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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-36882

JACK NUTTER and KIM NIKOLAI,

Petitioners-Appellants,

v.

**BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF BERNALILLO,**

Respondent-Appellee.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Beatrice J. Brickhouse, District Judge**

Crowley & Gribble, P.C.
Clayton E. Crowley
Albuquerque, NM

for Appellants

W. Kenneth Martinez, County Attorney
Michael I. Garcia, County Attorney, Advanced
Albuquerque, NM

for Appellee

DECISION

DUFFY, Judge.

{1} This is a zoning dispute. The Board of County Commissioners of Bernalillo County approved a minor amendment to the Paseo Del Norte/North Albuquerque Acres Sector Plan, which altered the minimum lot size for four lots, encompassing 2.5 acres of the larger 3,651 acres within the Sector Plan area. This amendment was approved to permit these lots to retain their status as limited commercial lots by adopting a reduced minimum lot size requirement. Petitioners are nearby homeowners who would like to

prevent commercial development on these lots and appealed the County Commission's decision to the district court.

{2} Acting in its appellate capacity pursuant to Rule 1-074 NMRA, the district court affirmed the County's decision. The district court found that the approval of a minor amendment to the Sector Plan, pursuant to Section 20.5.F.2 of the Bernalillo County Zoning Ordinance, was supported by substantial evidence. Albuquerque, N.M., Ordinance ch. 86-174, App. A § 20.5(F)(2) (2007). Appellants sought certiorari review of the district court's order affirming a final administrative decision of the County Commission, pursuant to Rule 12-505 NMRA. We granted certiorari.

{3} "In reviewing an agency decision, this Court applies the same standard of review applicable to the district court under Rule 1-074(R), while at the same time determining whether the district court erred in the first appeal." *Princeton Place v. N.M. Human Servs. Dep't*, 2018-NMCA-036, ¶ 26, 419 P.3d 194, *cert. granted*, 2018-NMCERT-____ (No. S-1-SC-36995, May 21, 2018) (internal quotation marks and citations omitted). We will affirm an administrative agency unless the agency acted arbitrarily or capriciously, the decision of the agency is not supported by substantial evidence, or the agency action was not in accordance with the law. Rule 1-074(R); see *Regents of Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020, ¶ 17, 125 N.M. 401, 962 P.2d 1236 ("The decision of the agency will be affirmed if it is supported by the applicable law and by substantial evidence in the record as a whole. 'Substantial evidence' is evidence that a reasonable mind would regard as adequate to support a conclusion." (internal quotation marks and citation omitted)).

{4} After a thorough review of the appellate briefs and a whole record review of the proceedings below, we note that the arguments presented to us on appeal are substantively identical to the arguments raised in the district court. We have reviewed and considered the parties' briefing, the record, the relevant case law, and the district court's opinion and order dated November 7, 2017. Based on our comprehensive review, we detect no error in the district court's opinion and order and adopt the legal reasoning set forth therein.

CONCLUSION

{5} We affirm.

{6} **IT IS SO ORDERED.**

MEGAN P. DUFFY, Judge

WE CONCUR:

JENNIFER L. ATTREP, Judge

BRIANA H. ZAMORA, Judge