

SECOND JUDICIAL DISTRICT COURT  
STATE OF NEW MEXICO  
COUNTY OF BERNALILLO

Javier Benavidez, James Santiago Maestas,  
Roberto Roibal, the SouthWest Organizing  
Project, the New Mexico Health Equity Working  
Group, and the Pajarito Village Association,

Appellants/Petitioners,

v.

No. CV - D-202-CV-2015-05363

the Bernalillo County Board of County  
Commissioners, and Art De La Cruz,  
Wayne Johnson, Debbie O'Malley, Maggie  
Hart Stebbins, and Lonnie Talbert, Bernalillo  
County Commissioners,

and

Consensus Planning and Western  
Albuquerque Land Holdings, LLC,

Appellees/Respondents.

NOTICE OF APPEAL AND  
ALTERNATIVE  
PETITION FOR A WRIT OF CERTIORARI

Introduction

The Appellants/Petitioners in this matter seek review of two decisions of the Bernalillo County Board of County Commissioners (“the Board of County Commissioners”). The first decision was a ruling denying the Appellants/Petitioners’ appeal to the Board of County

Commissioners from a determination of the Bernalillo County Planning Commission (“the County Planning Commission”) recommending approval of a zone map amendment for the proposed Santolina development. The second decision was a determination by the Board of County Commissioners approving the zone map amendment for the proposed Santolina development.

During the Board of County Commissioners’ administrative proceedings, the County officials involved asserted that both of the Board’s decisions described above were legislative matters and not quasi-judicial matters. For that reason, there may be a dispute about whether the Board of County Commissioners’ decisions concerning these two matters were decisions by the Board acting as a zoning authority in a quasi-judicial capacity or decisions by the Board acting in a different capacity.

Appeals from the Board of County Commissioners when it acts as a zoning authority are governed by NMSA 1978 sections 3-21-9 and 39-3-1.1 and NMRA 1-074, and are initiated by notices of appeal. Requests for review of the Board of County Commissioners when it acts in another capacity are governed by Article VI sections 2 and 13 of the New Mexico Constitution and NMRA 1-075, and are initiated by petitions for writs of certiorari. For that reason, the Appellants/Petitioners are filing this Notice of Appeal and Alternative Petition for a Writ of Certiorari.

## Notice of Appeal

### I. The parties

The parties involved in these two decisions are the same. The Appellants/Petitioners are: Javier Benavidez, James Santiago Maestas, Roberto Roibal, the SouthWest Organizing Project, including its individual and group members, the New Mexico Health Equity Working Group, including its individual and group members, and the Pajarito Village Association, including its individual and group members (referred to collectively as “the Appellants/ Petitioners”).

The Bernalillo County Appellees/Respondents are the Bernalillo County Board of County Commissioners and its members, who are Art De La Cruz, Wayne Johnson, Debbie O’Malley, Maggie Hart Stebbins, and Lonnie Talbert. (They and the Board of County Commissioners are referred to collectively as “the Board of County Commissioners”).

The private Appellees/Respondents are the entities that sought the zone map amendment at issue in this Notice of Appeal and Alternative Petition for a Writ of Certiorari; they are Consensus Planning and Western Albuquerque Land Holdings, LLC (referred to collectively as “the Santolina Developer”).

### II. The decisions at issue

The Appellants/Petitioners hereby appeal to the District Court for the Second Judicial District from the decision of the Board of County Commissioners that denied the Appellants/Petitioners’ appeal to the Board from the County Planning Commission recommendation (“the Board Zoning Change Appeal Decision”). The Appellants/Petitioners also appeal to the District

Court for the Second Judicial District from the Board of County Commissioners' ruling that approved the zone map amendment for the proposed Santolina development ("the Board Decision Approving the Zone Map Amendment").

A. The Board of County Commissioners' Zoning Change Appeal Decision

The first decision by the Board of County Commissioners denied the Appellants/Petitioners' administrative appeal to the Board from a recommendation of the Bernalillo County Planning Commission to approve the zone map amendment for the proposed Santolina development ("the Santolina Zone Map Amendment"). The Board of County Commissioners voted to deny the Appellants/Petitioners' appeal on May 28, 2015, and a copy of the Board of County Commissioners' Zoning Change Appeal Decision, which is dated June 1, 2015, is attached as Exhibit A.

The Appellants/Petitioners' appeal to the Board of County Commissioners was appeal number CO2015-0006/CZ-20130009, and the language in the Board of County Commissioners' Written Zone Change Appeal Decision denying the Appellants/Petitioners' appeal is on the fourth page of the Decision. It states:

**ACTION: DENIED THE APPEAL CO2015-0006/CZ-20130009 AND CONTINUED THE REQUEST TO THE JUNE 16, 2015 HEARING TO CONSIDER SPR-20130004, CZ-20130009 AND THE DEVELOPMENT AGREEMENT**

Board of County Commissioners' Zoning Change Appeal Decision, fourth page (emphasis in original; the pages of the Board of County Commissioners' decisions in this matter are not

numbered).

The explanation of the Board of County Commissioners' action appears on the same page; it states:

At the May 28, 2015 public hearing, the Board of County Commission [*sic*] denied the [Petitioners'] appeal COA2015-0007/SPR-20130004 for a Planned Communities Level A Master Plan called the Santolina Master Plan and continued the appeal request to the June 16, 2015 hearing to consider APR-2013004, CZ-20130009 and the development agreement.

*Id.*

Although this language refers to the Appellants/Petitioners' administrative appeal concerning the Santolina Master Plan, the appeal number, the indicated date of the Board of County Commissioners' vote, and the language in the "legal description" at the top of the page indicate that the Board's decision at issue addresses the Appellants/Petitioners' appeal concerning the Santolina Zone Map Amendment.

B. The Board of County Commissioners' Decision Approving the Zone Map Amendment

The second decision by the Board of County Commissioners approved the Santolina Zone Map Amendment. The vote by the Board of County Commissioners to approve the Santolina Zone Map Amendment was taken on June 16, 2015, and a copy of the Board of County Commissioners' Decision Approving the Zone Map Amendment, which is dated June 18, 2015, is attached as Exhibit B.

The language in the Board of County Commissioners' Decision Approving the Zone Map

Amendment is on the first page of the Decision. It states:

**ACTION: APPROVED A ZONE MAP AMENDMENT FROM A-1 RURAL AGRICULTURAL TO PLANNED COMMUNITY ZONE IN CONNECTION WITH THE ADOPTED SANTOLINA PALNNED COMMUNITIES LEVEL A MASTER PLAN (ORDINANCE #2015-20)**

Board of County Commissioners' Decision Approving the Zone Map Amendment, first page (emphasis in original).

The explanation of the Board of County Commissioners' action appears on the same page; it states:

At the June 16, 2015 public hearing, the Board of County Commissioners approved the request for a zone map amendment from A-1 Rural Agricultural to Planned Community Zone in connection with the adopted Santolina Planned Communities Level A Master Plan.

*Id.*

III. The District Court has jurisdiction over the Appellants/Petitioners' appeal from the Board of County Commissioners' Zoning Change Appeal Decision.

The Appellants/Petitioners' Notice of Appeal seeking review of the Board of County Commissioners' Zoning Change Appeal Decision is filed pursuant to NMSA 1978 sections 3-21-9 and 39-3-1.1. Those statutes provide that aggrieved parties may seek review in the District Court of zoning decisions by municipal and county officials. In this matter, the Appellants/Petitioners are aggrieved by the Board of County Commissioners Zoning Change Appeal Decision because the Appellants/ Petitioners filed the appeal to the Board of County Commissioners that was denied by the Board's Zoning Change Appeal Decision.

Moreover, the Appellants/Petitioners' Notice of Appeal from the Board of County Commissioners' Zoning Change Appeal Decision is timely pursuant to NMRA 1-074 because it is filed within 30 days of each of the following events:

- the Board of County Commissioners' vote on May 28, 2015 denying the Petitioners/Appellants' appeal from the County Planning Commission recommendation for approval of the zone map amendment (Exhibit A, fourth page); and
- the Board of County Commissioners' Zoning Change Appeal Decision, which denied the Petitioners/Appellants' appeal from the County Planning Commission determination, which is dated June 1, 2015 *Id.*

IV. The District Court has jurisdiction over the Appellants/Petitioners' appeal from the Board of County Commissioners' Decision Approving the Zone Map Amendment.

The Appellants/Petitioners' Notice of Appeal seeking review of the Board of County Commissioners' Decision Approving the Zone Map Amendment is filed pursuant to NMSA 1978 sections 3-21-9 and 39-3-1.1. Those statutes provide that aggrieved parties may seek review in the District Court of zoning decisions by municipal and county officials. In this matter, the Appellants/Petitioners are aggrieved by the Board of County Commissioners' Decision Approving the Zone Map Amendment because they presented arguments against the zone map amendment during the Board's administrative proceedings and because they are adversely affected by the zone map amendment. The Appellants/Petitioners therefore are entitled to review of the Board of County Commissioners' Decision Approving the Zone Map Amendment.

Moreover, the Appellants/Petitioners' Notice of Appeal from the Board of County Commissioners' Decision Approving the Zone Map Amendment is timely pursuant to NMRA 1-074 because it is filed within 30 days of each of the following events:

- the Board of County Commissioners' vote on June 16, 2015 approving the zone map amendment (Exhibit B, first page); and
- the Board of County Commissioners' Decision Approving the Zone Map Amendment, which is dated June 18, 2015. *Id.*

V. The Appellants/Petitioners are entitled to review of the Decisions of the Board of County Commissioners.

As is explained on page 6, the Appellants/Petitioners are aggrieved by the Board of County Commissioners' Zoning Change Appeal Decision and by the Board of County Commissioners' Decision Approving the Zone Map Amendment. Sections 3-21-9 and 39-3-1.1 NMSA 1978 provide that because the Appellants/Petitioners are aggrieved by those Decisions, the Appellants/Petitioners are entitled to review of those Decisions by the District Court.

Moreover, the Appellants/ Petitioners' appeal of those Decisions are timely. The Appellants/Petitioners therefore are entitled to review of those Decisions by the District Court.



## Petition for a Writ of Certiorari

The Appellants/Petitioners hereby petition the New Mexico District Court for the Second Judicial District for a writ of certiorari to review the two Decisions of the Board of County Commissioners described above. The Appellants/Petitioners have addressed each of these Decisions separately.

The Appellants/Petitioners' allegations concerning the Board of County Commissioners' Zoning Change Appeal Decision begin on this page and end on page 15. The Appellants/Petitioners' allegations regarding the Board of County Commissioners' Decision Approving the Zone Map Amendment start on page 15 and finish on page 29.

### VI. Review of the Board of County Commissioners' Zoning Change Appeal Decision

#### A. The parties

The Appellants/Petitioners, the Bernalillo County Appellees/Respondents, and the private Appellees/Respondents are the same as those listed on page 3.

#### B. Jurisdiction

The District Court's jurisdiction is based on Article VI, section 2 of the New Mexico Constitution, which provides that an aggrieved party shall have an absolute right to one appeal and Article VI, section 13 of the New Mexico Constitution, which provides that the District Courts shall have appellate jurisdiction in all cases originating in inferior tribunals in the District Courts' districts. For the reasons explained on page 6, the Appellants/Petitioners are aggrieved by the Board of County Commissioners' Zoning Change Appeal Decision, and the

Appellants/Petitioners therefore are entitled to review of that Board of County Commissioners Decision.

In accordance with NMRA 1-075, and as explained on pages 4-5, this Petition is timely because it is filed within 30 days of:

- the Board of County Commissioners' vote on May 28, 2015 denying the Appellants/Petitioners' appeal of the County Planning Commission's recommendation for approval of the zone map amendment (Exhibit A, fourth page); and
- the Board of County Commissioners' Zoning Change Appeal Decision, which was issued on June 1, 2015 (Exhibit A, first page).

C. The Board of County Commissioners' proceedings

The proceedings before Bernalillo County were initiated by the Santolina Developer's filing of an application for the Santolina zone change. The proposed Santolina zone change was considered first by the County Planning Commission, which made a decision to recommend that the Board of County Commissioners approve the zone change.

Acting for the Appellants/Petitioners, the New Mexico Environmental Law Center filed an appeal (numbered CO2015-0006/CZ-20130009) of that decision to the Board of County Commissioners. The Board held a public hearing concerning the appeal on May 28, 2015. During the hearing, the Appellants/Petitioners presented the appeal, after which agents for the Santolina Developer and Bernalillo County Planning Department staff members presented arguments against the appeal. Following those presentations, one of the members of the Board of

County Commissioners made a motion to deny the appeal. The motion was seconded, and it passed by a vote of 3-2. Exhibit A, fourth page. (Not all of the details set forth in this paragraph and the next paragraph are in the Board of County Commissioners' Decision, but all of them will appear in the administrative record.)

There was no discussion by any members of the Board of County Commissioners about the Appellants/Petitioners' appeal either before or after the motion was made to deny the appeal. Moreover, none of the members of the Board of County Commissioners stated any reasons for denying the appeal. Finally, the Board of County Commissioners' Zoning Change Appeal Decision provides no rationale for the denial of the appeal. Exhibit A, fourth page.

D. The Appellants/Petitioners are entitled to relief.

The Appellants/Petitioners are entitled to have the Board of County Commissioners' Zoning Change Appeal Decision vacated for several reasons, including the following.

1. The Board of County Commissioners has not stated any reasons for its Decision.

The first reason why the District Court should vacate the Board of County Commissioners' Zoning Change Appeal Decision is that the Board of County Commissioners has provided no information whatsoever about the basis or reasons for the Decision. The language in the Decision simply states that "the Board of County Commissioners denied the appeal ...." Exhibit A, fourth page. This failure by the Board of County Commissioners to state reasons for its Decision violates the principle enunciated by New Mexico courts that

administrative agencies must explain the reasons for their decisions.

This principle has been enunciated both by the New Mexico Supreme Court and by the New Mexico Court of Appeals. *See, e.g., Fasken v. Oil Conservation Commission*, 87 N.M. 292, 294, 532 P.2d 588, 590 (N.M. 1975), *Continental Oil Company v. Oil Conservation Commission*, 70 N.M. 310, 321, 373 P.2d 809, 816 (N.M. 1962), *Akel v. Human Services Department*, 106 N.M. 741, 743, 749 P.2d 1120, 1122 (Ct. App. 1987), *cert denied sub nom. New Mexico Human Services Department v. Akel*, 107 N.M. 74, 752 P.2d 789 (N.M. 1988), *City of Roswell v. New Mexico Water Quality Control Commission*, 84 N.M. 561, 565, 505 P.2d 1237, 1241 (Ct. App. 1972), *cert denied sub nom. New Mexico Water Quality Control Commission v. Roswell*, 84 N.M. 560, 505 P.2d 1236 (N.M. 1973).

Because the Board of County Commissioners failed to comply with this well established requirement, the Board's Zoning Change Appeal Decision should be vacated.<sup>1</sup>

2. The Board of County Commissioners' Zoning Change Appeal Decision does not comply with Bernalillo County Resolution 116-86.

Bernalillo County Resolution 116-86 governs zoning changes such as that granted by the Decision.<sup>2</sup> First, the zone map amendment is not consistent with the health, safety, and general welfare of the county. Second, the zone map amendment does not comply with the requirement

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<sup>1</sup> The Appellants/ Petitioners had no opportunity to raise this point before the Board of County Commissioners because it arose when the Board made its Decision.

<sup>2</sup> The Appellants/Petitioners raised this issue before the Board of County Commissioners.

that a land use change not be in significant conflict with adopted elements of the Comprehensive Plan or other County Master Plans and amendments to those Plans. Third, the applicant for the zone map amendment has not demonstrated that the existing zoning is inappropriate. Fourth, the zone map amendment would allow uses of the land involved for purposes that would be harmful for the community.

Moreover, the failure of the Board of County Commissioners' Zoning Change Appeal Decision to comply with Resolution 116-86 is reflected in the Decision. As was explained on page 10, the Decision contains no information at all about either the basis or the reasons for the Decision. The only information is a statement to the effect that the Appellants/ Petitioners' appeal of the County Planning Commission recommendation is denied. There is neither a demonstration nor even an allegation that the denial of the appeal has any basis either in Resolution 116-86 or in the administrative record.

3. The bias of one of the members of the Board of County Commissioners deprived the Appellants/Petitioners of due process.

The third reason why the District Court should vacate the Board's Zoning Change Appeal Decision is that the Board of County Commissioners' administrative proceedings denied the Appellants/Petitioners the due process to which they were entitled.

The Board of County Commissioners' proceedings were conducted to determine whether to deny the Appellants/Petitioners' appeal concerning a zoning matter. For that reason, the proceedings were quasi-judicial proceedings during which the Appellants/ Petitioners were

entitled to procedural due process. See Los Chavez Community Association v. Valencia County, 2012-NMCA-044, ¶19, 277 P.3d 475. Despite that, County Commissioner Art De La Cruz demonstrated his bias in favor of the proposed Santolina development before the Board made its began its hearings in this matter and before the Board made the Decisions at issue here.<sup>3</sup>

The Board of County Commissioners' first public hearing in this matter was conducted on March 25, 2015. In the March 23<sup>rd</sup> edition of the *Albuquerque Journal*, County Commissioner De La Cruz authored an op-ed piece supporting the proposed Santolina development. The op-ed is attached as Exhibit C, and its tone and Commissioner De La Cruz's position are summarized early. In the first sentence, he 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.

Much of the rest of the op-ed is devoted to expressions of Commissioner 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 Commissioner De La Cruz was biased in favor of the proposed Santolina development before the Board of County Commissioners even began its public hearings and before the Board made the Decisions at issue in this matter. Moreover, the Board of County Commissioners' vote denying the Appellants/Petitioners' appeal of the County

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<sup>3</sup> The Appellants/Petitioners made these arguments below.

Planning Recommendation was 3-2. Commissioner De La Cruz's bias therefore was crucial to the Board's Zoning Change Appeal Decision, and that bias deprived the Appellants/Petitioners of their right to an impartial tribunal and therefore of their right to due process. For that reason, the Board of County Commissioners' Zoning Change Appeal Decision should be vacated.

VII. Review of the Board of County Commissioners' Decision Approving the Zone Map Amendment

A. The parties

The Appellants/Petitioners, the Bernalillo County Appellees/Respondents, and the private Appellees/Respondents are the same as those listed on page 3.

B. Jurisdiction

The District Court's jurisdiction is based on Article VI, section 2 of the New Mexico Constitution, which provides that an aggrieved party shall have an absolute right to one appeal and Article VI, section 13 of the New Mexico Constitution, which provides that the District Courts shall have appellate jurisdiction in all cases originating in inferior tribunals in the District Courts' districts. As is explained on page 6, the Appellants/Petitioners are aggrieved by the Board of County Commissioners' Decision Approving the Zone Map Amendment, and the Appellants/ Petitioners therefore are entitled to review of that Board of County Commissioners Decision.

In accordance with NMRA 1-075, and as explained on page 7, this Petition is timely because it is filed within 30 days of:

- the Board of County Commissioners' vote on June 16, 2015 approving the request for a zone map amendment (Exhibit B, first page); and
- the Board of County Commissioners' Decision Approving the Zone Map Amendment, which was issued on June 18, 2015 (*Id.*).

C. The Board of County Commissioners' proceedings

The proceedings before Bernalillo County were initiated by the Santolina Developer's filing of an application for the Santolina zone change. The proposed Santolina zone change was considered first by the County Planning Commission, which made a decision to recommend that the Board of County Commissioners approve the zone change.

Acting for the Appellants/Petitioners, the New Mexico Environmental Law Center filed an appeal (numbered CO2015-0006/CZ-20130009) of that decision to the Board of County Commissioners. Exhibit A, fourth page. The Board conducted a public hearing concerning the Appellants/Petitioners' appeal on May 28, 2015, and denied the appeal following that public hearing.

Subsequently, at a public hearing conducted on June 16, 2015, the Board of County Commissioners approved the zone map amendment. The written decision documenting that action (the Board of County Commissioners' Decision Approving the Zone Map Amendment) was issued on June 18, 2015, and it is attached as Exhibit B. Although this is not reflected in the Board of County Commissioners' Decision Approving the Zone Map Amendment, the vote on the motion to approve the zone map amendment was 3-2.



D. The Appellants/Petitioners are entitled to relief.

The Appellants/Petitioners are entitled to have the Board of County Commissioners' Zoning Change Appeal Decision vacated for several reasons, including the following.

1. The Board of County Commissioners has not cited anything in the administrative record or provided any analysis to support its Decision Approving the Zone Map Amendment.

The New Mexico Court of Appeals has made clear that agencies must base their decisions on information in the record before them. See Fasken v. Oil Conservation Commission, 87 N.M. 292, 294, 532 P.2d 588, 590 (Ct. App. 1975) and City of Roswell v. New Mexico Water Quality Control Commission, 84 N.M. 561, 564-565, 505 P.2d 1237, 1240-1241 (Ct. App. 1972), *cert denied sub nom. New Mexico Water Quality Control Commission v. Roswell*, 84 N.M. 560, 505 P.2d 1236 (N.M. 1973). In this matter, however, nothing in the Findings asserted to support the Board of County Commissioners' Decision Approving the Zone Map Amendment explains how that Decision is justified by the record of the Board's administrative proceeding. There also is no analysis to support the conclusions that are asserted in that Decision.

The only three Findings that address the requirements that must be met for proposed zoning changes are Findings two, seven, and eight. Finding #2 asserts that the request for approval of the amendment to the zone map has been submitted in accordance with section 19.5 of the Bernalillo County Zoning Code and that development of the Santolina property will take place in accordance with that section. There is nothing in Finding #2, however, to indicate what, if anything, in the administrative record supports either of these assertions. There also is no

analysis of section 19.5 or any explanation of why the zone change will take place in accordance with that section. In other words, Finding #2 consists of an unsupported conclusion only. There is nothing in that Finding to demonstrate that its conclusion is supported either by analysis or by material in the record.

Finding #7 is similar. It includes three allegations. The first is that the request for the zone map amendment is consistent with the Albuquerque/Bernalillo County Comprehensive Plan policies for master planned communities. The second is that the request has demonstrated that the existing zoning on the property in question is no longer appropriate. And the third is that the request has demonstrated that the proposed Santolina development is more advantageous to the community because it furthers and implements the plans and goals of the Planned Communities Criteria and the County Comprehensive Plan. Board of County Commissioners' Decision Approving the Zone Map Amendment, third page. However, nothing in Finding #7 provides any information to indicate where in the record any of these demonstrations is presented. Finding #7 also does not provide any analysis of its conclusions. There is no information, for example, about what policies in the Comprehensive Plan and the Planned Communities Criteria have been reviewed for consistency with the request for the zone map amendment or how that request demonstrated that consistency. Like Finding #2, Finding #7 presents an unsupported conclusion only.

The same is true of Finding #8, which is the third Finding that addresses criteria in Resolution 116-86 for zone map amendments. Finding #8 simply repeats one of the

requirements of Resolution 116-86 – that a zone map amendment must be consistent with the health, safety, and general welfare of the County residents. There is nothing to indicate what that criterion means or how it is applied to the zone map amendment for the proposed Santolina development; there also is no information to indicate what, if anything, in the record supports the conclusion that this zone map amendment complies with that criterion.

None of these three Findings provides any analytical support or record support for the proposition that the zone map amendment complies with applicable requirements. Moreover, none of the other Findings cited to support the Board of County Commissioners' Decision Approving the Zone Map Amendment provides either type of support:

- Finding #1 describes the request for the zone map amendment;
- Finding #3 explains that the request for the zone map amendment was submitted in conjunction with the request for approval of the Santolina Master Plan;
- Finding #4 provides the anticipated time period for the proposed Santolina development, and asserts (without basis) that the proposed development is responsive to growth that is expected to occur;
- Finding #5 is a description of the Santolina Master Plan and the proposed zoning for the area covered by the Plan; and
- Finding #6 presents allegations about the Santolina Master Plan.

The language of the Board of County Commissioners' Decision Approving the Zone Map Amendment and the Findings that are cited in support of that Decision make clear that the

Decision is not based on information from the record of the Board's administrative proceedings. Because the Board of County Commissioners did not comply with the established principle that its rulings must be based on the record, the Board's Decision Approving the Zone Map Amendment should be vacated.

2. The request for the Santolina zone map amendment does not comply with the requirements of Bernalillo County Resolution 116-86.

The second reason why the Board of County Commissioners' Decision Approving the Zone Map Amendment should be vacated is that the request for the zone map amendment does not comply with the requirements for zone map amendments established by the Bernalillo County Resolution 116-86.<sup>4</sup> Specifically, Resolution 116-86 establishes several requirements that must be met for a proposed zone map amendment. They include the following.

- A proposed amendment must be consistent with the health, safety, and general welfare of the County (Resolution 116-86, §1.A)
- A proposed land use change must not be in significant conflict with the Comprehensive Plan or other County Master Plans (*Id.*, §1.C);
- The applicant for the zoning change must demonstrate that the existing zoning is inappropriate because:
  - o An error was made when the original zone map was created; or

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<sup>4</sup> The Appellants/Petitioners raised this point before the Board of County Commissioners.

- Changes in the neighborhood conditions have made the existing zoning no longer appropriate; or
  - A different zoning is more advantageous to the community as articulated in the Comprehensive Plan or other County Master Plan, even if neither of the two preceding subsections applies (*Id.*, § 1.E);
- A proposed land use change will not be approved where some of the uses permitted by the change would be harmful to adjacent property, the neighborhood, or the community. *Id.*, § 1.F.

The zone map amendment proposed for the Santolina development does not meet any of these requirements.<sup>5</sup>

- a. The zone map amendment is not consistent with the health, safety, and welfare of Bernalillo county.

The Board of County Commissioners' Decision Approving the Zone Map Amendment asserts that the request for the zoning change is consistent with the health, welfare, and safety of the county. Decision, third page. However, the only Finding that addresses this issue is Finding #8, which simply alleges without support or reference to the administrative record that the request for the zoning change meets this requirement. In fact, the information in the record

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<sup>5</sup> These arguments are spelled out in the Appellants/Petitioners' filings in the Board's proceedings concerning the zone map amendment and the Santolina Level A Master Plan.

indicates that the application for the zone change is inconsistent with the county's welfare, safety, and health in at least the following three ways.

- i. There is not water available to serve the proposed Santolina development.

The administrative record before the Board of County Commissioners indicates in two ways that there is not sufficient water to serve the proposed Santolina development. First, contrary to the assertions by the Santolina Developer, the Albuquerque Bernalillo County Water Utility Authority ("the Water Authority") has not agreed to provide water for the proposed development. The letter cited by the Santolina developer to support its assertion that the Water Authority has agreed to provide water for the proposed development in fact does not indicate that either water rights or water are available.

Second, the Water Authority's own 2007 Water Resources Management Strategy and other material in the record indicate that there is not water available for the proposed development. The other material in the record indicating the unavailability of water includes a citation to a presentation made in July, 2014 by Bruce Thomson to the effect that water resources in the Middle Rio Grande are over-allocated by approximately 40 acre-feet per year and the testimony presented during a Board of County Commissioners' public hearing by Norm Gaume. Mr. Gaume's testimony is particularly compelling not only because of his extensive water expertise but also because he was subject to cross-examination by the members of the Board of County Commissioners.

- ii. Construction of a planned community on the sandy soils in the area would cause adverse health effects.

The information in the record establishes that the soils in the area covered by the zone map amendment consist of erodible sand dunes. In addition, other material in the record indicates that construction of a planned community at the proposed Santolina development site would result in blowing sand that can contribute to asthma and other respiratory illnesses. For that reason, the zone map amendment that would allow such construction is inconsistent with the health, safety, and welfare of the county.

- iii. The proposed Santolina development would most likely cause net expense to Bernalillo County and the City of Albuquerque.

There were several analyses presented to the Board of County Commissioners about whether the proposed Santolina development would cause net expense to local governments, but the most realistic analysis indicates that it is not likely that the development could be conducted without net expense to those governments. That analysis was completed by Ph.D. economist Kelly O'Donnell, and several of the most important points in her analysis were the following.

- New Mexico's working population is shrinking in large part because the economy here cannot sustain enough good jobs to keep working people here.
- According to the Bureau of Business and Economic Research and the Mid-Region Council of Governments, only about 7,700 new jobs will be created in the area covered by the proposed Santolina development by the year 2035 (as opposed to the 25,000 new

jobs predicted by the Santolina Developer).

- According to an analysis of 2013 census data for western Bernalillo county, about two-thirds of the people who moved there did so from other locations within the county, and the majority of the remaining one third of those people moved to the west side of Bernalillo county from counties surrounding Bernalillo county. This means that the Santolina Developer's prediction of tax revenue that would be created by the proposed Santolina development are unrealistically high.
- Finally, the Santolina Developer's estimates of Bernalillo County's costs do not include any expenditures for new infrastructure, infrastructure maintenance, or open space acquisition, even though the Santolina Level A Master Plan appears to assume that the County would acquire, develop, and maintain open space for the development. Even more importantly, the Master Plan does not consider the costs that will be incurred for transportation and water.

- b. The zone map amendment is in significant conflict with adopted elements of the Comprehensive Plan.

The zone map amendment was requested for the purpose of allowing the Santolina Developer to proceed with the proposed Santolina development. But the Santolina Developer has failed to comply with the Planned Communities Criteria that must be met for approval of the Santolina Level A Master Plan. The clearest example of this is the failure to meet the Planned Communities Criteria requirement for demonstrating availability of water. The Planned



Communities Criteria mandate that a level A master plan identify depth to groundwater, provide information about proximity to production wells, and demonstrate legal and physical availability of water, including information about water quantity and quality. Planned Communities Criteria, §5.C.6. None of this information is provided in the Santolina Level A Master Plan or in other documents that support the application for the zone map amendment.

- c. The Santolina Developer has not demonstrated that the existing zoning is inappropriate.

Resolution 116-86 provides that there must be a showing that the existing zoning is inappropriate either because there was an error in the original zoning or changed neighborhood conditions have made the new zoning more appropriate, or because a different category is more advantageous to the community even if neither of the first two conditions applies. Here, there has been no showing or even allegation by the Santolina Developer that the original zoning was an error. The Santolina Developer also has not shown that the neighborhood where Santolina would be located has changed in such a way that the new zoning is preferable. Finally, as is explained above, the new zoning would be less, not more, advantageous to the community. The Santolina Developer therefore has not met the burden of showing that the existing zoning should be changed.

- d. The zone map amendment is harmful to the neighborhood and the community.

As is explained above, the proposed Santolina development would adversely affect Bernalillo county because of the proposed development's use of water, the impacts that its

construction would have on air quality, and the net expense that the development would probably cause the County and the City of Albuquerque. For those and other reasons, the zone map amendment that is designed to facilitate the Santolina development would be harmful to the Bernalillo county community.

For all of these reasons, the Board of County Commissioners Decision Approving the Zone Map Amendment violated Bernalillo County Resolution 116-86, and that Decision should be vacated.

3. The Appellants/Petitioners were deprived of the procedural due process to which they were entitled by the bias of two of the members of the Board of County Commissioners.

The third reason why the District Court should vacate the Board of County Commissioners' Decision Approving the Zone Map Amendment is that the conduct of the Board of County Commissioners' administrative proceedings denied the Appellants/Petitioners the due process to which they were entitled.

As is explained at pages 13-14, The Board of County Commissioners' proceedings were quasi-judicial proceedings to determine a zoning issue, and the Appellants/ Petitioners were entitled to procedural due process in those proceedings. See Los Chavez Community Association v. Valencia County, 2012-NMCA-044, ¶19, 277 P.3d 475. As is also explained, however, the Appellants/Petitioners were denied that due process because of the bias of County Commissioners Art De La Cruz and Wayne Johnson.

- a. Commissioner Art De La Cruz demonstrated his bias in favor of the proposed Santolina development before the Board of County Commissioners began its hearings and before the Board made the Decisions at issue here.

Mr. De La Cruz authored an op-ed in the *Albuquerque Journal* before the Board of County Commissioners' hearings began, and before the Board made either of the Decisions at issue in this matter, in which he publicly expressed his support for the proposed Santolina development. As is indicated on Commissioner De La Cruz's op-ed (which is attached as exhibit C), it was published on March 23, 2015, but the Board of County Commissioners' hearings in this matter did not begin until March 25, 2015. Mr. De La Cruz therefore had made up his mind about the proposed Santolina development before he heard any of the evidence presented during those hearings.

Moreover, the Board of County Commissioners approved the Santolina zone map amendment by a vote of 3-2, and Mr. De La Cruz voted in the majority. His bias therefore was critical to the Board of County Commissioners' Decision Approving the Zone Map Amendment. For that reason, the Board of County Commissioners' Decision Approving the Zone Map Amendment should be vacated.

- b. Commissioner Wayne Johnson demonstrated his bias in favor of the proposed Santolina development before the Board of County Commissioners voted to approve the zone map amendment.

The Board of County Commissioners heard public testimony concerning the proposed Santolina development on June 16, 2015, and then voted in the same hearing to approve the

Santolina Zone Map Amendment. On June 14, 2015, the *Albuquerque Journal* published an op-ed by Commissioner Wayne Johnson in which he demonstrated his bias in favor of the proposed Santolina development. (The op-ed is attached as exhibit D.) The entire op-ed is an argument for approval of the proposed Santolina development, and Mr. Johnson states his position quite clearly:

A failure to plan is a plan to fail. From small family businesses to large corporations, leaders realize that you have to know where you're going and have an idea how to get there.

...

The Santolina Master Plan is one such plan.

...

If you're concerned about water and sprawl, the Santolina Master Plan provides a more attractive alternative to piecemeal development.

Exhibit D, ¶¶1, 3, 13.

Commissioner Johnson clearly prejudged the proposed Santolina development before the conclusion of the public hearings concerning the development, demonstrating his bias in favor of the proposed development. That bias deprived the Appellants/Petitioners of the impartial tribunal to which they were entitled, thereby depriving them of procedural due process. Moreover, the Board of County Commissioners approved the zone map amendment by a 3-2 vote, and Commissioner Johnson provided one of the three votes in favor of the amendment. His bias in favor of the proposed Santolina development therefore was critical to the approval of the zone map amendment.

For that reason, the Board of County Commissioners' Decision Approving the Zone Map

Amendment should be vacated.

VIII. Claim for relief

For the reasons outlined above, the Appellants/Petitioners request that the Court:

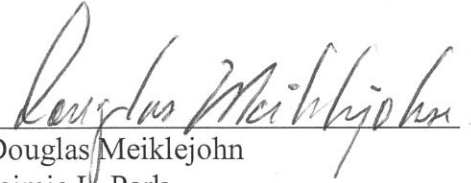
- A. Vacate the Board of County Commissioners' Zoning Change Appeal Decision;
- B. Vacate the Board of County Commissioners' Decision Approving the Zone Map

Amendment; and

- C. Grant the Appellants/Petitioners such other relief as is appropriate.

Dated: June 26, 2015.

NEW MEXICO  
ENVIRONMENTAL LAW CENTER



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Jaimie L. Park

Eric Jantz

Jon Block

1405 Luisa Street, Suite 5

Santa Fe, N.M. 87505

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[dmeiklejohn@nmelc.org](mailto:dmeiklejohn@nmelc.org)

[jpark@nmelc.org](mailto:jpark@nmelc.org)

Attorneys for the Appellants/Petitioners

Certificate of Service

I certify that on June 26, 2015 copies of this Notice of Appeal and Alternative Petition for a Writ of Certiorari were sent by electronic mail and first class mail to:

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Michael I. Garcia  
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Bernalillo County  
Bernalillo County Attorney's Office  
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Attorney for the South Valley Coalition  
of Neighborhood Associations

John P. Salazar  
RODEY, DICKASON, SLOAN, AKIN  
& ROBB, P.A.  
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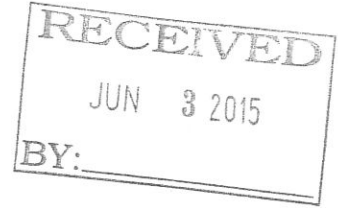
For the South Valley Regional Association of  
Acequias and the Center for Social  
Sustainable Systems

  
\_\_\_\_\_  
Douglas Meiklejohn



County of Bernalillo  
State of New Mexico

Planning & Development Services  
111 Union Square SE, Suite 100  
Albuquerque, New Mexico 87102  
Office: (505) 314-0350  
www.berncogov/zoning-building-and-planning/



NOTIFICATION OF DECISION  
BOARD OF COUNTY COMMISSIONERS

June 1, 2015

COMMISSIONERS

- Maggie Hart Stebbins, Chair  
District 3
- Art De La Cruz, Vice Chair  
District 2
- Debbie O'Malley, Member  
District 1
- Lonnie C. Talbert, Member  
District 4
- Wayne A. Johnson, Member  
District 5

COUNTY MANAGER

Tom Zdunek

ELECTED OFFICIALS

- Tanya R. Giddings  
Assessor
- Maggie Toulouse Oliver  
Clerk
- Willow Misty Parks  
Probate Judge
- Manuel Gonzales III  
Sheriff
- Manny Ortiz  
Treasurer

Western Albuquerque Land Holdings  
P. O. Box 56790  
Albuquerque, NM 87187

SUBJECT: FILE NO: CO2015-0005/SPR-20130004

LEGAL DESCRIPTION:

John P. Salazar of the Rodey Law Firm, agent for Western Albuquerque Land Holdings LLC, appeals the recommendation of the County Planning Commission of specific findings and conditions for approval of a Planned Communities Level A Master Plan called the Santolina Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,700 acres, generally zoned A-1 Rural Agricultural (Original request submitted by Consensus Planning, agent for Western Albuquerque Land Holdings, Youth Development, Inc., and Central New Mexico Community College, and Martin Eckert, agent for Albuquerque Public Schools).

ACTION:

**BOARD OF COUNTY COMMISSIONERS ACCEPTED THE  
REQUEST TO WITHDRAW THE APPEAL CO2015-0005/ SPR-  
20130004**

To Whom It May Concern:

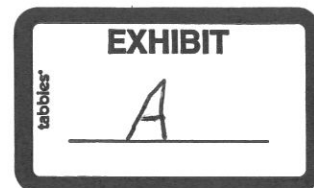
At the May 28, 2015 public hearing, the Board of County Commissioners accepted the request to withdraw the appeal CO2015-0005/SPR-2013004 for a Planned Communities Level A Master Plan called the Santolina Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,700 acres, generally zoned A-1 Rural Agricultural.

Sincerely,

*ENRICO GRADI*

Enrico Gradi  
Community Development Manager

EG/fs





*County of Bernalillo*  
*State of New Mexico*

*Planning & Development Services*

*111 Union Square SE, Suite 100*

*Albuquerque, New Mexico 87102*

*Office: (505) 314-0350*

*[www.bernco.gov/zoning-building-and-planning/](http://www.bernco.gov/zoning-building-and-planning/)*

**NOTIFICATION OF DECISION**  
**BOARD OF COUNTY COMMISSIONERS**

June 1, 2015

**COMMISSIONERS**

Maggie Hart Stebbins, Chair  
District 3

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Lonnie C. Talbert, Member  
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Wayne A. Johnson, Member  
District 5

**COUNTY MANAGER**

Tom Zdunek

**ELECTED OFFICIALS**

Tanya R. Giddings  
Assessor

Maggie Toulouse Oliver  
Clerk

Willow Misty Parks  
Probate Judge

Manuel Gonzales III  
Sheriff

Manny Ortiz  
Treasurer

Western Albuquerque Land Holdings  
P. O. Box 56790  
Albuquerque, NM 87187

SUBJECT: FILE NO: CO2015-0008/SPR-20130004

**LEGAL DESCRIPTION:**

South Valley Coalition of Neighborhood Associations appeals the decision of the County Planning Commission to recommend approval of a Planned Communities Level A Master Plan called the Santolina Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,700 acres, generally zoned A-1 Rural Agricultural (Original request submitted by Consensus Planning, agent for Western Albuquerque Land Holdings, Youth Development, Inc. and Central New Mexico Community College, and Martin Eckert, agent for Albuquerque Public Schools).

**ACTION:**

**DENIED THE APPEAL CO2015-0008/ SPR-20130004 AND  
CONTINUED THE REQUEST TO THE JUNE 16, 2015  
HEARING TO CONSIDER SPR-20130004, CZ-20130009 AND  
THE DEVELOPMENT AGREEMENT**

To Whom It May Concern:

At the May 28, 2015 public hearing, the Board of County Commission denied the appeal CO2015-0008/SPR-2013004 for a Planned Communities Level A Master Plan called the Santolina Master Plan and continued the request to the June 16, 2015 hearing to consider SPR-2013004, CZ-20130009 and the development agreement. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,700 acres, generally zoned A-1 Rural Agricultural.

Sincerely,

*ENRICO GRADI*

Enrico Gradi  
Community Development Manager

EG/fs





*County of Bernalillo*  
*State of New Mexico*

*Planning & Development Services*  
*111 Union Square SE, Suite 100*  
*Albuquerque, New Mexico 87102*  
*Office: (505) 314-0350*  
[www.berncoco.gov/zoning-building-and-planning/](http://www.berncoco.gov/zoning-building-and-planning/)

**NOTIFICATION OF DECISION**  
**BOARD OF COUNTY COMMISSIONERS**

June 1, 2015

**COMMISSIONERS**

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Clerk

Willow Misty Parks  
Probate Judge

Manuel Gonzales III  
Sheriff

Manny Ortiz  
Treasurer

Western Albuquerque Land Holdings  
P. O. Box 56790  
Albuquerque, NM 87187

SUBJECT: FILE NO: CO2015-0009/ SPR-20130004

**LEGAL DESCRIPTION:**

South Valley Regional Association of Acequias and the Center for Sustainable Systems appeals the decision of the County Planning Commission to recommend approval of a Planned Communities Level A Master Plan called the Santolina Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,700 acres, generally zoned A-1 Rural Agricultural (Original request submitted by Consensus Planning, agent for Western Albuquerque Land Holdings, Youth Development, Inc., and Central New Mexico Community College, and Martin Eckert, agent for Albuquerque Public Schools).

**ACTION:**

**DENIED THE APPEAL CO2015-0009/ SPR-20130004 AND  
CONTINUED THE REQUEST TO THE JUNE 16, 2015  
HEARING TO CONSIDER SPR-20130004, CZ-20130009 AND  
THE DEVELOPMENT AGREEMENT**

**To Whom It May Concern:**

At the May 28, 2015 public hearing, the Board of County Commission denied the appeal CO2015-0009/SPR-2013004 for a Planned Communities Level A Master Plan called the Santolina Master Plan and continued the request to the June 16, 2015 hearing to consider SPR-2013004, CZ-20130009 and the development agreement. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,700 acres, generally zoned A-1 Rural Agricultural.

Sincerely,

**ENRICO GRADI**

Enrico Gradi  
Community Development Manager



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*State of New Mexico*

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**NOTIFICATION OF DECISION**  
**BOARD OF COUNTY COMMISSIONERS**

June 1, 2015

**COMMISSIONERS**

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Probate Judge

Manuel Gonzales III  
Sheriff

Manny Ortiz  
Treasurer

Western Albuquerque Land Holdings  
P. O. Box 56790  
Albuquerque, NM 87187

SUBJECT: FILE NO: CO2015-0006/CZ-20130009

**LEGAL DESCRIPTION:**

New Mexico Environmental Law Center, agent for Southwest Organizing Project, New Mexico Health Equity Working Group, and Pajarito Village Neighborhood Association, appeals the decision of the County Planning Commission to recommend approval of a zone map amendment from A-1 Rural Agricultural to Planned Community Zone in connection with the proposed Santolina Planned Communities Level A Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,700 acres, generally zoned A-1 Rural Agricultural (Original request submitted by Consensus Planning, agent for Western Albuquerque Land Holdings, Youth Development, Inc., and Central New Mexico Community College, and Martin Eckert, agent for Albuquerque Public Schools).

**ACTION: DENIED THE APPEAL CO2015-0006/ CZ-20130009 AND  
CONTINUED THE REQUEST TO THE JUNE 16, 2015  
HEARING TO CONSIDER SPR-20130004, CZ-20130009 AND  
THE DEVELOPMENT AGREEMENT**

To Whom It May Concern:

At the May 28, 2015 public hearing, the Board of County Commission denied the appeal CO2015-0006/CZ-2013009 for a Planned Communities Level A Master Plan called the Santolina Master Plan and continued the request to the June 16, 2015 hearing to consider SPR-2013004, CZ-20130009 and the development agreement. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,700 acres, generally zoned A-1 Rural Agricultural.

Sincerely,

*ENRICO GRADI*

Enrico Gradi

Community Development Manager

EG/fs



# County of Bernalillo

## State of New Mexico

Planning and Development Services  
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### NOTIFICATION OF DECISION BOARD OF COUNTY COMMISSIONERS

#### COMMISSIONERS

Maggie Hart Stebbins, Chair  
District 3

Art De La Cruz, Vice Chair  
District 2

Debbie O'Malley, Member  
District 1

Lonnie C. Talbert, Member  
District 4

Wayne A. Johnson, Member  
District 5

June 1, 2015

Western Albuquerque Land Holdings  
P. O. Box 56790  
Albuquerque, NM 87187

SUBJECT: FILE NO: SPR-20130004 & CZ-20130009

#### LEGAL DESCRIPTION:

##### **SPR-20130004**

Consensus Planning and John P. Salazar of the Rodey Law Firm, agents for Western Albuquerque Land Holdings, Youth Development, Inc., and Central New Mexico Community College and Martin Eckert, agent for Albuquerque Public Schools is proposing a Planned Communities Level A Master Plan called the Santolina Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,700 acres, generally zoned A-1 Rural Agricultural (Original request submitted by Consensus Planning, agent for Western Albuquerque Land Holdings, Youth Development, Inc., and Central New Mexico Community College, and Martin Eckert, agent for Albuquerque Public Schools)

##### **CZ-20130009**

Consensus Planning and John P. Salazar of the Rodey Law Firm, agents for Western Albuquerque Land Holdings, Youth Development, Inc., and Central New Mexico Community College and Martin Eckert, agent for Albuquerque Public Schools requests a zone map amendment from A-1 Rural Agricultural to Planned Community Zone in connection with the proposed Santolina Planned Communities Level A Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico, and containing approximately 13,700 acres, generally zoned A-1 Rural Agricultural (Original request submitted by Consensus Planning, agent for Western Albuquerque Land Holdings, Youth Development, Inc. and Central New Mexico Community College, and Martin Eckert, agent for Albuquerque Public Schools)

**Continued to the June 16, 2015 hearing at 1:00 pm, to allow the Board of County Commission to consider SPR-20130004, CZ-20130009 and the Development Agreement.**

If you have any questions, please feel free to contact Catherine VerEecke directly at 314-0387

#### COUNTY MANAGER

Tom Zdunek

#### ELECTED OFFICIALS

Tanya R. Giddings  
Assessor

Maggie Toulouse Oliver  
Clerk

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Probate Judge

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Manny Ortiz  
Treasurer

Sincerely,

ENRICO GRADI

Enrico Gradi

Community Development Manager

EG/fs

CO2015-0005/SPR-20130004  
CO2015-0008/SPR-20130004  
CO2015-0009/SPR-20130004  
CO2015-0006/CZ-20130009

cc: File

Kevin Grovet, Public Work  
Christi L. Tanner, Public Works  
Raeleen Marie Bierner, Public Works  
Youth Development Inc., 516 1<sup>st</sup> Street NW, Albuquerque, NM 87102  
Central New Mexico Community College, 525 Buena Vista SE, Albuquerque, NM 87106  
Consensus Planning, 302 8<sup>th</sup> St NW, Albuquerque, NM 87102  
Western Albuquerque Land Holding LLC  
6991 E. Camelback Road, Suite B297, Scottsdale, AZ 85251  
New Mexico Environment Law Center,  
Douglas Meiklejohn, 1405 Luisa St. #5, Santa Fe, NM 87505  
Rodey Law Firm, John P. Salazar, P.O. Box 1888, Albuquerque, NM 87103  
Southwest Organizing Project, 211 10<sup>th</sup> St. SW, Albuquerque, NM 87102  
South Valley Coalition of Neighborhood Associations, P.O. Box 12841, Albuquerque, NM 87105  
South Valley Regional Association of Acequias, 5734 Evans Road SW, Albuquerque, NM 87105  
Albuquerque Public Schools, Brad Winter, P.O. Box 25704, Albuquerque, NM 87125  
Ray Cook, USDOT/FAA,  
Real Estate and Utilities Group, ASW-53, 2601 Meacham Blvd., FT. Worth, TX 76137  
Carol and Gilbert Perez, 4621 Spring Valley SW, Albuquerque, NM 87105  
Rudy and Angel Garcia, 1200 Don Francisco PL. NW, Albuquerque, NM 87107  
Charles W. Travelstem, 6100 Buffalo Grass Ct. NE, Albuquerque, NM 87111  
Frank Sanchez, 609 Briar Rd., Bellingham, WA 98225  
Ruben Marquez, 2927 Cabral Tr. SW, Albuquerque, NM 87121  
Claus Zahn and Conrad Zahn, 9 Dama Rd., Los Lunas, NM 87031  
Toan Luong, 1835 Shadow Leader SE, Albuquerque, NM 87123  
James Thomas, 2641 San Mateo NE, Albuquerque, NM 87110  
Lynette Gallegos, 8623 Bouvandie Ave. NW, Albuquerque, NM 87120  
Carlos Profit, 5805 Coors Blvd. SW, Albuquerque, NM 87121  
Alicia Kassa, 5609 Kimberlite Dr. NW, Albuquerque, NM 87120  
Richard Austin, 8423 Mendocino, Dr. NE, Albuquerque, NM 87122  
Rod Mahoney, 1838 Sadora Rd. SW, Albuquerque, NM 87105  
Andrew Gingerich, MRCOG, 809 Copper Ave, NW, Albuquerque, NM 87102  
Marisol Archuleta, 3615 Big Cottonwood Dr. SW, Albuquerque, NM 87105  
Diane Reese, 1620 Bernard Thomas Lane SW, Albuquerque, NM 87105  
Michael Reed, 2401 Black Mesa Loop SW, Albuquerque, NM 87105  
Nathan Perez, 2250 Hyde Street, San Francisco, CA 94109  
Zoe Economou, 214 Riverside Dr. SW, Albuquerque, NM 87105  
Marcia Fernandez and Rip Anderson, 2401 Violet SW, Albuquerque, NM 87105  
Senoria Garcia, 1923 Arenal Rd. SW, Albuquerque, NM 87105  
Phillip Kleh, 803 Vassar Dr. SE, Albuquerque, NM 87106  
Adam Rubinstein, 1431 ½ La Vega SW, Albuquerque, NM 87105  
Jay Phelan, 545 Shirk Ln. SW, Albuquerque, NM 87105  
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Lauro Silva, 5005 5<sup>th</sup> St SW, Albuquerque, NM 87105  
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Juan Reynosa, 211 10<sup>th</sup> St SW, Albuquerque, NM 87102  
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Jorge Garcia, 1212 Montrose Pl. SW, Albuquerque, NM 87105  
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County of Bernalillo  
State of New Mexico

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[www.berncogov/zoning-building-and-planning/](http://www.berncogov/zoning-building-and-planning/)

NOTIFICATION OF DECISION  
BOARD OF COUNTY COMMISSION

June 18, 2015

COMMISSIONERS

- Maggie Hart Stebbins, Chair  
District 3
- Art De La Cruz, Vice Chair  
District 2
- Debbie O'Malley, Member  
District 1
- Lonnie C. Talbert, Member  
District 4
- Wayne A. Johnson, Member  
District 5

COUNTY MANAGER

Tom Zdunek

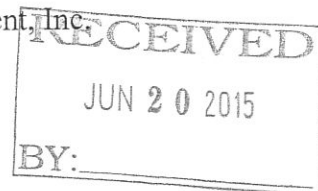
ELECTED OFFICIALS

- Tanya R. Giddings  
Assessor
- Maggie Toulouse Oliver  
Clerk
- Willow Misty Parks  
Probate Judge
- Manuel Gonzales III  
Sheriff
- Manny Ortiz  
Treasurer

Western Albuquerque Land Holdings, Youth Development, Inc.  
P. O. Box 56790  
Albuquerque, NM 87187

SUBJECT: FILE NO: CZ-20130009

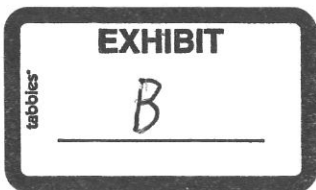
LEGAL DESCRIPTION: Consensus Planning, agent for Western Albuquerque Land Holdings, Youth Development, Inc., and Central New Mexico Community College and Martin Eckert, agent for Albuquerque Public Schools requests a zone map amendment from A-1 Rural Agricultural to Planned Community Zone in connection with the proposed Santolina Planned Communities Level A Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico, and containing approximately 13,700 acres, generally zoned A-1 Rural Agricultural. (CONTINUED FROM THE OCTOBER 1, 2014 HEARING)



**ACTION: APPROVED A ZONE MAP AMENDMENT FROM A-1 RURAL AGRICULTURAL TO PLANNED COMMUNITY ZONE IN CONNECTION WITH THE ADOPTED SANTOLINA PLANNED COMMUNITIES LEVEL A MASTER PLAN (ORDINANCE #2015-20)**

To Whom It May Concern:

At the June 16, 2015 public hearing, the Board of County Commissioners approved the request for a zone map amendment from A-1 Rural Agricultural to Planned Community Zone in connection with the adopted Santolina Planned Communities Level A Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and



sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico, and containing approximately 13,700 acres, generally zoned A-1 Rural Agricultural.

The decision was based on the following Findings.

1. The request is for a zone map amendment from A-1 Rural Agricultural to Planned Community Zone in connection with the proposed Santolina Planned Communities Level A Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico, and containing approximately 13,700 acres, generally zoned A-1 Rural Agricultural.
2. The request for approval of the PC Planned Communities Zone has been submitted in accordance with Section 19.5 of the Bernalillo County Zoning Code (Planned Communities Zone). Development of the Santolina Master Planned Community will take place following the regulations in Section 19.5 of the Bernalillo County Zoning Code.
3. The request for approval of the PC Planned Communities Zone has been submitted in conjunction with the request for approval of the Santolina Level A Master Plan (SPR-20130004).
4. The Santolina development will take place within the next 40-50 years in accordance with the Level A Santolina Master Plan and subsequent Level B and Level C Plans. The Plan is responsive to the population and economic growth that is anticipated to occur in the Albuquerque Metropolitan Area by the Mid-Region Council of Governments.
5. The plan includes goals of providing for mixed land uses, a broad range of housing, employment, educational, and recreational opportunities in distinct land use areas that include residential village centers, industrial/business parks, parks and Open space, an urban center, a business park, and a town center with an open space network that provides connections to all portions of the development. The Santolina Zoning incorporates the land use areas that will be further defined in subsequent Level B and Level C planning and zoning.
6. The Santolina Level A Master Plan has been approved based on consistency with the Planned Communities Criteria and the Reserve Area policies of the Albuquerque/Bernalillo County Comprehensive Plan, with conditions of approval.
7. The request for Level A Planned Community Zoning for Santolina is consistent with Resolution 116-86 for the following reasons:
  - a. The request is consistent with the goals and plans in the approved Santolina Level A Master Plan, as well as policies in Albuquerque/Bernalillo County Comprehensive Plan for master planned communities;

- b. The request has demonstrated that the existing zoning on the property (primarily A-1 zoning) is no longer appropriate and the proposed development is more advantageous to the community by furthering and implementing the goals and plans articulated in the approved Santolina Level A Master Plan, as well as the Planned Communities Criteria and the Albuquerque/Bernalillo County Comprehensive Plan for master planned communities.
8. The request is consistent with the health, safety, and general welfare of the residents of Bernalillo County.

If you have any questions, please feel free to contact me at 314-0385 or Catherine VerEecke at 314-0387.

Sincerely,

  
Enrico Gradi  
Community Development Manager

EG/fs

cc: File

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Christi L. Tanner, Public Works  
Raeleen Marie Bierner, Public Works  
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South Valley Regional Association of Acequias, 5734 Evans Road SW, Albuquerque, NM 87105  
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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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## Santolina proposal has shown merit

*Landowner has addressed legitimate concerns about West Side project*

BY WAYNE JOHNSON  
BERNALILLO COUNTY COMMISSION

A failure to plan is a plan to fail. From small family businesses to large corporations, leaders realize that you have to know where you're going and have an idea how to get there.

Rarely is that path set in stone, as shorter or better paths may present themselves. But you do have to have a plan.

The Santolina Level A Master Plan is one such plan. Like all plans, the Santolina Level A plan will require further refinement in order to meet changing conditions and future concerns.

Common concerns raised at the 13 public meetings held on the Santolina plan are: water use, sprawl/traffic congestion, public financing and jobs-to-housing ratio. While each is legitimate, it's important to remember that the Level A plan is but the first step on a journey, not the end of the line.

Approval would not grant the developer permission to begin building. It would simply define where commercial, retail, residential, open space, schools, roads and other infrastructure would be placed should market demand meet projected growth.

Prior to any development and the issuance of permits, the landowner would need additional approval and the further refinement in a Level B or C plan. Each would have to go through the same public process and answer many of the same questions.

There's been a lot said about public financing or TIDDs (tax increment development districts). The truth is the Level A plan under consideration does not include any form of public financing or TIDD. Further, approval of the Level A plan does not make it any more or less likely that the developers would receive a TIDD, nor does rejection guarantee that the developers couldn't receive a TIDD sometime in the future.

The specter of a TIDD is primarily a distraction used to whip up opposition to the project and is not a meaningful part of what is a land use discussion.

Lack of jobs on the West Side has been a chronic problem. Unlike previous developments that focused primarily on housing, Santolina dedicates land for large-scale businesses — not just homes — and sets a goal of two jobs for every home. Granted, the goal of two jobs per home may never be reached, but even if half of the goal is achieved, Santolina will have almost twice the current jobs-to-housing ratio that currently exists on the West Side.

The first step in creating jobs is having the space for them. Santolina has that space.

There are those who believe that the only kind of "good development" is in-fill development. While there is a place for in-fill and parts of the city and county would benefit, in-fill development is not the only kind of beneficial development.

As currently zoned, the land that comprises Santolina can be developed. Simply put, there could be almost 14,000 homes — each with its own well and septic system.

If you're concerned about water and sprawl, the Santolina Master Plan provides a more attractive alternative to piecemeal development.

The plan describes necessary infrastructure for a traffic system that minimizes congestion and for a water/wastewater system that the Albuquerque Bernalillo County Water Utility Authority maintains it can support.

And if metro area growth meets projections, the question will be where water is consumed not if it will be consumed.

It's said when you have the facts argue the facts. When you have the law argue the law. If you don't have either, argue the process.

The county's review process has been extensive. While the process could have been less confusing, there have been 13 public meetings with at least one to go and countless hours of staff work over almost two years.

To say that we are proceeding without ample public input is simply not accurate. And those councilors and board members who would weigh in on a county land-use decision are and would be doing so without the benefit of hearing all sides.

The county commission must decide whether or not to allow a landowner to put their property to what they believe is its highest and best use. Thus far, opponents have not provided an alternative — they've just said no.

Passion and an intense desire to stop new development in Bernalillo County simply aren't enough for the commission to deny a property owner his or her property rights regardless of who that owner might be.

EXHIBIT

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