a church. She based the determination on the following factors: (1) the lease agreement for potential weddings which required a separate rental fee for the use of the property, a required donation to the church which equaled the rental fee of the premises, and outside bartending and security requirements for any weddings held at the property; (2) internet advertisements for Plaintiff's existing wedding properties which characterized the properties as "Tucson's Preeminent Wedding Site"; (3) the Fazio's website for Reflections at the Buttes which advertised "Three Stunning Locations" and a new location "coming soon" at Mesquite Grove; (4) magazine articles in *Millionaire Blueprints* and other publications in which John Fazio alluded to Mesquite Grove being a third location for his successful wedding business; and (5) the promotion of Mesquite Grove as a new location for Reflections at a bridal fair. (*DDSOF*, Ex. 9, Att. A).

The Fazios appealed Whittemore's interpretation to the Board of Adjustment pursuant to A.R.S. § 11-816(D). The Board of Adjustment held a public hearing at which John Fazio and members of the public testified under oath. (*DDSOF*, Ex. 5). In advance of the hearing, Whittemore conducted a random survey of the wedding practices of fourteen area churches and found that no church charged more than $1,500 for rental costs, only four allowed alcohol, and that the number of weddings

administered per year ranged from four to twenty. (*DDSOF*, Ex. 9, Att. D). In contrast, Mesquite Grove charged $5,000 in rental fees, allowed alcohol, and would administer seventy weddings a year on average. *Id.* The Board of Adjustment voted to uphold Whittemore's determination that Mesquite Grove was a commercial wedding venue, and therefore not allowed at the Tanque Verde Property consistent with the zoning code. (*DDSOF*, Ex. 5).

Plaintiffs' claims arise over then-inspector Whittemore's interpretation, and the Board of Adjustment's confirmation, that Mesquite Grove was not a church. Plaintiffs assert the following claims: (1) deprivation of Mesquite Grove's free exercise of religion under the First Amendment, (2) interference with contract, (3) interference with business expectancy, (4) inverse condemnation, and (5) violation of RLUIPA. (Doc 1-29).

Plaintiffs filed a motion for partial summary judgment on their RLUIPA claim. (Doc. 48). Defendant Carmine DeBonis, Tina Whittemore's successor, filed a response in opposition to Plaintiffs' motion and filed a cross-motion for partial summary judgment on the RLUIPA claim. (Doc. 75). Defendant Pima County Board of Adjustment did the same. (Doc. 77). Defendants DeBonis and the Board of Adjustment subsequently moved for summary judgment on the remainder of the claims. (Docs. 89, 91).

II. Legal Standard

The purpose of summary judgment is to avoid unnecessary trials where the moving party can establish that there is no dispute over the relevant material facts.

Northwest Motorcycle Ass'n v. U.S. Dep't of Agriculture, 18 F.3d 1468, 1471 (9th Cir.1994). Rule 56(a) mandates summary judgment "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In evaluating a motion for summary judgment, all justifiable inferences must be viewed "in the light most favorable to the non-moving party." *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir.2001).

Initially, the moving party bears the burden of informing the court of the basis for its motion, together with evidence demonstrating the absence of any genuine issue of material fact. *Celotex*, 477 U.S. at 323. The non-moving party must then "go beyond the pleadings and identify facts which show a genuine issue for trial." *Id*. To avoid summary judgment, the opposition "must cite to the record in support of the allegations made in the pleadings to demonstrate that a genuine controversy requiring adjudication by a trier of fact exists." *Taybron v. City of San Francisco*, 341 F.3d 957, 960 (9th Cir.2003).

III. Discussion

A. Federal Claims

1. The Pima County Board of Adjustment is a Non-Jural Entity

The capacity to sue or be sued is determined by the law of the state where the court is located. Fed. R. Civ. P. 17(b)(3). Generally, governmental entities have no inherent authority to sue or be sued. *Braillard v. Maricopa County*, 224 Ariz. 481,

487, 232 P.3d 1263, 1269 (App. 2010); *see also* 56 Am. Jur. 2d Municipal Corporations, Etc. § 746. ("The proper party in actions involving municipalities, counties, and towns, and their departments and subordinate entities, is the municipality, or county, or town itself, and generally subordinate entities do not have the capacity to sue or be sued apart from an action against the municipality, county, or town of which they are a part."). The authority to sue or be sued must be provided by the entity's enabling statute. *Schwartz v. Superior Court*, 186 Ariz. 617, 619, 925 P.2d 1068, 1070 (App.1996). Therefore, a governmental entity may only sue or be sued if the legislature granted the authority by statute. *See Kimball v. Shofstall*, 17 Ariz.App. 11, 13, 494 P.2d 1357, 1359 (1972). While Pima County may be sued through the Board of Supervisors, as expressly provided by Arizona Revised Statute 11-201(a)(1), no such power has been conferred upon the Pima County Board of Adjustment. *See* A.R.S. § 11-816.

The Board of Adjustment is established at the Board of Supervisors' discretion and is given limited authority by statute. *See* A.R.S. § 11-816(a). The authority to sue or be sued is not catalogued in the statute's enumeration of the Board of Adjustment's powers. The authority granted to the Board of Adjustment is as follows:

> 1. Interpret the zoning ordinance if the meaning of any word, phrase or section is in doubt, if there is dispute between the appellant and enforcing officer or if the location of a district boundary is in doubt.
>
> 2. Allow a variance from the terms of the ordinance if, owing to peculiar conditions, a strict interpretation would work an unnecessary

> hardship and if in granting the variance the general intent and purposes of the zoning ordinance will be preserved.
>
> 3. If authorized by the board of supervisors, review decisions by a hearing officer who hears and determines zoning violations pursuant to § 11-815 and render a final decision.

Because the Pima County Board of Adjustment has been given no power to sue or be sued, it is a non-jural entity and must be dismissed from this case.

2. Quasi-Judicial Immunity

The rationales underlying quasi-judicial immunity and judicial immunity are identical: "if the losing party in one forum were allowed to maintain a civil action against the decision-maker in another forum, it would threaten the decision-maker's independence." *Buckles v. King County*, 191 F.3d 1127, 1134 (9th Cir. 1999). When public officials perform functions analogous to those performed by a judge, the same absolute immunity is extended to the public official. *Butz v. Economou*, 438 U.S. 478, 511 (1978). The public official asserting absolute immunity bears the burden of demonstrating the performance of functions analogous to those performed by judges. *Id.* at 506.

The following factors are to be considered when determining whether a public official qualified for quasi-judicial immunity: the existence of "an adversarial proceeding, a decision-maker insulated from political influence, a decision based on evidence submitted by the parties, and a decision provided to the parties on all of the issues of fact and law." *Id.* The existence of these factors ensures that adjudications

contain the same safeguards provided by the judicial process. *Buckles v. King County*, 191 F.3d 1127, 1134 (9th Cir. 1999).

The determinations of Tina Whittemore and the Board of Adjustment featured many quasi-judicial safeguards and procedures. There was an adversarial proceeding where opposing parties were able to testify under oath in support of, or against, the proposed land use. The land use determination was then made, in part, by documents produced by John Fazio to inspector Whittemore. The Plaintiffs' were entitled to review of the determination of inspector Whittemore by appeal to the Board of Adjustment, whose ultimate decision was subject to judicial review. *See* A.R.S. § 11-816(c), (d). Finally, the office of inspector is appointed, rather than elected, thereby isolating the inspector from political influence.

The Ninth Circuit has extended quasi-judicial immunity to zoning decision makers, acknowledging that "[l]and use decisions are often contentious and involve conflicting interests and policies." *Buckles v. King County*, 191 F.3d 1127, 1136 (9th Cir. 1999). Because of the contentious nature of land-use determinations, allowing aggrieved parties to maintain suit against land use decisionmakers would undermine the independence required to evenhandedly enforce zoning codes. *See id.* Because the land use determination at issue here was sufficiently analogous to the role performed by the judiciary, inspector DeBonis is immune from suit on Plaintiffs' RLUIPA and §1983 claims.

2. RLUIPA Claim

Even if the Defendants were subject to suit, Plaintiffs' claim under the RLUIPA does not survive summary judgment. The RLUIPA prevents government from imposing a land use regulation "that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution" unless the government can demonstrate that imposition of the burden of the regulation is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 2000cc(a)(1). Even if the Plaintiffs establish that the proposed use of the proposed use of Mesquite Grove as a wedding and reception venue constitutes a "religious exercise," they have not established a triable issue of fact as to whether the County's regulations substantially burdened the religious exercise.

The Plaintiffs bear the burden to prove that the County's land use regulation or denial of a conditional use permit imposed a substantial burden on its religious exercise. *See* 42 U.S.C. § 2000cc-2(b); *Guru Nanak Sikh Soc'y of Yuba City v. County of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006). A substantial burden occurs where a governmental authority places "substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Int'l Church of Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059, 1067 (9th Cir. 2011). IN order to impose a substantial burden, al land use regulation "must be oppressive to a significantly great extent." *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cri. 2004) (internal citations omitted). A substantial burden "must place more than

inconvenience on religious exercise." *Int'l Church of Foursquare Gospel*, 673 F.3d at 1067.

The Ninth Circuit has consistently found a land use regulation to impose a substantial burden where the regulation operates to deprive a church of a suitable site. *See Guru Nanak*, 456 F.3d 978 (substantial burden found where the net effect of zoning board's seemingly arbitrary decisions significantly "lessened the prospect of . . . being able to construct a temple in the future"); *Int'l Church of Foursquare Gospel*, 673 F.3d 1059 (court found it unclear whether suitable alternative existed for a growing church seeking to expand into a large building in an industrial area where zoning code prohibited the construction of a church). However, where a suitable alternative site may exist and the claimant fails to show the absence of any suitable alternatives, the Ninth Circuit has affirmed summary judgment in favor of the restrictions imposed by the governmental regulation. *See San Jose Christian College*, 360 F.3d at 1035 ("while the [zoning] ordinance may have rendered College unable to provide education and/or worship at the Property, there is no evidence in the record demonstrating that College was precluded from using other sites within the city.").

In the present case, the Plaintiffs present no evidence that the church sought out other suitable sites to conduct their desired activities. When asked whether he considered any other sites for Mesquite Grove, John Fazio replied, "No. Mesquite Grove Chapel was named that because of the mesquite forestry that was there, there are no alternative sites. Mesquite Grove Chapel was site specific." (Ex. 1 at 121).

Because John Fazio failed to seek alternative sites, there is nothing in the record that would enable the Court, or any fact-finder, from evaluating whether any suitably-zoned alternative site was available. The mere presence of mesquite trees, which are ubiquitous in Pima County, in and of itself does not serve to make the property so unique as to categorically preclude all other sites from being suitable.

In situations like this, the Ninth Circuit has held that "common sense dictates whether alternate sites are suited and for sale in the City must be considered in determining whether the City's denial of the necessary permits for the desired property constitutes a substantial burden." *Int'l Church of Foursquare Gospel*, 673 F.3d at 1069. Where a party claiming to have been substantially burdened by a land use regulation fails to show the absence of available suitable alternative sites, the Ninth Circuit has affirmed summary judgment in favor of the governmental entity. *See San Jose Christian College*, 360 F.3d 1024. Without such a showing, it cannot be concluded that the governmental regulation in question has placed "more than inconvenience on religious exercise." *Id*. at 1035. As such, the Defendants are entitled to summary judgment on Plaintiffs' claims under the RLUIPA.

B. State Law Claims

1. State Law Immunity

While Arizona also provides quasi-judicial immunity to those performing functions similar to the courts, the application of immunity differs from the federal application. *See Lavit v. Superior Court,* 173 Ariz. 96, 99 (App. 1992). The Arizona Supreme Court has outlined the following reasons for extending judicial immunity:

"(1) the need to save judicial time in defending suits; (2) the need for finality in the resolution of disputes; (3) to prevent deterring competent persons from taking office; (4) to prevent the threat of lawsuit from discouraging independent action; and (5) the existence of adequate procedural safeguards such as change of venue and appellate review." *Id.*

With this policy in mind, Arizona has not been extended as widely as the federal doctrine, and has not been extended outside the context of a court proceeding. *See Lavit v. Superior Court*, 137 Ariz. 96 (Ct. App. 1992) (finding quasi-judicial immunity proper for an independent psychiatrist appointed by the court); *see also Acevedo v. Pima County Adult Probation Dept.*, 142 Ariz. 319 (1984) (extending quasi-judicial immunity to probation officers charged with writing pre-sentence reports). In light of the narrow application of quasi-judicial immunity in Arizona, the Court declines to extend state law immunity to Inspector DeBonis.

2. Interference with Contract and Business Expectancies

Plaintiffs allege an interference with contract arising out of a $600,000 loan made by Debi Fazio to Mesquite Grove and an interference with a business expectancy arising out of a potential agreement with Least of These LLC and Blue Sky Fitness and Recreation for fitness programs for the mentally disabled to be performed at the Mesquite Grove property. Additionally, Plaintiffs assert a claim of interference with a business expectancy arising from lease expectancies from Debi Fazio to perform marriage ceremonies and seminars.

Interference with a business expectancy requires:

(1) The existence of a valid contractual relationship or business expectancy;

(2) Knowledge of the relationship or expectancy on the part of the interferer;

(3) Intentional interference inducing or causing a breach or termination of the relationship or expectancy; and

(4) Resultant damage to the party whose relationship or expectancy has been disrupted.

Wagenseller v. Scottsdale Mem'l Hosp., 710 P.2d 1025, 1041 (1985).

The Plaintiffs failed to show that then-inspector Whittemore had any knowledge of the relationship or expectancies existing between the Plaintiffs and third-parties. Plaintiffs contend that the lease agreement was provided to Tina Whittemore when she requested financial information to make her land-use determination. However, John Fazio does not recall whether he disclosed the contract or potential agreements to Whittemore. None of the information provided to Whittemore contained specific information regarding the terms of the agreements entered into by Mesquite Grove and Debi Fazio (*See* Ex. 4). It is unclear whether the information provided to Whittemore would afford Whittemore actual knowledge of the contracts and expectancies being interfered with.

The owner of Blue Sky Fitness, during deposition, stated that he knew John Fazio and had discussed a potential arrangement for Blue Sky Fitness to use the Mesquite Grove property for their recreation program, but when asked about the specific arrangement with John Fazio, stated "I don't know about the business aspect of it." (Ex. 28 at 12:24-25). While a cognizable business expectancy does not require

certainty, an action for tortious interference with a business relationship requires the existence of a relationship "evidenced by an actual and identifiable understanding or agreement which in all probability would have been completed if the defendant had not interfered." *Dube v. Likins*, 216 Ariz. 406, 414, 167 P.3d 93, 101 (App. 2007).

Assuming arguendo that Whittemore had actual knowledge of the expectancies and contract at issue, the intentional interference with those expectancies must also be improper. *See Wagenseller v. Scottsdale Mem'l Hosp.*, 710 P.2d 1025, 1043 (1985) ("If the interferer is to be held liable for committing a wrong, his liability must be based on more than the act of interference alone.") To be liable for tortious interference, the Plaintiffs must show that the Defendants acted improper as to motive or means. *Id.* Impropriety of interference is determined by the following factors:

(a) the nature of the actor's conduct;

(b) the actor's motive;

(c) the interests of the other with which the actor's conduct interferes;

(d) the interests sought to be advanced by the actor;

(e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other;

(f) the proximity or remoteness of the actor's conduct to the interference; and

(g) the relations between the parties.

Wagenseller v. Scottsdale Mem'l Hosp., 147 Ariz. 370, 387, 710 P.2d 1025, 1042 (1985). The nature of the actor's conduct and the actor's motives are the factors

given the most weight. *Safeway Ins. Co., Inc. v. Guerrero*, 210 Ariz. 5, 12, 106 P.3d 1020, 1027 (2005).

The nature of Tina Whittemore's conduct was not improper. As chief zoning inspector, Whittemore was tasked with the application of county zoning laws, which required inquiry into each proposed land use to ensure the continuing integrity of zoning regulations. Because inquiry into a proposed land use is within the scope of Whittemore's duties, the nature of her conduct does not suggest impropriety.

Additionally, it does not appear Whittemore acted with improper motive. There was no pecuniary advantage to be had by finding the proposed use was not a church. Furthermore, Mesquite Grove's stated interest in opening a church must be weighed against the Defendants' need to adhere to their mandated duty to enforce the application of the zoning code. These are both certainly valid interests, but the preservation of neighborhoods and the safety of residents provided by zoning codes would seem to take precedent over the development interests of individual landowners. Weighing the parties' respective interests does not suggest that Whittemore acted improperly. Because Plaintiffs' failed to demonstrate that then-inspector Whittemore had knowledge of the various contracts allegedly interfered with, and failed to demonstrate that any interference was improper, Inspector DeBonis is entitled to summary judgment on each of Plaintiffs' tortious interference claims.

3. Inverse Condemnation

The Takings Clause of the Fifth Amendment prohibits the government from taking private property for public use without just compensation. *Wonders v. Pima County,* 207 Ariz. 576, 580, 89 P.3d 810, 814 (App. 2004) ("[A] regulation which 'denies all economically beneficial or productive use of land' will require compensation under the Takings Clause.") To determine whether a regulation denies the beneficial or productive use of land, Arizona Courts apply the *Penn Central* factors. *See id; see also Penn Cent. Transp. Co. v. New York,* 438 U.S. 104, 124 (1978). Whether the reduction of value constitutes a compensable taking depends upon "[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations" and the "character of the governmental action." *Penn Cent. Transp. Co. v. New York,* 438 U.S. 104, 124 (1978). The second prong recognizes that a physical invasion of property by the government is more likely to constitute a "taking" than the implementation of a public program that may place a burden on land use in furtherance of the common good. *Id.*

In the present case, there has been no physical invasion of the Plaintiffs' property. The character of the government's action could fairly be described as advancing the public good while incidentally burdening the use of the Plaintiffs' land. The Supreme Court has upheld land-use regulations that "destroyed or adversely affected recognized real property interests" where the "health, safety, morals, or general welfare would be promoted by prohibiting particular contemplated

uses of land." *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 125 (1978). While a wedding event center would likely not compromise the health and morals of the community, there are certainly valid safety concerns raised by the development of a wedding reception business, including increased traffic and the consumption of alcohol by wedding goers.

Furthermore, Plaintiffs have not shown that the regulation had a significant economic impact on their property. The land sold at a trustee's sale for more than the purchase price, and had Plaintiffs elected to keep the property, they would have been entitled to develop the property in a manner consistent with Pima County zoning codes. (Doc. 89 at 4). Where the governmental interference is not physical, promotes the common good, and does not significantly decrease the value of the property in question, a compensable taking has not occurred. In light of these factors, Inspector DeBonis is entitled to summary judgment on Plaintiffs' inverse condemnation claim.

IV. Order

Based on the foregoing,

IT IS ORDERED that Plaintiffs' Motion for Partial Summary Judgment (Doc. 48 and 99) is **denied**;

IT IS FURTHER ORDERED that Defendant Carmine DeBonis Jr.'s Cross-Motion for Summary Judgment on Federal Claims (Doc. 75) is **granted**;

IT IS FURTHER ORDERED that Defendant Board of Adjustment District 4's Partial Motion for Summary Judgment (Doc. 77) is **granted**;

IT IS FURTHER ORDERED that Defendant Carmine DeBonis Jr.'s Motion for Summary Judgment on Land-Use Appeal and Counts I-IV (Doc. 89) is **granted**;

IT IS FURTHER ORDERED that Defendant Board of Adjustment District 4's Motion for Summary Judgment on Counts I through IV (Doc. 91) is **granted**; and

IT IS FURTHER ORDERED that judgment shall be entered in favor of Defendants Board of Adjustment District 4 and Carmine DeBonis, Jr.

Dated this 2nd day of January, 2013.

Jacqueline M. Rateau

Jacqueline M. Rateau
United States Magistrate Judge