



County of Los Alamos

1000 Central Ave
Los Alamos, NM 87544

Agenda - Final - Revised Board of Appeals

*Terry Priestley, Chair: Randall Ryti, County Councilor; and Philo
Shelton, Utilities Manager*

Wednesday, January 19, 2022

1:00 PM

Council Chambers - 1000 Central Avenue
TELEvised

I. CALL TO ORDER

II. APPROVAL OF AGENDA

III. DELIBERATION

- A.** [15377-22](#) Closed Session pursuant to NMSA § 10-15-1 (H)(3) for deliberations in connection with Action No. 2020-01 Sirphey, LLC, a New Mexico limited liability company, Appellant v. Michael Arellano, in his official capacity as the Building Official for Los Alamos County, Appellee.

Presenters: Board of Appeals

Attachments: [A - Attachment A-Order Remanding Notice of Appeal](#)

- B.** [15385-22](#) Possible Final Action on Proceeding

Presenters: Board of Appeals

IV. ADJOURNMENT

NOTE: This meeting is in person and open to the public. However, for convenience, the following Zoom meeting link and/or telephone call in numbers may be used for public viewing and participation:

<https://us06web.zoom.us/j/89867949847>

Or Telephone:

**US: +1 720 707 2699 or +1 253 215 8782 or +1 346 248 7799 or +1 646 558 8656
or +1 301 715 8592 or +1 312 626 6799**

Webinar ID: 898 6794 9847

For Viewing only, use: <http://losalamos.legistar.com/Calendar.aspx>



County of Los Alamos

Staff Report

January 19, 2022

Los Alamos, NM 87544
www.losalamosnm.us

Agenda No.: A.

Index (Council Goals):

Presenters: Board of Appeals

Legislative File: 15377-22

Title

Closed Session pursuant to NMSA § 10-15-1 (H)(3) for deliberations in connection with Action No. 2020-01 Sirphey, LLC, a New Mexico limited liability company, Appellant v. Michael Arellano, in his official capacity as the Building Official for Los Alamos County, Appellee.

..Purpose and Scope

The purpose of this hearing is for the Board of Appeals to meet, deliberate, and issue findings of fact and conclusions of law as ordered by the 1st Judicial District Court on December 1, 2021. No further argument or evidence will be heard or taken from the parties, and no other matters will be entertained.

..Potential Motions for Hearing

FOR ENTERING CLOSED SESSION FOR DELIBERATION

I move that the Board of Appeals enter into closed session pursuant to New Mexico Statute 10-15-1(H)(3) for the purposes of deliberation in connection with this administrative adjudicatory proceeding.

FOR EXITING CLOSED SESSION

I move that the Board of Appeals exit the closed session, and that the following statement be included in the minutes: The matters discussed in the closed session were limited only to those specified in the motion for closure, and no action was taken in the closed session.

FOR ADOPTING A FINAL WRITTEN ORDER

I move that the Board of Appeals approve this written order containing findings of fact and conclusions of law, and further move to authorize the Chair of the Board of Appeals to sign this order and enter the written order into the record of this proceeding.

FOR ADOPTING FINDINGS OF FACT AND CONCLUSION WITH DIRECTION TO CHAIR TO PREPARE A FINAL WRITTEN ORDER CONSISTENT WITH THE BOARD'S FINDINGS.

I move that the Board of Appeals adopt the following findings of fact and conclusions of law

_____, and further move the Chair prepare, in consultation with the County Attorney, a written order consistent with these finding and enter the written order into the record of this proceeding.

Attachments

A - Order Remanding Appellant's Notice of Appeal for Lack of Ripeness issued December 1, 2021 in *Sirphey LLC. v. Appellant v. Board of the County Council of Los Alamos County and Michael Arellano, building official of Los Alamos County, Appellees*, Case No: D-132-CV-2021-00002, 1st Judicial District Court, Los Alamos County, State of New Mexico.

STATE OF NEW MEXICO
LOS ALAMOS COUNTY
FIRST JUDICIAL DISTRICT COURT

SIRPHEY LLC,

Appellant,

v.

No. D-132-CV-2021-00002

BOARD OF THE COUNTY COUNCIL
OF LOS ALAMOS COUNTY AND MICHAEL
ARELLANO, building official of Los
Alamos County,

Appellees.

**ORDER REMANDING APPELLANT'S NOTICE OF APPEAL FOR LACK OF
RIPENESS**

This cause came before the Court for hearing on April 26, 2021, on Appellees Motion to Dismiss. Appellant Sirphey LLC was present, and were represented by its attorney, Philip J. Dabney, Esq. Defendants were represented by Donald A. DeCandia, Esq., and Terra Hittson, Esq., of Hartline Barger LLP.

The parties fully briefed the issues set forth in the Motion. The Court ruled from the bench that Appellant's Notice of Appeal is timely, but is not ripe for review, as Appellees' Board of Appeals had not yet issued a final decision for review. The Court remanded this matter back to the administrative agency for issuance of a final decision. This Order memorializes that ruling. All parties were given an opportunity to examine this order, and Defendants object.

Findings of Fact

1. On November 22, 2019, Appellant was issued a stop-work order.

2. The stop-work order was appealed to the Los Alamos County Board of Appeals.
3. The Board of Appeals did not issue a final written decision regarding Appellant's appeal of the stop-work order.
4. On or about July 21, 2020, Appellant filed a notice of appeal with the Los Alamos County Clerk.
5. On or about September 8, 2020, the Los Alamos County Council considered Appellant's appeal of the stop-work order.
6. The Los Alamos County Council did not issue a final written decision regarding Appellant's appeal of the stop-work order.

Conclusions of Law

1. The Board of Appeals is required by law to issue a written decision outlining with particularity the findings of facts and conclusions of law which support its decision.
2. Rule 1-075(C) NMRA requires a petition for writ of certiorari contain a copy of the final decision to be reviewed by the District Court.
3. Rule 1-075(H) NMRA requires a petition for writ of certiorari contain a record, which shall include a copy of the final decision.
4. Rule 1-075(P)(5) NMRA authorizes a party to raise by motion the failure of the agency to issue a written decision.
5. Rule 1-075(K)(3) NMRA requires that a petitioner lay out a specific attack on any finding of fact or decision, or such an attack shall be deemed waived. The petitioner's argument must identify with particularity the fact or facts not supported by substantial evidence.
6. Rule 1-075 NMRA requires a whole record review.

7. Section 10-84 of the Los Alamos County Code of Ordinances requires the Board of Appeals to issue its findings and decisions in writing to the Los Alamos County Council.

8. Rule 1-075 NMRA requires a petition for writ of certiorari be filed within thirty days of the final decision of an agency. Further, a petition for writ of certiorari filed after the announcement of a decision by an agency, but before the decision is issued by the agency, shall be treated as timely filed.

9. When the District Court exercises appellate jurisdiction, it is not a fact-finding body. *Vandervossen v. City of Española*, 2001-NMCA-016, ¶ 26, 130 N.M. 287, 294-295.

10. Where the decision depends upon factual questions that the governing body failed to resolve, the reviewing court must remand for further proceedings. *Downtown Neighborhoods Ass'n v. City of Albuquerque*, 1989-NMCA-091, ¶ 17, 109 N.M. 186, 189 (Citing *Michelson v. Michelson*, 1976-NMSC-026, 89 N.M. 282, quoting *Mora v. Martinez*, 1969-NMSC-030, ¶6, 80 N.M. 88, 89-90). Although this principle originates in appellate court review of district court decisions, this principle is applicable to review of administrative agency decisions by analogy. *Id.*

11. It is not for the courts to search the record in order to determine what the basis for a decision is. *Mora v. Martinez*, 1969-NMSC-030, ¶ 5, 80 N.M. 88, 89. The purpose of appellate rules is to aid the appellate court by placing the clear basis of the decision of the lower body. *Id.* ¶ 6. By analogy, the purpose of Rule 1-075's requirements to attach and reference the record, including the final decision, as well its distinguishing of an announced decision and issuance of a final decision, is to provide the district courts with the basis of an administrative agencies decision.

12. The administrative agency in the case at bar, the Los Alamos County Board of Appeals, therefore only announced a decision, but did not ever issue a final decision. The Board did not at any point lay out the basis for its decision for the Los Alamos County Council to review.

13. The Board of Appeals was required to issue a final decision, and, by the Los Alamos County Code of Ordinances Section 10-84, was required to issue that final decision in writing to the Los Alamos County Council for review.

14. There is a procedural due process right to the written findings of fact announced by an agency in making a ruling or decision.

15. Appellant has been denied a written findings of fact, and therefore has been denied procedural due process.

16. Appellant's Appeal is therefore timely, as there has been no decision by the administrative agency.

17. Appellant's Appeal is not ripe for consideration, because the Court has no basis for the administrative agency's decision.

18. It is not for the Court to guess at the administrative agency's reasoning. *See Mora*, 1969-NMSC-030, ¶ 6. The administrative agency has failed to resolve factual questions upon which their decision is based. Therefore, this Court must remand Appellant's Appeal to the administrative agency for issuance of a written decision. *See Downtown Neighborhoods Ass'n*, 1989-NMCA-091, ¶ 17.

WHEREFORE, based on the foregoing, the Court hereby ORDERS that Appellant's Appeal is remanded to the Los Alamos County Council for remand to the Board of Appeals for the issuance of findings of fact and conclusions of law within 60 days of remand, and for further proceedings consistent with Section 10-84 of the Los Alamos County Code of Ordinances.



HONORABLE JASON LIDYARD
DISTRICT COURT JUDGE

Respectfully submitted,

/s/ Philip J. Dabney
Philip J. Dabney, Esq.
3500 Trinity Drive, Suite B-4
Los Alamos, NM 87544
(505) 622-3911
phil@dabneylawpc.com
Attorney for Appellant

Approved as to form only by:

via email 11/29/2021

Hartline Barger LLP, by
Donald A. DeCandia
Terra Hittson, appearing *pro hac vice*
141 E. Palace Avenue
Garden Level, Suite 2
Santa Fe, NM 87501
(505) 336-5291
DDecandia@hartlinebarger.com
THittson@hartlinebarger.com

Attorneys for Appellees



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