

BERNALILLO COUNTY

Planning & Development Services
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ZONING SECTION

APPEAL TO COUNTY COMMISSION

Application Date: _____

Application Number: _____

Hearing Date: _____

OWNER/ APPLICANT FOR LAND USE REQUEST Western Albuquerque Land Holdings		PHONE 505-764-9801
MAILING ADDRESS PO Box 56790	CITY Albuquerque	ZIP 87187

AGENT (FOR APPELLANT) New Mexico Environmental Law Center		PHONE 505-989-9022
MAILING ADDRESS 1405 Luisa St #5	CITY Santa Fe	ZIP 87505

APPELLANT Southwest Organizing Project, et al		PHONE 505-247-8832
MAILING ADDRESS 211 10th St SW	CITY Albuquerque	ZIP 87102

SITE ADDRESS	Case #
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DIRECTIONS Bounded by Interstate 40 to north, 118 St and escarpment east, Pajarito Mesa on south and escarpment near Rio Puerco Valley on west

LEGAL DESCRIPTION projected sections 1,2,3,4,5,8,9,10,11,12,13,14,15,16 & 17, T9N, R1E, & sections 6,7,8,16,17 & 18, T9N, R2E & sections 32,33,34,35 & 36 T10N, R1E & sections 30 & 31, T9N, R2E, NMPM, Atrisco, Bern Co

ZONE MAP PAGE	CURRENT ZONE(S) A-1	PROPERTY SIZE IN ACREAGE 13700
UPC #	PROPOSED Level B ZONE(S) Master Plan	SUBDIVISION NAME Santolina

CASE # & SCOPE OF APPEAL Appeal Bernalillo County Planning Commission decision on Santolina Master Plan, see attached appeal

DETAILED INFORMATION Please see attached appeal document

I hereby acknowledge that I have read this entire application and affirm that all of the provided information is correct. I agree to comply with the requirements of Bernalillo County and the State of New Mexico as outlined in all applicable laws, ordinances and regulations.

Jaimie Park
Printed Name

Jaimie Park
Signature

1/25/17
Date

BEFORE THE BERNALILLO COUNTY, NEW MEXICO

BOARD OF COUNTY COMMISSIONERS

SOUTHWEST ORGANIZING PROJECT,
NEW MEXICO HEALTH EQUITY WORKING
GROUP, PAJARITO VILLAGE ASSOCIATION,
JAVIER BENAVIDEZ, SANTIAGO JAMES
MAESTAS, ROBERTO ROIBAL, and KRISTINE
SUOZZI,

v.

FILE NO. _____

BERNALILLO COUNTY PLANNING COMMISSION

APPEAL OF THE
BERNALILLO COUNTY PLANNING COMMISSION
RECOMMENDATION THAT THE
BERNALILLO COUNTY BOARD OF COUNTY COMMISSIONERS
APPROVE THE LEVEL B.1 SANTOLINA MASTER PLAN

Introduction

A. The Appellants hereby appeal to the Board of County Commissioners to reject the recommendation of the County Planning Commission that the Santolina Level B.1 Master Plan be approved.

This is an appeal of the Bernalillo County Planning Commission (“the Planning Commission”) recommendation that the Bernalillo County Board of County Commissioners (“the Board of County Commissioners” or “the Board”) approve the proposed Santolina development Level B.1 Master Plan (“the Plan”). This appeal is filed by the SouthWest Organizing Project, the New Mexico Health Equity Working Group, the Pajarito Village Association, the South Valley Coalition of Neighborhood Associations, Javier Benavidez, Santiago James Maestas, Roberto Roibal, Kristine Suozzi, Rod Mahoney, Marcia Beauregard Fernandez and Daniel Richard "Rip" Anderson (referred to collectively as “the Appellants”).

The recommendation of the Planning Commission (“the Planning Commission Decision”) was determined by a vote of the Planning Commission on January 4, 2017. For that reason, the Appellants are filing this appeal before 12:00 noon on January 19, 2017. Because the written notice of the Planning Commission’s Recommendation was not issued until January 10, 2017, and because the written notice of the Planning Commission’s Recommendation stated that appeals must be filed within 15 days after the date of the written notice (Planning Commission’s Recommendation, page 5), the Appellants hereby reserve the right to amend their appeal by 12:00 noon on January 25, 2017.

In addition, the Appellants reserve the right to address the Board of County Commissioners concerning this appeal for themselves and through counsel at any hearing, meeting, or other forum conducted by the Board of County Commissioners addressing the proposed development.

The Appellants also reserve the right to supplement the arguments presented in this appeal with additional support for the arguments presented in this appeal and with additional arguments that are not presented in this appeal.

Finally, the Appellants reserve the right to add additional appellants to an amended appeal to the Board of County Commissioners.

B. The Appellants’ appeal to the Board of County Commissioners is based on the Santolina Level B.1 Master Plan’s failure to comply with the conditions set by the Board of County Commissioners and with requirements of the Planned Communities Criteria.

The Appellants request that the Board of County Commissioners reject the Planning Commission’s recommendation that the Santolina Level B.1 Master Plan be approved. The Appellants’ request is based on the following seven reasons.

First, the developers of the proposed Santolina development (“the Santolina developers” or “WALH” [Western Albuquerque Land Holdings, LLC]) have not complied with the requirement established by the Board of County Commissioners in its decision approving the Santolina Level A Master Plan that the Santolina developers have a development agreement with the Albuquerque/Bernalillo County Water Utility Authority (“Water Utility Authority” or “ABCWUA”) in place before a Level B.1 Master Plan may be approved.

Second, the Santolina Level B.1 Master Plan does not comply with the requirements of the Bernalillo County Planned Communities Criteria (“the Planned Communities Criteria”) concerning land use.

Third, the Santolina Level B.1 Master Plan does not comply with the “No Net Expense” policy of the Planned Communities Criteria, the Bernalillo County Comprehensive Plan, and the Santolina Level A development agreement.

Fourth, the Santolina Level B.1 Master Plan does not comply with the Planned Communities Criteria requirements concerning environment and open space.

Fifth, the Santolina Level B.1 Master Plan does not comply with the requirements of the Planned Communities Criteria addressing government and public services.

Sixth, the Santolina developers did not comply with other conditions established by the Board of County Commissioners for the filing of the Santolina Level B.1 Master Plan and by the Planned Communities Criteria.

Finally, approval of the Santolina Level B.1 Master Plan by either the Planning Commission or the Board of County Commissioners is premature for two reasons. First, the Santolina developers failed to provide information that the Planned Communities Criteria require be provided before submission of a Level B Master Plan. Second, the Appellants’ challenge to

the Board of County Commissioners' approval of the Santolina Level A Master Plan and the zone map amendment for the proposed Santolina development are still pending in State District Court, and the Planned Communities Criteria indicate that Level B.1 master plans cannot be approved before Level A master plans are approved.

C. The Appellants have raised their concerns about the proposed Santolina development in prior Bernalillo County proceedings and in the Second Judicial District Court.

Several of the issues raised by the Appellants in this appeal are not new to the proceedings concerning the proposed Santolina development or, more specifically, to the Santolina master planning process. The Appellants raised concerns about the impact that the proposed Santolina development would have in five areas in their appeal of the County Planning Commission's recommendation that the Board of County Commissioners approve the Santolina Level A Master Plan. The Appellants also raised these issues in their litigation in the Second Judicial District Court challenging the Board's approval of that Level A Master Plan. Those five areas are:

- 1) The failure of the Santolina developers to comply with the Planned Communities Criteria requirement that a developer provide documentation of physical and legal water availability;
- 2) The absence from the Santolina Level A Master Plan of an adequate transportation plan for the proposed development as required by the Planned Communities Criteria;
- 3) The failure of the Santolina developers to demonstrate that the proposed development will support the schools needed by the proposed development's population;

- 4) The failure of the Santolina developers to take into account adequately the impacts that would result from the construction of the proposed development on the predominantly sandy soils in the area; and
- 5) The inability of the Santolina developers to construct the development at “no net expense” to the governments of Bernalillo County and the City of Albuquerque.

In addition to these concerns, the Appellants also have expressed concern about several other issues in their filings in the Second Judicial District Court. They are:

- 6) The effects of the proposed Santolina development on traffic from the proposed development to the east side and the center of Albuquerque, and the air pollution that this traffic would cause;
- 7) The effects that the proposed Santolina development’s use of water would have on water usage in the Middle Rio Grande Basin, and communities and agriculture in the Basin;
- 8) The impact of the proposed Santolina development on schools in the Albuquerque Public School District, particularly schools on the West Side of Albuquerque that are already overcrowded or at capacity; and
- 9) The manner in which the Santolina developers have proceeded, particularly their failure to engage the public and their belittling of the knowledge and expertise that members of the community want to bring to the table.

Argument

- I. **The Santolina developers have not complied with the condition established by the Board of County Commissioners that the developers have a development agreement with the Albuquerque/Bernalillo County Water Utility Authority prior to approval of a Santolina Level B Master Plan.**
 - A. **The Board of County Commissioners has required that a development agreement with the Albuquerque/Bernalillo County Water Utility Authority be in place.**

In its June 19, 2015 Notification of Decision approving the Santolina Level A Master Plan (“the Level A Master Plan Decision”), the Board of County Commissioners enacted several conditions that must be met before a Santolina Level B master plan can be approved. One of those conditions is that the Santolina developers must have in place a development agreement with the Albuquerque/ Bernalillo County Water Utility Authority before any Level B or Level C planning document can be approved. Condition #8 to that decision states:

8. Prior to approval of any Level B or Level C planning document, the Applicant [the Santolina developers] will provide a fully executed development agreement with the ABCWUA. The development agreement should be structured to ensure compliance with the ABCWUA’s existing guidelines, policies, and ordinances and as may be amended from time to time. The development agreement should, at a minimum, address residential, industrial, institutional and commercial water conservation provisions, guidelines, and design standards. The development agreement should, at a minimum, address infrastructure improvement, direct and indirect potable reuse, and water supply charges, as well as provide a Phasing Plan consistent with ABCWUA policies. This condition shall in no way constrain the ABCWUA from imposing such requirements as it may deem necessary.

Level A Master Plan Decision condition #8, page 6.

That condition therefore mandates the execution of a development agreement with the Water Utility Authority and specifies the terms of the development agreement.

B. The Santolina developers do not have a development agreement with the Water Utility Authority.

There is no indication anywhere in the Santolina Level B.1 Master Plan that the developers have a “fully executed development agreement” with the Water Utility Authority. On the contrary, the Level B.1 Master Plan makes very clear that there is no such development agreement in place. Section 6.1.2 of the Level B.1 Master Plan states:

WALH *is pursuing* a Development Agreement with the ABCWUA regarding water service.

Santolina Level B.1 Master Plan, page 63, emphasis added.

That section also states:

The final Development Agreement’s terms and conditions *will comply* with the Santolina Level A Approvals and the ABCWUA water system standards, guidelines and current Levels of Service (LOS).

Id., emphasis added.

Both of these statements indicate that the development agreement between the Santolina developers and the Water Utility Authority has yet to be developed. There is no such agreement in place, and the Santolina Level B.1 Master Plan does not even indicate when such an agreement will be developed.

C. The Santolina Level B.1 Master Plan does not demonstrate that there is water for the proposed development.

The Santolina Level B.1 Master Plan purports to demonstrate that the Water Utility Authority has made a commitment to provide water for the proposed Santolina development by referencing a July, 2014 letter from the Water Utility Authority. Santolina Level B.1 Master Plan, page 5. In fact, however, the letter in question does not indicate any such commitment by the Water Utility Authority, nor does the letter indicate that either water rights or water are available.

The only positive statement in the letter, which is from Water Utility Authority Executive Director Mark Sanchez, states that, “The Water Authority is capable of serving the master planned community.” Sanchez letter, ¶1. However, the letter indicates clearly at several points that the Water Utility Authority’s capability to provide service is not guaranteed.

The letter states:

[S]ervice will be contingent upon the Santolina developer’s ability to comply with the Water Authority’s current guidelines, policies and ordinances, as amended from time to time.

...

If the CPC decides to recommend approval of the master plan [Level A Master Plan], the Water Authority recommends that the CPC provide conditional approval which requires that the developer successfully execute a development agreement with the Water Authority for the Santolina Master Plan.

...

In order for Santolina to be served by the Water Authority, the developer will need to provide significant infrastructure improvements, and the expansion will need to occur at no net expense to the existing ratepayers.

Sanchez letter, ¶¶1-3.

There is therefore no merit to the Santolina Level B.1 Master Plan’s assertion that the Water Utility Authority has indicated that it has the capacity and capability to provide the water that is required.

Moreover, the Water Authority’s ability to make any such guarantees is very limited for three reasons. The first is that the Water Authority has no legal authority to grant the Santolina development water rights. The only entity in New Mexico that can approve the use of water for a specific purpose (such as a proposed development) is the New Mexico State Engineer. *See* NMSA 1978 §74-9-2. The second is that the Water Authority does not have the water rights to supply the proposed development. The third is that existing consumptive uses of water in the Middle Rio Grande exceed the legally available supply.

Norman Gaume, former director of the New Mexico Interstate Stream Commission and an expert in the matters of the Albuquerque metropolitan area's water supplies and the water supplies legally available within the Middle Rio Grande as limited by the Rio Grande Compact, raised the issues of water rights and legally available supply of Middle Rio Grande water during the Board of County Commissioners' Level A Master Plan proceedings. *See* Norman Gaume Written Testimony for May 11, 2015 Board of County Commissioners Hearing (May 17, 2015). The developers have not provided any documentation in the Level B.1 Master Plan or supporting technical documents that the Water Utility Authority currently has the water rights to supply Santolina and that existing consumptive uses of water in the Middle Rio Grande do not exceed the legally available supply.

II. The Santolina Level B.1 Master Plan does not comply with the Planned Communities Criteria addressing land use.

The Planned Communities Criteria establish specific requirements for Level B master plans concerning land use. For example, Level B master plans are required to provide:

conceptual description[s] of village characteristics in terms of market potential and opportunities, including location and description of village center – parcel sizes by use, suitability to natural topography, intensities, service area of center.

Planned Communities Criteria, page 38.

Contrary to these requirements, the Santolina Level B.1 Master Plan provides no information about the specifics of “market potential and opportunities”. The Plan includes general statements about anticipated growth on the West Side of Albuquerque (Plan, page 12), and provides approximate numbers for the people expected to live in Santolina and the jobs that are anticipated to be created there, but includes no specific information to back up these numbers. *Id.* There is nothing in the Plan about what kinds of jobs these will be or where these people currently are who will migrate to Santolina. The Plan also has no explanations about its

apparent assumptions that these people will have adequate training to work in these jobs or adequate means to afford the cost of housing offered in the development, which is also not provided in the Plan.

In addition, Level B master plans are required to explain the “suitability to natural topography” of village centers. Planned Communities Criteria, page 38. However, the only village center that the Santolina Level B.1 Master Plan addresses is the Village Verde Residential Village Center, and the Plan’s only information concerning the relationship of that village center to natural topography is the statement that the village center is located adjacent to the western escarpment open space, which allegedly will provide “recreational opportunities as well as pedestrian and bicycle connections to the Village Center”. Plan, page 14.

III. The Santolina Level B.1 Master Plan does not comply with the “no net expense” requirement of the Planned Communities Criteria, the Bernalillo Comprehensive Plan, and the Santolina Level A Development Agreement.

The Planned Communities Criteria, the Bernalillo County Comprehensive Plan and the Santolina Level A Development Agreement all require that, “the Level B Master Plan analysis for subsequent development phases of the Project must also satisfy the ‘no net expense’ policy.” Santolina Level A Development Agreement, Section 7, page 9 (August 10, 2015). The “no net expense” policy means that a planned community must be developed, including government and public facilities, at no net expense to the governments of Bernalillo County and the City of Albuquerque. The Level B.1 Master Plan does not demonstrate compliance with the “no net expense” policy for three reasons.

The first is that the Level B.1 Master Plan “Fiscal and Economic Impact Study” is based upon unrealistic assumptions regarding high rates of population growth and job creation. The second is that the study also failed to include in its analysis the twenty Santolina Tax Increment

Development Districts (“TIDDs”) approved by the Board of County Commissioners. Level B.1 Master Plan “Fiscal and Economic Impact Study”, pages 6-11; 16-18 (January 21, 2016). These TIDDs will transfer forty-five (45) percent of the gross receipts tax increment and forty-five (45) percent of the property tax increment generated within the districts away from the County General Fund to the developers. The County will be losing at a minimum \$500 million dollars from its gross receipts tax increment and property tax increment over the next 50 years, but due to inflation that loss will more likely be \$1 billion.

The third reason is that the “Fiscal and Economic Impact Study” estimates of County costs do not include any expenditures for water, new infrastructure, infrastructure maintenance, or open space acquisition. Additionally, the study does not consider the costs that will be incurred for transportation and schools. *Id.* at 11- 17.

A. The Santolina Level B.1 Master Plan does not demonstrate “no net expense” to the County for transportation/roadway infrastructure.

Vital to a “no net expense” analysis is the phasing strategy for the Project. The Level B.1 Master Plan does not provide a phasing strategy for the Project in general, as well as for specific components of the Project, such as roadway infrastructure. *See* Plan, page 116. (“...Owner(s) and Developer(s) shall have the right to develop the property in such order and at such rate and time as the market dictates.”) Without a phasing strategy for roadway infrastructure, the Planning Commission cannot evaluate whether the Level B.1 Master Plan’s roadway infrastructure component complies with the “no net expense” requirement.

Not only does the Level B.1 Master Plan fail to identify a detailed phasing strategy for the Project’s roadway infrastructure component, it also fails to identify the share of private, local, and regional public funding for all roadway infrastructure projects needed. *See generally*, Level B.1 Master Plan “On-Site and Off-Site Locations of Interest Traffic Analysis,” (March 31,

2016). Furthermore, the Mid-Region Metropolitan Planning Organization had also advised the Planning Commission that the Level B.1 Master Plan needed to identify which roads within the Level B Master Plan area and off-site were anticipated to be privately or publically funded in order to conduct a “no net expense” analysis. Planning Commission Hearing, TR-24 (July 21, 2016).

The Planning Commission could not determine whether “the plan is consistent with Reserve Area policies that call for substantial self-sufficiency and economic sensitivity and development that is at no net cost to Bernalillo County” without this required information. Planning Commission Decision, Finding #6 (January 10, 2017). The Planning Commission also acknowledged that it did not have this necessary information for a “no net expense” analysis by requiring the developers to provide such information as a condition of the Planning Commission’s recommending to the Board of County Commissioners approval of the Level B.1 Master Plan. Planning Commission Decision, Condition #2. (“The applicant/agent will provide to Public Works a list of 2025 and 2040 transportation projects identifying Level B.1 improvements to be built and the share of private, local and regional public funding for each project within 30 days of BCC approval.”) However, the Planned Communities Criteria does not permit satisfaction of its Level B criteria through the application of future “conditions of approval.”

B. The Santolina Level B.1 Master Plan does not demonstrate “no net expense” to the County for schools.

Albuquerque Public Schools (“APS”) stated in its comments to the Planning Commission on the Santolina Level B.1 Master Plan the following, in pertinent part:

In particular, for the scale of development as proposed by the Santolina Level B Plan, calling for 9,444 dwelling units, the District would need at least 101.6 acres of land, 5 schools (assuming a typical and traditional educational curriculum model) and at least

\$162,944,857 for new construction, not including the cost of land...*All new and future construction is contingent on taxpayer approval.*

APS Memorandum, pages 4-6 (July 12, 2016), emphasis added. As stated above, the “Fiscal and Economic Impact Study” does not include this cost estimate in its analysis of recurring costs to the County. Therefore, the Planning Commission’s finding that the Level B.1 Master Plan “is consistent with Reserve Area policies that call for substantial self-sufficiency and economic sensitivity and development that is at no net cost to Bernalillo County” is based upon erroneous assumptions.

IV. The Santolina Level B.1 Master Plan does not comply with the Planned Communities Criteria addressing land use.

A. The Level B.1 Master Plan does not include the analyses of environmental resources mandated by the Planned Communities Criteria.

The Planned Communities Criteria mandate that Level B master plans analyze several environmental features and resources that may be affected by developments, such as the proposed Santolina development. The Criteria require:

1. Analysis of slopes, drainage, soils, animal life, groundwater, vegetation, airport noise zones, and other environmental characteristics which identify unique and important site features for protection and optimum use or which restrict development.

Planned Communities Criteria, page 39.

The Santolina Level B.1 Master Plan provides no information about airport noise zones, and the only information that is provided about ground water are statements that the ground water is at a depth of 700 to 1,000 feet below ground surface, that no water supply wells are planned at this time, and that aquifer recharge is not contemplated at this time. Plan, pages 96-97. There is nothing in the Level B.1 Master Plan about the quality of the ground water or its

gradient, or about measures that are to be put in place to prevent pollution of ground water by the industry that is expected to be located at the Santolina development.

In addition, although there are general descriptions of the vegetation and wildlife in the area of the proposed Santolina development (Plan, page 80), the Master Plan provides no information about the impact of the proposed development on the vegetation or wildlife or about how any impacts on the vegetation and wildlife will be mitigated.

B. The Level B.1 Master Plan presents only an incomplete strategy for meeting community air quality standards and objectives and ensuring that residents will not be affected by toxic air emissions.

The Santolina Level B.1 Master Plan also fails to present a complete strategy for ensuring that community air quality standards are met and that residents near industrial facilities will not be impacted by toxic air emissions. The Plan relies on an analysis that was prepared to compare the “Santolina Scenario” development with the Mid Rio Grande Council of Governments MTP Trend scenario, and asserts that the analysis demonstrates that the proposed Santolina development would not result in significant changes in carbon monoxide emissions. Plan, pages 82-83. However, the alleged analysis in question is neither included in the Plan nor cited specifically.

The Plan also asserts that the proposed development will not create increased levels of carbon monoxide because the creation of local jobs will ensure that residents do not have to travel to other areas of Bernalillo county for work, but the Plan contains no contingency measures to be employed to limit carbon monoxide emissions if those local jobs do not materialize. *Id.*, pages 82-84. In addition, the Plan states that “County or regional regulations for pollen control will be complied with stringently”, and proposes “careful design of

landscaping palettes” to reduce pollen (*Id.*, page 84) without explaining what the regulations accomplish or how “landscaping palettes” function to reduce pollen.

Finally, the Santolina Level B.1 Master Plan’s attention to industrial emissions is limited to a statement that:

Industrial and manufacturing emissions typically from stationary sources are regulated by multiple local, County, state and federal regulations. This type of development in Santolina will be held to a high standard and must comply with all applicable regulations.

Id., page 84.

The Plan says nothing about what types of industry and manufacturing are expected to be located in Santolina or what kinds of emissions they will produce. The Plan also provides no information about the effects that these emissions have on people who are exposed to them or the effectiveness of the “multiple local, County, state and federal regulations” that allegedly govern them. There also is no information about the direction or velocity of prevailing winds and their relationship to the areas where people will live in the proposed development. Finally, the Plan says nothing about who these people will be, and specifically whether they will be old people and young children, who are particularly susceptible to air pollutants.

C. The Level B.1 Master Plan does not demonstrate that its proposed siting of industrial land will prevent contamination of ground water.

As was pointed out above, the Level B.1 Master Plan’s only information about ground water at the site are general statements that the ground water is at a depth of 700 to 1,000 feet below ground surface, that no water supply wells are planned at this time, and that aquifer recharge is not contemplated at this time. Plan, pages 96-97. The Level B.1 Master Plan provides no information about the quality of the ground water or its gradient, or whether

measures will be put in place to ensure that ground water beneath the proposed Santolina development is not polluted by the industries that are expected to be located there.

V. The Santolina Level B.1 Master Plan does not comply with the requirements of the Planned Communities Criteria addressing government and public services.

A. The Santolina Level B.1 Master Plan does not provide the required strategy for funding and maintenance of public facilities and sites, including open space.

The Planned Communities Criteria for Level B government and public services require developers to provide a “strategy for funding and maintenance of public facilities and sites, including open space.” Planned Communities Criteria, page 39.

The Merriam-Webster Dictionary defines “strategy” as “a careful plan or method.” The developers, however, merely provided a list of “available financing mechanisms for Project and System Infrastructure.” Plan, page 120. Without a strategy for funding and maintenance of public facilities and sites, there is no means for the Planning Commission to evaluate whether the Level B.1 Master Plan “is consistent with Reserve Area policies that call for substantial self-sufficiency and economic sensitivity and development that is at no net cost to Bernalillo County.” Planning Commission Decision, Finding #6.

Bernalillo County Planning Manager for Parks and Open Space, Mr. Barney, also raised this concern with the Planning Commission. Mr. Barney stated the following, in pertinent part:

There isn't a strategy, and I – and just to refer back to the planned community criteria, there is – it does require, under D, for – for a Level B plan, under D, Government Services, no. 1, strategy for funding and maintenance of public facilities in sight, including open space. So the strategy would show us, you know, which of these tools are going to be used and how, because otherwise, it's difficult for us to evaluate is there going to be enough revenues to actually support our facilities in the future.

Planning Commission Hearing, TR-52: 15-24 (July 21, 2016).

The Planned Communities Criteria make clear that a strategy for funding and maintenance of public facilities and open space must be provided in a Level B master plan. The

Santolina Level B.1 Master Plan fails to comply with this requirement by merely providing a list of potential financing mechanisms for the project. The Planning Commission's recommendation fails to require the Level B.1 Master Plan to comply with the first criteria of the Planned Communities Criteria for government and public services.

B. The Santolina Level B.1 Master Plan does not provide the required facilities plan, including detailed location, phasing of water systems, sewer systems, and drainage systems.

The Planned Communities Criteria for Level B government and public services require developers to provide "a facilities plan including detailed location, phasing of water systems, sewer systems, drainage systems, and mobility systems." Planned Communities Criteria, page 39.

The Level B.1 Master Plan fails to comply with this requirement in two ways. First, the Plan fails to include a development agreement with the Water Utility Authority, which is the foundation for water and sewer systems. Second, the Plan therefore provides only "conceptual" plans for water, sewer, and drainage systems.

As previously discussed, the Board of County Commissioners has required that a development agreement with the Water Utility Authority be in place prior to approval of a Santolina Level B Master Plan. One reason for this requirement is that the Water Utility Authority development agreement provides the detailed timing, phasing, location, availability, responsibilities, and maintenance of water, sewer and drainage systems. *See* Level B "Water & Sanitary Sewer Master Plan", page 3 (January 25, 2016); *See also* Level A Master Plan Decision Condition #8, page 6.

The Bernalillo County Interim Director for Infrastructure Planning and Geo-Resources, Mr. McGregor, explained to the Planning Commission the importance and necessity of Planning Commission review of the Water Utility Authority development agreement:

Without a development agreement and without the associated serviceability statement, which outlines the specific water and sanitary sewer improvement needed to serve the entire development and the Level B plan, then the planned community criteria for a detailed plan including detailed location, phasing of water systems, sewer systems, drainage systems, and mobility systems cannot have been satisfied, nor can the requirement for statements of water availability and availability of public services, including liquid waste, have been – have been adequately addressed either.

Planning Commission Hearing, TR-66:17-25; TR-67: lines 1-2 (July 21, 2016).

Without a development agreement with the Water Utility Authority, the Level B.1 Master Plan and supporting technical documents merely provided the Planning Commission with conceptual water, sewer and drainage plans. The Level B.1 Master Plan clearly states that its “Sequencing Map” demonstrating development phasing is “intended to be illustrative” and is not representative of actual sequencing. Plan, page 113. The developers further concede that they have only prepared a “conceptual Water and Sanitary Sewer Master Plan.” Level B.1 Master Plan “Water & Sanitary Sewer Master Plan”, page 12 (January 25, 2016). Finally, the Level B.1 Master Plan “Revised Drainage (Stormwater) Master Plan and Terrain Management Plan” submitted to the Planning Commission on November 2, 2016 also admits it is merely a conceptual plan.

Providing a conceptual facilities plan, which fails to include detailed location and phasing of water, sewer, and drainage systems, does not comply with the Planned Communities Criteria. Additionally, deferring the submission of such required information to the Level B Development Agreement, which is only presented to the Board of County Commissioners, does not comply with the Planned Communities Criteria. *See Plan*, page 119.

The Planning Commission ultimately decided to recommend to the Board of County Commissioners approval of the Level B.1 Master Plan without ever seeing even a draft Water Utility Authority development agreement, and without requiring a facilities plan that included detailed location and phasing of water, sewer, and drainage systems, in violation of the Planned Communities Criteria. The Planning Commission found that, in pertinent part:

The Santolina Level B.1 Master Plan with the attached conditions of approval demonstrates *substantial consistency* with the Planned Communities Criteria in the areas of Land Use, Transportation, Environment and Open Space, and Government and Public Service.

Planning Commission Decision, Finding #7, emphasis added.

However, the Planned Communities Criteria does not permit “substantial consistency” with its criteria – it requires absolute consistency. The Planned Communities Criteria also do not permit satisfaction of its Level B criteria through the application of future “conditions of approval.” *See* Planning Commission Decision, Conditions #4-6; *See generally*, Planned Communities Criteria, pages 38-40.

C. The Santolina Level B.1 Master Plan does not provide an annexation plan/agreement.

The Planned Communities Criteria for Level B master plans concerning government and public services also require developers to provide an annexation plan/agreement. The Santolina Level B.1 Master Plan fails to provide the required annexation plan/agreement.

D. The Santolina Level B.1 Master Plan does not provide required statements of water availability and availability of solid and liquid wastes services, fire and police services, and schools.

In addition, the Planned Communities Criteria for Level B master plans concerning government and public services require developers to provide, “Statements of water availability and availability of public services, such as solid and liquid wastes ... fire, police and schools.”

Planned Communities Criteria, page 39. The Santolina Level B.1 Master Plan does not provide any of these required statements of availability.

1. The Santolina Level B.1 Master Plan does not provide the required statement of water availability and availability of solid and liquid wastes services.

The Santolina Level B.1 Master Plan does not provide the required statement of water availability and statement of availability for liquid and solid waste services. *See Plan; see also* Planning Commission Decision, Findings #18-19. Moreover, the Level B.1 Master Plan “Water and Sanitary Sewer Master Plan” states that the Water Utility Authority “*may* provide water and sewer service for the project” and:

If the ABCWUA provides water and sewer service for the project, the Owner(s) and developer(s) will enter into a separate Development Agreement with the ABCWUA concerning the terms of providing such water and sewer service to the project.

Level B.1 Master Plan “Water and Sanitary Sewer Master Plan”, page 12 (January 25, 2016), emphasis added.

These are clearly not statements of water availability and availability of solid and liquid wastes services. Furthermore, the Interim Director for Infrastructure Planning and Georesources at Bernalillo County Public Works, Mr. McGregor, had cautioned the Planning Commission that:

Approving a Level B master plan without an ABCWUA development agreement that at least addresses the general infrastructure associated with the Level A approved plan...would essentially be approving a subsequent plan with no documentation of physical or legal water availability, quantity, and quality.

Planning Commission Hearing, TR-68: 2-9 (July 21, 2016). Yet that is exactly what the Planning Commission did, in violation of the Planned Communities Criteria.

2. The Santolina Level B.1 Master Plan does not provide the required statement of availability of schools.

The Santolina Level B.1 Master Plan does not include a statement from Albuquerque Public Schools (“APS”) that there are schools available for students within the proposed Level B.1 Master Plan area. The plan merely states the following, in pertinent part:

There will likely be some need for APS to accommodate initial students within existing facilities until the APS facilities within the Level B Plan are constructed and open for enrollment. Santolina shall continue to work with APS Facilities Planning to ensure sites and school facilities are available in a timely manner, consistent with APS policies and funding.

Plan, page 110; *See also* Planning Commission Decision, Finding #15.

Senior Planner and Manager with APS Capital Master Plan, Alvira Lopez, also advised the Planning Commission that the “Santolina development would exacerbate existing overcrowding” at the schools identified in the Level B.1 Master Plan as servicing Plan area students. Planning Commission Hearing, TR-35:12-14 (July 21, 2016). Additionally, APS School Member for District 5, Mr. Quezada, informed the Planning Commission that, “This project’s going to be a huge strain on the Albuquerque Public School budget.” Planning Commission Hearing, TR-37: 14-15. These statements indicate that there are not schools available for the Santolina Level B.1 Plan area.

3. The Santolina Level B.1 Master Plan does not include the required statement of availability of fire and police services.

The Santolina Level B.1 Master Plan does not include a statement of availability from either the City of Albuquerque or Bernalillo County for police facilities and services, yet states that, “Initial development within this Level B Plan will utilize these existing public facilities.” Plan, page 109.

The Plan also asserts that Albuquerque's City Fire Station 14 "could provide service to the residences and commercial/employment centers within this Level B Plan." *Id.* However, Bernalillo County Fire Marshall, Chris Gober, advised the Planning Commission, in pertinent part, that:

Our only concerns for the fire safety side, public safety side is that we have the property and the facilities present for – to provide EMS services, fire services and law enforcement services up there, that new development, and it can be in a phased-type of fashion along with the development, *but we need to have those facilities there so we're not overwhelming the other resources down further in the Valley along with the fire hydrants.* We need to make sure those are in place, so we have water protection, water for the buildings, the homes, and the undeveloped land that's up in that area.

Planning Commission Hearing, TR-19:16-25; TR-20:1 (June 23, 2016), emphasis added.

The Fire Marshall's statement to the Planning Commission is not one of availability of existing facilities and services, but rather a warning that the proposed Santolina development - without new facilities and services - will overwhelm existing resources.

VI. The Santolina developers did not comply with other conditions established by the Board of County Commissioners and the Planned Communities Criteria for the filing of the Santolina Level B.1 Master Plan.

When the Board of County Commissioners approved the Santolina Level A Master Plan it imposed a number of conditions to be met by the Santolina developers in subsequent Level B master plans, in addition to the Planned Communities Criteria Level B filing requirements. *See* Level A Master Plan Decision, Conditions #1-22. The developers did not comply with a number of conditions imposed by the Board of County Commissioners and by the Planned Communities Criteria for the filing of a Level B Master Plan.

A. The Santolina developers did not comply with other conditions established by the Board of County Commissioners for the filing of the Santolina Level B.1 Master Plan.

The developer did not comply with at least eight (8) conditions established by the Board of County Commissioners pertaining to Level B Master Plan filings. The following is a brief discussion of the conditions not met by the developers' Level B.1 Master Plan filing.

1. The Santolina developers did not provide a plan for attaining the 2-1 jobs-to-housing ratio established in the Santolina Level A Master Plan in its Level B.1 Master Plan.

The Board of County Commissioners established the condition that Santolina developers must provide a plan for attaining a 2-1 jobs-to-housing ratio in Level B Master Plans filed with the County. Level A Master Plan Decision, Condition #3. The Level B.1 Master Plan acknowledged this requirement, yet did not provide the required jobs-to-housing ratio plan. Plan, page 4. The Plan merely states that, "The Level B Plan sets the stage for achieving the jobs to housing ratio set out by the Level A Development Agreement," and that, "We are anticipating over 9,000 dwelling units for the first Level B Plan, which would commit us to 1.25 jobs per dwelling unit." *Id.* This is not a plan for achieving a 2-1 jobs-to-housing ratio. Additionally, the Level B.1 Master Plan "Fiscal and Economic Impact Study", submitted in May 2016, also fails to provide the required jobs-to-housing ratio plan.

It was clearly inappropriate for the Planning Commission to find that the Level B.1 Master Plan "also includes mechanisms that seek to ensure that the overall gross density is maintained and the jobs-to-housing balance of 1.25 jobs per household is achieved over the course of the development" without this required information. Planning Commission Decision, Finding #10.

2. The Santolina developers did not provide the coordination of time frames for the Level B.1 Master Plan offsite roadway improvements and Plan phasing.

The Board of County Commissioners also established the condition that Santolina developers must provide the coordination of timeframes for the Plan's offsite roadway improvements, along with a phasing plan. Level A Master Plan Decision, Condition #5. The Santolina developers did not provide this required information in either its Level B.1 Master Plan or its supporting technical documents. Plan, page 116; *See generally*, Level B.1 Master Plan "Transportation Master Plan" (revised September 30, 2016) *and* Level B.1 Master Plan "On-Site and Off-Site Locations of Interest Traffic Analysis" (March 31, 2016).

3. The Santolina developers did not provide a funding plan for Level B.1 Master Plan arterial streets and linkages which are needed for Santolina and not programmed in the Bernalillo County Capital Improvements Program or the Metropolitan Transportation Plan.

The Board of County Commissioners established an additional condition pertaining to the transportation element of the Level B Master Plan:

Funding for arterial streets and linkages, which are needed for Santolina and not programmed in the Bernalillo County Capital Improvements Program (CIP) or the Metropolitan Transportation Plan (MTP), shall be identified and submitted to the County for recommendation for inclusion in the CIP or the MTP.

Board of County Commissioners Decision, Condition #6.

As previously discussed, the developers did not provide this required information in their Level B.1 Master Plan or supporting technical documents. The Mid-Region Metropolitan Planning Organization advised the Planning Commission that the Level B.1 Master Plan needed to identify which roads within the Level B Master Plan area and off-site were anticipated to be privately or publically funded through the CIP and MTP programs. Planning Commission Hearing, TR-24 (July 21, 2016). However, the Planning Commission voted to recommend approval of the incomplete Level B.1 Master Plan with the condition that, "The applicant/agent

will provide to Public Works a list of 2025 and 2040 transportation projects identifying Level B.1 improvements to be built and the share of private, local and regional public funding for each project within 30 days of BCC approval.” Planning Commission Decision, Condition #2.

The incomplete Level B.1 Master Plan clearly violates Condition #6 established by the Board of County Commissioners. Additionally, Condition #2 established by the Planning Commission in its January 10, 2017 Decision violates the Planned Communities Criteria.

4. The Santolina developers did not provide a fully executed development agreement with the Water Utility Authority.

The Board of County Commissioners established several conditions pertaining to a development agreement with the Water Utility Authority. The first condition established is that, “the applicant will provide a fully executed development agreement with the ABCWUA.” Board of County Commissioners Decision, Condition #8. As previously discussed, the Santolina developers did not provide the required fully executed development agreement.

5. The Santolina developers did not provide a written explanation of the projected Level B.1 Master Plan water use and phasing within the context of the 2024 Water Conservation Plan Goal and Program Update or a water conservation plan.

The Board of County Commissioners established two additional conditions pertaining to a development agreement with the Water Utility Authority. The first additional condition established that:

Prior to approval of any Level B or Level C document, the applicant shall, based on the approved ABCWUA development agreement, provide to the County a written explanation of the projected Master Plan water use and phase and the subsequent level plans within the context of the 2024 Water Conservation Plan Goal and Program Update (July 2013) or subsequent updates.

Id. at Condition #9.

The second additional condition established that Santolina developers must provide a water conservation plan. *Id.* at Condition #10. The Santolina developers did not provide a written explanation of projected water use and phasing within the context of the 2024 Water Conservation Plan Goal and Program Update, nor did they provide the required water conservation plan. The incomplete Level B.1 Master Plan merely states that, “Santolina will comply with all adopted water consumption and usage policies of the ABCWUA and the County,” and simply refers to Bernalillo County Code of Ordinances Article VII: Water Conservation Requirements and “the most current version of the County’s Water Conservation Development Standards and Guidelines.” Plan, pages 5-6.

These statements clearly do not comply with Conditions #9-10 established by the Board of County Commissioners.

6. The Santolina developers did not resolve water and wastewater issues for the Level B.1 Master Plan community.

The Board of County Commissioners also established the condition that, “Water and wastewater issues for the Santolina Master Planned Community shall be resolved between the ABCWUA and the applicant prior to any Level B approval.” *Id.* at Condition #11. As previously discussed, a fully executed development agreement with the Water Utility Authority would provide the detailed location and phasing of water, sewer and drainage systems, along with water availability and serviceability for the Level B.1 Master Plan area. Without the required development agreement with the Water Utility Authority, the Level B.1 Master Plan merely provides conceptual plans and leaves unresolved water and wastewater issues. The Planning Commission even acknowledged these defects (the lack of a development agreement with the Water Utility Authority and Level B.1 Master Plan’s unresolved water and wastewater issues) in its Decision, Condition #5.

Instead of complying with the Board of County Commissioners' Condition #11, as well as with the Planned Communities Criteria, the Planning Commission deferred compliance with these requirements "prior to a Level B Master Plan final hearing before the BCC." Planning Commission Decision, Condition #5.

7. The Santolina developers did not provide documentation that the proposed development will comply with Albuquerque/Bernalillo County Air Quality Standards.

The Board of County Commissioners also established the condition that prior to any Level B plan approval the Santolina developers must provide "documentation that the proposed development will comply with Albuquerque/Bernalillo County Air Quality Standards." Board of County Commissioners Decision, Condition #13. As previously discussed, the Level B.1 Master Plan did not provide this required documentation. The Plan does not identify what types of industry and manufacturing will be located within the Plan area, what types of emissions will be produced, and the effects of such emissions on the Plan area population.

B. The Santolina developers did not comply with other conditions established by the Planned Communities Criteria for the filing of the Santolina Level B.1 Master Plan.

Under the Planned Communities Criteria's Level B Master Plan submittal requirements, developers are required to submit the following *prior to* formal submittal of a Level B plan:

A Level B transportation system analysis, including specific traffic studies for the particular plan submittal plus all other approved Level B plan elements in the community, existing and projected demand (phased as appropriate), and *consequential noise and air quality impacts*.

Planned Communities Criteria, page 38, emphasis added.

Though the developers submitted a Level B Transportation Plan with their formal submittal of the Level B.1 Master Plan on January 25, 2016, the Plan failed to include analyses of "consequential noise and air quality impacts." *Id.* It took the developers five months after

formal submittal of the Level B.1 Master Plan to finally submit the required air quality impacts analysis to the Planning Commission. *See* Level B.1 Master Plan “Air Quality Impact Analysis” (May 2016). Such a delayed submission does not comply with the Planned Communities Criteria.

For five months the Planning Commission had before it an incomplete Level B.1 Master Plan application. Yet the Planning Commission proceeded to consider the incomplete application and hold a hearing specifically on the transportation component of the Level B.1 Master Plan without the required noise impacts and air quality impacts analyses. *See* Planned Communities Criteria Hearing, TR-3: 9-12 (April 27, 2016) (As was pointed out by Enrico Gradi, the Bernalillo Planning and Development Service Director, “As you all know, this case is being divided up into various sections pertaining to the different elements of the Level B Planned Communities criteria. Today’s hearing will involve primarily around the issue of transportation.”).

The Planning Commission held four more hearings on the Level B.1 Master Plan application after the developers finally submitted at least the Level B Master Plan Air Quality Impacts Analysis. The “Air Quality Impacts Analysis was not considered at any of the four hearings held after its submission. *See generally* Planning Commission Hearing transcripts for June 23, 2016; July 21, 2016; and November 2, 2016. Additionally, to this date, the developers have failed to submit a noise impacts analysis. Therefore, the Planning Commission’s finding that, “The Santolina Level B.I Plan and associated technical appendices have been reviewed and revised to address the requirements of Bernalillo County departments and other commenting agencies” is factually incorrect. Planning Commission Decision, Finding #12. One cannot review and revise a technical document that one does not have.

VII. It would be premature for the Board of County Commissioners to approve the Santolina Level B.1 Master Plan.

Finally, it would be premature for the Board of County Commissioners to approve the Santolina Level B.1 Master Plan for two reasons. First, as is pointed out above, the Santolina developers failed to provide information that was required for the Planning Commission to evaluate the Santolina Level B.1 Master Plan, and the Planning Commission should not have made the recommendation that it did without all of that information.

Second, the Appellants in this appeal have challenged in the Second Judicial District Court the Board of County Commissioners' earlier approval of the Santolina Level A Master Plan and the Zone Map Amendment for the proposed Santolina development. Those challenges are still pending in the Second Judicial District Court, and it therefore would be inappropriate for the Board of County Commissioners to approve the Santolina Level B.1 Master Plan.

Although the Planned Communities Criteria indicate that the Level A Master Plan, the Level B Master Plan, and the Level C Master Plan can be approved simultaneously, there is nothing in the Planned Communities Criteria indicating that a Level B Master Plan may be approved before a Level A Master Plan is approved. For that reason, if the Second Judicial District Court invalidates the Board of County Commissioners' approval of the Santolina Level A Master Plan, approval of the Santolina Level B.1 Master Plan would violate the Planned Communities Criteria. Similarly, if the Second Judicial District Court rules that the Board of County Commissioners' approval of the Zone Map Amendment for the proposed Santolina development is invalid, all approvals of Level A and Level B Master Plans would be invalidated as well because they depend upon the property for the proposed Santolina development being zoned for planned communities.

The Board of County Commissioners therefore should not act on the Santolina Level B.1 Master Plan until the pending litigation concerning the Santolina Level A Master Plan and the Zone Map Amendment for the Santolina property is resolved.

Conclusion

For the above stated reasons, the Board of County Commissioners should reject the Planning Commission's recommendation and should not approve the Santolina Level B.1 Master Plan.

Dated: January 25, 2017.

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