



May 30, 2017

Mr. Joe Chavez, Chairman
Bernalillo County Planning Commission
1 Civic Plaza NW
Albuquerque, NM 87102

Re: Special Project Review – Santolina Level A Master Plan Findings and
Conditions of Approval Amendments

Dear Chairman Chavez:

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 Community Representatives”) request that the Bernalillo County Planning Commission (“Planning Commission”) recommend approval of two proposed amendments to the Bernalillo County Board of County Commissioners’ (“Board”) June 16, 2015 approval of the Santolina Level A Master Plan.

The first proposed amendment is to add a “Finding” that all subdivision actions are major subdivision actions and shall be reviewed and approved, along

with associated Level C documents, by the Planning Commission pursuant to NMSA 1978, Section 47-6-9.D and Section 74-7 of the Bernalillo County Code of Ordinances, and shall be subject to the public hearing requirements contained in NMSA 1978, Section 47-6-14 and the water permit requirements contained in NMSA 1978, Section 47-6-11.2.

The second proposed amendment is to remove Condition #19, which would allow an unlawful review of proposed Santolina subdivision actions and associated Level C documents by the County Development Review Authority under summary review procedures.

These proposed amendments would eliminate the unlawful review of major subdivision documents and plats pursuant to summary review procedures and would restore the public participation requirements, the water permit requirements, and the Planning Commission's review and approval authority of such documents and plats mandated under the New Mexico Subdivision Act.

Argument

I. The New Mexico Subdivision Act and Its Implementing Bernalillo County Ordinances Mandate That Major Subdivision Plats and Documents Be Reviewed and Approved Under Procedures for Major Subdivisions and Not Under Summary Review Procedures for Minor Subdivisions.

Level C documents for a planned community such as Santolina, which result in Types 1, 2,3 (six lots or greater) or 4 subdivisions, must be considered by either

the Board of County Commissioners or the Planning Commission. NMSA 1978, Section 47-6-9.D; Sections 74-7, 74-10, 74-33 of the Bernalillo County Code of Ordinances. If the Board delegates the authority to review and approve Types 1, 2, 3 (six lots or greater) and 4 subdivision preliminary plats and final plats, as well as associated Level C documents, to the Planning Commission, the delegation must comply with the public hearing requirements contained in NMSA 1978, Section 47-6-14 and with the water permit requirements contained in NMSA 1978, Section 47-6-11.2. *Id.* Only certain Type 3 and all Type 5 subdivision plats and associated Level C documents may be reviewed by the County Development Review Authority under summary review procedures. NMSA 1978, Section 47-6-11.M.

However, the Board and the Developers endeavored to unlawfully circumvent these requirements through the adoption of Condition #19 to the Board's approval of the Level A Master Plan. Condition #19 states, in pertinent part, that "A summary platting procedure, such as that allowed for a 'minor subdivision' under County ordinances, shall be permitted for the Boundary Plat, and for any subsequent platting actions prior to a Level C plan or a Level C subdivision plat approval." Board of County Commissioners' Approval of the Santolina Level A Master Plan, page 7(June 19, 2015).

A summary review procedure does not permit public participation, requires much less information from the developer, and does not require a water permit.

NMSA 1978, Section 47-6-27; NMSA 1978, Section 47-6-11.2; Bernalillo County Code of Ordinances, Section 74-51, citing to Ord. No. 96-23, art. 6, § 1, 10-1-96 and Ord. No. 2005-7, § 1, 6-28-05; *Compare* Bernalillo County Code of Ordinances, Section 74-82(a)(1) with Sections 74-82(a)(2) and 74-82(a)(3).

II. Substantial Harm Will Result to the Board of County Commissioners, the Planning Commission and the Public If Condition #19 Is Not Removed.

The New Mexico Subdivision Act and its implementing Bernalillo County Ordinances clearly mandate that the public has a right to a public hearing on major subdivision plats and associated Level C documents, and that developers are required to provide “proof of a service commitment from a water provider and an opinion from the state engineer that the [developer] can ...[furnish water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision] or provide a copy of a permit obtained from the state engineer...for the subdivision water use,” NMSA 1978, Section 47-6-11.2. The Bernalillo County Code of Ordinances also mandates that the Planning Commission has review and approval authority for major subdivision actions and documents.

Condition #19 is an unlawful attempt to circumvent the public participation and water permit requirements mandated by the New Mexico Subdivision Act. Under Condition #19, no public hearings will be held on the proposed Santolina plats and associated Level C documents, and the Developers will not be required to

comply with the water permit requirements. Condition #19 is also an unlawful attempt to circumvent the Planning Commission's review and approval authority for major subdivision actions and documents.

Furthermore, Condition #19 would cause substantial harm to the Board, the Planning Commission, and the public if the Planning Commission recommends approval of the Santolina Developers' proposed amendments to Conditions #8, #9 and #11 and the Board adopts such a recommendation. The Santolina Developers have requested that the Planning Commission either remove entirely or amend Conditions #8, #9 and #11 to the Board's Approval of the Level A Master Plan so that the Developers are either no longer required to provide a development agreement with the Water Authority with its Level B.1 Master Plan or would be required to provide this development agreement only with its Level C Master Plan. *See Santolina Developers' Application (Request) to remove and/or amend Conditions #8, #9 and #11 to the Board's Approval of the Level A Master Plan (April 24, 2017).*

If the Planning Commission recommends approving the Developers' proposed amendments to Conditions #8, #9 and #11 to either remove or defer the Water Authority development agreement requirement to Level C and the Board accepts that recommendation, the Board will not be able to review this critical document of the proposed Santolina development. This is because the Planned

Communities Criteria state that the Board of County Commissioners has review and approval authority of only Level A and Level B planned community master plans and associated documents. Planned Communities Criteria, pages 35, 38.

The Planned Communities Criteria therefore acknowledge that the Board has delegated its review and approval authority of major subdivision plats and associated Level C documents to the Planning Commission and of minor subdivision plats and associated Level C documents to the County Development Review Authority. *Id.* at page 41. However, Condition #19 would also preclude the Planning Commission from exercising its lawfully delegated review and approval authority for major subdivision plats and associated Level C documents.

Additionally, the Board's ability to assess whether the Level B.1 Master Plan and associated documents comply with the Planned Communities Criteria will be substantially undermined. Without a fully executed Water Authority development agreement in place, the Board cannot adequately determine whether the Level B.1 Master Plan and associated documents satisfy the Level B Planned Communities Criteria requirements pertaining to water. One reason for this is because the Water Authority development agreement will provide the detailed timing, phasing, location, availability, responsibilities, and maintenance of water, sewer and drainage systems, as well as the required statements of water availability and serviceability. Level B.1 Master Plan, page 63.

Finally, the public's right to provide comment and testimony on this critical document would be eliminated if the Planning Commission recommends approving the Developers' proposed amendments to Conditions #8, #9 and #11 to defer the Water Authority development agreement requirement to Level C and the Board accepts that recommendation. Not only does the public have a right to a public hearing on major subdivision plats and associated Level C documents, NMSA 1978, Section 47-6-11.2, the public also has the right to provide comment and testimony on Level A and Level B master plans and associated documents, including the Water Authority development agreement. Bernalillo County Board of County Commissioners Rules of Procedure for Quasi-Judicial Hearings and Regular Zoning Meetings, Rule 19, page 7 (April 22, 2014) (providing procedures for accepting public comment on an agenda item).

However, if the required Water Authority development agreement is deferred to Level C, thereby becoming a Level C document, and is not reviewed by the Board and is instead reviewed by the County Development Review Authority under summary review procedures, the public will no longer have the opportunity to provide comment and testimony on this critical document.

Conclusion

For the above stated reasons, the Community Representatives request that the Planning Commission recommend the following two proposed amendments to the Board's Approval of the Level A Master Plan:

- 1) the addition of the following "Finding": All subdivision actions are major subdivision actions and shall be reviewed and approved, along with associated Level C documents, by the Planning Commission pursuant to NMSA 1978, Section 47-6-9.D and Section 74-7 of the Bernalillo County Code of Ordinances, and shall be subject to the public hearing requirements contained in NMSA 1978, Section 47-6-14 and the water permit requirements contained in NMSA 1978, Section 47-6-11.2; and
- 2) the removal of Condition #19.

Dated: May 30, 2017.

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Certificate of Service


I certify that on May 30, 2017 copies of this Special Project Review –
Santolina Level A Master Plan Findings and Conditions of Approval Amendments
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