

NEW MEXICO
ENVIRONMENTAL LAW CENTER

June 8, 2015

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Art De La Cruz, Vice-Chair
Wayne Johnson, Member
Debbie O'Malley, Member
Lonnie Talbert, Member
Bernalillo County Board of County
Commissioners
One Civic Plaza
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By electronic mail to:
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Re: Revised Draft Findings and Conditions for the proposed Santolina development

Dear Chairperson Stebbins and Commissioners De La Cruz, Johnson, O'Malley, and Talbert:

The following are the comments of the SouthWest Organizing Project, the New Mexico Health Equity Working Group, and the Pajarito Village Association (referred to collectively as "the Appellants"¹) on the Bernalillo County Planning Department staff's Revised Draft of the Bernalillo County Findings and Conditions dated 5:00 p.m. on May 22, 2015 concerning the proposed Santolina development ("the Revised Findings and Conditions").

The proposed findings and conditions that are presented in the Revised Findings and Conditions are inadequate because they fail to recognize and address the ways in which the Santolina Level A Master Plan ("the Santolina Master Plan") violates the Bernalillo County Planned Communities Criteria ("the Planned Communities Criteria"). They also are deficient because they do not acknowledge the failure of the proposed zone change for the Santolina development to comply with the requirements of Bernalillo County Resolution 116-86 ("Resolution 116-86"). In addition, the proposed conditions set forth in the Revised Findings and Conditions do not adequately address any of the deficiencies in the proposed findings presented in that document.

For these reasons, the Bernalillo County Board of County Commissioners ("the Board of County Commissioners") should refuse to adopt the Revised Findings and Conditions. Rather, the Board of County Commissioners should remand the matter to the Bernalillo County planning staff and the Bernalillo County Planning Commission ("the County Planning Commission") with instructions to propose findings that accurately reflect the presentation made in the Santolina Level A Master Plan and conditions that address the deficiencies in that Master Plan.

¹ The appeals filed by these three organizations have been denied, but the organizations are referred to as "the Appellants" for ease of reference.

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The Board of County Commissioners also should direct the County Planning staff and the County Planning Commission to include in their new proposed conditions for the Santolina development the conditions that were outlined in the Appellants' filings prior to the May 11, 2015 Board of County Commissioners hearing in this matter. The first of those filings addressed conditions that should be imposed on approval of the Santolina Master Plan, and it was filed on May 1, 2015. The second of those filings addressed conditions that should be imposed on approval of the zone map amendment sought by the Santolina developer for the proposed Santolina development, and it was filed on May 4, 2015. The conditions set forth in both of those filings are hereby incorporated by reference.

- I. The Revised Draft Findings and Conditions do not take into account the Santolina Master Plan's failure to comply with the Planned Communities Criteria.
 - A. The Revised Draft Findings and Conditions do not address adequately the failure of the Santolina Level A Master to provide required information concerning availability of water.
 1. The Revised Draft Findings and Conditions fail to analyze the issue of water availability.

The Revised Findings and Conditions allege without analysis and incorrectly that the Santolina Master Plan complies with the Planned Communities Criteria requirements for environment and open space. Revised Findings and Conditions, Finding 6. The Revised Findings and Conditions also assert, again incorrectly, that the Santolina Master Plan complies with the requirement that the Santolina Developer demonstrate the availability of water for the proposed development. Revised Findings and Conditions, Findings 17, 18. There are several reasons why these assertions are inaccurate.

2. The Santolina Master Plan does not include the information required by the Planned Communities Criteria.

The Planned Communities Criteria indicate clearly the specific information that must be provided in a level A master plan concerning availability of water. The Criteria state that the plan must include:

Identification of depth to groundwater and proximity to production wells;
documentation of physical and legal water availability, quantity and quality
(existing data).

Planned Communities Criteria, section 5.C (Environment and Open Space), subsection 6.

Despite the clear mandate of the Planned Communities Criteria that a level A master plan provide the information that is listed in section 5.C.6 of those Criteria, none of that information appears anywhere in the Santolina Master Plan.

3. The Santolina Developer's argument that this information is not required is unpersuasive.

The Santolina Developer has argued in Board of County Commissioners hearings that it is not necessary for the Developer to provide this information about depth to groundwater, proximity to production wells, and water quantity and quality for two reasons. First, the Developer has asserted that the Planned Communities Criteria were effectively amended because of the creation of the Albuquerque/Bernalillo County Water Utility Authority ("the Water Authority"). Second, the Developer has alleged that the Water Authority has indicated that it will provide water for the Santolina development. Neither of these allegations is credible.

a. The Planned Communities Criteria have not been amended.

The assertion that the Planned Communities Criteria were effectively amended is not credible because it is directly at odds with the language of the Planned Communities Criteria. The Planned Communities Criteria mandate that the information about depth to groundwater, proximity to production wells, and water quantity and quality be provided, and the Criteria make no exception for situations in which water allegedly will be provided by the Water Authority. If the Board of County Commissioners had wanted to change the Planned Communities Criteria to indicate that water availability could be demonstrated by referring to the Water Authority, the Board would have done so. The Board of County Commissioners did not do so, and the Planned Communities Criteria therefore require that this information be provided.

b. The Water Authority has not indicated that it will provide water.

The Santolina Developer and the Revised Findings and Conditions rely on a letter from the Water Authority for their conclusion that the Developer has complied with the requirement that water and water rights be available. *See* Finding 17. In fact, however, that letter does not state that the Water Authority will provide water for the proposed Santolina development. Rather, the letter states only that the Water Authority is capable of providing water provided that the Santolina Developer meets the Water Authority's conditions. One of those conditions is that the Developer provide the infrastructure for water service. Another condition is that the Developer comply with the Water Authority's policies, one of which is the Water Authority's own 2007 Water Resources Management Strategy (Attachment 22 to the Planning Staff's

Report). It indicates that new developments such as Santolina that are outside of the current Water Authority service area must either provide their own water rights or provide funding with which to acquire water rights.

4. There is not water available for the proposed Santolina development.

Finally, the evidence before the Board of County Commissioners indicates that there is not water available for the proposed development. The most telling evidence on this issue is the testimony provided by Norman Gaume, a water engineer with approximately 40 years of experience dealing with water issues. He stated unequivocally that the middle Rio Grande basin is already over-appropriated, and that there is not water available in the basin to satisfy the demands of the Santolina development.

5. The conditions set forth in the Revised Findings and Conditions to address water availability are inadequate.

The findings in the Revised Findings and Conditions do not adequately address the failure of the Santolina Developer to demonstrate the availability of water for the proposed Santolina development. Moreover, the proposed conditions set forth in the Revised Findings and Conditions do not rectify this failure; rather, they only propose to set conditions concerning agreements between the Santolina Developer and the Water Authority. *See* Conditions 1, 8, and 9. None of this addresses the failure of the Santolina Developer to provide the information that is required for the Santolina Master Plan.

B. The Revised Findings and Conditions do not address the failure of the Santolina Master Plan to comply with the Planned Communities Criteria requirements concerning transportation.

1. The Santolina Master Plan does not address transportation issues adequately.

The Santolina Master Plan does not provide information concerning transportation that is required by the Planned Communities Criteria. The information that must be submitted for a Community Level A Master Plan is spelled out in Section 5.B of the Criteria:

A comprehensive transportation system plan which discusses major street continuity and phased analyses of travel demand and supply, identifies major travel corridors, and considers private and public responsibilities for on-site and off-site improvements must be conducted prior to formal submittal of the Level A plan. Studies supporting the plan will require specification of land use proposals

in terms of timing, location, quantity, and type as assumptions underlying the travel demand estimates.

Contrary to these requirements, the Santolina Master Plan contains only general information about proposed transportation plans. *See* Santolina Master Plan, pages 92-105. The need for more information about transportation and revision of the proposed transportation plan was noted by the County Planning staff in its Report at several points. On page 23 of the Report, the staff stated that:

Staff and agencies are requesting modification to the Santolina transportation plan and additional information before the Level A plan is approved.

Similarly, on page 27, the Staff Report noted that the New Mexico Department of Transportation had submitted extensive comments:

NMDOT comments are also extensive. The comments are with regarding of the I-40 frontage Rd. south as a two way collector street, inadequate information on the internal roadway system which should be a grid pattern and tie into the wider system, need to follow requirements for the State roads in the development, signal spacing, maintenance of the roads especially the extensions to the State roads, and the proposed interchanges, particularly at Shelly Rd. In addition the location of the urban center with two major roads through it is inappropriate.

Finally, at pages 62, 69, and 70 of the Staff Report, the staff noted the need for revisions of the Santolina Master Plan and additional information concerning transportation.

2. The Revised Findings and Conditions' provisions fail to address the problems concerning the transportation adequately.

Despite these specific comments on the deficiencies of the Santolina Master Plan's treatment of the transportation issue, the Revised Findings and Conditions' first three findings addressing transportation indicate that the Santolina Master Plan's treatment of the transportation issue is adequate. *See* Findings 6, 10, and 11. However, Finding 14 contradicts that position by pointing out specifically that the proposed roads on the west side of the Santolina development are not consistent with the Metropolitan Transportation Plan. Moreover, Conditions 4, 5, and 6 provide specific requirements concerning transportation that the Santolina developer must be meet in the future. This is not an appropriate approach to deficiencies in the Santolina Master Plan.

The Planned Communities Criteria require that particular information concerning transportation be provided in a level A master plan. The Criteria do not indicate that the required information can be provided in a subsequent level plan. But this is the approach taken by the Revised Findings and Conditions. Apparently the County Planning Department staff's view is that a failure to provide required information can be remedied by requiring that the information be provided later. That is not consistent with the Planned Communities Criteria. In accordance with those Criteria, the Santolina Master Plan should be rejected unless and until the Santolina Developer presents a Master Plan that complies with the requirements of the Criteria on the issue of transportation as well as all other issues.

- C. The Revised Findings and Conditions do not adequately address the problems that will result from building the proposed Santolina development on sandy soils.

The problems that would result from construction of a major development such as Santolina on the sand-based soils in the area of the proposed development were noted in comments to the County Planning staff. For example, Laura Gleason and Bernalillo County Place Matters both raised the possible health impact that could result from construction on such sandy soils. The Bernalillo County Place Matters Health Impact Assessment that was included in Attachment 27 to the Planning Staff Report, pointed out:

Sand dunes – Site development impacts to the fragile desert ecosystem, consisting of large lateral expanses of sand dunes, and the potential for erosion on high wind days to contribute to air pollution, asthma and lower and upper respiratory illness.

...

The development is likely to impact the ancient sand dunes covering the proposed site. The impact is likely to cause short-term soil disturbance and long-term air quality issues resulting from the erosion of sand dunes in high wind events. The particles caught up in the wind have serious health impacts.

Despite these problems, the Revised Findings and Conditions do not address the issues presented by the sand-based land where the Santolina development is proposed. There are no findings related to the problems of building on sandy soils or the possible health impacts that such building might cause. There also are no conditions addressing the construction problems that would result from such building, and there is only one condition that purports to address air quality issues. It is Condition 13, and it states only that before any level B plan approval the Santolina developer:

shall provide documentation that the proposed development will comply with Albuquerque/Bernalillo County Air Quality Standards and will demonstrate the

intent to comply with air quality standards established by the Environmental Protection Agency (EPA).

This Condition is inadequate for two reasons. First, it provides nothing about what must be shown to demonstrate compliance with Albuquerque/Bernalillo County Air Quality Standards. There is no requirement, for example, that the documentation include evidence provided by a qualified air quality expert. Second, the only showing that must be made concerning compliance with EPA standards is a showing of intent. That could just be a statement by the Santolina developer that it plans to comply which would provide no assurance that compliance will in fact be achieved.

The Revised Findings and Conditions therefore are not adequate to address the possible problems that would result from construction of the proposed Santolina development on the sandy soils in the area where the development is proposed.

D. The Revised Findings and Conditions fail to recognize that the proposed Santolina development cannot be built at no net expense to local government.

The Planned Communities Criteria mandate that a planned community such as the proposed Santolina development provide government and public facilities at no net expense to local government. Despite that, the Revised Findings and Conditions contain no finding that this requirement will be met by the proposed Santolina development. Finding 12 addresses benefits to Bernalillo County, and it alleges that the proposed development would result in substantial economic benefits to the County, but it qualifies that assertion by pointing out that there “are no concrete assurances that market demand currently exists for the development.” In other words, it is not clear that economic benefits to the County will in fact result. In addition, Condition 2 states that the County and the Santolina Developer agree on the “no net expense” clause of the Planned Communities Criteria, but it does not provide any information indicating that the proposed development will in fact comply with that clause.

Finally, whether that will occur is not at all clear. There have been two economic and fiscal analyses submitted to the Board of County Commissioners, and they provide very different conclusions. Based on the lack of certainty about the market, and the very different conclusions reached by these two studies, there is no basis for the apparent conclusion of the Revised Findings and Conditions that the no net expense requirement will be complied with by the Santolina Developer.

- E. The Revised Findings and Conditions do not address the inadequacy of the Santolina Master Plan's provisions concerning schools for the proposed development.

The Planned Communities Criteria mandate that a developer provide a "concept plan for provision of schools ...". Despite that, the Santolina Master Plan provides only very general estimates of the numbers of schools that will be needed in 2035 and at full build out of the development. This is neither recognized nor addressed in the Revised Findings and Conditions.

Finding 22 indicates only that the proposed development is within the Albuquerque Public School (APS) district, which will include any schools within the Santolina development area. And Condition 16 effectively puts off further consideration of this deficiency by mandating that the Santolina Developer work with APS to address this issue in the future. Moreover, on March 18, 2015 the APS Board passed a resolution opposing approval of the Santolina Master Plan by the Board of County Commissioners. Despite its clear importance, that resolution is never even mentioned in the Revised Findings and Conditions.

The Revised Findings and Conditions fail to consider the issue of schools realistically, and they should not be approved.

- II. The Revised Findings and Conditions fail to take these issues into account in connection with the proposed zone map amendment.

All of these issues are relevant to the Santolina Developer's proposal for the zone map amendment for the proposed Santolina development. Resolution 116-86 mandates that a showing be made for a proposed zone map amendment either that a zone change be justified by changed community conditions or that a zone change is advantageous to the community pursuant to adopted elements of the Comprehensive Plan or other County Master Plans and amendments thereto. There has been nothing presented to the Board of County Commissioners to indicate that the proposed zone change is justified by changed community conditions, and the evidence presented indicates that the proposed Santolina development would be less advantageous to the community. The Revised Findings and Conditions fail to address these issues adequately, and the Board of County Commissioners therefore should decline to approve the Revised Findings and Conditions as well as the proposed zone map amendment.

- III. The Board of County Commissioners should adopt the conditions recommended by the Appellants.

In their filings dated May 1, 2015 and May 4, 2015, the Appellants explained conditions that are necessary for approval of the Santolina Master Plan and the zone map amendment

Bernalillo County Board of County Commissioners
Re: Revised Findings and Conditions
June 8, 2015
Page 9


sought for the proposed Santolina development. If the Board of County Commissioners proposes to approve the Santolina Master Plan and the zone map amendment, the Board should impose the conditions recommended by the Appellants in those filings.

Conclusion

The Revised Findings and Conditions do not adequately address the deficiencies in the Santolina Master Plan and the Santolina Developer's request for approval of the zone map amendment for the proposed Santolina development. The Board of County Commissioners therefore should reject the Santolina Master Plan and the request for the zone map amendment. If the Board of County Commissioners chooses to approve the Santolina Master Plan and the zone map amendment, the Board should adopt the conditions recommended by the Appellants.

Thank you for your attention to these issues.

Yours truly,


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