

BEFORE THE BERNALILLO COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS

SOUTHWEST ORGANIZING PROJECT,
NEW MEXICO HEALTH EQUITY WORKING
GROUP, and PAJARITO VILLAGE ASSOCIATION,

FILE NOS. CZ-20130009
SPR-20130004

v.

BERNALILLO COUNTY PLANNING COMMISSION

REQUEST FOR RECUSAL AND
ALTERNATIVE MOTION FOR DISQUALIFICATION OF
BERNALILLO COUNTY COMMISSIONER ART DE LA CRUZ

Introduction

The SouthWest Organizing Project, the New Mexico Health Equity Working Group, and the Pajarito Village (referred to collectively as “the Appellants”) hereby request that Bernalillo County Commissioner Art de la Cruz recuse himself from participating in these appeals and in the related appeals pertaining to the proposed Santolina development.

Alternatively, the Appellants hereby move the Bernalillo County Board of County Commissioners to disqualify Bernalillo County Commissioner Art de la Cruz from participating in the proceedings concerning the proposed development.

The Appellants make these alternative requests for relief both as to their appeals, which are cases COA2015-0007/SPR-20130004 and COA2015-0006/CZ-20130009 and as to the proceedings in the other appeals concerning the proposed Santolina development.

Those other cases are:

- the appeal filed by Consensus Planning and John P. Salazar of the Rodey Law Firm (in case COA2015-0005/SPR-20130004);

- the appeal filed by the South Valley Coalition of Neighborhood Associations (in case COA2015-0008/SPR-20130004); and
- the appeal filed by the South Valley Regional Association of Acequias and the Center for Sustainable Systems in case COA2015-0009/SPR-20130004).

These alternative requests for relief are based on the grounds that the members of the Bernalillo County Board of County Commissioners must be without bias in these proceedings, and that Bernalillo County Commissioner Art de la Cruz has demonstrated that he is biased. These alternative requests for relief apply to the appeal concerning the zoning change that is sought for the proposed Santolina development and the appeals concerning the proposed approval of the Santolina development Master Plan.

The Appellants have not had an opportunity to contact other counsel to determine whether this Request for Recusal or Alternative Motion for Disqualification will be opposed, but because of the nature of the Motion, the Appellants presume that it will be opposed.

Argument

- I. Commissioner Art de la Cruz should recuse himself or be disqualified from participating in the appeal concerning the zone change for the proposed Santolina development because he is biased.
 - A. The members of the Bernalillo County Board of County Commissioners must be free of bias in zoning appeals.

The standards of conduct that apply to members of New Mexico boards of county commissioners in zoning proceedings were addressed by the New Mexico Court of Appeals in Los Chavez Community Association v. Valencia County, 2012-NMCA-044, 277 P.3d 475. In that matter, a decision of the Valencia County Board of County Commissioners approving a zone change by a 3-2 vote was challenged on several grounds.

One of those grounds was that the party opposing the zone change was denied due process because one of the members of the Board of County Commissioners who voted for the zone change was a first cousin to one of the individuals who sought the zone change. The Court of Appeals upheld that challenge and invalidated the Valencia County Board of County Commissioners' decision on the zone change, and explained in its opinion the need for the members of boards deciding zoning changes to be free of bias.

The Court of Appeals began its analysis by pointing out that those who sit on boards to decide zoning questions act in a quasi-judicial capacity. 2012-NMCA-044, ¶19. The Court noted that decisions on zoning changes involve determining the rights, duties, or obligations of individuals according to current legal standards, and that members of boards that make those decisions must act like the members of judicial bodies and be bound by ethical standards comparable to those that govern courts. *Id.*

The Court of Appeals also pointed out that the due process clauses of the Fourteenth Amendment to the United States Constitution and the New Mexico Constitution prohibit the deprivation of life, liberty, or property without due process, and that procedural due process requires a tribunal that is free from bias. *Id.* Finally, the Court of Appeals explained that a judge is presumed to be biased if he or she is related to a party to the proceeding. 2012-NMCA-044, ¶21. Based on that analysis, the Court of Appeals overruled the Valencia County Board of County Commissioners' approval of the zone change. 2012-NMCA-044, ¶¶23-24.

B. Commissioner Art de la Cruz has demonstrated that he is biased.

It is difficult to imagine how Commissioner de la Cruz could have expressed his bias about the proposed Santolina development more directly and more publicly. Mr. de la Cruz authored an op-ed piece supporting the proposed Santolina development in the March

23rd edition of the *Albuquerque Journal*, the newspaper with the largest circulation in the state of New Mexico. The entire op-ed is an argument for approval of the proposed development, and its tone and Mr. de la Cruz's position are summarized early in the op-ed.

In the first sentence of the op-ed, Mr. de la Cruz stated:

It is important for the public to know why I and others support thoughtful, well-planned developments in Bernalillo County, such as the proposed Santolina development.

The first sentence of the third paragraph of the op-ed continues to make clear Mr. de la Cruz's position:

Because growth is inevitable, I consider Santolina to be appropriate progress for our county because we will determine what the development will ultimately become.

Albuquerque Journal, March 23, 2015, page A7. (The complete op-ed is attached to this Request/Motion as Exhibit 1.)

Much of the rest of the op-ed is devoted to expressions of Mr. de la Cruz's disagreement with and disparagement of the arguments of those who have expressed concerns about and opposition to the proposed Santolina development. *See, e.g.*, op-ed ¶¶4-10, 12.

There can be no question that Mr. de la Cruz has already made up his mind about the proposed Santolina development. He has stated publicly and in an unambiguous manner that he favors the development and that the arguments against the development lack merit. This is not a case like Los Chavez Community Association v. Valencia County, *supra*, in which the Court of Appeals presumed bias on the part of the Valencia County Commissioner who voted for a zone change sought by her cousin. 2012-NMCA-044, ¶21. Here, the issue is not presumption of bias; rather it is the actual bias that Bernalillo County Commissioner Art de la Cruz has expressed directly and clearly.

C. Commissioner de la Cruz must recuse himself or be disqualified.

Because he has prejudged the requested zone change for the proposed Santolina development, Commissioner de la Cruz must either recuse himself or be disqualified from participating in the hearing and from voting on that requested zone change. In the words of the State Court of Appeals in Chavez Community Association v. Valencia County, *supra*:

Due process requires a neutral and detached judge in the first instance.

2012-NMCA-044, ¶23; quotation marks and citations omitted.

Commissioner de la Cruz has demonstrated that he is neither neutral nor detached, and he therefore must either recuse himself or be disqualified.

II. Commissioner de la Cruz should either recuse himself or be disqualified from the proceedings concerning the proposed Santolina development Master Plan.

The bias demonstrated by Commissioner de la Cruz in his op-ed in the *Albuquerque Journal* also should cause him to recuse himself or to be disqualified from participating in and voting on the proceeding concerning the proposed Santolina Master Plan.

The Appellants are not aware of any New Mexico court decisions addressing directly whether a county commission's approval of a master plan such as that proposed for the Santolina development constitutes a quasi-judicial decision or is a legislative action. However, the New Mexico Supreme Court's explanation of the difference between zoning actions that are quasi-judicial and those that are legislative in nature indicates that the proceedings concerning the Santolina Master Plan are quasi-judicial.

The Supreme Court's explanation of the distinction between these types of actions was enunciated in Albuquerque Commons Partnership v. City Council of the City of Albuquerque, 2008-NMSC-0025, 144 N.M. 99, *rev'd on other grounds*, Albuquerque Commons Partnership v. City Council of the City of Albuquerque, 2011-NMSC-002, 149

N.M. 308. In the 2008 Albuquerque Commons Partnership v. City Council of the City of Albuquerque case, the Supreme Court considered a challenge to the City of Albuquerque's adoption of the 1995 Uptown Sector Plan. One of the issues raised in the challenge was whether the City's adoption of that Plan constituted a quasi-judicial action or a legislative action. Quoting from an earlier State Court of Appeals decision concerning this issue, the Supreme Court stated:

[L]egislative action reflects public policy relating to matters of a permanent or general character, is not usually restricted to identifiable persons or groups, and is usually prospective; quasi-judicial action, on the other hand, generally involves a determination of the rights, duties, or obligations of specific individuals on the basis of the application of currently existing legal standards or policy considerations of past or present facts developed at a hearing conducted for the purpose of resolving the particular interest in question.

2008-NMSC-0025, ¶32; citation omitted.

According to these criteria, the proceedings concerning the proposed Master Plan for the Santolina development are quasi-judicial proceedings. The proceedings are being conducted by the Bernalillo County Board of County Commissioners to determine the rights, duties, and obligations of the developer of the proposed Santolina development and of the other parties that have filed appeals from the County Planning Commission's recommendation concerning that Master Plan. Moreover, the Board of County Commissioners will make its determination on the basis of the Master Plan's compliance or lack of compliance with existing legal requirements set forth in New Mexico law and Bernalillo County ordinances and other governing measures. In addition, the proceedings will include hearings to be conducted on March 25th and 26th for the purpose of considering the appeals that have been filed concerning the proposed Master Plan.

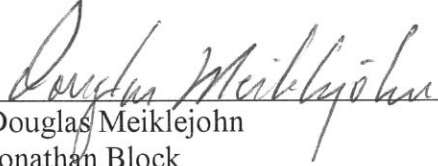
For these reasons, the Board of County Commissioners should conduct the proceedings concerning the Santolina Master Plan as quasi-judicial proceedings, and should require that the decisions in those proceedings be made by impartial members of the Board of County Commissioners. *See Los Chavez Community Association v. Valencia County, supra.* As was demonstrated above, Commissioner de la Cruz has made clear that he is not impartial and that he favors the Santolina development. He therefore should recuse himself or should be disqualified from participating in and voting on the appeals concerning the Santolina Master Plan.

Conclusion

It is clear that Bernalillo County Commissioner Art de la Cruz is not impartial and has prejudged the appeal concerning the zoning change sought by the developer of the proposed Santolina development and the appeals concerning the Santolina Master Plan. Commissioner de la Cruz therefore should recuse himself from participating in and voting on each of those appeals. Finally, if he is not willing to recuse himself, the remaining members of the Board of County Commissioners should disqualify him from participating in and voting on each of those appeals.

Dated: March 24, 2015.

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Certificate of Service

I certify that on March 24, 2015 copies of this Request and Alternative Motion were sent by electronic mail to:

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Santolina development isn't the threat opponents claim

Good planning prevents urban sprawl, and water need is accounted for

BY ART DE LA CRUZ
VICE CHAIR, BERNALILLO COUNTY COMMISSION

It is important for the public to know why I and others support thoughtful, well-planned developments in Bernalillo County, such as the proposed Santolina development. It is important that the county "get the facts out" and dispel the distortions and misinformation being spread by opponents, most notably a group referring to itself as WTF — "What's The Future."

Strong planning, standards and accountability efforts should determine what the future of Bernalillo County and the city of Albuquerque should look like. Presently, Santolina fits this model as a master-planned residential and commercial development.

Because growth is inevitable, I consider Santolina to be appropriate progress for our county because we will determine what the development will ultimately become. Conversely, why would we allow our future to be that of unplanned, smaller hodgepodge growth?

By potentially denying Santolina or others like it, we send the message that new residents are not welcome here. This notion is not realistic because the population will grow and development will occur. Not properly planning for the needed homes, places to work, shop, play and learn would be short-sighted and negligent.

This 50-year project is primarily being opposed for fear of lack of water and fear of urban sprawl. It has been postulated that the development would take all available water, with our *acequias* and river running dry and that we would be left with no drinking or irrigating water.

The truth is this: The Albuquerque Bernalillo County Water Utility Authority, as required by the state engineer, has a water resources management strategy in place that takes future growth into account and can accommodate Santolina within the water utility's existing water rights portfolio.

This revelation has not stopped opponents from spreading fear, especially in the South Valley, which is one of the areas I serve.

With respect to fear of urban sprawl, true urban sprawl only occurs when the growth is unplanned and uncontrolled. It is foolhardy to believe that the state's most populous county will not continue to grow.

Besides the opponents' concerns about available water and urban sprawl, some folks just do not want any growth, period.

Often, these opponents claim that they can only support infill projects, yet there is not enough area to infill in the long term.

Infill efforts, even with reasonable and thoughtful projects, very often face stiff and aggressive opposition by those who claim to support infill growth. And then there are those residents who support infill growth as long as it is not "in my backyard."

Should we abdicate our right to dictate how well-planned growth happens because some don't want to see any growth at all? Bernalillo County staff has made every effort to ensure that every development project in the county's jurisdiction is well-planned, sustainable and attractive. County law also helps to this end by guaranteeing exhaustive public review and input.

The county is dedicated to ensuring smart growth through standards via sector plans. The alternative is to make master-planned developments so difficult to get approved that developers forego Bernalillo County and

seek approvals in our neighboring counties. Should this occur, we will have absolutely no say in the elements of these developments and yet we will experience all the unplanned, unfunded repercussions related to traffic and supporting infrastructure.

Unfortunately, large unbridled developments in our neighboring counties really do fit the definition of urban sprawl and impact us today.

Should the county deny approval of the Santolina development, there is nothing to prevent the owner from selling the land in small parcels to multiple individual owners who have the right to seek any variety of smaller developments, potentially resulting in either a vast quiltwork of ununified projects at best or the well-documented situation at Pajarito Mesa at worst.

I prefer to more thoughtfully and proactively determine the destiny of Bernalillo County's unavoidable and foreseeable growth.

EXHIBIT

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