

BEFORE THE BERNALILLO COUNTY, NEW MEXICO

BOARD OF COUNTY COMMISSIONERS

SOUTHWEST ORGANIZING PROJECT, NEW MEXICO HEALTH EQUITY WORKING GROUP, PAJARITO VILLAGE ASSOCIATION, SOUTH VALLEY COALITION OF NEIGHBORHOOD ASSOCIATIONS, CENTER FOR SOCIAL SUSTAINABLE SYSTEMS, SOUTH VALLEY REGIONAL ASSOCIATION OF ACEQUIAS, SANTIAGO JAMES MAESTAS, ROBERTO ROIBAL, KRISTINE SUOZZI, MARCIA BEAUREGARD FERNANDEZ, ROD MAHONEY, DANIEL RICHARD “RIP” ANDERSON, and DR. VIRGINIA NECOCHEA,

Protestants/Appellants,

ORIGINAL CASE NO. SPR2016-0001

REQUEST TO STAY
THE BOARD’S CONSIDERATION OF THE SANTOLINA LEVEL B.I DRAFT
DEVELOPMENT AGREEMENT

I. Introduction

The SouthWest Organizing Project, the Pajarito Village Association, the South Valley Coalition of Neighborhood Associations, the Center for Social Sustainable Systems, the South Valley Regional Association of Acequias, the New Mexico Health Equity Working Group, Santiago James Maestas, Roberto Roibal, Kristine Suozzi, Rod Mahoney, Marcia Beauregard Fernandez, Daniel Richard “Rip” Anderson, and Dr. Virginia Necochea (collectively “the Protestants/Appellants”) request that the Bernalillo County Board of County Commissioners (“Board” or “Board of County Commissioners”) stay its consideration of the Santolina Level B.I

Draft Development Agreement scheduled for the November 13, 2018 Board Administrative Meeting¹ until all of the following events have occurred:

1. There is a final decision by the New Mexico Court of Appeals regarding the Second Judicial District Court's invalidation of the Santolina Level A Zone Map Amendment (and subsequent invalidation of all Level A and Level B approvals dependent upon the Level A Zone Map Amendment);
2. There is a final decision by the Second Judicial District Court regarding whether the Board's approval of the Santolina Level B.1 Master Plan and denial of Protestants/Appellants' appeal of the County Planning Commission's decision recommending approval of the Santolina Level B.1 Master Plan failed to comply with applicable law;
3. The Santolina developers (Western Albuquerque Land Holdings and Consensus Planning) comply with the Planned Communities Criteria Level B requirements and provide required information and documentation, including but not limited to Statements of Availability and Serviceability for water and public services, including liquid and solid waste management/recycling, cultural and human service facilities, fire and police protection, transit services, and schools;

Although the agenda for the Board's meeting scheduled for November 13th is not yet available, the County's legal counsel advised counsel for the Protestants/Appellants of the Board's consideration of the Santolina Draft Level B.I Development Agreement in an email

¹ It is unclear why the Board is deviating from the Santolina Level A procedures implemented by the Board regarding development agreements. The Board considered the Santolina Draft Level A Development Agreement at a Zoning Meeting, providing public notice (albeit limited) and opportunity for public comment on the Draft Level A Development Agreement. See Attached Exhibit A. It is unclear whether public comment will be permitted on the Draft Level B.I Development Agreement at the Board's November 13, 2018 Administrative Meeting.

dated October 29, 2018.² See attached Exhibit B. The Board is scheduled to consider the Santolina Draft Level B.I Development Agreement at its November 13, 2018 Administrative Meeting.

Section II of this Motion provides the criteria for reviewing requests to stay consideration of Board Administrative Meeting agenda items. Section III applies the criteria to this matter and demonstrates that a stay of the Board's consideration of the Draft Level B.I Development Agreement is appropriate. Section IV provides the Protestants/Appellants concluding remarks.

II. Criteria for Reviewing a Motion to Stay the Board's Consideration of the Draft Level B.1 Development Agreement.

New Mexico courts apply the following criteria for granting a stay:

- a. The likelihood that the movant will prevail on the merits of the petition for review;
- b. Whether the moving party will suffer irreparable harm if a stay is not granted;
- c. Whether substantial harm will result to other interested persons; and
- d. Whether harm will ensue to the public interest.

Rule 1-066 NMRA; LaBalbo v. Hymes, 1993-NMCA-010, ¶ 11, 115 N.M. 314, 850 *cert. denied*, 115 N.M. 359 (1993).

Application of the above criteria demonstrates that a stay is appropriate in this matter for the following reasons. First, there is a significant likelihood that the Court of Appeals will uphold the District Court's invalidation of the Level A Zone Map Amendment and subsequent Board approvals dependent upon the Level A Zone Map Amendment, in favor of the Protestants/Appellants. Second, Protestants/Appellants and the public interest would suffer irreparable harm if the Board does not stay its consideration of the Draft Level B.I Development Agreement and approves the Draft Level B.I Development Agreement as currently written.

² However, the County's legal counsel failed to provide notice of the Board's discussion regarding the Santolina Draft Level B.I Development Agreement at the Board's October 23, 2018 Administrative Meeting. See attached Exhibit C.

Third, no substantial harm would result to other interested persons, such as the Santolina developers, if the Board stays consideration of the Draft Level B.I Development Agreement until the above event occur.

III. Argument

A. There is a Significant Likelihood that the Court of Appeals Will Uphold the District Court's Invalidation of the Santolina Level A Zone Map Amendment and Subsequent Board Approvals Dependent Upon the Level A Zone Map Amendment.

The Protestants/Appellants are likely to prevail against the County's and Santolina developers' appeals of the District Court's invalidation of the Board's Santolina Level A Zone Map Amendment ("Zone Map Amendment") approval for the following reasons. First, law established by the State Supreme Court and Court of Appeals indicates that the Board's proceedings addressing the Zone Map Amendment were quasi-judicial and that the participants in those proceedings were entitled to procedural due process. Los Chavez Community Association v. Valencia County, 2012-NMCA-044, 277 P.3d 745; Albuquerque Commons Partnership v. City Council of the City of Albuquerque, 2008-NMSC-0025, 144 N.M. 99, *rev'd on other grounds*, Albuquerque Commons Partnership v. City Council of the City of Albuquerque, 2011-NMSC-002, 149 N.M. 308.

Second, the District Court's ruling invalidating the Board's approval of the Zone Map Amendment is in accordance with applicable law. Los Chavez Community Association v. Valencia County, 2012-NMCA-044, 277 P.3d 745; Albuquerque Commons Partnership v. City Council of the City of Albuquerque, 2008-NMSC-0025, 144 N.M. 99, *rev'd on other grounds*, Albuquerque Commons Partnership v. City Council of the City of Albuquerque, 2011-NMSC-002, 149 N.M. 308.

Third, the District Court's ruling is supported by substantial evidence in the record of the Board's proceedings because the evidence demonstrated that Commissioner De La Cruz's Op-Ed in the Albuquerque Journal raised "questions of partiality and prejudgment, or the appearance thereof" sufficient to require the Board "at the very least" to consider recusing or disqualifying Commissioner De La Cruz. District Court Memorandum and Opinion, pp. 17-18 (May 31, 2017).

Finally, the County and the Santolina developers have not satisfied their burden of demonstrating to the Court of Appeals that the District Court's invalidation of the Zone Map Amendment is not in accordance with the law and not supported by substantial evidence in the record.

B. Protestants/Appellants and the Public Interest Would Suffer Irreparable Harm if the Board Does Not Stay Its Consideration of the Santolina Draft Level B.1 Development Agreement.

1. The Santolina developers have not provided required information and documentation necessary for the Board's meaningful evaluation of the Draft Level B.1 Development Agreement.

The Protestants/Appellants would suffer irreparable harm if the Board does not stay its consideration of the Draft Level B.I Development Agreement and approves the Draft Level B.I Development Agreement as currently written for the following reasons. First, the Santolina developers have failed to comply with the Planned Communities Criteria Level B requirements and Board conditions necessary for a meaningful evaluation of the Draft Level B.I Development Agreement. Therefore, Board approval of the Draft Level B.I Development Agreement based on incomplete information would therefore result in violation of the Planned Communities Criteria, causing further litigation.

The Planned Communities Criteria expressly states that the purpose of a Level B development agreement is to:

- a. Follow through with more detailed infrastructure/service agreement covering phasing of the village master plan and its public services/facilities, and designation of financial, operations, and management responsibility over time
- b. Specify measures to mitigate negative consequences of the village's development
- c. Augment Level A development agreements expressing items mutually agreed to by the City and/or County and the planned community developer and committing to their permanency unless re-negotiated; any limitations on development established at Level A cannot be increased at Level B
- d. Provide a legal recording instrument
- e. Identify more specifically any public incentives to the developer, or public/private partnerships, including provisions for affordable housing
- f. Identify more specifically any public incentives or agreements between the local government and developer for the appropriate protection and maintenance of the open space system.

Planned Communities Criteria, p. 40.

The Board members must have before them required information and documentation regarding infrastructure phasing of Santolina Level B.I's public services and facilities in order for the Board to meaningfully evaluate whether the Draft Level B.I Development Agreement complies with the above listed requirements, as well as the no-net expense requirement.

Information and documentation regarding required Statements of Availability and Serviceability for water and public services, including liquid and solid waste management/recycling, cultural and human service facilities, fire and police protection, transit services, and schools are vital for a meaningful evaluation of the Draft Level B.I Development Agreement. Planned Communities Criteria, Subsection D, Government and Public Services, p. 39.

The Petitioners/Appellants in this matter provided extensive legal argument and supporting documentation to the Board regarding the Santolina Level B.I Master Plan's failure to provide the required Statements of Availability and Serviceability for water³ and public services, including liquid and solid waste management/recycling, cultural and human service facilities, fire and police protection, transit services, and schools. *See generally* Protestants/Appellants' Amended Appeal of the County Planning Commission Decision Recommending Approval of the Level B.I Master Plan to the Board of County Commissioners dated January 25, 2017 (attached as Exhibit E). The Board, however, proceeded to approve the incomplete Level B.I Master Plan by a 3-2 vote.

The Petitioners/Appellants have since filed an appeal of the Board's approval of the incomplete Level B.I Master Plan with the Second Judicial District Court. *See* Notice of Appeal attached as Exhibit F *and* Docketing Statement attached as Exhibit G. Protestants/Appellants renew their objections to the Board's approval of the incomplete Level B.I Master Plan and remind the Board that the Santolina developers have failed to provide the following required information and documentation necessary for a meaningful evaluation of the Draft Level B.I Development Agreement:

³ The Albuquerque Bernalillo County Water Utility Authority ("Water Authority") released a "Serviceability Letter" for the proposed Santolina development on October 1, 2018. *See* attached Exhibit D. The letter expressly states that available surface water from the Drinking Water Project "is currently accounted for to meet existing demands or in other words is legally committed" and that current legal commitments for groundwater "is in excess of all current ground water capacity. As such, additional ground water infrastructure will be required to serve the proposed development". Water Authority Serviceability Letter, Attachment I, p. 4 (October 1, 2018). The letter also states that the Southside Water Reclamation Plant has no capacity to service Santolina and that "additional wastewater treatment capacity" is necessary to serve Santolina. *Id.* at p. 5. Finally, the Water Authority makes clear that "This serviceability letter does not provide a commitment from the Water Authority to provide services to the development." Water Authority Letter, p. 4 (October 1, 2018). However, it also appears that the Water Authority's Serviceability Letter proposes the use of the proposed Bosque Water Reclamation Plant to provide Santolina with its initial water needs. Water Authority Letter, Attachment I, p. 9 (October 1, 2018). The Board should stay consideration of the Draft Level B.I Development Agreement until the Water Authority has clarified whether it can in fact service Santolina or not.

- a. Required facilities plan providing detailed location, phasing of water, sewer and drainage systems;
- b. Required analyses of environmental resources;
- c. Required strategy for meeting community air quality standards and objectives and ensuring that residents will not be affected by toxic air emissions;
- d. Required information regarding “market potential and opportunities” for the proposed Santolina development;
- e. Required information regarding village centers and “suitability to natural topography”;
- f. Required “strategy for funding and maintenance of public facilities and sites, including open space”;
- g. A revised Santolina Level B.I Master Plan “Fiscal and Economic Impact Study” to include in its analysis the twenty (20) Tax Increment Development Districts (“TIDDs”) and forty (40) Public Improvement Districts (“PIDs”) approved by the Board and cost estimates for water, new infrastructure, infrastructure maintenance and operation, open space acquisition, transportation and schools expenditures;
- h. Required demonstration that Santolina’s proposed siting of industrial land will prevent contamination of water;
- i. Required plan for attaining the 2-to-1 jobs-to-housing ratio established in the Santolina Level A Master Plan;
- j. Required coordination of time frames for the Level B.I Master Plan offsite roadway improvements and Plan phasing;

- k. Required funding plan for Level B.I 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; and
- l. Required documentation that the proposed development will comply with Albuquerque/Bernalillo County Air Quality Standards.

2. Approval of the Draft Level B.I Development Agreement would violate the Planned Communities Criteria Level B requirements and the New Mexico Subdivision Act's public participation requirements.

Second, the Protestants/Appellants and the public interest would suffer irreparable harm if the Board does not stay its consideration of the Draft Level B.I Development Agreement because the Draft Level B.I Development Agreement, as currently written, unlawfully circumvents the Planned Communities Criteria Level B requirements by deferring submittal of information and documentation required at Level B to Level C. Draft Level B.I Development Agreement, pp. 3, 4, 5, 7. The Planned Communities Criteria, however, do not permit the Board to make such deferrals. Information and documentation required at Level B cannot be put off to Level C. Therefore, approval of the Draft Level B.I Development Agreement would result in violation of the Planned Communities Criteria.

The Protestants/Appellants and the public interest would suffer further irreparable harm because the Santolina developers would be permitted to submit Level B documents during the Level C phase of planned community development without public notice, comment and hearing, in violation of the New Mexico Subdivision Act. This is because the Board and the Santolina developers have unlawfully circumvented public notice and participation requirements through Condition 19 of the Board's Level A Master Plan approval.⁴

⁴ For a detailed discussion of how the Board and the Santolina developers have violated the New Mexico Subdivision Act's public participation requirements with Condition 19 of the Board's Level A Master Plan approval,

Condition 19 of the Board's Level A Master Plan approval decision 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's Approval of the Level A Master Plan, p. 7 (June 19, 2015) (emphasis added). Condition 19 is clearly not limited to a Santolina boundary plat; it also applies to all subsequent platting actions, including associated Level C documents. This means that information and documentation required at Level B pursuant to the Planned Communities Criteria that would be put off to Level C by the terms of the Draft Level B.I Development Agreement would be reviewed not by the Board or the Planning Commission pursuant to the Subdivision Act's public participation requirements, but by the County Development Review Authority ("CDRA") pursuant to summary review procedures. A summary review procedure does not permit public participation. NMSA 1978, Section 47-6-27; 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.

Furthermore, the New Mexico Subdivision Act does not permit the Board to delegate its review and approval authority of Santolina Level C documents to the CDRA. NMSA 1978, Section 47-6-9.D. County staff have conceded that the CDRA has no authority to review and approve Level C documents. Juanita Garcia with the County Planning and Development Services Department advised the Board the following:

We recognize that amendments to the subdivision ordinance will be required to allow the County's development review authority, the CDRA, to have review authority over the Level C plans and some of the projects within the Level B1 plan. Right now as established in the Zoning Code it indicates that any sort of development or approval for Level C plans requires it to be approved and reviewed by the CDRA. However, the

see Protestants/Appellants' Motion for the Bernalillo County Board of County Commissioners to Amend the Board's Findings and Conditions of Approval to the Santolina Level A Master Plan submitted on June 22, 2017, attached as Exhibit H.

CDRA is not structured in such a way to allow for that sort of review process so we – we recognize that and we understand that there are going to be some amendments needed to allow for that to happen.

Board Hearing Transcript, TR-24: 25, TR-25: 1-12 (April 4, 2017).

3. The Board’s consideration of the Draft Level B.I Development Agreement is premature because there are no final valid Santolina Level A or B approvals in place.

a) The New Mexico Court of Appeals has not yet issued a final decision regarding the Second Judicial District Court’s invalidation of the Board’s approval of the Level A Zone Map Amendment and subsequent invalidation of all Board approvals pertaining to Santolina.

The Protestants/Appellants and the public interest would suffer irreparable harm if the Board does not stay its consideration of the Draft Level B.I Development Agreement because there are no final valid Santolina Level A or B approvals in place. Several of the above listed Protestants/Appellants filed a consolidated action involving four appeals of the Board’s and the County 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 decision recommending approval of the Santolina Level A Master Plan; 2) the Board’s approval of the Santolina Level A Master Plan; 3) the Board’s denial of their appeal from the Planning Commission’s decision recommending approval of the Santolina Level A Zone Map Amendment for the proposed Santolina development; and 4) the Board’s approval of the Level A Zone Map Amendment. The Second Judicial District Court (“District Court”) issued its Memorandum and Opinion in those appeals (case number D-202-CV-2015-04466, consolidated with number D-202-CV-2015-05363) on May 31, 2017.

The District Court reversed the Board’s approval of the Santolina Level A Zone Map Amendment on the grounds that due process was violated and remanded the matter back to the

Board for proceedings consistent with its Opinion. Memorandum and Opinion, pp. 2, 17-18 (May 31, 2017). The County and the Santolina developers each filed an appeal of the District Court's invalidation of the Santolina Level A Zone Map Amendment with the New Mexico Court of Appeals ("Court of Appeals"). The Protestants/Appellants filed an appeal and alternative Petition for Writ of Certiorari of the District Court's refusal to review the Board's decisions pertaining to the Level A Master Plan and Level A Development Agreement with the Court of Appeals.

All of the parties' appeals/alternative Petition for Writ of Certiorari have been placed on the Court of Appeals' general calendar. Appellants/Protestants anticipate that briefing for all pending appeals/Petition for Writ of Certiorari will be completed by the end of November 2018. Court of Appeals Order Extending Time to File Brief in Chief in Case No. A-1-CA-37051; Court of Appeals Rule 12-210.B NMRA.

Because the District 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 [zone map amendment] and the concurrent denial of their CPC appeal," the Board's approval of the Level A Zone Map Amendment is now void.⁵ Additionally, the Board's subsequent approvals of the Santolina Level A Master Plan, Level A Development Agreement, and Level B.I Master Plan are also void because those approvals were dependent upon the underlying approval of the Level A Zone Map Amendment. When an underlying decision is void, further proceedings dependent upon the voided decision are also void. Nesbit v. City of Albuquerque, 1977-NMSC-107, ¶ 11,

⁵ The County's appeal of the District Court's invalidation of the Zone Map Amendment to the Court of Appeals has stayed the District Court's decision, pursuant to Rule 1-062(E) NMRA. However, the Court of Appeals has yet to issue a decision regarding whether it will uphold the District Court's invalidation of the Zone Map Amendment. Therefore, until proceedings in the Court of Appeals concludes, there can be no certainty regarding whether the Zone Map Amendment is invalid or not.

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 government actions dependent on that approval).

If the Court of Appeals upholds the District Court's invalidation of the Level A Zone Map Amendment and the subsequent invalidation of all other Board approvals pertaining to Santolina Levels A and B, then the Board's approval or denial of the Draft Level B.I Development Agreement will also be invalidated. The Board therefore should reserve its resources and stay consideration of the Draft Level B.I Development Agreement until there is a final decision from the Court of Appeals regarding the invalidity of the Board's Santolina approvals.

- b) The Second Judicial District Court has not yet issued a final decision regarding whether the Board's approval of the Santolina Level B.I Master Plan and denial of Protestants/Appellants' appeal of the County Planning Commission's decision recommending approval of the Santolina Level B.I Master Plan failed to comply with applicable law.**

Similarly, the Board should stay its consideration of the Draft Level B.I Development Agreement until there has been final approval of the Level B.I Master Plan. Though the Board approved the Level B.I Master Plan on August 30, 2017 (Notification of Decision was issued on September 1, 2017), that approval has been challenged by the above identified Protestants/Appellants (Case No. D-202-CV-201707037). This litigation has not yet concluded,

and the District Court has not indicated a date by which the matter will be concluded.

Appellants/Petitioners anticipate that briefing will be completed in that matter by December 23, 2018. District Court Stipulated Order Granting Unopposed Joint Motion for Extension of Time to File Responses to Appellant/Petitioners' Amended Statement of Appellate Issues and for Extension of Time to File Replies to Responses (August 8, 2018).

If the District Court invalidates the Board's decisions regarding the Level B.I Master Plan, then the Board's decision approving or denying the Draft Level B.I Development Agreement would also be invalidated. The Board therefore should reserve its resources and stay consideration of the Draft Level B.I Development Agreement until there is a final decision from the District Court regarding the invalidity of the Board's Santolina Level B.I Master Plan decisions.

4. The Planned Communities Criteria do not permit the Board to approve a Level B.I Development Agreement before a final valid Level A Zone Map Amendment, Level A Master Plan, Level A Development Agreement, and Level B.I Master Plan are in place.

Fourth, the Protestants/Appellants and the public interest would suffer irreparable harm if the Board does not stay its consideration of the Draft Level B.I Development Agreement because the Planned Communities Criteria do not permit approval of the Draft Level B.I Development Agreement before a final valid Level A Zone Map Amendment, Level A Master Plan, Level A Development Agreement, and Level B.I Master Plan are in place. The Planned Communities Criteria provide for three Levels of approval of a planned community: Level A, Level B, and Level C. Planned Communities Criteria section 5, p. 35. The Criteria's description of the three Levels indicates that the most general planning is conducted at Level A; that more detailed planning is provided at Level B; and that Level C provides the most detailed planning. *Id.* The Criteria also indicate that the three Levels may be developed simultaneously and approved

jointly. *Id.* However, there is no provision in the Criteria for approval of a Level B.I Development Agreement before a Level A Zone Map Amendment, Level A Master Plan, Level A Development Agreement, and Level B.I Master Plan are in place. *Id.*

For that reason, if the Court of Appeals upholds the District Court's invalidation of the Level A Zone Map Amendment and subsequent invalidation of all of the Board's Santolina approvals dependent upon the Level A Zone Map Amendment, and if the District Court reverses the Board's decisions regarding the Level B.I Master Plan, any Board decision approving or denying the Draft Level B.I Development Agreement would be invalidated as well. The Board therefore should stay its consideration of the Draft Level B.I Development Agreement until the validity of the Board's Level A and Level B approvals are finally resolved.

5. Approval of the Draft Level B.I Development Agreement would allow the Santolina developers to move forward with the Level C process and begin construction of the proposed development.

Finally, Protestants/Appellants and the public interest will suffer irreparable harm if the Board does not stay its consideration of the Draft Level B.I Development Agreement because approval of the Draft Level B.I Development Agreement would allow the developers to move forward with the Level C phase of development and begin construction of this proposed development. This will result in harm to air quality, water quantity, overcrowding at APS schools, and violation of the County's no net expense requirement, all direct harms to Protestants/Appellants.

C. No Substantial Harm Would Result to Other Interested Parties, Such as the Santolina Developers or the County.

No substantial harm would result to other interested persons, such as the County or the Santolina developers, if the Board were to stay its consideration of the Draft Level B.I Development Agreement for two reasons. First, the Santolina Developers have failed to provide

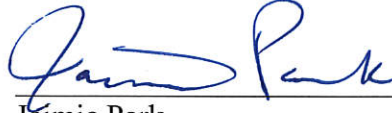
required information and documentation necessary for a meaningful evaluation of the Draft Level B.I Development Agreement. A stay would provide more time for the Santolina developers to comply with applicable law and provide the required information and documentation. Second, if the Court of Appeals and the District Court grant the relief requested by Protestants/Appellants and uphold the invalidation of the Level A Zone Map Amendment and invalidate and/or reverse all other Board approvals for Levels A and B, then any decision the Board renders regarding the Draft Level B.I Development Agreement would be invalidated. The County and the Santolina developers would suffer no harm by conserving resources until final decisions are reached by the Courts.

IV. Conclusion

For the above reasons, the Board's consideration of the Santolina Level B.I Development Agreement is premature at this time and should be stayed until the Court of Appeals and District Court issued final decisions and the Santolina developers comply with the Planned Communities Criteria and provide required information and documentation necessary for a meaningful evaluation of the Draft Level B.I Development Agreement.

Dated: November 5, 2018.

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Certificate of Service

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