

ATTACHMENT 10
BCC Packet

BEFORE THE BERNALILLO COUNTY, NEW MEXICO

BOARD OF COUNTY COMMISSIONERS

SOUTHWEST ORGANIZING PROJECT,
NEW MEXICO HEALTH EQUITY WORKING
GROUP, PAJARITO VILLAGE ASSOCIATION,
JAVIER BENAVIDEZ, SANTIAGO JAMES
MAESTAS, ROBERTO ROIBAL, and KRISTINE
SUOZZI (Protesters),

v.

APPEAL NO. COA 2017-0001
ORIGINAL CASE NO. SPR 2016-0001

BERNALILLO COUNTY PLANNING COMMISSION (Planning Commission).

**WESTERN ALBUQUERQUE LAND HOLDINGS LLC OBJECTION TO
REQUEST FOR DEFERRAL OF HEARING SET FOR MARCH 14, 2017**

INTRODUCTION

The Applicant, Western Albuquerque Land Holdings LLC, objects to any request for deferral of the hearing on the Level B.I Master Plan (the “**Level B Plan**”) currently set to be heard before the Bernalillo County Board of County Commissioners (“**County Commission**”) on March 14, 2107.

THE INSTANT PROCEEDING IS A LEGISLATIVE MATTER

Protesters have no grounds on which to object to consideration of what is a purely legislative matter. The County Commission Rule clearly state that consideration of master plans such as comprehensive community or neighborhood plans are legislative actions. *See* Rules of Procedure for Quasi-Judicial Hearings and Regular Zoning Meetings at Section 1, “Applicability of Rules.” Further, the Bernalillo County Attorney made clear on several occasions during the County Commission consideration of the Santolina Level A Community Master Plan that consideration of large area plans are legislative in nature. While the County Commission

employed a hearing process ordinarily used in quasi-judicial proceedings for the challenge to the Level A Plan, it was made clear that such was done simply as an accommodation to provide a more focused discussion of the issues at hand. There is no basis for opponents of a legislative proposal to object to having it heard. The County Commission is entitled to hear such matters when it is ready to do so.

APPLICANT IS ENTITLED TO BE HEARD

Applicant has complied with all County ordinances, policies, and procedures pertaining to its application. There were seven separate hearings between March 2, 2016 and January 4, 2017, before the Bernalillo County Planning Commission (the “**Planning Commission**”) on the application for Level B Plan approval. Planning staff recommended approval. The Planning Commission has submitted its unanimous recommendation of approval to the County Commission by its Notification of Decision dated January 10, 2107.

The matter to be heard before the County Commission is a legislative matter. The Applicant is prepared to proceed. Under these circumstances, Protesters, who object to the application, have no standing to request a deferral of the hearing on the application. Applicant is entitled to proceed, and requests that it be allowed to do so.

ARGUMENT

I.

Protesters Bald Attempt to Simply Delay Consideration of an Application Otherwise Ready to be Heard Does Not Constitute Grounds for Deferral.

There is no provision that a party or parties protesting an application is/are entitled to request a deferral. In a land use entitlement proceeding, it is ordinarily the applicant that would be entitled to request a deferral for reasons pertaining to the readiness of the application to be heard. It is not contemplated that someone opposing an application should be entitled to defer or delay an application, that is otherwise ready to be heard from a hearing on the merits.

While Rule 16 of the County Commission Rules of Procedure does provide that the County Commission has discretion to defer a zoning agenda item to a time certain, this is a legislative proceeding for consideration of a master plan. Therefore, it would appear that Rule 16 is not applicable.

In any event, it is the County Commission that determines whether or not a deferral should be granted. In this case, there is no valid reason for deferral since the Applicant is prepared to be heard and, there is no reasonable basis upon which opponents of an application should be entitled to defer an application that is otherwise ready to be heard.

II.

The County Commission Should Proceed to Hear the Application for Approval of the Level B Plan.

A. There is Nothing to Prevent the County Commission From Considering the Level B Plan.

The County Commission did, as indicated in its June 19, 2015, Notification of Decision, impose certain conditions in conjunction with its approval of the Santolina Level A Community Master Plan (the “**Level A Plan**”) pertaining to the execution of a development agreement with the Albuquerque Bernalillo County Water Utility Authority (“**Water Authority**”). More specifically, Condition #8 provides that “prior to approval of any Level B or Level C planning document, the applicant will provide a fully-executed development agreement with the ABCWUA. . . .”

Condition #9 provides that:

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 Goals and program update (July 2013) or subsequent updates.

Condition #11 provides 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. An agreement between the applicant and ABCWUA and 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.

In each case, the County Commission Level A condition, which are really Level B conditions, is that prior to approval of the Level B Plan the stated condition must be satisfied. At this point in time, the matter of the Level B Plan is merely set for hearing on March 14, 2017. There is nothing in the County Commission conditions pertaining to approval of the Level A Plan that would preclude consideration of the Level B Plan at this time.

However, for reasons that are discussed in a separate document, it is critically important that the County Commission revisit Conditions #8, #9, and #11 to the Level A Plan approval, given that the Water Authority has chosen not to engage in consideration of the Level A water development agreement, (Applicant submitted its proposed water development agreement by transmittal letter from John P. Salazar to Charles W. Kolberg, dated June 10, 2016, a copy of which attached as **Exhibit A**), and is now taking the position that it will not do so until the County Commission gives final approval to the Level B Plan (*see* John Stomp e-mail dated January 19, 2107, at 10:40 a.m., attached as **Exhibit B**). This creates a catch 22 for the Applicant in that County Commission Conditions #8, #9, and #11 require final approval of a Water Authority development agreement prior to final County Commission approval of the Level B Plan, while the Water Authority is taking the position that it will not approve the Level A water development agreement until the County Commission has approved the Level B Plan

B. The County Planning Commission Acknowledged the Conundrum With Which Applicant is Faced by Providing for an Extended Approval Period in its Proposed Condition #6, Which Allows Completion of the Water Authority Development Agreement to Occur Within One Year of the County Commission Land Use Decision Date.

County Planning Commission Condition #6 provides that:

The Level B.I Plan approval shall not be effective until the Level B.I development agreement with Bernalillo County and the Level B.I development agreement with the Albuquerque Bernalillo County Water Utility Authority are finalized and fully executed. Completion of both the Level B.I development agreements shall occur within one year of the BCC decision date. . . .

Condition #6 goes on to provide for further extensions of time to complete the respective development agreements in recognition of the presently non-coordinated approval timeframes.

The request for deferral goes on to challenge certain findings of the Planning Commission. However, a challenge of the findings of the Planning Commission does not constitute grounds for seeking a deferral. In fact, a challenge of the findings is a challenge on the merits and supports the proposition that such challenges should be considered at a County Commission hearing on the merits of the application.

III.

The County Commission Should Proceed With Consideration of the Level B Plan Because There Has Been Final County Commission Approval of the Santolina Level A Plan, the PC Zoning For the Level A Plan Area, and the Level A Development Agreement.

The opponents, in support of their request for deferral, note that they have appealed the decisions of the County Commission granting final approval of the Level A Plan and of the related PC Zoning for the master plan area to State District Court. The judicial appeal is pending.

However, the District Court has not acted on the merits of the appeal. In the interim, the legislative decision of the County Commission approving the Level A Plan and the related PC

Zoning stands. Therefore, the County Commission is entitled to proceed to consideration of the Level B Plan, which is consistent with, and designed to implement the Level A Plan, pursuant to the process set forth in the Planned Communities Criteria.

Should the opponents wish to stay or delay the County Commission proceedings while the appeal is pending, they are entitled to seek a stay from the Court. However, the opponents have chosen not to do so. In order to obtain a stay, a substantial bond protecting the Applicant from damages for unwarranted delay would, most likely, be required.

The opponents have chosen, instead, to seek a free stay from the County Commission by moving for deferral and requesting that the application for Level B Plan approval not be considered until the Court has ruled. This would be extremely prejudicial and harmful to the Applicant, which has proceeded, in good faith, pursuant to and in furtherance of County approvals granted to date, as well as its rights and obligations set forth in the Level A Development Agreement entered into by and between the County and the Applicant.

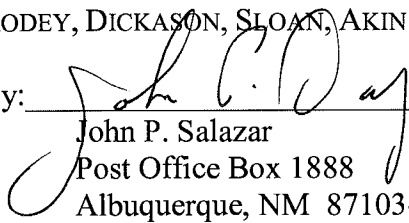
CONCLUSION

For the reasons stated, and otherwise, the County Commission should proceed to consider and approve the Level B Plan.

Respectfully submitted on behalf of Western Albuquerque Land Holdings LLC,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: _____



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Attorneys for Western Albuquerque Land Holdings LLC

I HEREBY CERTIFY that on the 2nd day of March, 2017, copies of this Response were sent by electronic mail to:

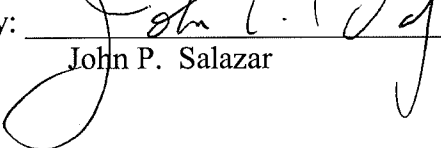
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Water Utility Authority
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Re: Santolina Level A Water and Wastewater Development Agreement (“Level A W&W Development Agreement”)

Mr. Kolberg:

Pursuant to the direction of the Bernalillo County Board of County Commissioners (the “**County Commission**”), in connection with its approval of the Santolina Level A Community Master Plan (“**Level A Master Plan**”), we hand you herewith a proposed Level A W&W Development Agreement to be entered into by and between Western Albuquerque Land Holdings LLC (“**WALH**”) and the Albuquerque Bernalillo County Water Utility Authority (the “**Water Authority**”). The proposed Level A W&W Development Agreement is very similar to the Mesa Del Sol Level A Master Plan Water and Wastewater Development Agreement.

In approving the Level A Master Plan for the Santolina Master Planned Community, the County Commission directed WALH to submit to and obtain Water Authority approval of a Level A W&W Development Agreement. Earlier this year WALH submitted to the County an application for approval of the first Santolina Level B Village Plan (the “**Village Plan**”). We are, therefore, submitting the proposed Level A W&W Development Agreement for consideration by the Water Authority pursuant to, *inter alia*, Section 7-1-15 “Service Consistency with Approved Land Use Plans” of the Water Utility Authority Water and Wastewater System Expansion Ordinance, which provides, *inter alia*, that:

Comprehensive plan policies for land use, supplemented by other adopted major planning documents, determine the appropriate locations and densities of development.

EXHIBIT A

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

Charles W. Kolberg, Esq.
Albuquerque Bernalillo County
Water Utility Authority

June 10, 2016

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The Village Plan is currently being heard over the course of several meetings over several months by the Bernalillo County Planning Commission (the "**Planning Commission**"). Following the conclusion of the Planning Commission hearings, the Planning Commission will make a recommendation to the County Commission. The Village Plan will then be heard and considered for approval by the County Commission. The Village Plan is on schedule for a recommendation by the Planning Commission in July, 2016 with final approval by the County Commission no later than the last County Commission meeting in December, 2016.

We are copying Michael Garcia of the Bernalillo County Attorney's office on this correspondence, because Mr. Garcia represents Bernalillo County on land use matters, including the Santolina master planning process. During the course of our discussions with Mr. Garcia, he has inquired about the status of the Level A W&W Development Agreement. Therefore, we wanted to make certain Mr. Garcia knows that the document has been submitted to the Water Authority for its consideration.

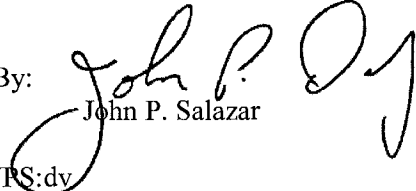
Please note that at the currently scheduled June 23, 2016 Planning Commission hearing on the Village Plan one of the agenda items is water and sewer service. We invite Water Authority representatives to attend and participate. If someone representing the Water Authority is willing to attend and/or participate, Jim Strozier with Consensus Planning can provide further detail on this hearing.

We appreciate your attention and that of the Water Authority to this submittal. Please let us know if you are in need of any additional information or clarification, and if we may meet in the near future to further discuss and address any question you or members of the staff of the Water Authority may have.

We look forward to an early and favorable determination on the enclosed submittal.

Sincerely,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: 
John P. Salazar
JPS:dv

Enclosure

cc (w/ enc.): Michael Garcia
Jeff Garrett

On Jan 19, 2017 10:40 AM, "Stomp, John M." <jstomp@abcwua.org> wrote:

James:

Thanks for the e-mail. I was not aware that the CPC approved the Level B, but we need approval from the BCC prior to moving forward on the Development Agreement. Your steps outlined below does not mention when that actual land use plan will be approved by the BCC. Do you have a timeline for that? John

From: James Topmiller [<mailto:jtopmill@bhinc.com>]
Sent: Sunday, January 15, 2017 11:17 PM
To: Stomp, John M. <jstomp@abcwua.org>
Subject: Santolina-Water Authority next steps

Hi John, I tried to contact you a couple of times last week. Sorry I missed you.

I called to review the current status of Santolina efforts at the Water Authority, and our next steps. You are most likely aware that CPC approved the land use plan a couple of weeks ago. This approval I believe was then to kick off a series of next steps for the Water Authority and Santolina. We continue to wish to move this project forward as expeditiously. Accordingly, it would be helpful for all of us to set up a meeting relatively soon for that discussion and check-in.

I think the basic plan/process is:

1. Level B CPC approval (done)
2. WUA internal studies/review (underway for some time now, but unknown status)
3. Serviceability letter (based on the studies and WUA policies)
4. Development Agreement (based on the Serviceability letter and WUA policies)
5. WUA Board (reviewing/approving the Development Agreement)

I am hopeful that we can be proactive within each of these steps.

Thanks John, hope to hear from you soon regarding a meeting time. If you feel we should include Mark S and Jeff G, that is fine, just let me know.

James R. Topmiller

Vice President

Community Development & Planning
Bohannon Huston

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