



June 6, 2017

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

Re: Request to Defer Special Project Review – Santolina Level A Master Plan Findings and Conditions of Approval Amendments; File No. SPR2017-0003

Dear Chairman Chavez:

Introduction.

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”) defer its consideration of Western Albuquerque Land Holdings’ (“WAHL”) and Consensus Planning’s (collectively known as the “Santolina Developers”) application to amend Conditions #8, #9 and #11 of the Board of County Commissioners’ (“Board”) Approval of the Santolina Level A Master Plan due to the recent Court decision issued by the Second Judicial District

on May 31, 2017 voiding the Board's approval of the Santolina Planned Communities Zone. (Attached as Exhibit A).

The Santolina Developers' application was submitted on April 24, 2017 and is scheduled to be heard by the Planning Commission on June 7, 2017. The application has been docketed as File No. SPR2017-0003 and is listed as Item #12 on the Planning Commission Agenda for the June 7, 2017 hearing.

I. Background of the Santolina Level A Appeals.

Several of the above listed Community Representatives filed a consolidated action involving four appeals of the Board of County Commissioners' and the Planning Commission's actions pertaining to Santolina Level A with the Second Judicial District Court. The following actions were appealed: 1) the Board's denial of their appeal from the Planning Commission's recommendation of the Santolina Level A Master Plan, dated May 15, 2015; 2) the Board's approval of the Santolina Level A Master Plan, dated June 19, 2015; 3) the Board's denial of their appeal from the Planning Commission's recommendation to approve the requested zone map amendment ("ZMA") for the proposed Santolina development, dated June 1, 2015; and 4) the Board's approval of the ZMA from A-1 Rural Agricultura to the Planned Communities ("PC") Zone, dated June 18, 2015.

II. Effect of The Second Judicial District Court Memorandum Opinion and Order Issued May 31, 2017 Addressing the Santolina Level A Appeals on Santolina Level B Proceedings.

The Court issued a Memorandum Opinion and Order (“Opinion”) addressing these four appeals on May 31, 2017, reversing the Board’s Decision on the ZMA and remanding for proceedings consistent with the Opinion. There is no longer a valid PC Zone in place for the proposed Santolina Development and the Court’s Opinion indicates that proceedings for Santolina Level A must begin anew.

Because the Court found that due process of law was violated and that the “Appellants were entitled to a fair and impartial tribunal on approval of the ZMA and the concurrent denial of their CPC appeal,” the Board’s approval of the ZMA is now void. The Board’s subsequent approvals of the Santolina Level A Master Plan and Santolina Level A Development Agreement are also void because those approvals were dependent upon the underlying approval of the ZMA. When an underlying decision is void, further proceedings dependent on the voided decision are also void. *See Nesbit v. City of Albuquerque*, 1977-NMSC-107, ¶ 11, 91 N.M. 455, 459 (decisions declared invalid due to underlying decision lacking due process); *Miller v. City of Albuquerque*, 1976-NMSC-052, ¶ 20, 89 N.M. 503, 507 (by failing to follow statutory procedures, due process of law was violated and no subsequent act could correct the defect); *Classen v. Classen*, 1995-NMCA-022, ¶ 10, 119 N.M. 582, 585 (a judgment is void if the court acted in a manner

inconsistent with due process); Zuni Indian Tribe v. McKinley County Board, 2013-NMCA-041, ¶ 21, 2013 N.M. App. LEXIS 12, 19 (applicant takes risk that appealed underlying decision will be void, thus voiding all subsequent governments actions dependent on that approval).

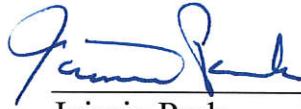
Conclusion.

For the above reasons, the Planning Commission cannot proceed with its consideration of the Santolina Developers' proposed amendments to the Board's approval of the Level A Master Plan or any other matter concerning the proposed Santolina development. Due to the Court's May 31, 2017 Opinion, there is no longer a valid PC Zone in place and therefore no longer a valid Level A Master Plan or a valid Level A Development Agreement in place.

The Planned Communities Criteria states that there are three levels of review and approval of a planned community and that even though all three levels could be developed simultaneously and approved jointly, Level B approvals cannot be made before valid Level A approvals. Planned Communities Criteria, page 35. Therefore, Community Representatives request the Planning Commission to defer consideration of this Level B matter until valid Level A approvals are in place.

Dated: June 6, 2017.

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Certificate of Service

I certify that on June 6, 2017 copies of this Special Project Review –
Santolina Level A Master Plan Findings and Conditions of Approval Amendments
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SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

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.

D-202-CV-2015-04466
Consolidated with D-202-CV-2015-05363

THE BERNALILLO COUNTY BOARD OF
COUNTY COMMISSIONERS, ART DE LA CRUZ,
WAYNE JOHNSON, DEBBIE O'MALLEY, MAGGIE
HART STEBBINS, and LONNIE TALBERT, BERNALILLO
COUNTY COMMISSIONERS,

Appellees/Respondents,

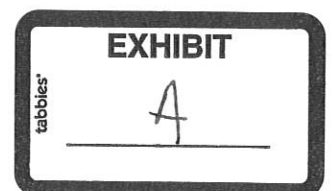
and

CONSENSUS PLANNING,
and WESTERN ALBUQUERQUE LAND HOLDINGS, LLC,

Appellees/Respondents.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes to the Court's attention as a result of Appellants Javier Benavidez, James Santiago Maestas, Roberto Roibal, the SouthWest Organizing Project, the New Mexico Health Equity Working Group, and the Pajarito Village Association's First Amended Notice of Appeal and Alternative First Amended Petition for Writ of Certiorari, seeking review of various decisions of Appellee Bernalillo County Board of County Commissioners. This is a consolidated action involving four appeals. Appellants appeal: 1) the Board's denial of their appeal from the County Planning Commission's ("CPC") recommendation of the Santolina Master Plan, dated May 15, 2015 [Record Proper ("RP") 87878-879, 58864-



872]; 2) the Board's approval of the Santolina Master Plan, dated June 19, 2015¹ [Id. 86811-818, 88635-637]; 4) the Board's denial of their appeal from the CPC's recommendation to approve the requested zone map amendment ("ZMA") for the proposed Santolina development, dated June 1, 2015; and 4) the Board's approval of the ZMA from A-1 Rural Agricultural to the Planned Communities ("PC") Zone, dated June 18, 2015.² [Id. 86821-828, 88654-656] The Court has reviewed the record and the pleadings filed herein. The Court **REVERSES** the Board's Decision on the ZMA and **REMANDS** for proceedings consistent with this Opinion. The Court **AFFIRMS** the Board's Decisions regarding the Master Plan and Appellants' appeal of the CPC recommendation regarding the Master Plan. The parties' requests for oral argument, filed March 31, 2016 and December 13, 2016, are **DENIED**.

I. FACTS AND BACKGROUND

The record in this matter is extensive. The Court only considers those documents referenced by the parties that are contained in the Record Proper and the Supplemental Record Proper and cited with an appropriate record page number. [See Notice of Filing of Record on Appeal, filed October 6, 2015 and Stipulated Notice of Filing First Supplement of Record on Appeal, filed January 28, 2016] See Rule 1-074 NMRA. The Court does not consider any exhibits attached to the appellate pleadings unless they are already part of the Record presented to the Court.

On August 26, 2013, Appellee Consensus Planning requested a Special Project Review for a Planned Community Level A Master Plan and a ZMA for the approximately 13,800 acres

¹ The Court concluded that the New Mexico Health Equity Working Group did not have standing to appeal the Board's approval of the Santolina Master Plan and zone map amendment. [Order, filed April 28, 2016]

² This Court dismissed Appellants' appeal of the Board's approval of the Development Agreement on April 28, 2016. Additionally, the Court has already issued rulings on Appellees' Motions to Dismiss for lack of standing and ripeness. The Court does not revisit those rulings here and does not address further any of Appellees' arguments on standing and ripeness contained in their appellate responses.

comprising Santolina and owned by Appellee Western Albuquerque Land Holdings (“WALH”). [RP 41343-345, 85034-052] The application contained an explanation of how the ZMA complied with Resolution 116-86 “Adopting Policies for Considering Zone Map Changes” and how the Master Plan met the goals of various plans. [Id.] After multiple hearings the CPC recommended approval of the Master Plan and the ZMA subject to various conditions. [Id. 5570-588, 8756-824, 8825-840, 8906-9025, 9079-209, 9401-546, 9932-10071, 10594-760, 11267-422] Appellants filed appeals of the CPC decisions in December 2014. [Id. 40143-177, 89171-211]

On March 23, 2015, the Albuquerque Journal published an Op-Ed authored by County Commissioner Art De la Cruz. [Id. 80980] The Op-Ed began: “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.” [Id.] The Op-Ed continued: “Presently, Santolina fits this model as a master-planned residential and commercial development” and the Commissioner “consider[ed] Santolina to be appropriate progress for our county.” [Id.] As to concerns expressed about water availability, he stated: “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.” [Id.] The Commissioner concluded by raising the issue of Pajarito Mesa if the County denied the developers’ requests and indicated that he “prefer[red] to more thoughtfully and proactively determine the destiny of Bernalillo County’s unavoidable and foreseeable growth.” [Id.]

The next day Appellants filed a Request for Recusal and Alternative Motion for Disqualification of Bernalillo County Commissioner De la Cruz. [Id. 80971-979] Appellants argued that board members who decide zoning questions act in a quasi-judicial capacity, that due process requires a tribunal free from partiality, and that Commissioner De la Cruz's Op-Ed demonstrated bias. [Id. 80973-974]

The Board conducted special zoning meetings regarding the Master Plan and ZMA on March 25-26, 2015; May 11, 2015; May 28, 2015, and June 16, 2015. [Id. 87273-422, 87423-717, 87889-88123, 88124-359, 88929-89097] Appellants' motion to recuse Commissioner De La Cruz was first raised at the March 25 special zoning meeting. [Id. 87277-296] Appellants asserted that the proceedings were quasi-judicial matters for which a non-biased Board was necessary. [Id.] Commissioner De La Cruz stated at the hearing that in the Op-Ed he "was thoughtful to avoid specificity related to any zoning issues" and that he had "opined . . . specifically about [his] philosophy related to master plans in general." [Id. 87293] He thought he could "render decisions objectively." [Id.] When asked, no Commissioner wanted to move to disqualify Commissioner De La Cruz. [Id. 87296] Appellants renewed their motion at the May 28 special zoning meeting. [Id. 88052-053] The County Attorney told the Board that the Commissioners had already declined to vote on this motion; it appears no Commissioner wanted to reconsider. [Id. 88053]

The Board heard Appellants' appeals at the May 11 and 28, 2015, hearings; the Board denied the appeals. [Id. 87878-879, 88119, 58864-872] According to Appellants, the decision regarding their appeal of the CPC's recommendation on the ZMA is not in the Record nor is the Board's vote denying it. [Statement of Appellate Issues ("SAI") 2, 4; Reply to Consensus Planning & WALH 4] Appellants never supplemented the record to include the written decision

for the appeal of the ZMA, although it appears to be attached to the Notice of Appeal in CV 2015-05363 and Appellants' Reply. See Rule 1-074(I) NMRA.

At the June 16, 2015, special zoning meeting, the Board approved by a 3-2 vote the adoption of the Master Plan and Ordinance 2015-20 rezoning Santolina from A-1 to the PC Zone. [Id. 86821-828, 88309-312, 88635-637, 88646-656] Commissioner De la Cruz voted in favor of both. [Id. 88309-312] The Ordinance was adopted by motion without further discussion or presentation “[a]mending the zone code and zone map of Bernalillo County . . . for the Santolina Level A Master Plan which establishes Planned Communities Zoning for Santolina property.” [Id. 88311-312, 88654 (all capital letters omitted)] It amended the “[t]he Zoning Code and the Zone Map of Bernalillo County . . . to establish general zoning categories and procedures in accordance with Section 19.5 of the Bernalillo County Zoning Code, as set forth in Chapter 4 of the . . . Master Plan.” [Id. 88654] The Notification of Decision was issued on June 18, 2015, approving the ZMA from A-1 Rural Agricultural to PC Zone for the Santolina property. [Id. 86821] The Decision found in pertinent part:

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 Master Plan (SPR-20130004).

* * *

5. . . . The Santolina Zoning incorporates the land use areas that will be further defined in subsequent Level B and Level C planning and zoning.

* * *

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.

[Id. 86821-823]

The Board adopted the Master Plan by Resolution 2015-42, on June 16, 2015. [Id. 88635-637, 88646-653] In pertinent part, the Master Plan Decision states that the “request for approval of the Santolina Level A Master Plan has been submitted in conjunction with a request for a zone change for Planned Communities (PC) Zoning in accordance with Section 19.5 of the . . . Zoning Code.” [Id. 88647] The Decision contains twenty-four (24) findings and twenty-two (22) conditions. [Id. 88647-653] The Master Plan itself states the PC Zone “adds the benefit of providing a predictable and easy to use framework for large-scale zoning” and “conforms to the Level A Planned Community Master Plan” and that the PC Zone “places zoning on the property in alignment with the vision for Santolina expressed in this Level A Master Plan.” [Id. 88736, 88767]

II. STANDARD OF REVIEW

Rule 1-074(A) “governs appeals from administrative agencies to the district courts when there is a statutory right of review to the district court.” Rule 1-074(R) provides that the district court shall apply the following administrative standards of review:

- (1) whether the agency acted fraudulently, arbitrarily or capriciously;
- (2) whether based upon the whole record on appeal, the decision of the agency is not supported by substantial evidence;
- (3) whether the action of the agency was outside the scope of authority of the agency; or
- (4) whether the action of the agency was otherwise not in accordance with law.

See also NMSA 1978, § 39-3-1.1(D) (1999). The party appealing bears the burden to show that the agency action falls within one of the oft-mentioned grounds for reversal set out above. See Fitzhugh v. N.M. Dep't of Labor, 1996-NMSC-044, ¶ 25, 122 N.M. 173, 922 P.2d 555. "The decision of the agency will be affirmed if it is supported by applicable law and by substantial evidence in the record as a whole." Regents of Univ. of N.M. v. N.M. Fed'n of Teachers, 1998-NMSC-020, ¶ 17, 125 N.M. 401, 962 P.2d 1236 (internal quotation marks and quoted authority omitted). "Substantial evidence supporting administrative agency action is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." Gallup Westside Dev., LLC v. City of Gallup, 2004-NMCA-010, ¶ 11, 135 N.M. 30, 84 P.3d 78.

[T]he decision of the zoning body is disturbed only . . . if the zoning authority's decision is not supported by substantial evidence. . . . Decisions of a municipality are presumably valid and the burden of proving otherwise rests upon a party seeking to void such decision. The party seeking to overturn such decision must establish that there is no substantial evidence to support the municipality's decision.

Hart v. City of Albuquerque, 1999-NMCA-043, ¶ 19, 126 N.M. 753, 975 P.2d 366 (internal quotation marks and quoted authority omitted). "The district court may not substitute its judgment for that of the agency and must evaluate whether the record supports the result reached, not whether a different result could have been reached." N.M. State Bd. of Psychologist Exam'rs v. Land, 2003-NMCA-034, ¶ 5, 133 N.M. 362, 62 P.3d 1244.

“Zoning actions are quasi-judicial in nature and a reviewing court applies an administrative standard of review” as set out above. Siesta Hills Neighborhood Ass’n v. City of Albuquerque, 1998-NMCA-028, ¶ 6, 124 N.M. 670, 954 P.2d 102. However, when a legislative act by a government body is challenged, New Mexico follows the majority rule. Dugger v. City of Santa Fe, 1992-NMCA-022, ¶ 16, 114 N.M. 47, 834 P.2d 424.

The majority of jurisdictions limit judicial review of an ordinance passed pursuant to express legislative authority to the constitutional validity of the statute or its application When an ordinance is challenged as unconstitutional, the test generally applied is whether the ordinance bears a reasonable or rational relationship to a legitimate legislative goal or purpose. The presumption that legislative acts are legal, valid, and constitutional extends to municipal ordinances.

Under the reasonableness standard, a court is required to show great deference to the municipality's decision. It is well settled in New Mexico that: where power to do an act is conferred upon a municipality in general terms without describing the mode of exercising it, the trustees have the discretion as to the manner in which the power shall be employed, and the courts will not interfere with this discretion. There is no independent inquiry into the wisdom, policy, or justness of the legislative action.

Id. ¶¶ 16-17 (block quotation, alterations, quoted authority, and citations omitted).

III. DISCUSSION

Appellants present five separate issues for this Court’s consideration: 1) whether the Board erred by denying Appellants due process during the Board's proceedings; 2) whether the Board erred by approving the ZMA; 3) whether the Board erred by denying Appellants’ appeal addressing the ZMA; 4) whether the Board erred by approving the Santolina Master Plan; and 5) whether the Board erred by denying Appellants' appeal concerning the Master Plan. [SAI 3] The Court determines that the ZMA approval process and consideration of the ZMA appeal were quasi-judicial proceedings requiring an impartial tribunal. The Board’s failure to consider and vote on Appellants’ due process challenge to the alleged bias of one of its members requires

REVERSAL and **REMAND**. The Court notes that the Board's decision denying Appellants' appeal of the CPC's ZMA recommendation is not in the Record, which would potentially preclude the Court's consideration of it. The Court concludes that the Master Plan was approved through a legislative process and **AFFIRMS** the Board's approval of the Master Plan and concurrent denial of Appellants' appeal from the CPC recommendation approving the Master Plan.

The first question these appeals present for this Court's resolution is whether the Master Plan and ZMA processes were legislative or quasi-judicial. These determinations guide the Court's due process analysis as well as what standard of review it applies. Appellants contend that both the approval of the ZMA and Master Plan were quasi-judicial proceedings in which they were entitled to an impartial tribunal. Appellees respond that both proceedings were legislative not giving rise to due process protections. The Court concludes that the ZMA approval was quasi-judicial and the Master Plan process legislative.

A. The Board's Decisions regarding the ZMA were quasi-judicial processes.

In Albuquerque Commons Partnership v. City Council, 2008-NMSC-025, 144 N.M. 99, 184 P.3d 411, the Supreme Court discussed the distinction between legislative action and quasi-judicial action.

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

Id. ¶ 32 (quoted authority omitted). The Supreme Court concluded that a rezoning decision by the City Council that downzoned a small number of properties was quasi-judicial. See id.

“When a zoning action is specifically designed to affect a relatively small number of properties and does not apply to similarly situated properties in the surrounding area or city-wide, that action is quasi-judicial, not legislative.” Id. ¶ 39 (emphasis in original); Hart, 1999-NMCA-043, ¶ 13 (“Zoning decisions can be either legislative or quasi-judicial depending upon the impact of the zoning change.”); Dugger, 1992-NMCA-022, ¶ 9 (“In New Mexico, decisions that determine how a particular piece of property can be used have been held to be quasi-judicial.”). In a quasi-judicial matter, “[w]hile the specific procedures employed must adhere to fundamental principles of justice and procedural due process, they are not required to comport with the same evidentiary and procedural standards applicable to a court of law.” Albuquerque Commons P’ship, 2008-NMSC-025, ¶ 34 (internal quotation marks and quoted authority omitted).

Quasi-judicial zoning matters are not politics-as-usual as far as the municipal governing body is concerned. In such proceedings, the council does not sit as a mini-legislature, as it functions in most matters, but instead must act like a judicial body bound by ethical standards comparable to those that govern a court in performing the same function.

Id. ¶ 33 (internal quotation marks and quoted authority omitted). Fact finding regarding the applicability of existing legal standards or policy considerations is required and is the hallmark of quasi-judicial action. See id. ¶ 32.

Appellants assert that the Board’s actions approving the ZMA, that is, changing the zoning of the Santolina property from A-1 Rural Agricultural to the PC Zone, was a quasi-judicial action because the Board took evidence, heard testimony from sworn witnesses, and engaged in fact finding regarding the appropriateness of changing the zoning of a specific property owned by a specific owner. [SAI 17, 22-27] Appellees contend that the Decision approving the ZMA changing the pertinent area to the PC Zone was legislative or planning and not a quasi-judicial act by the Board as the zoning authority. They contend that the zone change

is part of the approval of the Master Plan and the legislative function. [Response 15-22; Board Response 14-23] The Court agrees with Appellants.

Application of the Albuquerque Commons Partnership criteria persuades the Court that the approval of the ZMA was quasi-judicial. The ZMA request was made by Appellee Consensus Planning to amend the zone map for a specific area of land, albeit a very large area, but a specific area in the County. WALH is the owner of the 13,800 acres of land that is Santolina. [RP 85034, 87426] This is not a case where the Board issued a zoning ordinance or zoning action that applied to the entire County. See, e.g., KOB-TV, LLC v. City of Albuquerque, 2005-NMCA-049, ¶ 23, 137 N.M. 388, 111 P.3d 708 (concluding that enactment of city-wise ordinance was legislative, not quasi-judicial); Miles v. Bd. of Cnty. Comm'rs, 1998-NMCA-118, ¶ 12, 125 N.M. 608, 964 P.2d 169 (concluding that adoption of comprehensive zoning ordinance covering entire county served legislative not adjudicative function). Rather, the Board in this case adjudicated the zoning of one parcel owned by one entity. See KOB-TV, LLC, 2005-NMCA-049, ¶ 20 (“Thus, application of a general rule to a particular piece of property to deter the manner in which a particular piece of property can be used is quasi-judicial.”).

According to the written Decision, a hearing was held. Witnesses were sworn, and testimony offered. The Board then issued a written Decision with factual findings applying Resolution 116-86 governing ZMAs and concluding that the ZMA furthered the goals and plans in the Planned Communities Criteria and the Albuquerque/Bernalillo County Comprehensive Plan for master planned communities. The Board found that the ZMA request met the requirements of Resolution 116-86(A), (E) that the ZMA was “consistent with the health, safety, and general welfare” of County residents and that

[t]he 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.

The Court notes that nothing in the PC Zone Decision states that the Master Plan created or compelled the PC Zone. Rather, the Decision states that the ZMA request “demonstrated that the existing zoning . . . [was] no longer appropriate and the proposed development is more advantageous to the community.” [Id. 86823] This constitutes fact finding, a primary indicator of a quasi-judicial action. The Board applied existing legal standards, Sections 19.5 and 25 of the Zoning Code, Resolution 116-86, the Planned Communities Criteria, and the Albuquerque/Bernalillo County Comprehensive Plan to the facts presented in reaching its Decision. The fact that more discrete zoning will occur at a future date for specific areas of the 13,800 acres, indeed this development is projected to occur over the next forty to fifty years, does not change this conclusion. [Id. 88647] The entire parcel was zoned, inter alia, A-1 Rural Agricultural, which allowed certain uses, and now is zoned PC, which permits development governed by a series of plans as delineated in Section 19.5 of the Zoning Code.

To the extent Appellees rely on the remarks of the County Attorney at the March 25, 2015 hearing in support of their position that the ZMA was a legislative process the Court is unpersuaded. Review of the transcripts of the Board hearings reveal that some lack of clarity existed regarding the distinctions between approval of the ZMA and approval of the Master Plan. One commissioner stated that she thought the Board was in quasi-judicial mode until the zoning appeals were heard. Another indicated that she believed that the Board was in quasi-judicial mode as well and for that reason she had not considered the public’s communications with her office. [Id. 87425-426, 87289-291, 87593, 87830-831] At the March 25, 2015 hearing, the

County Attorney stated that the Commissioners had been told they could talk to their constituents about the Master Plan but not about the zoning “to be safe.” [Id. 87292] The County Attorney also stated at that hearing that the Master Plan and Zoning were legislative and not quasi-judicial, that the zoning was being altered through the Master Plan, and that no separate zone change existed. [Id. 87277-278, 87289-291] However, neither Appellee directs this Court to what in the Master Plan compels the zone change. Rather, the Zoning Code provides for a zoning designation of PC Zone for areas to be governed by master plans. The Court also notes that the Board took two votes and issued two separate decisions, one for the ZMA and one for the Master Plan.

In 2012, the Bernalillo County Comprehensive Zoning Ordinance, or the Zoning Code, was amended to add Section 19.5 PC Planned Communities Zone, a “new zoning designation for the Planned Communities Criteria.” [Id. 89143] Section 19.5 states: “This zone allows a variety of uses controlled by plans which govern the size, configuration, land use mix, densities, and other features on site suitable for planned communities in the reserve and rural areas.” Section 19.5(B)(1) also states: “Adoption and amendment of rank two Level A plans is by the Board of County Commissioners. It is initially done when the PC zone is mapped for a community; application for the PC zone shall be accompanied by a proposed Level A plan for the planned community.” The PC Zone is a zone and part of the Zoning Code. While what happens in the PC Zone may be controlled by plans, the PC Zone itself is a zoning designation. According to the Zoning Code, it appears the PC Zone is “mapped” first before the adoption of a Level A plan, given that the application for the PC Zone needs the Level A with it. This interpretation is supported by Finding of Fact ¶ 2 in the Decision regarding the Master Plan. [Id. 88647 (“The request for approval of the Santolina Level A Master Plan has been submitted in

conjunction with a request for a zone change for Planned Communities (PC) Zoning in accordance with Section 19.5 of the Bernalillo County Zoning Code (Planned Communities Zone)].] The Court concludes that the approval of the ZMA was a quasi-judicial zoning action pursuant to the zoning code.

B. The Board’s Decision approving the Master Plan was legislative.

In contrast, the Court concludes that approval of the Master Plan was a legislative process. “Legislative action ‘reflects some public policy relating to matters of a permanent or general character, is not usually restricted to identifiable persons or groups, and is usually prospective.’” KOB-TV, LLC, 2005-NMCA-049, ¶¶ 19, 23 (quoting Dugger, 1992-NMCA-022, ¶ 8). NMSA 1978, Section 3-19-1(D) (1965) gives a municipality the authority to “adopt, amend, extend and carry out a general municipal or master plan which may be referred to as the general or master plan.” See also NMSA 1978, § 4-37-1 (1975) (“All counties are granted the same powers that are granted municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties.”). NMSA 1978, § 4-57-2(A) (1967) states:

A. A county planning commission shall have such powers as are necessary and proper to carry out and promote county planning. Such planning shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the county which will, in accordance with existing and future needs, best promote health, safety, morals, order, convenience, prosperity or the general welfare as well as efficiency and economy in the process of development.

See also Albuquerque/Bernalillo County Comprehensive Plan (stating that the “Board . . . has retained the authority to adopt master plans for the physical development of areas within the jurisdiction” of the County [Id. 23438]). “[T]he legislature has assigned to the master plan the role of guide, enabling municipal planning commissions to use reasonable discretion in applying

its provisions to the actual decision-making processes involved in municipal development.” West Bluff Neighborhood Ass’n v. City of Albuquerque, 2002-NMCA-075, ¶ 12, 132 N.M. 433, 50 P.3d 182, overruled on other grounds by Rio Grande Chapter of the Sierra Club v. N.M. Mining Comm’n, 2003-NMSC-005, ¶ 16, 133 N.M. 97, 61 P.3d 806; see also NMSA 1978, § 3-19-9 (1970). A master plan is advisory in nature, has no regulatory effect, and does not bind the county’s final decision making authority or bind the county to any specific procedures. West Bluff Neighborhood Ass’n, 2002-NMCA-075, ¶ 13. In Dugger, the Court of Appeals noted that planning documents are typically adopted by resolution, which do not carry the weight of law, as do ordinances. 1992-NMCA-022, ¶ 27.

A master plan is part of the Board’s legislative function of planning the County’s development. This understanding of a plan being legislative is also found in the Board’s Rules of Procedure for Quasi-Judicial Hearings and Regular Zoning Meetings, paragraph 1, dated April 22, 2014:

Quasi-judicial proceedings do not include legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans, zoning regulations, other land use planning documents, or the adoption of area-wide maintenance maps or amendments. Legislative acts relating to land use matters may be heard at a Regular Administrative meeting, or if necessary, at a Regular Zoning Meeting.

The Board adopted Resolution 2015-42 on June 16, 2015 and issued its Decision on the Master Plan on June 19, 2015. [Id. 88635-637, 88646] The Court determines that the adoption of the Master Plan was a legislative process in accord with the Planned Communities Criteria and the Albuquerque/Bernalillo Comprehensive Plan to develop the Reserve Area. Like a comprehensive zoning ordinance affecting the entire county, the Master Plan serves a legislative function because it reflects broad, prospective applications of public policy regarding the Reserve Area and County development. Appellants are correct that the Decision appears to

contain factual findings pursuant to various standards. [SAI 27] However, the Master Plan itself and the Resolution adopting it did not adjudicate anyone's rights as in the above zone change. [Id. 28-29]

C. A quasi-judicial zoning process requires a fair and impartial tribunal.

When a body is the ultimate decision-making body for “adjudicating individual property applications for changes in zoning designations” it acts in a quasi-judicial capacity. Los Chavez Cmty. Ass’n v. Valencia Cnty., 2012-NMCA-044, ¶¶ 13, 19, 277 P.3d 475. In Los Chavez Community Association, the Court “reaffirm[ed] the proposition that those who sit on boards adjudicating individual property applications for changes in zoning designations act in a quasi-judicial capacity.” Id. ¶ 19. “Procedural due process requires a fair and impartial hearing before a trier of fact who is disinterested and free from any form of bias or predisposition regarding the outcome of the case.” Id. ¶ 20 (internal quotation marks and quoted authority omitted). City and County officials “must avoid acting or voting on matters wherein they have a conflict of interest or their actions give rise to an appearance of impropriety.” Siesta Hills Neighborhood Association, 1998-NMCA-028, ¶ 20. “[I]nterested parties in a quasi-judicial zoning matter are entitled . . . to a tribunal which is impartial in the matter – i.e., having had no pre-hearing or ex parte contacts concerning the question at issue.” Albuquerque Commons P’ship, 2008-NMSC-025, ¶ 34 (internal quotation marks and quoted authority omitted).

Appellants challenged the participation of Commissioner De La Cruz in the approval processes for the ZMA and Master Plan based on his Op-Ed in the Albuquerque Journal two days before the ZMA and Master Plan hearings began. The Court has determined that the ZMA process was quasi-judicial and any adjudication of the ZMA necessitated a fair and impartial tribunal. Although the Board heard argument on Appellants’ motion, it did not vote on whether

Commissioner De La Cruz should recuse or be otherwise disqualified. Due process required the Board give Appellants' request such consideration on the ZMA. This is not a situation where a commissioner or other government official stated their position after hearing all the evidence. See, e.g., Siesta Hills, 1998-NMCA-028, ¶ 19 (holding that disqualification of city councilor was unnecessary where no evidence was presented that she prejudged merits of petition for annexation and special use zoning and statements at issue were made after having heard Siesta Hills' arguments). Rather, the Commissioner opens the Op-Ed stating he strongly supports the Santolina development and rebuts alleged opponents' arguments before the hearings before the Board had even begun.

The Court acknowledges that the Board had been advised that both proceedings were legislative and that the County Attorney indicated that the Board was giving the public more process than was due. The Court also acknowledges that the Board expressed confusion regarding whether its members were able to speak to or have ex parte contact with the public outside of the hearings regarding the Santolina development. Commissioner De La Cruz stated at the hearing that he specifically confined his remarks to the Master Plan in the Op-Ed to prevent any question regarding his ability to be impartial on the ZMA.

“New Mexico law binds quasi-judicial decisionmakers to ethical standards comparable to those that govern a court in performing the same function.” Los Chavez Comm'n Ass'n, 2012-NMCA-044, ¶ 24 (internal quotation marks and quoted authority omitted). Appellants were entitled to a fair and impartial tribunal on approval of the ZMA and the concurrent denial of their CPC appeal. The Op-Ed in the Court's opinion raises questions of partiality and prejudgment, or the appearance thereof, sufficient to warrant at the very least the Board's consideration of the recusal or disqualification of Commissioner De La Cruz. Accordingly, the Court **REVERSES**

the Decision approving the ZMA and the denial of Appellants' appeal of the CPC's recommendation of the ZMA to the Board. The Court **REMANDS** these two matters to the Board for proceedings consistent with this Opinion. "Procedural due process requires a fair and impartial hearing before a trier of fact who is disinterested and free from any form of bias or predisposition regarding the outcome of the case." Id. ¶ 20. The Court is aware that the composition of the Board has changed since the Board considered the ZMA. Before the Board considers the approval of the ZMA and Appellants' appeal of the CPC recommendation, its members shall assure themselves and their constituents that they are free of conflicts of interest and without partiality or prejudice in the matter.

D. The Court affirms the Board's approval of the Master Plan and denial of Appellants' appeal.

The Court determined above that the approval of the Master Plan was a legislative process. When a legislative action is challenged as being unconstitutional "the test generally applied is whether the ordinance bears a reasonable or rational relationship to a legitimate legislative goal or purpose." Dugger, 1992-NMCA-022, ¶ 16. The presumption is that legislative acts are legal, valid, and constitutional. Id.

It is well settled in New Mexico that [w]here power to do an act is conferred upon a municipality in general terms without describing the mode of exercising it, the trustees have the discretion as to the manner in which the power shall be employed, and the courts will not interfere with this discretion. There is no independent inquiry into the wisdom, policy, or justness of the legislative action.

Id. ¶ 17 (block quotation, quoted authority, and citations omitted). Applying this standard of review, the Court declines to make any "independent inquiry into the wisdom, policy, or justness of the [the Board's] legislative action." Id. The Court will not apply the administrative standard of review as argued by Appellants; the Court does not review whether substantial evidence supports the Board's approval of the Master Plan. See id. ¶ 18 ("When the district court applied

the administrative standard of review to determine that there was not substantial evidence on the whole record to support the City's decision to deny annexation, in effect the court made an independent inquiry into the wisdom of the City's action based on the evidence before it and did not limit itself to a determination of whether the City's action was constitutional and within its legislatively granted authority. Thus, the district court impermissibly substituted its judgment for that of the City. We hold that application of the administrative standard of review to the City's decision whether to approve or deny an annexation petition pursuant to Section 3-7-17 was improper.”).

“Because the City's decision was legislative, the wisdom of the action is not for the courts to decide.” Id. ¶ 30. “It follows that any claim by petitioners that they were denied due process must fail.” Id.; Miles, 1998-NMCA-118, ¶ 8 (“The distinction between individualized fact-based deprivations, that are protected by procedural due process, and policy-based deprivations of the interests of a class, that are not protected by procedural due process ... underlies both the distinction between legislation and judicial trial and the distinction between rulemaking and adjudication.” (Internal quotation marks, quoted authority, and alterations omitted.)); see also NMSA 1978, § 3-19-10 (1965). Appellants have not asserted that the Board acted fraudulently or unconstitutionally in adopting the Master Plan. They have not claimed that the Board acted beyond the scope of its delegated authority. See Dugger, 1992-NMCA-022, ¶ 31. Rather, they attack the substance of the Board’s Decision, asking this Court to reweigh that presented by the parties; they ask the Court to review the wisdom of the Board’s action. This the Court will not do. The Board held multiple hearings in which the public participated generating a substantial record. The Decision and Resolution adopting the Master Plan set out the Board's reasoning and subsequent requirements regarding the Master Plan. The Board acted within its planning

authority in doing so. The Board's adoption of the Master Plan, and the concurrent denial of Appellants' appeal of the CPC recommendation, is **AFFIRMED**.

IV. CONCLUSION

Accordingly, for the above-stated reasons, the Court **REVERSES** the Board's Decisions on the ZMA and **REMANDS** for proceedings consistent with this Opinion. The Court **AFFIRMS** the Board's Decisions regarding the Master Plan and Appellants' appeal of the CPC recommendation regarding the Master Plan.

IT IS SO ORDERED.


NANCY J. FRANCHINI
DISTRICT COURT JUDGE