

SECOND JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF BERNALILLO



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, Daniel Richard "Rip" Anderson,
Marcia Beauregard Fernandez, Santiago James
Maestas, Rod Mahoney, Roberto Roibal,
Dr. Virginia Necochea, and Kristine Suozzi,

Appellants/Petitioners

v.

NO. D-202-CV-201707037

Bernalillo County Board of County Commissioners
and the individual members of the County
Commission, Wayne Johnson, Debbie O'Malley,
Stephen Michael Quezada, Maggie Hart Stebbins,
and Lonnie Talbert,

and

Western Albuquerque Land Holdings,
LLC, and Consensus Planning, Inc.,

Appellees/Respondents.

THE APPELLANTS/PETITIONERS'
AMENDED STATEMENT OF APPELLATE ISSUES

I. Introduction

This is an appeal or, alternatively, a proceeding by certiorari, filed by the SouthWest Organizing Project, including its individual and group members, the New Mexico Health Equity Working Group, including its individual and group members, the Pajarito Village Association, including its individual and group members, South Valley Coalition of Neighborhood Associations, including its individual and group members, Center for Social Sustainable

Systems, including its individual and group members, South Valley Regional Association of Acequias, including its individual and group members, Daniel Richard “Rip” Anderson, Marcia Beauregard Fernandez, Santiago James Maestas, Rod Mahoney, Roberto Roibal, Kristine Suozzi, and Dr. Virginia Necochea (the “Appellants/Petitioners”) (Four Appellants/Petitioners were inadvertently left off of the Notice of Appeal/Alternative Petition for Writ of Certiorari filed October 17, 2017: South Valley Coalition of Neighborhood Associations, Center for Social Sustainable Systems, South Valley Regional Association of Acequias, and Dr. Virginia Necochea). The Appellants/ Petitioners seek reversal of the following decisions made by the Bernalillo County Board of County Commissioners (the “Board” or the “Board of County Commissioners”) addressing the proposed Santolina development: the decision approving the Santolina Level B.1 Master Plan (“Level B.1 Master Plan” or “Plan”) (Record [“R”], 095373-095379); and the decision denying Appellants/Petitioners appeal of the County Planning Commission (“Planning Commission”) decision recommending approval of the Level B.1 Master Plan. *Id.* These two decisions were made in one proceeding conducted by the Board. For that reason, this Statement of Appellate Issues presents one Summary of Proceedings, set forth in Section III. Following that Summary of Proceedings, this Statement of Appellate Issues is divided into the following sections: Section IV addresses the standard of review; Section V addresses Appellants/Petitioners’ argument regarding the Board’s decisions denying the Appellants/ Petitioners’ appeal concerning the Planning Commission’s decision recommending approval of the Plan and the Board’s approval of the Plan; and Section VI sets forth the Appellants/Petitioners’ claim for relief.

II. Statement of issues presented for review

The following issues are presented for review by this proceeding:

- A. Whether the Board erred by approving the Plan; and
- B. Whether the Board erred by denying the Appellants/Petitioners appeal addressing the Planning Commission's decision recommending approval of the Plan.

III. Summary of Proceedings

A. Nature of the case.

This is an appeal filed pursuant to NMSA 1978, Sections 3-21-9 and 39-3-1, and Rule 1-074 of the Rules of Civil Procedure. Alternatively, this litigation is filed as a petition for a writ of certiorari pursuant to Article VI, sections 2 and 13 of the New Mexico Constitution and Rule 1-075 of the Rules of Civil Procedure. The Appellants/Petitioners seek reversal of the Board of County Commissioners' two decisions listed on page 2 above. The Appellees/Respondents are the Board and the individual members of the Board (collectively the "Board of County Commissioners" or the "Board"); Western Albuquerque Land Holdings, LLC and Consensus Planning ("the Santolina developers").

C. Course of the proceedings and disposition by the agency.

The proceedings below addressing the Level B.1 Master Plan were initiated by the Santolina developers' filing of an application for the Board's approval of the Plan. R, 088890-089007. The application was considered first by the Bernalillo County Planning Commission (the "Planning Commission"), which determined that it should be approved and issued a written decision. R, 091986-091992. The Appellants/Petitioners filed an appeal of the Planning Commission decision (numbered COA2017-0001/SPR-2016-0001) to the Board of County Commissioners. R, 094754-094784. The Board conducted several "special zoning meetings" concerning the Appellants/Petitioners' appeal and the Planning Commission's decision on March 14, 2017 (R, 10064-100675); April 4, 2017 (R, 100676-100772); August 15, 2017 (R, 100773-100891); and August 30, 2017 (R, 100892-101077). During those hearings, County Staff

presented the Santolina Level B.1 Master Plan; the Appellants/Petitioners presented their appeal; and agents for Western Albuquerque Land Holdings, LLC (“WAHL”) and Consensus Planning (the “Santolina developers”), as well as representatives of the Bernalillo County Planning Department staff, presented arguments against the appeal. Following those presentations, the Board denied the Appellants/Petitioners’ appeal and approved the Santolina Level B.1 Master Plan by a 3-2 vote (R, 101075-101076) and entered a written decision to that effect (R, 095373-095379). The Board denied the appeal filed by the Appellants/Petitioners concerning the Level B.1 Master Plan. *Id.* The Board also approved the Level B.1 Master Plan. *Id.*

D. Facts relevant to the issues presented for review.

1. The Planned Communities Criteria (“PCC”) require a valid Level A master plan, zone map amendment, and development agreement be in place before Level B approvals. PCC, p. 35 (R, 101188).
2. In order to develop property as a planned community, the property must be zoned for planned communities. Bernalillo County Zoning Ordinance; Section 19.5(B)(1).
3. The Board approved the Santolina Level A Master Plan, Zone Map Amendment, and Development Agreement in 2015. R, 101141-101148.
4. The Appellants/Petitioners in this matter filed an appeal/alternative petition for writ of certiorari of the Board’s Level A approvals with the Second Judicial District Court in 2015. D-202-CV-2015-04466, consolidated with D-202-CV-2015-05363.
5. The Second Judicial District Court invalidated the Board’s Level A Zone Map Amendment approval on May 31, 2017. R, 101848-101867. Therefore, no valid

Level A zone map amendment is in place. Id; Nesbit v. City of Albuquerque, 1977-NMSC-107, ¶ 10, 11, 575 P.2d 1345; Miller v. City of Albuquerque, 1976-NMSC-052, ¶ 21, 22, 554 P.2d 665; Zuni Indian Tribe v. McKinley County Board, 2013-NMCA-041, ¶ 21.

6. The Zone Map Amendment is a condition precedent for subsequent Level A, B and C approvals, therefore all approvals dependent upon the now invalid Zone Map Amendment are also invalid. Id.
7. The Board approved the Level B.1 Master Plan without valid Level A approvals in place. R, 095373-095379.
8. The PCC, which govern the proposed Santolina development, do not permit Level B approvals before Level A approvals. PCC, p. 35 (R, 101188).
9. The Board's written decision approving the Level B.1 Master Plan is not based on the record. R, 095373-095379.
10. The Level B.1 Master Plan ("Plan") does not provide required information concerning availability of water. *See generally* Plan (R, 095385-095537); Mark Sanchez letter dated July 14, 2014 (R, 101164-101165); Administrative Resolution AR 2017-48 (August 15, 2017) (This document cannot be found in the record; Appellants/Petitioners will file a Motion to Supplement the Record); Appellants/Petitioners' First Amended Appeal of Planning Commission Decision Recommending Approval of Santolina Developers' Proposed Amendments to Level A Conditions of Approval (June 24, 2017) (R, 102889-102950); Appellants/Petitioners' Reply to Santolina Developers' Response in Opposition to Appellants/Petitioners' Appeal (August 7, 2017) (R, 102989-103045).

11. The Plan does not demonstrate “substantial consistency with the Planned Communities Criteria in the areas of...Environment and...Government and Public Service.” Board Decision, Finding 7 (September 1, 2017) (R, 101192).
12. The Plan does not provide required information concerning land use. PCC, p. 38 (R, 101191); *See generally* Plan (R, 095385-095537).
13. The Plan does not include the analyses of environmental resources mandated by the PCC. PCC, p. 39 (R, 101192); Plan, pp. 76 (R, 095479), 78-80 (R, 095481-095483). Appellants/Petitioners mistakenly cited to pp. 80, 96-97 in their Notice of Appeal and Alternative Petition for Writ of Certiorari, pp. 21-22.
14. The Plan does not demonstrate that its proposed siting of industrial land will prevent contamination of ground water. PCC, p. 39 (R, 101192); *See generally* Plan, (R, 095385-095537).
15. The Board established the condition that prior to any Level B plan approval the Santolina developers must provide “documentation that the proposed development will comply with Albuquerque/Bernalillo County Air Quality Standards.” Board Decision, Condition 13 (June 19, 2015) (R, 101146). The Plan presents only an incomplete strategy for meeting community air quality standards and objectives and ensuring that residents will not be affected by toxic air emissions. Plan, pp. 78-80 (R, 095481-095483). The Plan does not identify what types of industry and manufacturing will be located within the Plan area, what types of emissions will be produced, and the effects of such emissions on the Plan area population. *Id.* Appellants/Petitioners mistakenly cited to pp. 82-84 in their Notice of Appeal and Alternative Petition for Writ of Certiorari, pp. 22-23.

16. The Santolina developers did not submit the required air quality impacts analysis with its Plan application. PCC, p. 38 (R, 101191). The air quality impacts analysis was submitted five months after the Plan was submitted. However the Planning Commission never considered it. Level B.1 MP Air Quality Impact Analysis (May 2016) (R, 090221-090316); *See generally* Board Hearing Transcripts for June 23, 2016 special zoning meeting (R, 093651-093800), July 21, 2016 special zoning meeting (R, 093801-093943), and November 2, 2016 special zoning meeting (R, 093944-094062).
17. The Santolina developers did not submit the required consequential noise analysis. *See generally* Plan Application (R, 088890-089007).
18. The Planning Commission held a hearing specifically on the Plan transportation component without the required noise impacts and air quality impacts analyses. Planning Commission April 27, 2016 Hearing Transcript, p. 3:9-12 (R, 096959).
19. The Plan does not include required information regarding village centers and “suitability to natural topography.” PCC, p. 38 (R, 101191); Plan, p. 14 (R, 095406).
20. The Plan does not demonstrate “substantial consistency with the PCC in the areas of...Land Use.” PCC, p. 38 (R, 101191); Board Decision, Finding 7 (September 1, 2017) (R, 095375); Planning Commission Decision, Finding 7 (January 10, 2017) (R, 101360).
21. The Plan does not comply with the “no net expense” requirement of the PCC (R, 101188-101195), the Bernalillo County Comprehensive Plan, and the Santolina Level A Development Agreement (R, 101519-101603); Board Decision, Finding

- 6 (September 1, 2017) (R, 095375); Planning Commission Decision, Finding 6 (January 10, 2017) (R, 101360); Level B.1 Master Plan Fiscal and Economic Impact Study (R, 089433-089502); Board August 30, 2017 Hearing Transcript, pp. 107-124 (R, 100999-101015), pp. 148-153 (R, 101039-101044).
22. The Plan does not include required information regarding “market potential and opportunities” for the proposed Santolina development. PCC, p. 38 (R, 101191); Plan, p. 12 (R, 095404).
23. The Plan does not provide the required strategy for funding and maintenance of public facilities and sites, including open space. PCC, p. 39 (R, 101192); Plan, pp. 113-117 (R, 095527-095531) (Appellants/Petitioners mistakenly cited to page 120 of the Plan in their Notice of Appeal and Alternative Petition for Writ of Certiorari, pages 30-31); Planning Commission July 21, 2016 Hearing Transcript, p. 52:15-24 (R, 093852).
24. The Plan does not demonstrate “no net expense” to the County for transportation/roadway infrastructure. Plan, p. 114 (R, 095528) (Appellants/Petitioners mistakenly cited to the Plan, page 116 in their Notice of Appeal and Alternative Petition for Writ of Certiorari, pages 28-29); Board Decision, Finding 7 (September 1, 2017) (R, 095375); Level B “On-Site and Off-Site Locations of Interest Traffic Analysis (March 31, 2016) (This document cannot be found in the record; Appellants/Petitioners will file a Motion to Supplement the Record); Planning Commission July 21, 2016 Hearing Transcript, p. 24 (R, 093824); Board March 14, 2017 Hearing Transcript, p. 46:22-25 (R, 100649), p. 47:1-3 (R, 100650).

25. The Santolina developers did not provide a funding strategy for the 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. Board Decision, Condition 6 (June 19, 2015) (R, 101145); Planning Commission July 21, 2016 Hearing Transcript, p. 24 (R, 093824); Planning Commission Decision, Condition 2 (January 10, 2017) (R, 101362); Board Decision, Condition 1 (September 1, 2017) (R, 095377).
26. The Plan does not demonstrate “no net expense” to the County for schools. Albuquerque Public Schools (“APS”) Memo, pp. 4-6 (July 12, 2016) (R, 090330-090335); Level B.1 Master Plan Fiscal and Economic Impact Study (R, 089433-089452); Board August 30, 2017 Hearing Transcript, p. 46:12-23 (R, 100721), p. 47:20-24 (R, 100722), p. 114:6-13 (R, 101005), p. 118:14-25 (R, 101009), p. 119:1-5 (R, 101010).
27. The Santolina developers did not provide a plan for attaining the 2-1 jobs-to-housing ratio established in the Santolina Level A Master Plan in its Level B.1 Master Plan. Board Decision, Condition 3 (June 19, 2015) (R, 101145); Plan, p. 4 (095394).
28. The Plan does not “include mechanisms that seek to ensure that the overall gross density is maintained and the jobs-to-housing balance of 1.25 jobs per household is achieved over the course of the development.” Planning Commission Decision, Finding 10 (January 10, 2017) (R, 101360); Board Decision, Finding 10 (September 1, 2017) (R, 095375).
29. The Plan does not comply with the requirements of the PCC addressing

government and public services. PCC, p. 39 (R, 101192); *See generally* Plan (R, 095385-095537).

30. The Plan does not provide the required facilities plan, including detailed location, phasing of water systems, sewer systems, and drainage systems. PCC, p. 39 (R, 101192); Level B. Water and Sanitary Sewer Master Plan, pp. 3, 12 (January 25, 2016) (R, 089406, 089415); Planning Commission July 21, 2016 Hearing Transcript, p. 66:17-25 (R, 093866), p. 67:1-2 (R, 093867); Administrative Resolution AR 2017-48 (August 15, 2017) (This document cannot be found in the record; Appellants/Petitioners will file a Motion to Supplement the Record); Level B Revised Drainage (Stormwater) Master Plan and Terrain Management Plan (November 2, 2016) (This document cannot be found in the record; Appellants/Petitioners will file a Motion to Supplement the Record); Plan, p. 116 (R, 095530) (Appellants/Petitioners mistakenly cited to Plan, p. 113 in their Notice of Appeal and Alternative Writ for Certiorari, pp. 31-33).
31. The Plan does not provide required statements of availability of water, solid and liquid waste services. PCC, p. 39 (R, 101192); *See generally* Plan (R, 095385-095537); Level B Water and Sanitary Sewer Master Plan, p. 12 (January 25, 2016) (R, 089415); Planning Commission July 21, 2016 Hearing Transcript, p. 68:2-9 (R, 093868).
32. The Plan does not provide required statements of availability of fire and police services. PCC, p. 39 (R, 101192); *See generally* Plan (R, 095385-095537); Planning Commission June 23, 2016 Hearing Transcript, p. 19:16-25 (R, 097196), p. 20:1 (R, 097197).

33. The Plan does not provide required statements of availability of schools. PCC, p. 39 (R, 101192); *See generally* Plan (R, 095385-095537); Planning Commission July 21, 2016 Hearing Transcript, p. 35:12-14 (R, 097362), p. 37:14-15 (R, 097364).
34. The Santolina developers did not provide the coordination of time frames for the Level B.1 Master Plan offsite roadway improvements and Plan phasing. *See generally* Plan (R, 095385-095537); Level B “Transportation Master Plan” (September 30, 2016) (R, 091183-091349); Level B “On-Site and Off-Site Locations of Interest Traffic Analysis” (March 31, 2016) (This document cannot be found in the record; Appellants/Petitioners will file a Motion to Supplement the Record); Board Decision, Condition 5 dated June 19, 2015 (R, 101145).

IV. Standard of Review

The Appellants/Petitioners have filed this litigation as an appeal pursuant to NMSA 1978, Sections 3-21-9 and 39-3-1.1 and Rule 1-074, and in the alternative as a petition for writ of certiorari pursuant to Article VI, sections 2 and 13 of the New Mexico Constitution and Rule 1-075. The District Court’s authority to review the Board’s decisions addressing the Level B.1 Master Plan is set forth in NMSA 1978, Section 39-3-1.1, which provides in part:

C. Unless standing is further limited by a specific statute, a person aggrieved by a final decision may appeal the decision to district court...

D. In a proceeding for judicial review of a final decision by an agency, the district court may set aside, reverse or remand the final decision if it determines that:

- 1) the agency acted fraudulently, arbitrarily or capriciously;
- 2) the final decision was not supported by substantial evidence; or
- 3) the agency did not act in accordance with the law.

NMSA 1978, Section 39-3-1.1.C, D.

Additionally, both Rule 1-074 and Rule 1-075 provide the same standard of review of administrative agency decisions for the district court to apply. This standard is:

- 1) whether the agency acted fraudulently, arbitrarily, or capriciously;
- 2) whether, on the basis of review of the entire record, 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.

1-074(R) NMRA and 1-075(R) NMRA.

Finally, whether the Board's approval of the Level B.1 Master Plan was a quasi-judicial or legislative zoning act, the District Court has the authority to review such decisions. KOB TV, LLC v. City of Albuquerque, 2005-NMCA-049, ¶ 29, 137 N.M. 388, 398.

V. Argument

A. **The Board erred in denying the Appellants/Petitioners' appeal and approving the Level B.1 Master Plan because valid Level A approvals were not in place.**

The Bernalillo County Planned Communities Criteria, which govern planned communities like the proposed Santolina development, requires three phases of review and approval of a planned community: "Level A is the overall Community Master Plan, Level B includes the Village Plan, the community center, employment center, or all or part of an Urban Center plan. Level C is for subdivision or site development plan review." PCC, p. 35 (R, 101188). In order to develop property as a planned community, the property must be zoned for planned communities. Bernalillo County Zoning Ordinance ("the Zoning Ordinance"), Section 19.5(B)(1). The Santolina developers, therefore, sought a Zone Map Amendment to change the zoning from A-1 Rural Agricultural to a Planned Communities zone. The Board approved the Santolina developers' Zone Map Amendment, as well as the Santolina Level A Master Plan and the Level A Development Agreement, in 2015. R, 10159-101603.

The Appellants/Petitioners in this matter filed an appeal/alternative petition for writ of certiorari of the Board of County Commissioners' Level A approvals for the proposed Santolina development with the Second Judicial District Court in 2015. D-202-CV-2015-04466, consolidated with D-202-CV-2015-05363. The Court reversed the Board's decision approving the Zone Map Amendment, or Planned Communities Zone, for the proposed Santolina development. *See generally* Memorandum Opinion and Order (May 31, 2017) (R, 101848-101867). The Court reversed the Board's approval of the Zone Map Amendment on the grounds that the Board's Zone Map Amendment proceedings were quasi-judicial and that the Board denied the Appellants/Petitioners procedural due process. *Id.*

Because the Zone Map Amendment is a condition precedent for Level A, B and C approvals, all approvals dependent upon the now invalid Zone Map Amendment are also invalid. Nesbit v. City of Albuquerque, 1977-NMSC-107, ¶ 10, 11, 575 P.2d 1345; Miller v. City of Albuquerque, 1976-NMSC-052, ¶ 21, 22, 554 P.2d 665; Zuni Indian Tribe v. McKinley County Board, 2013-NMCA-041, ¶ 21; Planned Communities Criteria, page 35; Bernalillo County Zoning Ordinance Section 19.5(B)(1). Therefore, no valid Level A approvals were in place at the time the Board approved the Level B.1 Master Plan. As of the date of this filing there are still no valid Level A approvals in place.

The recently approved Level B.1 Master Plan is also invalid because it too relies upon the voided Zone Map Amendment. *See* Appellants/Petitioners' Notice of Appeal and Alternative Petition for Writ of Certiorari, pp. 7-17. The Board denied the Appellants/Petitioners' appeal of the Planning Commission's decision recommending approval of the Level B.1 Master Plan and approved the Level B.1 Master Plan on August 30, 2018, three months after the District Court invalidated the Level A Zone Map Amendment and all subsequent approvals dependent upon the

now invalid Zone Map Amendment. R, 095373-095379. Again, the Planned Communities Criteria and Bernalillo County Ordinance Section 19.5(B)(1) require a valid Zone Map Amendment to be in place before Level B approvals may occur. Therefore, the Board erred in denying the Appellants/Petitioners' appeal and approving the Level B.1 Master Plan.

B. The Board erred in denying the Appellants/Petitioners' appeal and approving the Level B.1 Master Plan because the Planned Communities Criteria do not permit Level B approvals before Level A approvals.

Furthermore, the Planned Communities Criteria do not permit the Board to make Level B approvals *before* Level A approvals. The Planned Communities Criteria provide the following, in pertinent part, "While this process outlines three separate levels of review, it is possible that levels could be developed simultaneously and approved jointly." PCC, p. 35 (R, 101188). The Planned Communities Criteria do not state that the Board may make Level B approvals *before* valid Level A approvals are in place. As discussed above, and in detail in Appellants/Petitioners' Notice of Appeal and Alternative Petition for Writ of Certiorari pp. 7-17, there are no valid Level A approvals in place. Therefore, the Board erred in denying the Appellants/Petitioners' appeal of the Planning Commission's decision recommending approval of the Level B.1 Master Plan and approving the Level B.1 Master Plan by making Level B approvals *before* valid Level A approvals are in place.

C. The Board erred in denying the Appellants/Petitioners' appeal and approving the Level B.1 Master Plan because the Level B.1 Master Plan does not comply with the Planned Communities Criteria, Bernalillo County Comprehensive Plan, and the Bernalillo County Code of Ordinances.

The Santolina Level B.1 Master Plan is governed by the Planned Communities Criteria that have been adopted by the Board of County Commissioners. However, the Santolina Level B.1 Master Plan fails to comply with several important requirements of those Criteria.

1. *The Santolina developers failed to provide the required “consequential noise and air quality impacts” analyses with its Level B.1 Master Plan Application.*

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

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

PCC, p. 38, emphasis added (R, 101191).

The Santolina developers failed to provide an analysis of “consequential noise and air quality impacts” with its Level B.1 Master Plan Application. R, 088890-089007. The developers never submitted the required noise impacts analysis. The developers did however submit the required air quality impacts analysis to the Planning Commission *five months after* the required submission deadline, but the Planning Commission never considered the untimely filed analysis. *See* Level B.1 Master Plan “Air Quality Impact Analysis” (May 2016) (R, 090221-090316). Such a delayed submission does not comply with the Planned Communities Criteria and resulted in the Planning Commission’s and the Board’s consideration of an incomplete Level B.1 Master Plan Application. *See generally* Planning Commission Hearing transcripts for June 23, 2016 (R, 093651-093800), July 21, 2016 (R, 093801-093943), and November 2, 2016 (R, 093944-094062).

For these reasons, the Board’s and the Planning Commission’s finding that, “The Santolina Level B.I Plan and associated technical appendices have been reviewed and revised to address the requirements of Bernalillo County departments and other commenting agencies” is also not supported by substantial evidence in the record. Board Decision, Finding 12 (September 1, 2017) (R, 095375); Planning Commission Decision, Finding 12 (January 10, 2017) (R,

101361).

2. *The Santolina Level B.1 Master Plan failed to provide the required statement of water availability and availability of solid and liquid wastes services, as well as the required facilities plan providing detailed location, phasing of water, sewer and drainage systems.*

The Planned Communities Criteria make clear that a developer of a proposed planned community must demonstrate, at both Levels A and B, the availability of water for the proposed development. PCC, pp. 36, 39 (R, 101189, 101192). The Santolina Level B.1 Master Plan does not provide the required statement of water availability and statement of availability for liquid and solid waste services. *See generally* Plan (R, 095385-095537); Planning Commission Decision, Findings 18-19 (January 10, 2017) (R, 101361-101362); Administrative Resolution AR 2017-48 (August 15, 2017); Appellants/Petitioners' Notice of Appeal and Alternative Petition for Writ of Certiorari, pp. 18-21, 33-34.

Additionally, the PCC require developers to provide "a facilities plan including detailed location, phasing of water systems, sewer systems, drainage systems, and mobility systems." PCC, p. 39 (R, 101192). The Level B.1 Master Plan fails to comply with this requirement by merely providing conceptual plans for water and sewer systems. *See generally* Plan (R, 095385-095537); Level B "Water & Sanitary Sewer Master Plan," pp. 3, 12 (January 25, 2016) (R, 089406, 089415); Level B.1 Master Plan "Revised Drainage (Stormwater) Master Plan and Terrain Management Plan" (November 2, 2016); Planning Commission July 21, 2016 Hearing Transcript, p. 66:17-25 (R, 093866), p. 67:1-2 (R, 093867); Administrative Resolution AR 2017-48 (August 15, 2017). Providing a conceptual facilities plan, which fails to include detailed location and phasing of water, sewer, and drainage systems, does not comply with the Planned Communities Criteria. Additionally, deferring the submission of such required information to

the Level C phase of development does not comply with the Planned Communities Criteria for Level B Master Plans.

For these reasons, the Board's and the Planning Commission's finding that the Level B.1 Master Plan demonstrates "substantial consistency with the Planned Communities Criteria in the areas of...Environment and...Government and Public Service" is also not supported by substantial evidence in the record. Board Decision, Finding 7 (September 1, 2017) (R, 095375); Planning Commission Decision, Finding 7 (January 10, 2017) (R, 101360).

3. *The Santolina Level B. 1 Master Plan does not provide required information concerning land use.*

- a. The Level B.1 Master Plan does not include the required analyses of environmental resources.

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

The Criteria require:

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

PCC, p. 39 (R, 101192). The Level B.1 Master Plan provides no information about airport noise zones and provides merely general descriptions of the vegetation and wildlife in the area of the proposed Santolina development. Plan, p. 76 (R, 095479).

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

The Santolina Level B.1 Master Plan also fails to present a complete strategy for ensuring that community air quality standards are met and that residents near industrial facilities will not be impacted by toxic air emissions. Plan, pp. 78-80. The Plan also asserts that the proposed

development will not create increased levels of carbon monoxide because the creation of local jobs will ensure that residents do not have to travel to other areas of Bernalillo county for work, but the Plan contains no contingency measures to be employed to limit carbon monoxide emissions if those local jobs do not materialize. *Id.*; *See also* Appellants/Petitioners' Notice of Appeal and Alternative Petition for Writ of Certiorari, pp. 21-23.

- c. The Level B.1 Master Plan does not include required information regarding "market potential and opportunities" for the proposed Santolina development.

The PCC require Level B master plans to provide:

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

PCC, p. 38 (R, 101191). Contrary to these requirements, the Santolina Level B.1 Master Plan provides no information about the specifics of "market potential and opportunities." The Plan includes general statements about anticipated growth on the West Side of Albuquerque (Plan, p. 12; R, 095404), and provides approximate numbers for the people expected to live in Santolina and the jobs that are anticipated to be created there, but includes no specific information to back up these numbers. *Id.*

- d. The Level B.1 Master Plan does not include required information regarding village centers and "suitability to natural topography."

In addition, Level B master plans are required to explain the "suitability to natural topography" of village centers. PCC, p. 38 (R, 101191). However, the only village center that the Santolina Level B.1 Master Plan addresses is the Village Verde Residential Village Center, and the Plan's only information concerning the relationship of that village center to natural topography is the statement that the village center is located adjacent to the western escarpment open space, which allegedly will provide "recreational opportunities as well as pedestrian and

bicycle connections to the Village Center”. Plan, p. 14 (R, 095406).

For the above reasons, the Board’s and Planning Commission’s finding that the Level B.1 Plan “demonstrates substantial consistency with the Planned Communities Criteria in the areas of Land Use...and Environment” is not supported by substantial evidence in the record. Board Decision, Finding 7 (September 1, 2017) (R, 095375); Planning Commission Decision, Finding 7 (January 10, 2017) (R, 101360).

4. The Santolina Level B.1 Master Plan does not comply with the “no net expense” requirement of the PCC, the Bernalillo County Comprehensive Plan, and the Santolina Level A Development Agreement.

The PCC, the Bernalillo County Comprehensive Plan and the Santolina Level A Development Agreement all require that, “the Level B Master Plan analysis for subsequent development phases of the Project must also satisfy the ‘no net expense’ policy.” Level A Development Agreement, Section 7, p. 9 (August 10, 2015) (R, 101527). The “no net expense” policy means that a planned community must be developed, including government and public facilities, at no net expense to the governments of Bernalillo County and the City of Albuquerque. The Santolina Level B.1 Master Plan fails to demonstrate compliance with this “no net expense” requirement for the following reasons.

First, the Planned Communities Criteria for Level B government and public services require developers to provide a “strategy for funding and maintenance of public facilities and sites, including open space.” PCC, p. 39 (R, 101192). A strategy is a careful plan or method. Without a strategy for funding and maintenance of public facilities, the Board cannot evaluate whether the “no net expense” requirement will be met. The Plan merely provides a list of “available financing mechanisms for Project and System Infrastructure.” Plan, pp. 118-120 (R,

095532-095534); Planning Commission July 21, 2016 Hearing Transcript, p. 52:15-24 (R, 093852).

Second, the Santolina Level B.1 Master Plan “Fiscal and Economic Impact Study” is based upon unrealistic assumptions regarding high rates of population growth and job creation. This study also failed to include in its analysis the 20 Santolina Tax Increment Development Districts (“TIDDs”) approved by the Board of County Commissioners. Level B “Fiscal and Economic Impact Study”, pp. 6-11, 16-18 (January 21, 2016) (R, 089448-089453, 089458-089460). These TIDDs will transfer forty-five (45) percent of the gross receipts tax increment and forty-five (45) percent of the property tax increment generated with the districts away from the Bernalillo County General Fund to the developers. The County will be losing, at a minimum, \$500 million from its gross receipts tax increment and property tax increment over the next 50 years, but due to inflation that loss will more likely be \$1 billion.

Third, the “Fiscal and Economic Impact Study” estimates of County costs do not include any expenditures for water, new infrastructure, infrastructure maintenance, or open space acquisition. The Study also does not consider the costs that will be incurred by the County for transportation and schools. *Id.* at pp. 11-17 (R, 089453-089459); Appellants/Petitioners’ Notice of Appeal and Alternative Petition for Writ of Certiorari, pp. 25-29.

For these reasons, the Board’s and the Planning Commission’s finding that the Plan “is consistent with Reserve Area policies that call for substantial self-sufficiency and economic sensitivity and development that is at no net cost to Bernalillo County” is also not supported by substantial evidence in the record. Board Decision, Finding 6 (September 1, 2017) (R, 095375); Planning Commission Decision, Finding 6 (January 10, 2017) (R, 101360).

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

The PCC require developers to provide “siting of industrial land uses to avoid groundwater contamination.” PCC, p. 39 (R, 101192). The Plan provides no information about the quality of the ground water or its gradient, or whether measures will be put in place to ensure that ground water beneath the proposed Santolina development is not polluted by the industries that are expected to be located there. *See generally*, Plan (R, 095385-095537).

6. *The Santolina Level B.1 Master Plan does not provide required statements of availability of fire and police services and schools.*

The PCC require developers to provide, “Statements of water availability and availability of public services, such as solid and liquid wastes ... fire, police and schools.” PCC, p. 39 (R, 101192). The Plan does not provide any of these required statements of availability. *See* Appellants/Petitioners’ Notice of Appeal and Alternative Petition for Writ of Certiorari, pp. 34-36. Specifically, the Plan does not include a statement from Albuquerque Public Schools (“APS”) that there are schools available for students within the proposed Plan area. Plan, pp. 106-108 (R, 095518-095520); Planning Commission July 21, 2016 Hearing Transcript, p. 35:12-14 (R, 093835), p.37:14-15 (R, 093837). For this reason, the Board’s and Planning Commission’s Finding that “the Level B.1 plan includes a provision for schools within the plan area to be part of the Albuquerque Public School system” is also not supported by substantial evidence in the record. Board Decision, Finding 15 (September 1, 2017) (R, 095375); Planning Commission Decision, Finding 15 (January 10, 2017) (R, 101361).

The Plan also does not include a statement of availability from either the City of Albuquerque or Bernalillo County for police facilities and services.” Plan, pp. 104-105 (R, 095516-095517); Planning Commission June 23, 2016 Hearing Transcript, p. 19:16-25 (R,

097196), p. 20:1 (R, 097197). For this reason, the Board's and Planning Commission's Finding that the Level B.1 Master Plan demonstrates "substantial consistency with the Planned Communities Criteria in the areas of...Government and Public Service" is also not supported by substantial evidence in the record. Board Decision, Finding 7 (September 1, 2017) (R, 095375); Planning Commission Decision, Finding 7 (January 10, 2017) (R, 101360).

D. The Board erred in denying the Appellants/Petitioners' appeal and approving the Plan because the Plan does not comply with other conditions established by the Board for the approval of the Plan.

When the Board approved the Santolina Level A Master Plan in 2015 it imposed a number of conditions to be met by the Santolina developers in subsequent Level B master plans, in addition to the PCC Level B filing requirements. Board Decision, Conditions 1-22 (June 19, 2015) (R, 101144-101148). Conditions 8, 9 and 11 have been modified by the Board and deferred to the Level C phase of development. Administrative Resolution AR 2017-48 (August 15, 2017). The developers did not comply with a number of conditions imposed by the Board pertaining to Level B Master Plan filings. The following is a brief discussion of the conditions not met by the developers' Plan. See Appellants/Petitioners' Notice of Appeal and Alternative Petition for Writ of Certiorari, pp. 36-41, for a more detailed discussion.

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

The Board established the condition that Santolina developers must provide a plan for attaining a 2-1 jobs-to-housing ratio in Level B Master Plans filed with the County. Board Decision, Condition 3 (June 19, 2015) (R, 101145). The Plan acknowledged this requirement, yet did not provide the required jobs-to-housing ratio plan. Plan, p. 4 (R, 095394). Additionally, the Plan's "Fiscal and Economic Impact Study" also fails to provide the required jobs-to-housing

ratio plan. R, 089433-089502.

For these reasons, the Board's and the Planning Commission's finding that the Plan "also includes mechanisms that seek to ensure that the overall gross density is maintained and the jobs-to-housing balance of 1.25 jobs per household is achieved over the course of the development" is also not supported by substantial evidence in the record. Planning Commission Decision, Finding 10 (January 10, 2017) (R, 101360); Board Decision, Finding 10 (September 1, 2017) (R, 095375).

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

The Board also established the condition that Santolina developers must provide the coordination of timeframes for the Plan's offsite roadway improvements, along with a phasing plan. Board Decision, Condition 5 (June 19, 2015) (R, 101145). The Santolina developers did not provide this required information in either its Plan or its supporting technical documents. Plan, p. 114 (R, 095528); Level B "Transportation Master Plan" (September 30, 2016) (R, 091183-091349); Level B "On-Site and Off-Site Locations of Interest Traffic Analysis" (March 31, 2016).

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

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

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

Board Decision, Condition 6 (June 19, 2015) (R, 101145). The Plan does not provide this

required information. *See generally*, Plan (R, 095385-095537); Planning Commission July 21, 2016 Hearing Transcript, p. 24: 17-25 (R, 093824), p. 25:1-15 (R, 093825); Planning Commission Decision, Condition 2 (January 10, 2017) (R, 101362); Board Decision, Condition 1 (September 1, 2017) (R, 095375).

For this reason, the Board's and the Planning Commission's finding that the Plan "demonstrates substantial consistency with the [PCC] in the areas of...Transportation" is also not supported by substantial evidence in the record. Board Decision, Finding 7 (September 1, 2017) (R, 095375); Planning Commission Decision, Finding 7 (January 10, 2017) (R, 101360).

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

The Board also established the condition that prior to any Level B plan approval the Santolina developers must provide "documentation that the proposed development will comply with Albuquerque/Bernalillo County Air Quality Standards." Board Decision, Condition 13 (June 19, 2015) (R, 101146). The Plan did not provide this required documentation. The Plan does not identify what types of industry and manufacturing will be located within the Plan area, what types of emissions will be produced, and the effects of such emissions on the Plan area population. *See generally*, Plan (R, 095385-095537).

E. The Board erred in denying the Appellants/Petitioners' appeal and approving the Level B.1 Master Plan because the Board's decision was not based on substantial evidence in the record.

1. *The Board's decision denying the Appellants/Petitioners' appeal of the Planning Commission's decision recommending approval of the Level B.1 Master Plan is not based on substantial evidence in the record.*

The Board has provided no information whatsoever about the basis or reasons for its decision denying Appellants/Petitioners appeal of the Planning Commission's decision

recommending approval of the Level B.1 Master Plan. The language in the Decision simply states that “the Board of County Commissioners voted to deny the appeal...”. R, 095373-095379.

The New Mexico Supreme Court and Court of Appeals have made clear that agencies must base their decisions on information in the record before them and must explain the reasons for their decisions. Fasken v. Oil Conservation Commission, 87 N.M. 292, 294, 532 P.2d 588, 590 (N.M. 1975). The District Court therefore must vacate the Board’s decision denying Appellants/Petitioners’ appeal of the Planning Commission’s decision for failure to explain the reasons for the Board’s decision and cite to substantial evidence in the record in support of the Board’s decision. The Appellants/ Petitioners had no opportunity to raise this point before the Board of County Commissioners because it arose when the Board made its Decision.

2. *The Board’s decision approving the Level B.1 Master Plan is not based on substantial evidence in the record.*

For the reasons discussed above, the Board’s written decision, on its face, makes clear that it is not based on substantial evidence in the record. R, 095373-095379. Furthermore, because the Board also failed to explain the reasons for its decision, the Board’s approval of the Level B.1 Master Plan must be vacated. The Appellants/ Petitioners had no opportunity to raise this point before the Board of County Commissioners because it arose when the Board made its Decision.

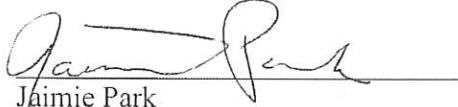
VI. Claims for Relief

For the reasons outlined above, the Appellants/Petitioners request that the Court:

- A. Vacate the Board’s decision approving the Level B.1 Master Plan for the proposed Santolina development; and
- B. Vacate the Board’s decision denying the Appellants/Petitioners’ appeal from the Planning Commission’s decision approving the Level B.1 Master Plan.

Dated: July 16, 2018

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A handwritten signature in cursive script, appearing to read "Jaimie Park", is written over a horizontal line.

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