



BERNALILLO COUNTY

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Planning

APPEAL TO COUNTY COMMISSION

Application Date: _____
Appeal Number: _____
Hearing Date: _____

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SITE ADDRESS	Case # SPR2017-0003
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DIRECTIONS/LOCATION
Bounded by Interstate 40 to north, 118 St. and escarpment east, Parajito Mesa on south and escarpment near Rio Puerco Valley on west

LEGAL DESCRIPTION
projected sections 1,2,3,4,5,8,9,10,11,12,13,14,15,16&17, T9N, R1E, & sections 6,7,8,16,17&18, T9N, R2E, & sections 32,33,34,35&36, T10N, R1E, & sections 30&31, T9N, R2E, NMPM, Atrisco, Bern Co.

ZONE MAP PAGE #	CURRENT ZONE(S) A-1 Rural	PROPERTY SIZE IN ACREAGE 13,700
UPC #	PROPOSED ZONE(S) Level B.1	SUBDIVISION NAME Santolina

EXISTING USE
A1 Rural Agricultural

PROPOSED USE
Santolina Planned Community

SCOPE OF APPEAL, INCLUDING CASE NUMBER

Appeal of Bernalillo County Planning Commission June 7, 2017 Decision, see attached Appeal; SPR2017-0003.

DETAILED INFORMATION (JUSTIFICATION MUST BE PROVIDED PER ZONING CODE REQUIREMENTS, ADDITIONAL INFORMATION MAY BE ATTACHED)

Please see attached Appeal.

I hereby acknowledge that I have read this entire application and affirm that all of the provided information is correct. I agree to comply with the requirements of Bernalillo County and the State of New Mexico as outlined in all applicable laws, ordinances and regulations.

Jaimie Park
Printed Name

Jaimie Park
Signature

6/22/17
Date

BEFORE THE BERNALILLO COUNTY, NEW MEXICO

BOARD OF COUNTY COMMISSIONERS

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

v.

FILE NO. SPR2017-0003

BERNALILLO COUNTY PLANNING COMMISSION

APPEAL OF THE
BERNALILLO COUNTY PLANNING COMMISSION
RECOMMENDATION THAT THE
BERNALILLO COUNTY BOARD OF COUNTY COMMISSIONERS
APPROVE THE SANTOLINA DEVELOPERS' PROPOSED AMENDMENTS
TO CONDITIONS #8, #9 AND #11 OF APPROVAL TO THE SANTOLINA
LEVEL A MASTER PLAN

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Introduction

- I. **The Appellants hereby appeal to the Board of County Commissioners to reject the recommendation of the County Planning Commission that the Santolina Developers' proposed amendments to Conditions #8, #9 and #11 of Approval to the Level A Master Plan be accepted.**

This is an appeal of the Bernalillo County Planning Commission ("the Planning Commission") recommendation that the Bernalillo County Board of County Commissioners ("the Board of County Commissioners" or "the Board") accept the Santolina Developers' proposed amendments to Conditions #8, #9 and #11 of Approval to the Level A Master Plan ("the Plan"). This appeal is filed by the SouthWest Organizing Project, the New Mexico Health Equity Working Group, the Pajarito Village Association, the South Valley Coalition of Neighborhood Associations, the South Valley Regional Association of Acequias, the Center for Social Sustainable Systems, Javier Benavidez, James "Santiago" Maestas, Roberto Roibal, Kristine Suozzi, Rod Mahoney, Marcia Beauregard Fernandez, Daniel Richard "Rip" Anderson, and Dr. Virginia Necochea (referred to collectively as "the Appellants").

The recommendation of the Planning Commission ("the Planning Commission Decision") was determined by a vote of the Planning Commission on June 7, 2017. For that reason, the Appellants are filing this appeal before 12:00 noon on June 22, 2017.

In addition, the Appellants reserve the right to address the Board of County Commissioners concerning this appeal for themselves and through counsel at any hearing, meeting, or other forum conducted by the Board of County Commissioners addressing the proposed development.

The Appellants also reserve the right to supplement the arguments presented in this appeal with additional support for the arguments presented in this appeal and with additional arguments that are not presented in this appeal.

Finally, the Appellants reserve the right to add additional appellants to an amended appeal to the Board of County Commissioners.

II. The Appellants' appeal to the Board of County Commissioners is based on the recently issued Second Judicial District Court Order, the requirements of the Planned Communities Criteria, the Planning Commission's rules of procedure and the Bernalillo County Code of Ordinances.

The Appellants request that the Board of County Commissioners defer consideration of the Planning Commission's recommendation that the Santolina Developers' proposed amendments to Conditions #8, #9 and #11 of Approval to the Level A Master Plan be accepted and this Appeal until a valid zone map amendment, Level A Master Plan and Level A Development Agreement are in place for the proposed Santolina development, if that ever occurs.

In the alternative, the Appellants request that the Board of County Commissioners reject the Planning Commission's recommendation that the Santolina Developers' proposed amendments to Conditions #8, #9 and #11 of Approval to the Level A Master Plan be accepted. The Appellants' request is based on the following eight reasons.

First, the Honorable Judge Nancy Franchini of the Second Judicial District Court issued a Memorandum Opinion and Order ("Opinion") addressing four of the appeals filed by several of the above-listed Appellants pertaining to the Santolina Level A approvals and reversed the Board's decision approving the zone map amendment for the proposed development.¹ There is no longer a valid Planned Communities Zone ("PC Zone") in place for the proposed development. Because the PC Zone has been voided, the Level A Master Plan and the Level A Development Agreement, both dependent upon the PC Zone, have also been voided. The

¹ The Court dismissed Appellants' appeal of the Board's approval of the Level A Development Agreement "because there is no final written decision to review". Order on Appellee/Respondents' Motion to Dismiss for Lack of Ripeness, Finding 1 (April 28, 2016).

Court's Opinion indicates that proceedings for Santolina Level A must begin anew, therefore the Board should defer consideration of the Planning Commission's recommendation and this Appeal until there is a valid PC Zone, Level A Master Plan, and Level A Development Agreement in place, if that ever occurs.

Second, Conditions #8, #9 and #11 are necessary to ensure that the Santolina Developers comply with the Bernalillo County Planned Communities Criteria (the "Planned Communities Criteria") requirements for demonstrating that the Developers will have water for the proposed development.

Third, despite the Santolina Developers' assertions to the contrary, it is not clear that the Albuquerque/Bernalillo County Water Utility Authority ("Water Authority") will not enter into a development agreement with the Santolina Developers until after the Board approves the Santolina Developers' Level B.1 Community Master Plan (the "Level B.1 Master Plan"). There is therefore no merit to the Developers' argument that a development agreement with the Water Authority cannot be considered until after a Level B.1 Master Plan is approved by the Board.

Fourth, there is no merit to the Santolina Developers' assertion that the Water Authority is obligated to provide the proposed Santolina development with water pursuant to the June 27, 2006 "County-Water Authority Franchise and Right-of-Way Agreement".

Fifth, there is no merit to the Santolina Developers' assertion that the 2012 Addendum to the Planned Communities Criteria either repealed or amended the Planned Communities Criteria to no longer require submittal of information pertaining to water.

Sixth, there is no merit to the Santolina Developers' assertion that the Board must follow the same procedure for the proposed Santolina development as the City of Albuquerque followed for the Mesa del Sol development.

Seventh, the deferral of conditions #8, #9 and #11 to the Level C phase of development would result in substantial harm. The Developers' assertion that no development can take place until after a Level C plan is approved by the Board is without merit and deferral of the required Water Authority development agreement to Level C would mean that both members of the public and the Board would not be able to participate in Bernalillo County's determination of whether there is adequate water for Santolina because that determination would be made by the Bernalillo County Development Review Authority.

Finally, the Planning Commission violated its rules of procedure and Section 62-36 of the Bernalillo County Code of Ordinances when the Planning Commission recommended that the Board accept the Santolina Developers' proposed amendments to Conditions #8, #9 and #11. The Planning Commission considered new evidence not properly in the record for the Santolina Developers' application to amend Conditions #8, #9 and #11, in violation of the Planning Commission's rules of procedure. Commissioner Pena also failed to disclose his financial interests or any other type of perceived possible conflict of interest in the proposed Santolina development, in violation of both the Planning Commission's rules of procedure and Section 62-36 of the Bernalillo County Code of Ordinances.

Factual Background

The Board of County Commissioners issued its written decision approving the Santolina Level A Community Master Plan (the "Santolina Level A Master Plan"), with findings and conditions of approval, on June 19, 2015 ("Board of County Commissioners Approval of Level A Master Plan"). These conditions were approved by the Board to ensure that the future Santolina Level B.1 Master Plan would comply with the Albuquerque/Bernalillo County

Comprehensive Plan, the Planned Communities Criteria and other applicable state and county laws.

Condition #8 requires the Santolina Developers to provide a “fully executed development agreement” with the Water Authority prior to approval of any Level B or Level C document. Board of County Commissioners Approval of Level A Master Plan (June 19, 2015). Condition #9 requires the Santolina Developers to provide, prior to approval of any Level B or Level C planning document, “a written explanation of the projected Master Plan water use and phasing and subsequent level plans within the context of the 2024 Water Conservation Plan Goal and Program Update (July 2013) or subsequent updates” based on the fully executed development agreement with the Water Authority. *Id.* Condition #11 requires the submittal of a fully executed development agreement with the Water Authority before any Level B approval. *Id.* Condition #11 also requires that, “Water and wastewater issues for the Santolina Master Planned Community shall be resolved between the Albuquerque/Bernalillo County Water Utility Authority (ABCWUA) and the applicant prior to any Level B approval.” *Id.*

The Board of County Commissioners adopted Conditions #8, #9 and #11 in response to testimony given to the Board by Executive Director of the Water Authority, Mr. Mark Sanchez, and in response to the letter dated July 29, 2014 that Mr. Sanchez provided to the Bernalillo County Planning Commission (“Planning Commission”). At the Board’s March 25, 2015 hearing, Mr. Sanchez stated that:

If there was a Level A Master Plan with all the conditions set forth, we could certainly discuss servicing in the future.

Board of County Commissioners Hearing Transcript, TR-79:20-22 (March 25, 2015).

Similarly, in his letter of July 29, 2014, Mr. Sanchez stated the following, in pertinent part:

Water Authority ordinances require that a land use master plan be approved prior to the Water Authority providing service to a master planned community outside its service area. The development agreement will specify the requirements and conditions of service. It is through this agreement that the planned community criteria will be addressed If the Santolina *Level A Master Plan* is approved by the Bernalillo County Commission, only then will Water Authority staff proceed in negotiating a draft development agreement with the developer.

Sanchez letter, ¶¶ 2, 4 (July 29, 2014); emphasis added.

Seven months after receiving notice of these conditions, the Santolina Developers submitted their application for the Level B Master Plan (which later became known as “Level B.1 Master Plan”). That application did not include a fully executed development agreement with the Water Authority or any explanation as to the reasons why no such development agreement was included.

The Planning Commission held six hearings on the incomplete Level B.1 Master Plan and voted to recommend approval of the incomplete Level B.1 Master Plan on January 4, 2017. Planning Commission Hearing Transcript, TR-12: 9-17 (January 4, 2017) (“the Planning Commission’s Decision”). The agent for the Santolina Developer, Mr. Strozier, advised the Planning Commission that the Developers agreed with the proposed findings and conditions to the Planning Commission’s decision. Mr. Strozier stated, in pertinent part, the following:

We – once again, we are in agreement with that – with this moving forward. We have reviewed – I think that’s – those changes are good, and so we are – we are certainly in agreement with the revised language to, I believe, it was conditions 5 and 6² that is being – that is being presented for your consideration....

² Condition #5 states the following:

To address the first part of a two step, BCC Level B.1 approval process and prior to partial Level B.1 approval, by the BCC, outstanding issues related to water and sewer service should be addressed including resolution of Level A conditions and Level B PCC criteria. Accordingly, the applicant should submit to the Planning staff preliminary drafts of the subject ABCWUA-related documents (i.e. Development Agreement, ABCWUA-acceptable Level B Facilities Plan, and Water Availability or Serviceability

Planning Commission Hearing Transcript, TR-63: 15-24 (January 4, 2017).

The written decision of the Planning Commission's January 4, 2017 vote was issued on January 10, 2017 ("Planning Commission Decision"). Several of the above-listed Appellants filed an Appeal of the Planning Commission Decision on January 25, 2017 and filed a Motion for Deferral of Hearing Set for March 14, 2017 on February 13, 2017. Both the Appeal and the Motion were filed in a timely manner.

In contrast, the Developers filed an appeal of the Planning Commission Decision on March 2, 2017, more than two months after such an appeal was due. *See* Appellants' Response in Opposition To and Motion to Dismiss Santolina Developers' Appeal to Planning Commission Decision Finding #19 and Conditions #5 and #6 (March 8, 2017).

The Developers also filed a Response in Opposition to Appellants' Appeal and an Objection to Appellants' Request for Deferral of Hearing Set for March 14, 2017 (March 2, 2017), as well as a motion to remove and/or revise Conditions #8, #9, and #11 to approval of the Santolina Level A Community Master Plan. *See* Appellants' Response in Opposition To Santolina Developers' Motion To Remove And/Or Revise Conditions #8, #9, and #11 To Approval Of The Santolina Level A Community Master Plan.

Statement) along with any zoning changes or special use requests needed to accommodate ABCWUA-required infrastructure, prior to a Level B Master Plan final hearing before the BCC.

Condition #6 states the following:

The Level B.1 Plan approval shall not be effective until the Level B.1 Development Agreement with Bernalillo County and the Level B.1 Development Agreement with the Albuquerque/Bernalillo County Water Authority are finalized and fully executed. Completion of both the Level B.1 Development Agreements shall occur within one year of the BCC decision date. In the event that both the Level B.1 Development Agreements have not been fully executed by the one-year deadline date, the Bernalillo County Planning and Development Services Director may extend the deadline for up to an additional six months. No further level B or level C applications will be submitted until the development agreement with the ABCWUA is finalized and fully executed. If there is no water development agreement with the ABCWUA after the prescribed time the matter shall return to the BCC for further consideration.

Planning Commission Notification of Decision, Conditions #5 and #6 (January 10, 2017).

The Board of County Commissioners held a hearing on the incomplete Santolina Level B.1 Master Plan on March 14, 2017 and April 4, 2017. The Board voted to defer consideration of the incomplete Level B.1 Master Plan until “receipt of a recommendation to amend the Santolina Level A Plan through the County Planning Commission Process (To Modify Conditions of Approval Related to Water Service).” See Notification of Decision, Board of County Commission (April 7, 2017). The Developers then submitted SPR2017-0003 to the Planning Commission on April 24, 2017 to modify conditions of approval related to water service for the proposed Santolina development. Appellants filed a Response in Opposition to Developers’ application to amend conditions of approval related to water service, as well as a Request to Defer the June 7, 2017 Planning Commission hearing and a Request to Amend Condition #19 of the Board’s conditions of approval for the Santolina Level A Master Plan.

The Planning Commission held a hearing on SPR2017-0003 on June 7, 2017 and voted to recommend that the Board accept the Developers’ proposed amendments to Conditions #8, #9 and #11 related to water service.

Argument

I. The Second Judicial District Court Has Voided the Board’s Approval of the Zone Map Amendment for the Proposed Santolina Development, Thereby also Voiding the Board’s Approvals of the Santolina Level A Master Plan and the Santolina Level A Development Agreement.

A. Background of the Santolina Level A Appeals.

Several of the above listed Appellants filed a consolidated action involving five appeals of the Board of County Commissioners’ and the Planning Commission’s actions pertaining to Santolina Level A with the Second Judicial District Court. The following actions were appealed: 1) the Board’s denial of their appeal from the Planning Commission’s recommendation that the Santolina Level A Master Plan be approved, dated May 15, 2015; 2) the Board’s approval of the

Santolina Level A Master Plan, dated June 19, 2015; 3) the Board's denial of their appeal from the Planning Commission's recommendation to approve the requested zone map amendment ("ZMA") for the proposed Santolina development, dated June 1, 2015; 4) the Board's approval of the ZMA from A-1 Rural Agricultural to the Planned Communities ("PC") Zone, dated June 18, 2015, and 5) the Board's approval of the Development Agreement.

B. The Court reversed the approval of the Zone Map Amendment.

The Court recently reversed the Board of County Commissioners' decision approving the Zone Map Amendment. Memorandum Opinion and Order, pp. 2, 8-9, 9-14, 16-18, 20. The Zone Map Amendment was sought by the Santolina Developers, and it changed the zoning of the Santolina property from A-1 Rural Agricultural to Planned Communities. *Id.*, pp. 2, 5-6. 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.³ *Id.*, pp. 9-14, 16-18.

C. The Court's ruling reversing the Zone Map Amendment means that the Board's Zone Map Amendment decision is void.

The basis on which the Court reversed the Zone Map Amendment was that the Board of County Commissioners denied the Appellants/Petitioners procedural due process. The Court stated:

The Op-Ed [by Commissioner De La Cruz] in the Court's opinion raises questions of partiality and prejudice, or the appearance thereof, sufficient to warrant at the very least the Board's consideration of the recusal or disqualification of Commissioner De La Cruz. Accordingly, the Court **REVERSES** the Decision approving the [Zone Map Amendment] and the denial of Appellants' appeal of the CPC's recommendation of the [Zone Map Amendment] to the Board.

Opinion, page 17 (May 31, 2017).

³ The Court addressed the Zone Map Amendment proceedings and the Appellants/Petitioners' appeal from the County Planning Commission decision on the Zone Map Amendment.

Moreover, the Appellants sought to disqualify Commissioner De La Cruz from the entire proceeding, not just from voting on the Zone Map Amendment. *See* Appellants/Petitioners' Request for Recusal and Alternative Motion for Disqualification of Bernalillo County Commissioner de la Cruz.⁴ ("Request and Alternative Motion") Record ("R"), 80971-80979. As the Court noted in its Opinion, the Board heard argument on the Request and Alternative Motion, but never voted on the Request and Alternative Motion.

The Appellants filed their Request and Alternative Motion the day before the Board began its hearings on Santolina (R., 80971-80979), and the Request and Alternative Motion was taken up as a preliminary matter at the beginning of the Board's first hearing on March 25, 2015. R., 87277-87296. After the Board failed to vote on the Request and Alternative Motion, Commissioner De La Cruz participated in all of the Board's proceedings concerning the Zone Map Amendment as well as all of the Board's proceedings addressing the Santolina Level A Master Plan, and the Development Agreement between the Board and the Santolina Developers ("the Development Agreement"). *See* R. 87296-87422 (March 25, 2015 Board hearing transcript); R. 87296-87422 (March 26, 2015 Board hearing transcript); R. 87719-87888 (May 11, 2015 Board hearing transcript); R. 87889-88123 (May 28, 2015 Board hearing transcript); R. 88124-88360 (June 16, 2015 Board hearing transcript); and R. 88361-88526 (June 24, 2015 Board hearing transcript).

The Board denied the Appellants procedural due process at the start of the Board's proceedings, and continued those proceedings on the basis of that denial of procedural due process. For that reason, this case is analogous to the situation in Nesbit v. City of Albuquerque, 1977-NMSC-107, 91 N.M. 455.

⁴ Appellants misspelled Commissioner De La Cruz's name in its Request and Alternative Motion submitted to the Board.

In Nesbit, the developer of apartments failed to give the statutorily required notice to neighbors of the property in question. 1977-NMSC-107, ¶1. After the City Commission denied the proposal, the developer obtained review in the District Court, which reversed the Commission in 1973. The Commission then approved the developer's proposal. *Id.* When construction began in 1976, the neighbors filed a motion to intervene in the litigation and a motion to set aside the 1973 judgment. The District Court granted both motions, and the developer appealed (*Id.*), arguing that even if the zoning agencies' decisions were invalid, the 1973 District Court decision was correct because all of the parties entitled to notice of that proceeding were served. *Id.*, ¶10.

The Supreme Court disagreed, stating:

The 1976 district court found as a matter of law that the failure to give the notice required by statute *rendered all subsequent acts void*. The 1973 judgment and the subsequent approval by the City Commission were also void. *By failing to follow statutory procedures, due process of law was violated and no subsequent act could correct the defect.*

Id., ¶11, emphasis added.

The Supreme Court's reasoning in Nesbit applies in this matter. There, the neighbors were denied procedural due process at the start of the City's proceedings, and the Supreme Court ruled that "no subsequent act could correct the defect." 1977-NMSC-107, ¶11. Here, the Board denied the Appellants procedural due process at the start of the Board's proceedings concerning the Zone Map Amendment and "no subsequent act by the Board [can] correct that defect." For that reason, all of the Board's proceedings concerning the Zone Map Amendment that occurred after the Board's denial of procedural due process – *i.e.*, all of the Board's proceedings on that issue – are void. Moreover, the Board cannot correct its error merely by taking a new vote on the Zone Map Amendment. If the Santolina Developers propose to seek a new amendment of

the zone map, they must file a new application requesting that relief, and that application must be considered first by the Planning Commission.

D. The ruling reversing the Zone Map Amendment also voids the Board's decision approving the Santolina Level A Master Plan.

1. Amendment of the zone map is a required condition for approval of the Santolina Level A Community Master Plan.

The Bernalillo County Zoning Ordinance (“the Zoning Ordinance”) indicates that an area should be mapped for a planned community before or at the same time that a Level A Master Plan is approved, and this was confirmed by the Court’s Opinion. The appropriate sequence of approvals for establishment of a planned community is set forth in the Zoning Ordinance.

Section 19.5(B)(1) of the Zoning Ordinance indicates that:

Adoption and amendment of rank two Level A plans is by the Board of County Commissioners. It is initially done when the PC [Planned Communities] zone is mapped for a community; application for the PC zone shall be accompanied by a proposed Level A plan for the planned community.

Zoning Ordinance (PC Planned Communities Zone), §19.5(B)(1).

The significance of this language was explained in the Court’s Opinion. The Court stated:

According to the Zoning Code, it appears the PC Zone is “mapped” first before the adoption of a Level A plan, given that the application for the PC Zone needs the Level A with it. This interpretation is supported by Finding of Fact ¶2 in the Decision regarding the Master Plan. [*Id.* 88647 (“The request for approval of the Santolina Level A Master Plan has been submitted in conjunction with a request for a zone change for Planned Communities (PC) Zoning in accordance with Section 19.5 of the Bernalillo County Zoning Code (Planned Communities Zone)).]

Memorandum Opinion and Order, pp. 13-14.

As interpreted by the Court, the Zoning Ordinance therefore indicates that an area should be zoned for a Planned Community before the adoption or at the time of approval of a Level A

Master Plan, and this was the procedure followed by the Board in this matter. The Santolina property was zoned A-1 Rural Agricultural until the Board amended the zone map to change that zoning to Planned Communities. R. 88311-88312. In accordance with the timing dictated by the Zoning Ordinance, the Board made that zoning change immediately after the Board's approval of the Santolina Level A Master Plan. *Id.*, R, 88309. Moreover, the Zoning Ordinance indicates that this sequence was appropriate. The Ordinance states that:

All property is governed according to the zone in which it is located. Any use not designated a permissive or conditional use in a zone is specifically prohibited from that zone, except as otherwise provided herein.

Zoning Ordinance, §6.E.

The Santolina property was zoned A-1 Rural Agricultural before the Board changed the zoning to Planned Communities. The uses that the Zoning Ordinance authorizes in A-1 Rural Agricultural areas do not include Planned Communities, which means that the Santolina property could not be used for that purpose without the Zone Map Amendment. Zoning Ordinance, §7, A1 Rural Agricultural Zone (as amended through June 10, 2014).

2. The Board's decisions confirm that approval of the Santolina Level A Master Plan depends on the approval of the zoning change.

The Board of County Commissioners' written decisions changing the zoning for the Santolina property and the approval of the Santolina Level A Master Plan confirm that the zoning decision is a condition that is to be satisfied at or before the time of the approval of the Master Plan. The Board's written decision changing the zoning for the proposed Santolina development from A-1 Agricultural to Planned Communities states:

The decision is based on the following Findings:

1. The request is for a zone map amendment from A-1 Rural Agricultural to Planned Community Zone in connection with the proposed Santolina Planned Communities Level A Master Plan.

....

3. The request for approval of the PC Planned Communities Zone has been submitted in conjunction with the request for approval of the Santolina Level A Master Plan (SPR-20130004).

Zone Map Amendment Decision, p.2, R. 86822.

Similarly, the Board of County Commissioners' written decision approving the Santolina Level A Master Plan ("the Level A Master Plan Decision") stated:

The request for approval of the Santolina Level A Master Plan has been submitted in conjunction with a request for a zone change for Planned Communities (PC) Zoning in accordance with Section 19.5 of the Bernalillo County Zoning Code (Planned Communities Zone) (CZ-20130009).

Level A Master Plan Decision, p. 2, Findings ¶2, R. 88646.

3. The Santolina Level A Master Plan also indicates its dependence on the Zone Map Amendment.

The language of the Santolina Level A Master Plan itself confirms that the Zone Map Amendment is a condition for the approval of the Master Plan. For example, the Plan states:

Concurrently with the Bernalillo County approval of this Master Plan, the Planned Communities Zone (PC Zone) has been applied to the property. The Santolina PC Zone (see Chapter 4), places zoning on the property in alignment with the vision for Santolina expressed in this Level A Master Plan.

Santolina Level A Master Plan, p. 10, R. 86584.

As another example, the Master Plan indicates:

In addition to the Master Plan, WAHL [Western Albuquerque Land Holdings, LLC] also requested adoption of Planned Community Zone (PC Zone) for the entire Master Plan Area. The PC Zone is in conformance with the Level A Master Plan for the planned community.

Id., p. 23, R 86597.

Furthermore, the Santolina Developers have conceded that, “[t]he Master Plan does not function without having the PC zone designation applied to it.” Santolina Developers’ Motion for Rehearing, page 9 (June 12, 2017).

4. The Court’s ruling reversing the Zone Map Amendment voids the approval of the Santolina Level A Master Plan.

The Zoning Ordinance indicates that a zone map amendment changing zoning to Planned Communities Zone should be done before or at the same time as approval of a Level A Master Plan. In this matter, the Court reversed the Board of County Commissioners’ decision amending the zone map to change the zoning for the proposed Santolina development property from A-1 Rural Agricultural to Planned Communities. The result of that decision is that the land where the proposed Santolina development would be located remains zoned A-1 Rural Agricultural, and the Board’s decision changing the zoning of that land to Planned Communities is no longer valid.

For that reason, the Board’s approval of the Santolina Level A Master Plan also is not valid because the land addressed by that Master Plan is no longer zoned Planned Communities.

E. The Court’s ruling reversing the Zone Map Amendment voids the Board’s approval of the Santolina Level A Development Agreement.

1. Amendment of the zone map is a required condition for approval of the Santolina Level A Development Agreement.

The Board of County Commissioners entered into the Santolina Level A Development Agreement (“Development Agreement”) on August 10, 2015, nearly two months after the Board’s approvals of the Zone Map Amendment and the Santolina Level A Master Plan. R 88725. Section 3.3 of the Development Agreement expressly states the Agreement’s dependence on the Zone Map Amendment; it provides:

This Agreement is contingent upon action by the Governing Body approving the Master Plan, the Land Use Plan, the PC Zoning, and this Agreement.”

R 88662.

Moreover, this reflects the Development Agreement's relationship to the Zone Map Amendment. The Zone Map Amendment provides the framework for a Planned Community and is the means for implementing the Planned Communities Criteria and ensuring compliance with the Comprehensive Plan. The Development Agreement is the contract between the Board and the Santolina Developers designed to ensure compliance with the Planned Communities Criteria.

2. The Development Agreement is also dependent upon the now invalidated Santolina Level A Master Plan.

As noted above, the Court's ruling voiding the Zone Map Amendment also voids the Board of County Commissioners' approval of the Santolina Level A Master Plan. However, there can be no valid Development Agreement without a valid Level A Master Plan for three reasons. First, the language of Section 3.3 of the Development Agreement quoted above confirms that a valid Level A Master Plan is a condition for the approval of the Development Agreement. *Id.* Second, the Planned Communities Criteria confirm that approval of a Development Agreement is dependent on approval of a valid Level A Master Plan. The Planned Communities Criteria require the following, in pertinent part:

Level A development agreement will be developed *in accordance with* the Community Master Plan to:

- a. *Codify the Master Plan* and Land Use Plan.
- b. Outline a preliminary infrastructure/service agreement to cover phasing of master plan and public services/facilities, and designation of financial, operations, and management responsibility over time.
- c. Commit to mitigation of negative consequences of development when known.
- d. Provide an assignable agreement expressing items mutually accepted by the City and/or County and the planned community developer and committing to their permanency unless re-negotiated.
- e. Provide a document suitable as a legally recorded instrument with the County Clerk.
- f. Identify incentives to be provided by the City to the developer, if any are agreed to.

Planned Communities Criteria, pp. 36-37, emphasis added.

Third, Section 19.5 of the Zoning Ordinance confirms that approval of a Development Agreement is dependent on approval of a valid Level A Master Plan. Section 19.5(A)(2) states:

Until a Level B plan has been adopted by the County to govern a site, uses and regulations specified in the Level A Development Agreement, which must accompany initial county zoning, shall govern the interim permissive and conditional uses. The uses *shall be consistent with the Level A Plan: community plan.*

Zoning Ordinance (Planned Communities Zone), §19.5(A)(2), emphasis added.

For those reasons, the Court's ruling rendering the Santolina Level A Master Plan void also voids the Development Agreement. Therefore, the Board cannot proceed with its consideration of the Planning Commission's recommendation to approve the Santolina Developers' proposed amendments to the Board's approval of the Level A Master Plan or any other matter concerning the proposed Santolina development.

II. The Elimination of Conditions #8, #9 and #11 Would Mean That the Santolina Developers Would Violate the Planned Communities Criteria Requirements Addressing Water for the Proposed Santolina Development.

A. Removal of Conditions #8, #9 and #11 would violate the Planned Communities Criteria requirements for approval of a Level B Master Plan.

The Planned Communities Criteria for Level B address the need for the Santolina Developers to provide information about the availability and use of water in two different ways. The first is in subsection D.2 of the requirements for a Level B Master Plan. It states that an application for approval of such a plan must include:

2. Facilities plan including detailed location, phasing of water systems, sewer systems, drainage systems, and mobility systems.

Planned Communities Criteria, page 39.

The second requirement is in subsection D.4 of the Planned Communities Criteria requirements for Level B Master Plans. It provides that an application for approval of a Level B Master Plan shall provide:

4. Statements of water availability and availability of public services including liquid and solid waste management/ recycling, cultural and human service facilities, fire and police protection, transit services, and schools.

Id.

The Board of County Commissioners imposed Conditions #8, #9 and #11 in order to mandate that the Santolina Level B.1 Master Plan meet the requirements of these two subsections of the Planned Communities Criteria. The Board sought to mandate that the Santolina Developers' Level B.1 Master Plan would provide the necessary information through a development agreement with the Water Authority. Such a development agreement should address water systems, sewer systems and drainage systems, as well as water availability. *See* Santolina Level A Master Plan Decision Condition #8.

Without a development agreement with the Water Authority, the incomplete Santolina Level B.1 Master Plan and supporting technical documents merely provide the Planning Commission with conceptual water, sewer and drainage plans. The Developers concede that, "It is understood by all parties that the current planning of the Santolina Master Plan water system is conceptual only and has not yet been adopted by the ABCWUA [Water Authority]". Santolina Level B.1 Master Plan, page 63.

The Developers further concede that they have only prepared a "conceptual Water and Sanitary Sewer Master Plan." Water & Sanitary Sewer Master Plan, page 12 (January 25, 2016); Santolina Level B.1 Master Plan, page 68. Additionally, the Revised Drainage (storm water) Master Plan and Terrain Management Plan submitted to the Planning Commission on November 2, 2016 also admits it is merely a conceptual plan. Santolina Level B.1 Master Plan, page 55, citing to Exhibit 14, "Stormwater Management Plan, 2025" and Exhibit 15, "Stormwater Management Plan, Full Buildout".

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 for Level B Master Plans. Additionally, deferring the submission of such required information to the Level C phase of development, as requested by WAHL, does not comply with the Planned Communities Criteria.

The Planning Commission ultimately decided to recommend to the Board of County Commissioners approval of the incomplete Level B.1 Master Plan without ever seeing even a draft Water Authority development agreement⁵ and without requiring detailed facilities plans that include detailed location and phasing of water, sewer, and drainage systems, in violation of the Planned Communities Criteria. The Planning Commission found that, in pertinent part:

The Santolina Level B.1 Master Plan with the attached conditions of approval demonstrates *substantial consistency* with the Planned Communities Criteria in the areas of Land Use, Transportation, Environment and Open Space, and Government and Public Service.

Planning Commission Decision, Finding #7, emphasis added.

However, the Planned Communities Criteria do not permit “substantial consistency” with their criteria; they require absolute consistency. The Planned Communities Criteria also do not permit satisfaction of its Level B criteria through the application of future “conditions of approval” or the deferral of Level B requirements to the Level C phase of development. *See* Planning Commission Decision, Conditions #4-6; *See generally*, Planned Communities Criteria, pages 38-40.

⁵ Appellants provided the Planning Commission with a copy of the draft development agreement submitted by WAHL to the Water Authority as Exhibit A to their Response in Opposition to the Santolina Developers’ Request that the Planning Commission recommend approval of proposed amendments to Conditions #8, #9 and #11 (May 30, 2017). This draft agreement was never considered by the Planning Commission when making its recommendation that the Board approve the Level B.1 Master Plan and was never entered into the record by the Santolina Developers in the proceedings before the Planning Commission concerning approval of the Level B.1 Master Plan.

As previously stated, the conditions of approval for the Level A Master Plan were adopted by the Board of County Commissioners in an effort to mandate that the future Level B Master Plan would comply with the Albuquerque/Bernalillo County Comprehensive Plan, the Planned Communities Criteria, and other applicable state and county laws. The Planned Communities Criteria require developers to submit detailed facilities plans for water systems, sewer systems and drainage systems, as well as statements of water availability and availability of public services, including liquid and solid waste services, at the Level B phase of development. Conditions of approval #8, #9 and #11 specifically deal with the Planned Communities Criteria Level B requirements pertaining to water availability and serviceability, and water, sewer and drainage systems.

Removal of these Conditions or deferral of them until after approval of the Santolina Level B.1 Master Plan would violate the Planned Communities Criteria for Level B Master Plans. Additionally, regardless of any conditions of approval the Board of County Commissioners may impose, the Santolina Developers are still required to provide detailed facilities plans for water systems, sewer systems and drainage systems, as well as statements of water availability and availability of public services, including liquid and solid waste services at the Level B phase of development. Planned Communities Criteria, page 39. Moreover, if there is a conflict between conditions of approval for a master plan and the Planned Communities Criteria, the Planned Communities Criteria govern.

Finally, the Santolina Developers cannot provide the required detailed facilities plans for water, sewer and drainage systems until a fully executed development agreement with the Water Authority is in place. The Developers also cannot provide statements of water availability and availability of liquid and solid waste services until a fully executed development agreement is in

place. One reason for this is because the Water Authority development agreement will provide the detailed timing, phasing, location, availability, responsibilities, and maintenance of water, sewer and drainage systems. Santolina Level B.1 Master Plan, page 63.⁶

The Bernalillo County Interim Director for Infrastructure Planning and Geo-Resources, Mr. McGregor, explained to the Planning Commission the importance and necessity of Planning Commission review of the Water Utility Authority development agreement:

Without a development agreement and without the associated serviceability statement, which outlines the specific water and sanitary sewer improvement needed to serve the entire development and the Level B plan, then the planned community criteria for a detailed plan including detailed location, phasing of water systems, sewer systems, drainage systems, and mobility systems cannot have been satisfied, nor can the requirement for statements of water availability and availability of public services, including liquid waste, have been – have been adequately addressed either.

Planning Commission Hearing, TR-66:17-25; TR-67:1-2 (July 21, 2016).

B. Removal and/or revision of Conditions #8, #9 and #11 would exacerbate the Board of County Commissioners' violation of the Planned Communities Criteria requirements for approval of the Santolina Level A Master Plan.

The Santolina Developers' Level A Master Plan approved by the Board of County Commissioners did not comply with the Planned Communities Criteria requirements for Level A master plans pertaining to water.⁷ Removal of Conditions #8, #9 and #11 therefore would exacerbate the Board's current violation of the Planned Communities Criteria requirements for Level A master plans by causing further violations of the Planned Communities Criteria requirements for Level B master plans.

⁶ “The key elements of this Development Agreement include: Development commitment that complies with ABCWUA [Water Authority] existing guidelines, policies and current levels of service; [r]esidential, industrial and commercial water conservation provisions, guidelines and standards; [i]nfrastructure improvements, storage, water supply charges; [t]iming, phasing, responsibilities and maintenance of water facilities.”

⁷ This violation of the Planned Communities Criteria by the Board of County Commissioners was not addressed by the Court's recent Opinion.

1. The Board of County Commissioners erroneously approved the Santolina Level A Master Plan despite its failure to demonstrate that there will be water for the proposed development.

The Planned Communities Criteria make clear that a developer of a proposed planned community must provide documentation of physical and legal water availability for the proposed development at Level A planning. Section 5 of the Planned Communities Criteria provides:

C. Environment and Open Space

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

The Santolina Level A Master Plan failed to comply with this requirement for several reasons. First, the Plan contained none of this information. Second, the Santolina Developers purported to comply with these requirements by asserting that the Water Authority has agreed to provide water for the proposed Santolina development, but that is not correct. The Water Authority letter (“Sanchez Letter”) cited by both the Level A Master Plan and the Level B.1 Master Plan does not indicate that either water rights or water are available. In addition, the Water Authority has no authority to approve water rights, and the Water Authority’s own documents indicate that water is not available.

There is no information in the Santolina Level A Master Plan addressing any of the items required by this subsection. The Level A Master Plan provides nothing about depth to groundwater, proximity to production wells, physical or legal water availability, or quantity or quality of water. There simply is no information about any of those subjects in the Level A Master Plan. Instead, the Level A Master Plan asserts that the Water Authority has committed to providing water for the proposed development. That assertion is not accurate.

The Santolina Level A Master Plan purports to comply with the requirement that water and water rights be available by stating that:

The ABCWUA [Albuquerque Bernalillo County Water Utility Authority] has provided a letter dated July 29, 2014, indicating they have the capability and capacity to serve the Santolina Master Plan as it develops over its 40-50 year buildout.

Santolina Level A Master Plan, page 65 (December 1, 2014).

In fact, however, that is not what was stated in the letter from the Water Authority to which the Level A Master Plan refers. The only positive statement in the letter, which is from Water Authority Executive Director Mark Sanchez, states that, “The Water Authority is capable of serving the master planned community.” Sanchez letter, ¶1 (July 29, 2014). However, the letter indicates clearly at several points that the Water Authority’s capability to provide service is not guaranteed. The letter states:

[S]ervice will be contingent upon the Santolina developer’s ability to comply with the Water Authority’ current guidelines, policies and ordinances, as amended from time to time.

...

If the CPC decides to recommend approval of the master plan, the Water Authority recommends that the CPC provide conditional approval which requires that the developer successfully execute a development agreement with the Water Authority for the Santolina Master Plan.

...

In order for Santolina to be served by the Water Authority, the developer will need to provide significant infrastructure improvements, and the expansion will need to occur at no net expense to the existing ratepayers.

Sanchez letter, ¶¶1-3 (July 29, 2014).

Moreover, Mr. Sanchez testified later that the letter “was taken a little out of context” and that the Water Authority had not “committed service” for the proposed Santolina development.

Testimony of Mark Sanchez at the Board of County Commissioners’ hearing, Hearing Transcript, TR- 69 (March 25, 2015). This was confirmed by the testimony of Allen Porter, an

official with the Utility Planning section of the Water Authority. He told the County Planning Commission that:

It's very important to note that the terms of this Development Agreement are going to include for them [the Santolina Developers] to bring their own water to be used in their development.

Testimony of Allen Porter at County Planning Commission hearing, Hearing Transcript, TR-31 (May 28, 2014). There is therefore no merit to the Santolina Level A Master Plan's assertion that the Water Authority has stated that it will provide water for the proposed development.

Moreover, the Water Authority's ability to make any such guarantees is very limited for two reasons. The first is that the Water Authority has no legal authority to grant the Santolina development water rights. The only entity in New Mexico that can approve the use of water for a specific purpose (such as a proposed development) is the New Mexico State Engineer. *See* NMSA 1978, Section 74-9-2; *See also* NMSA 1978, Section 47-6-11.2.

The second is that the Water Authority's own 2007 Water Resources Management Strategy⁸, which was in effect at the time of the Board's approval of the Level A Master Plan, 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. Section L of that Strategy states as a recommendation that:

The [Water] Authority should continue the current no-net-expense policy. Developments outside of the service area should provide water rights or funding for the purchase of new water rights as a condition of service in accordance with the no-net-expense policy.

⁸ Appellants attached the 2007 Water Resources Management Strategy, Section L as Exhibit B to their Response in Opposition to the Santolina Developers' Request that the Planning Commission recommend approval of proposed amendments to Conditions #8, #9 and #11 (May 30, 2017).

Albuquerque-Bernalillo County Water Utility Authority 2007 Water Resources Management Strategy, Section L.

The Board of County Commissioners therefore erred by approving the Santolina Level A Master Plan because the Santolina Developers did not demonstrate that they have water or water rights for the proposed development.

2. Removal of Conditions #8, #9, and #11 would exacerbate the Board of County Commissioners' erroneous approval of the Santolina Level A Master Plan by causing further violations of the Planned Communities Criteria requirements for Level B master plans.

Despite the Board of County Commissioners' erroneous approval of the Santolina Level A Master Plan, Conditions #8, #9 and #11 would mandate compliance with the Planned Communities Criteria requirements for Level B master plans by ensuring that there will be water and facilities and services using water for the proposed development. Condition #8 states:

Prior to approval of any Level B or Level C planning document, the applicant will provide a fully executed development agreement with the ABCWUA [Water Utility Authority]. The development agreement should be structured to ensure compliance with ABCWUA's existing guidelines, policies, and ordinances and as may be amended from time to time. The development agreement should, at a minimum, address residential, industrial, institutional and commercial water conservation provisions, guidelines, and design standards. The development agreement should, at a minimum address infrastructure improvements, direct and indirect potable reuse, and water supply charges, as well as provide a Phasing Plan consistent with ABCWUA policies. This condition shall in no way constrain the ABCWUA from imposing such requirements as it may deem necessary.

Santolina Level A Master Plan Decision (June 19, 2015).

Condition #9 provides:

Prior to approval of any Level B or Level C document, the applicant shall, based on the approved ABCWUA development agreement, provide to the County a written explanation of the Projected Master Plan water use and phasing and the subsequent level plans within the context of the 2024 Water Conservation Plan Goal and Program Update (July 2013) or subsequent updates.

Id.

Finally, Condition #11 states:

Water and Wastewater issues for the Santolina Master Planned Community shall be resolved between the Albuquerque/Bernalillo County Water Utility Authority (ABCWUA) and the applicant prior to any Level B approval. An agreement between the applicant and ABCWUA regarding timing, responsibilities, and maintenance of water and sewer facilities required to service Santolina will be developed and agreed upon prior to any Level B approval.

Id.

The effect of these three Conditions is to mandate compliance with the Planned Communities Criteria requirements for approval of Level B Master Plans and to ensure that there will be water for the proposed Santolina development if it is approved. Without those three Conditions, there would be nothing to guarantee that there will be water for the proposed development because there is nothing in the record in this matter to support the Board's erroneous determination that the Santolina Developers demonstrated that they will have the necessary water and water rights.

Removal of Conditions #8, #9 and #11 therefore would exacerbate the error committed by the Board of County Commissioners and allow the proposed Santolina development to proceed without water or water rights.

III. The Water Authority Has Not Indicated That It Will Not Enter Into A Development Agreement With the Developers Until After Board Approval Of The Santolina Level B.1 Master Plan.

The Santolina Developers have asserted that the Water Authority has represented that it will not be able to enter into a development agreement with them until after Board approval of the Santolina Level B.1 Master Plan. The record in this matter indicates that this is not accurate. The only definitive statement by Water Authority personnel that addresses the Authority's ability to enter into a development agreement with the Santolina Developers was provided by the

Executive Director of the Water Authority, Mr. Mark Sanchez. In his letter to the Planning Commission dated July 29, 2014, Mr. Sanchez stated:

If the Santolina *Level A Master Plan* is approved by the Bernalillo County Commission, only then will Water [Utility] Authority staff proceed in negotiating a draft development agreement with the developer. Of course, final approval of any development agreement requires formal action by the Water [Utility] Authority governing board.

Sanchez letter, page 2, ¶4 (July 29, 2014), emphasis added.

Mr. Sanchez therefore made clear that the Water Authority may enter into a development agreement with the Santolina Developers after Board approval of the Santolina Level A Master Plan. Mr. Sanchez never stated that the Water Authority would have to wait until Board approval of the Santolina Level B.1 Master Plan before the Authority could enter into a development agreement with the Santolina Developers. *Id.*

The Santolina Developers have attempted, unpersuasively, to counter this evidence by citing to communications by lower level members of the Water Authority staff. First, the Developers assert that Alan [*sic*] Porter indicated in his testimony to the Planning Commission on May 28, 2014 that the Water Authority could not enter into a development agreement with the Santolina Developers until the Santolina Level B.1 Master Plan is approved, but that assertion is unpersuasive for two reasons.

First, as was noted above, Mr. Porter was with the Utility Planning section of the Water Authority, he was not the Executive Director of the Water Authority. For that reason, to the extent that Mr. Porter's position is inconsistent with the position stated by the Water Authority Executive Director Mark Sanchez, Mr. Porter's statement cannot stand as indicating the official position of the Authority.

Second, Mr. Porter did not actually state that the Water Authority could not enter into a development agreement with the Santolina Developers until after the Santolina Level B.1 Master Plan was approved. Instead, he stated that:

As such, Water [Utility] Authority policy prohibits the execution of a Development Agreement *until the proposed development is in an approved land-use planning area*. The level of detail needed for the Development Agreement is usually not provided until the planning process advances to a level 2 or level B status.

Testimony of Allen Porter at County Planning Commission hearing, Hearing Transcript, TR- 31 (May 28, 2014) (emphasis added). This testimony is notable because Mr. Porter indicated that a development agreement cannot be entered into by the Water Authority until the proposed development is in an approved land-use planning area. If there are ever a valid zone map amendment and Level A Master Plan in place, the Water Authority development agreement would not have to wait for Board approval of a Level B.1 Master Plan.

The Santolina Developers also have alleged that the letter from Kris Cadena of the Water Authority to Joe Chavez, the Chairman of the Planning Commission, indicates that the Water Authority cannot enter into a development agreement with the Developers until after the Board of County Commissioners approves the Santolina Level B.1 Master Plan, but that allegation is unpersuasive for two reasons.

First, Kris Cadena's letter does not state that approval by the Board of County Commissioners must precede a development agreement between the Water Authority and the Santolina Developers. The letter states:

With your assistance, the Water [Utility] Authority requests that the CPC [County Planning Commission] make the determination on the proposed Level B plan so as to provide some level of certainty on the approved land uses for the Level B plan. Our understanding is that there is a condition that the Water [Utility] Authority Board must approve a development agreement prior to the Level B approval by the CPC [County Planning Commission]. We are requesting that this

condition be revised to state prior to BCC [Board of County Commissioners] approval for the Level B Plan *so as to be a concurrent process*.

Kris Cadena letter (July 13, 2016), emphasis added.

The letter therefore urges that the condition be changed to indicate that a development agreement between the Water Authority and the Santolina Developers be required *prior to* the Board's approval of the Santolina Level B.1 Master Plan. It does not state that the Water Authority will not enter into a development agreement with the Santolina Developers until after Board approval of the Level B.1 Master Plan. *Id.*

Second, like Allen Porter, Kris Cadena is not the Executive Director of the Water Authority. Kris Cadena is identified in the letter in question as the "Principal Engineer" for the Water Authority. Kris Cadena therefore does not have the ability to override the position taken by Executive Director Mark Sanchez in his July 29, 2014 letter to Joe Chavez, Chairman of the Planning Commission.

The Santolina Developers also rely unpersuasively on a January 19, 2017 electronic mail message from John Stomp of the Water Authority to James Topmiller of Bohannon Huston (a contractor for the Santolina Developers). Mr. Stomp did state in his message that "we need approval from the BCC prior to moving forward on the Development Agreement", however, this statement directly contradicts a previous statement given by Mr. Stomp to the Planning Commission on November 2, 2016.

Mr. Stomp testified to the Planning Commission that the Level B.1 Master Plan contained "enough specifics" sufficient for the Water Authority to make a decision on a development agreement for the proposed Santolina development. Planning Commission Hearing Transcript, TR-108: 5-25 (November 2, 2016). Additionally, Mr. Stomp is a lower level official

of the Water Authority, and it is not clear whether his assertion reflects the position of the Water Authority leadership or board of directors.

IV. There Is No Merit To The Santolina Developers' Assertion That The Water Authority Is Obligated To Provide Water To The Proposed Santolina Development.

The Developers rely on a "County-Water Authority Franchise and Right-of-Way Agreement, fully executed as of June 27, 2006" ("Franchise Agreement") in their erroneous assertion that the Water Authority "has an obligation to provide water" to the proposed Santolina Development. However, the Water Authority enabling statute, NMSA 1978, Section 72-1-10, does not mandate that the Water Authority must provide water to every potential user of water within Bernalillo County, either within corporate limits of the County or within the unincorporated area of the County. *Id.*

The Water Authority has discretion to determine its water availability and capability of service. *Id.* If there is a conflict between this Franchise Agreement and NMSA 1978, Section 72-1-10, the state law prevails over the Franchise Agreement. *See also* NMSA 1978, Section 47-6-11.2. Moreover, the New Mexico Office of the State Engineer is the only entity in New Mexico that can approve the use of water for a specific purpose. NMSA 1978, Section 74-9-2; *See also* NMSA 1978, Section 47-6-11.2

V. There Is No Merit To The Santolina Developers' Assertion That The 2012 Addendum To The Planned Communities Criteria Removed All Requirements Pertaining To Water For Planned Communities.

The Developers argue unpersuasively that the creation of the Water Authority either repeals or amends by implication the Planned Communities Criteria requirements pertaining to water for all levels of development and, therefore, the Developers are no longer required to provide any information pertaining to water in any of their Santolina master plans. Developers' Application to Remove and/or Amend Conditions #8, #9 and #11 to the Board of County

Commissioners' Approval of the Level A Master Plan, page 7 (April 24, 2017); *See also* Developers' Motion to Remove and/or Revise Conditions #8, #9 and #11 for the Approval of the Level A Master Plan, page 6 (March 2, 2017) and Developers' Response to Appellants Appeal of Planning Commission Decision, pages 5-6 (March 2, 2017). This assertion is without merit for two reasons.

First, the 2012 Addendum to the Planned Communities Criteria, on its face, does not say that the creation of the Water Authority repeals or amends the Planned Communities Criteria requirements pertaining to water for all levels of development phasing. The Addendum merely acknowledges that the Water Authority was established since the initial adoption of the Planned Communities Criteria in 1990. Addendum to the Planned Communities Criteria (May 22, 2012). Indeed, legal counsel for the Santolina Developers has conceded that the Addendum may not be an amendment.⁹

Second, New Mexico Courts do not favor repeal or amendment by implication. *State v. Trung Ho*, 2014-NMCA-038, 12 (2014); *Johnston v. Bd. of Educ. of Portales Mun. Sch. Dist. No. 1*, 1958-NMSC-141, 34 (1958); *First Baptist Church of Roswell v. Yates Petroleum Corp.*, 2015-NMSC-004, 22 (2015). Therefore, the Santolina Developers are still required to comply with the Planned Communities Criteria requirements pertaining to water for all phases of development.

⁹ Legal counsel for WAHL, John Salazar, stated, "And it's not clear. It appears to be an amendment to the Planned Communities Criteria, but I can't tell you I know for a fact". Board of County Commissioners Hearing Transcript, TR-143: 22-24 (May 11, 2015).

VI. There Is No Merit To The Santolina Developers' Assertion That The Board Must Treat The Proposed Santolina Development In The Same Manner As The City Of Albuquerque Treated Mesa Del Sol.

The Santolina Developers have alleged, unpersuasively, that the Board of County Commissioners must follow the same procedure that the City of Albuquerque followed with respect to the Mesa del Sol development. However, the Developers cite no authority for this proposition, and the Board therefore should assume that no such authority exists. *Doe v. Lee*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 765.

NMSA 1978, Sections 4-38-1 through 4-38-42 establish the creation of boards of county commissioners. NMSA 1978, Section 4-38-1 states, in pertinent part, "The powers of a county as a body politic and corporate shall be exercised by a board of county commissioners." *Id.* The Board of County Commissioners is authorized to promulgate its own rules, procedures and ordinances that may impose conditions on the proposed Santolina Development that were not imposed by the Albuquerque City Council in that entity's procedures for the Mesa del Sol master planned community. *Id.* The Board of County Commissioners is not bound by the rules and procedures of the Albuquerque City Council, a separate political entity. *Id.*

In fact, the Developers concede that the Board has the authority "to establish rules and regulations to govern the transaction of their business," contradicting their assertion that the Board must follow procedures used by the Albuquerque City Council for Mesa Del Sol. Santolina Developers' Motion for Rehearing in the Second Judicial District Court case D-202-CV-2015-04466, page 3 (June 12, 2017).

VII. Substantial Harm Will Result If the Board Accepts the Santolina Developers' Proposed Amendments to Conditions #8, #9 and #11.

A. The Developers' assertion that no development can take place until after a Level C plan is approved is without merit.

The Developers' faulty assertion that no harm will result by deferring the requirement of a Water Authority development agreement from a Level B approval to a Level C approval because the Planned Communities Criteria provides that "no development can take place until after a Level C plan has been approved" is incorrect and without supporting legal authority. Developers' Application to Remove and/or Revise Conditions of Approval to the Level A Master Plan, page 8 (April 24, 2017). Contrary to the Developers' assertion, the Planned Communities Criteria do not prohibit the Developers from building until after Level C approvals. *See generally*, Planned Communities Criteria. Furthermore, the Level A Development Agreement also permits the issuance of building permits before all level master plans and development agreements are approved. *See* Sections 6.10 (Existing Special Use Permits/Certain Interim Uses) and 11.15 (Amendment) of the Level A Development Agreement (August 10, 2015).

The Developers made this argument, and it failed, in the proceedings before the Second Judicial District Court. *See* Developers' Motion to Dismiss for Lack of Ripeness (November 2, 2015), *and see*, the Judge's April 28, 2016 Order finding Appellants' appeals of the Santolina Level A Master Plan and Santolina Zone Map Amendment ripe for judicial review.

B. The Developers' assertion that its proposed amendments to Conditions #8, #9 and #11 would only impact the sequence timing of the Water Development Agreement by the Water Authority is without merit.

The Developers assert in their letter giving notice of their application to neighborhood groups that their proposed amendments to Conditions #8, #9 and #11 "would only impact the

sequence timing of the Water Development Agreement by the Water Authority”. Developers’ Notice Letter to Sara Newton Juarez, Zoe Economou and the South Valley Alliance (April 24, 2017). This assertion is without merit for three reasons.

First, the Planned Communities Criteria state that the Board of County Commissioners has review and approval authority of only Level A and Level B planned community master plans and associated documents. Planned Communities Criteria, pages 35, 38. The Board does not have review or approval authority when it comes to Level C documents. *Id.* at page 41. If the Board accepts the Planning Commission’s recommendation to approve the Developers’ proposed amendments to Conditions #8, #9 and #11 to defer the Water Authority development agreement requirement to Level C, the Board will not be able to review this critical document pertaining to the proposed Santolina development. Therefore, the Developers’ proposed amendments would not merely impact the sequence timing of the Water Authority development agreement, but would significantly impact the Board’s review and approval authority of this critical document.

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

Finally, the public's right to provide comment and testimony on this critical document would be eliminated if the Board accepts the Planning Commission's recommendation to approve the Developers' proposed amendments to Conditions #8, #9 and #11 to defer the Water Authority development agreement requirement to Level C. The public currently has the right to provide comment and testimony on Level A and Level B master plans and associated documents, including the critical Water Authority development agreement. Bernalillo County Board of County Commissioners Rules of Procedure for Quasi-Judicial Hearings and Regular Zoning Meetings, Rule 19, page 7 (April 22, 2014) (providing procedures for accepting public comment on an agenda item). However, if the required Water Authority development agreement is deferred to Level C, thereby becoming a Level C document, it will not be reviewed by the Board and the public will no longer have the opportunity to provide comment and testimony on this critical document.

The Water Authority development agreement would be reviewed by the County Development Review Authority ("CDRA") using summary review procedures that do not permit public review or comment. Moreover, County Staff concede that the CDRA has no authority to review and approve the Santolina Water Authority development agreement, along with other Level B.1 documents and Level C documents and associated plans and plats. 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 CDRA is not structured in such away 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 Transcript, TR-24: 25, TR-25: 1-12 (April 4, 2017).

VIII. The Planning Commission Violated Its Rules Of Procedure And Section 62-36 Of The Bernalillo County Code of Ordinances When Making Its Recommendation That The Board Accept the Santolina Developers' Proposed Amendments To Conditions #8, #9 And #11.

A. The Planning Commission violated its rules of procedure by considering new evidence not properly in the record when making its recommendation that the Board accept the Santolina Developers' proposed amendments to Conditions #8, #9 and #11.

The Planning Commission's Hearing Procedure B.3 mandates the following:

Any and all correspondence and documents covering matters before the Commission must be submitted by 12:00 noon, eight calendar days prior to the public hearing on that matter. The Commission may vote to waive this requirement if it determines that the material is necessary to make an informed decision on the matter.

Guidelines for the Conduct of Business by the County Planning Commission and Board of Adjustment, Section B, Hearing Procedures (May 2012) ("Planning Commission Hearing Procedures").

Additionally, Hearing Procedure B.7 provides "the normal order for an application" before the Planning Commission as follows:

- a) Planning Staff Presentation
- b) Applicant's Presentation
- c) Presentations By Other Concerned Parties Pro And Then Con
- d) Rebuttal
- e) Cross-Examination
- f) Staff Response
- g) Chairman's Summary of Issues (In Complex Cases Only)
- h) Comments by CPC Members
- i) Motions, Including Findings, And Conditions That May Be Required

Id.

During the "Presentations By Other Concerned Parties" portion of the hearing on the Santolina Developers' application to amend Conditions #8, #9 and #11, legal counsel for the Appellants advised the Planning Commission that there was no evidence in the record supporting the Developers' assertion that the Water Authority could not enter into a development agreement

with the Developers until after the Board approved the Level B.1 Master Plan. Agent for the Developers, Mr. Jim Strozier, during the “Rebuttal” portion of the hearing, submitted to the Planning Commission an alleged March 15, 2017 email exchange between the executive director of the Water Authority, Mr. Mark Sanchez, and a Mr. Garret, of Garret Development, in which Mr. Sanchez allegedly stated that the Water Authority could not enter into an agreement with the Santolina Developers until after the Board approved the Level B.1 Master Plan.

Legal counsel for the Appellants immediately objected to the admission and consideration of this alleged email on the grounds that it was not properly part of the record in this matter as it had not been included in the Developers’ application to the Planning Commission and had not been provided to the Planning Commission eight days prior to the hearing pursuant to Hearing Procedure B.3. Chairman Chavez responded, “It is now [part of the record].” Mr. Strozier conceded that the alleged March 15, 2017 email had not been included with its April 24, 2017 application being considered by the Planning Commission on June 7, 2017.

The Planning Commission did not proceed to waive the eight-day requirement and determine that the alleged email was “necessary to make an informed decision on the matter.” The Planning Commission proceeded to vote to recommend that the Board accept the Developers’ proposed amendments to Conditions #8, #9 and #11, based on its unlawful consideration of this alleged email not properly part of the record pursuant to Hearing Procedure B.3.

The Planning Commission’s and the Developers’ violation of Hearing Procedure B.3 was not harmless error and significantly prejudiced Appellants and the public. Neither the Appellants nor the general public were provided with a copy of this alleged email that the Developers’ claim

expressly states the official position of the Water Authority regarding when the Water Authority can enter into a development agreement with the Santolina Developers. Hence, the Appellants and the public were unable to verify the authenticity of the alleged email or effectively rebut the Developers' assertion and the alleged email in support thereof.

Moreover, legal counsel for the Appellants was not permitted to cross-examine the Developers' agent regarding this alleged email in violation of Hearing Procedure 7(e). Had legal counsel for Appellants been permitted to do so, Mr. Strozier would have been cross-examined regarding why the alleged March 15, 2017 email had not been included as an exhibit to the Developers' application submitted to the Planning Commission on April 24, 2017 and why the alleged email had not been provided eight days prior to the June 7, 2017 hearing on the Developers' application.

B. The Planning Commission violated its rules of procedure and Section 62-36 of the Bernalillo County Code of Ordinances by not requiring Commissioner Johnny Pena to disclose his conflict of interest regarding the proposed Santolina Development and the matter under consideration by the Planning Commission.

Rule 6 of the Planning Commission mandates the following:

A member of the CPC who has a conflict of interest of a financial nature, that could influence the outcome of a particular case, shall reveal the existence of such conflict before the case is heard, and physically withdraw from the consideration for the case. A member of the CPC with any type of perceived possible conflict of interest, should so state at the outset. His withdrawal from that particular deliberation shall be at the will of the CPC.

Id., Subsection C. Additionally, Rule 9 of the Planning Commission states that, "These rules may be suspended for the consideration of a given item by a majority vote of the membership of the CPC present." *Id.*

Commissioner Johnny Pena was appointed to the Planning Commission on January 24, 2017 by the Board of County Commissioners, by a motion sponsored by Vice Chair of the

Board, Steven Quezada. *See* the Board’s Action Report for the January 24, 2017 Board Administrative Meeting, Section 6.B. Commissioner Pena is married to Klarissa Pena, the Special Projects/Governmental and Community Relations Director at Youth Development Inc. (“YDI”), who is a co-applicant with WAHL. *See* SPR2017-0003. Mrs. Pena also serves on the Albuquerque City Council, representing District 3, and is the Chair of the Water Authority.¹⁰ In May 2015, City Councilor Mrs. Pena recused herself from Albuquerque City Council deliberations on a draft bill pertaining to the Santolina Level A Master Plan. The reason for her recusal was that her employer, YDI, Inc., “own[s] small portions of land that Santolina would be built on.”¹¹

Being married to an employee of a co-applicant for the proposed Santolina Development presents, at the minimum, a “perceived possible conflict of interest” and, at the most, a “conflict of interest of a financial nature”. *Id.* at Rule 6. At the minimum, Commissioner Pena was required to state that he is married to an employee of a co-applicant for SPR2017-0003 so that the Planning Commission could then determine whether he should withdraw from deliberations pertaining to SPR2017-0003. At the most, Commissioner Pena was required to reveal that he has a financial interest in the proposed Santolina Development before the Planning Commission even heard the Developers’ application to amend Conditions #8, #9 and #11 and should have withdrawn from consideration of the matter, just like his wife did, because his family household receives income from a co-applicant of the proposed Santolina Development. Moreover, the Planning Commission did not suspend Rule 6 for the consideration of SPR2017-0003.

¹⁰ <http://klarissapena.com/get-to-know-klarissa/about-klarissa/>. Last accessed on June 19, 2017.

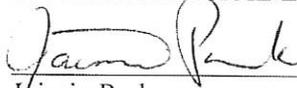
¹¹ *See* attached Exhibit A. Additionally, according to Commissioner Pena, Mrs. Pena “is always right.” *See* attached Exhibit B.

Conclusion

For the above stated reasons, the Appellants request that the Board of County Commissioners defer its consideration of the Planning Commission's recommendation to approve the Santolina Developers' proposed amendments to Conditions #8, #9 and #11 of Approval to the Level A Master Plan and this Appeal until a valid PC Zone, Level A Master Plan and Level A Development Agreement are in place, if that ever occurs. In the alternative, Appellants request that the Board reject the Planning Commission's recommendation to approve the Santolina Developers' proposed amendments to Conditions #8, #9 and #11 of approval to the Level A Master Plan.

Dated: June 22, 2017.

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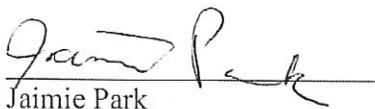
I certify that on June 22, 2017 copies of this Appeal of the Planning Commission's Recommendation that the Board of County Commissioners Approve the Santolina Developers' Proposed Amendments to Conditions #8, #9, and #11 of Approval to the Santolina Level A Master Plan were sent by electronic mail to:

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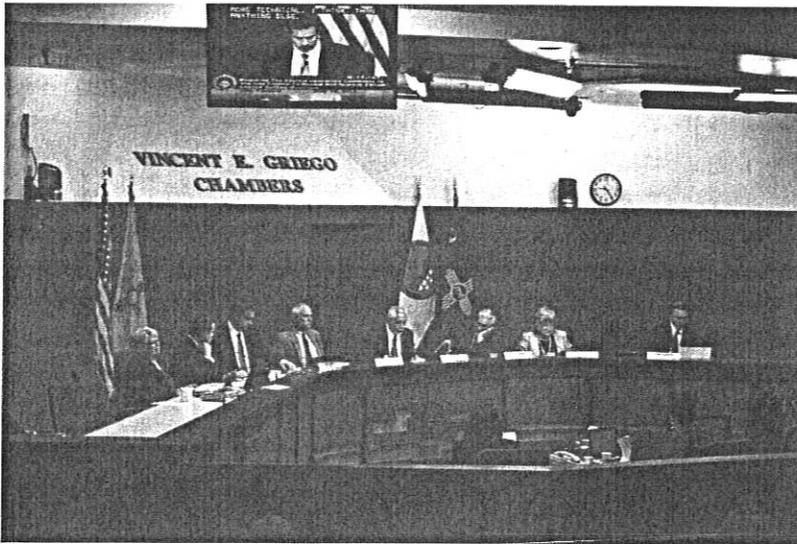

Jaimie Park

ALBUQUERQUE NEWSDESK

June 16, 2015

ABQ City Council rejects city input on Santolina

By Joey Peters



Albuquerque city council chambers during a city council hearing in May 2015. Photo Credit: Andy Lyman

The Albuquerque city council narrowly rejected a measure that would have called on the city to weigh in on a controversial planned development on the city's West Side.

Councilor Isaac Benton carried the bill Monday night, two weeks after the council rejected his introduction of similar legislation that would have also given the city a say on the Santolina master plan.

Benton said the city had a right to influence the master plan based on the city and county adopted Planned Communities Criteria and the Albuquerque/Bernalillo

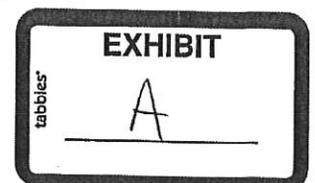
County Comprehensive Plan. But councilors rejected the bill on a 4-3 vote, with two members abstaining because their employers own some land where Santolina is planned to be built.

During the debate on the legislation, Benton stressed that he wasn't asking for anything drastic.

"We're not asking for signoff approval," he said. "We're not asking for anything other than consultation and input."



City council chambers during a city council hearing in May 2015. Photo Credit: Andy Lyman



Santolina is proposed to be built out on 22 square miles west of Albuquerque and house up to 90,000 people in the next 40 to 50 years. The master plan currently sits before the Bernalillo County commission for approval, where it is expected to be voted on Tuesday afternoon.

Backers of the master plan disagreed with Benton's logic behind his bill, arguing that the city had ample time and actually already weighed in on Santolina during the past two years. They also criticized the bill for coming up at the last minute.

"To hear commentary that the city was left in the dark and not involved in this issue is not accurate," Tom Garrity, a spokesman for Western Albuquerque Land Holdings (WALH), the company behind Santolina, told councilors.

Jim Strozier, president of Consensus Planning and an agent for Santolina, said that the city's Planning Department, Open Space Division and Transit Department had all submitted feedback on the master plan over the past two years.

He also added that the county has heard nearly 50 hours of public debate on Santolina.

"This is not being fast-tracked," he said. "It is happening very thoughtfully and deliberately."

At one point, city Councilor Rey Garduño, a vocal opponent of Santolina, asked Strozier whether he could be impartial about Santolina given his employment by WALH.

"Obviously they are my client," he said, "and with that I have an obligation to work on their behalf."



A portion of the proposed sight of the Santolina Master Plan
Photo: Andy Lyman

But he maintained that his active role in the American Planning Commission —Strozier previously served as chapter president of the urban planning association —meant that he was "ethically obligated" to push forward responsible development plans.

"This is not just a matter of whatever our client wants is going to be the right thing to do," he said.

Others came to the meeting to show support for Benton's bill. Southwest Organizing Project Executive Director Javier Benavidez evoked a Martin Luther King quote that "there is never a wrong time to do the right thing."

"I would argue that it's not too late in this process since this is a 50-year commitment," Benavidez said.

Toward the end of debate, Councilor Ken Sanchez asked City Attorney Jessica Hernandez whether she thought the city had any jurisdiction over Santolina.

"I don't believe the city has any standing to weigh in," she replied.

Sanchez talked about how the state Legislature recently took away extrajudicial land authority from city governments, which he said prevented the city council from deciding an issue like Santolina.

"I believe there is a process in place and that this is an issue of jurisdiction," Sanchez said. "I don't feel this is the right place to be discussing this here at the 11th hour."

Councilor Dan Lewis, who represents the West Side, added that "we need to put infrastructure and jobs on the West Side that we're going to need to grow."

All of this didn't stop Benton, Garduño and Councilor Diane Gibson from making final pleas to support the legislation. Benton talked about how the master plan would lead to "cannibalization of businesses and people" that would leave older neighborhoods closer to the central part of the city "to go into this new development."

Garduño was more harsh in his criticism.

"Santolina is sprawl development," he said. "We should be completely against sprawl development."

Councilors Sanchez, Lewis, Trudy Jones and Don Harris voted against the bill. Benton, Garduño and Gibson cast the three votes in favor of the bill. Councilors Brad Winter and Klarissa Peña recused themselves because their employers, Albuquerque Public Schools and Youth Development Inc, respectively, own small portions of land that Santolina would be built on.

The Bernalillo County commission will hear and maybe give a final vote on the Santolina master at its Tuesday, June 16 zoning meeting.

Related Stories:

- [City council rejects introduction of Santolina legislation \(http://nmpoliticalreport.com/3956/city-council-rejects-introduction-of-santolina-legislation/\)](http://nmpoliticalreport.com/3956/city-council-rejects-introduction-of-santolina-legislation/)
- [Santolina moves closer to approval as opponents shout 'Shame!' \(http://nmpoliticalreport.com/3886/santolina-moves-closer-to-approval-as-opponents-shout-shame/\)](http://nmpoliticalreport.com/3886/santolina-moves-closer-to-approval-as-opponents-shout-shame/)
- [Attempt to push back Santolina decision fails \(http://nmpoliticalreport.com/3010/attempt-to-push-back-santolina-decision-fails/\)](http://nmpoliticalreport.com/3010/attempt-to-push-back-santolina-decision-fails/)
- [Video: Two sides on Santolina \(http://nmpoliticalreport.com/2867/two-sides-on-santolina-video/\)](http://nmpoliticalreport.com/2867/two-sides-on-santolina-video/)
- [Water, 'systems thinking' and Santolina's tangled history \(http://nmpoliticalreport.com/2837/water-systems-thinking-and-santolinas-tangled-history/\)](http://nmpoliticalreport.com/2837/water-systems-thinking-and-santolinas-tangled-history/)
- [ABQ West Side development plans included in capital outlay \(http://nmpoliticalreport.com/4087/abq-west-side-development-plans-included-in-capital-outlay/\)](http://nmpoliticalreport.com/4087/abq-west-side-development-plans-included-in-capital-outlay/)

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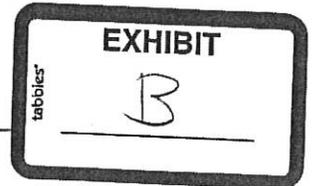
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Couple Raises \$14K for YDI After Wager



Albuquerque Journal · 13 Oct 2012 · 1 · By Elaine D. Briseño Journal Staff Writer

A friendly family bet has turned into a boost of almost \$14,000 for a local nonprofit organization.



Johnny Peña bet his wife Klarissa Peña, special projects director for Youth Development, Inc., that she could not raise \$10,000 for the organization during a fundraiser dinner and silent auction at the couple's home.

It was exactly what Klarissa Peña needed to mobilize the troops.

When it was all over, she had gotten enough donated items for the auction and convinced almost 175 people to attend the dinner and several more to donate online. By the end of the night, the fundraiser had generated \$7,300, and a donor agreed to add whatever was needed to reach the \$10,000 threshold. The biggest-ticket item was a Victrola donated by Joe and Isabel Chavez that brought in \$2,800.

"We had reached our goal by the end of the night," she said. "Then I checked the online donations, and we had received almost \$4,000 more to far exceed our goal."

That meant Peña had to live up to his end of the bargain. He stood on the corner of Central and Coors during rush hour Thursday holding a sign with a picture of Rosie the Riveter that read "It's true ... My wife is always right!"

"I feel so sorry for my husband," Peña said in an interview Thursday. "He's been a good sport."

She didn't leave him on that corner alone, though. She, Youth Development Inc. CEO Chris Baca and other volunteers joined him with their own signs thanking YDI and instructing people on how they could continue to donate.

Peña promised her husband two tickets to a Dallas Cowboys game.

"For being a good sport, he's going to be a winner too," Peña said. "I just bought him two tickets today to the Dec. 23 game against the Saints, but I wasn't invited."

Instead, he will be taking one of the couple's sons.

YDI is a nonprofit group that offers a myriad of services to children and young adults, including substance-abuse counseling, Head Start, shelter for homeless teens and help in finding em-

ployment. They also offer scholarships and GED courses, which will be the beneficiaries of the \$14,000.

Peña said the downturn in the economy led to program cuts in those areas. But, she said the scholarships and GED courses are two important programs they offer.

Jozette Silva, 21, dropped out of high school when she was a sophomore. Her parents divorced, and she had to get a job to help her mom pay bills. The family did not have a car and juggling school with the problem of getting to work overwhelmed her. She said she tried to catch up with her school work, but eventually dropped out.

She lost her job last year, and a family friend suggested she turn to YDI for help finding work. The organization hired her as a receptionist, and employees started encouraging her to get her GED. She will do so after she passes the social studies portion of the test. The group also awarded her a \$500 scholarship so she can go on to college.

“They’ve helped me a lot,” she said. “Without coming here, I would not have worked to get my GED. They pushed me to do that.”