


**SANTA FE COUNTY
LEGAL DEPARTMENT
MEMORANDUM**

To: The Board of County Commissioners
Katherine Miller, County Manager

From: Stephen C. Ross, County Attorney 

Date: December 23, 2011

Re: Affordable Housing Agreement Cow Springs Land & Cattle Co. and the Joseph and Alma Miller Revocable Trust

As you are aware, the County and Mr. Miller have been in mediation through the Court of Appeals mediation program. The goal of the mediation is to resolve all the outstanding issues with Mr. Miller.

One important element of this process has been to work towards a mutually agreeable Affordable Housing Agreement that is applicable to all of Mr. Miller's developments now in litigation. The County negotiating team worked with Mr. Miller through several mediation sessions to arrive at the attached document; the proposed affordable housing agreement is agreeable to Mr. Miller and he has signed it.

The proposed agreement utilizes alternative means of compliance permitted by Ordinance 2006-2; the proposed agreement moves all of the affordable housing required in Spirit Wind and Tierra Bello development to the nearby Cimarron Village development. Mr. Miller has agreed to provide 15% of the dwelling units provided in all three developments at prices that are consistent with the ordinance; a total of 17 units will be provided (total number of units in Tierra Bello (73) + total number of units in Spirit Wind (39) = 112 x 15% = 17). Mr. Miller will provide the affordable units in the form of townhomes in three price ranges, and may choose to rent rather than sell the units to affordable buyers. If he rents units, the initial market value rent payment must not exceed an amount that an affordable buyer would have to make as a monthly mortgage payment. Mr. Miller's plan at this time is to provide the affordable homes within an area designated for live/work mixed use in Cimarron Village (a minor master plan amendment will be required), and is also considering adjoining senior housing, some of which may also be affordable but not subject to this agreement. Mr. Miller also has the option under the agreement of selling townhomes to affordable buyers (the maximum target housing price is provided), and to provide affordable housing if he chooses in Spirit Wind or Tierra or an adjoining lot designated Lot 1-A3, instead of Cimarron Village.

**SANTA FE COUNTY
AFFORDABLE HOUSING AGREEMENT**

This Affordable Housing Agreement (the "Agreement") is entered into as of this _____ day of _____, 2012, by and between Joe Miller doing business as "Cow Springs Land & Cattle Co.," a New Mexico Limited Liability Company and the Joseph and Alma Miller Revocable Trust with their principal place of business at 286 Riverbank Road, Lamy, New Mexico (the "Applicant"), and the Board of County Commissioners of Santa Fe County, a political subdivision of the State of New Mexico (the "County").

RECITALS

WHEREAS, the Applicant has requested approval of Tierra Bello Subdivision development, a 73 parcel subdivision to be located within Tract 8A Eldorado at Santa Fe, located within a portion of the Canada De Los Alamos Grant within projected Sections 24 & 25, Township 17 North, Range 9 East, within central or northern Santa Fe County and also has requested approval of Spirit Wind Subdivision within a portion of the Canada De Los Alamos Grant within projected Sections _____, Township 17 North, Range 9 East, within central or northern Santa Fe County (the "Project");

WHEREAS, Santa Fe County Ordinance No. 2006-02 ("the Ordinance")(as amended) requires, among other things, the Applicant to provide Affordable Units or Lots within the Project and/or comply with the Ordinance through alternative means;

WHEREAS, the County has adopted the Santa Fe County Affordable Housing Regulations ("Regulations") to implement the Ordinance;

WHEREAS, pursuant to the Ordinance and Regulations, Applicant submitted an Affordable Housing Plan, which was approved by the Affordable Housing Administrator, and

WHEREAS, the Applicant and the County desire to memorialize the Applicant's obligations under the Ordinance and Regulations.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and obligations contained herein, the County and Applicant hereby agree as follows:

1. Definitions. All capitalized terms herein have the same meanings given them in the Ordinance and Regulations.

2. Required Affordable Units and Lots. Applicant agrees to cause to be built and rent the following Affordable Units whose initial market value rents will be less than the monthly mortgage payments for residences that meet the Maximum Target Housing Price indicated:

**- Cimarron Village Development - Tierra Bello Development – Spirit Wind-
- Alternative Means of Compliance -**

Assumptions: (1) Number of Units in Tierra Bello (73) + number of Units in Spirit Wind (39) = Total 112. (2) At least 15% (17) of the total units in both developments are Affordable Units. (3) Any and all obligations under Ordinance 2006-2 (the Affordable Housing Ordinance) for Tierra Bello and Spirit Wind shall be satisfied by the alternative means of compliance as set forth in this Agreement. (4) Rental property in Cimarron Village may be substituted for Single Family Residential property so long as the initial market value rental payments do not exceed that which an affordable buyer would have to meet to purchase a home in the income ranges set out below. The initial rental charges may be annually increased by the CPI. (5) If single-family residential properties are constructed instead of rental property, the maximum target home prices set out below will apply. (5) The developer also has the option to meet the Affordable Housing obligation by building Affordable Units on either lots 1-A3 of Eldorado at Santa Fe, on Tierra Bello, or on Spirit Wind.

| Lot Number | Income Range of People to Whom Affordable Unit May be Sold | Affordable Unit Type | Maximum Target Housing Price |
|--|--|----------------------|--|
| The Tierra Bello property is located east of Eldorado, on the east side of US 285, off of Colina Drive and Camino Valle, within Section 9 and 16, Township 15 North, Range 10 East (within Lot 8A Eldorado at Santa Fe) and the Spirit Wind property is located within Lot 18A Eldorado at Santa Fe. | Income Range 2 = 5 Units | Townhome | Studio = \$112,500; 1 Bedroom = \$119,500; 2 Bedroom \$136,750; 3 Bedroom = \$153,750; and 4 Bedroom = \$170,750 |
| | Income Range 3 = 6 Units | Townhome | Studio = \$140,500; 1 Bedroom = \$147,250; 2 Bedroom \$168,250; 3 Bedroom = \$189,250; and 4 Bedroom = \$210,250 |
| | Income Range 4 = 6 Units | Townhome | Studio = \$176,750; 1 Bedroom = \$184,000; 2 Bedroom \$210,250; 3 Bedroom = \$236,500; and 4 Bedroom = \$262,750 |

All Affordable Units shall meet the minimum structural requirements, minimum bathrooms and floor area, and other requirements set forth in the Regulations.

3. Development Schedule. The development schedule for Cimarron Village and individual Phases of Cimarron Village shall be developed on a schedule so that approximately 0.42 Affordable Units will be constructed for every market unit or lot constructed (22 Affordable Units and 53 market units); Tierra Bella and Spirit Wind may be developed on a schedule the developer chooses.

4. Integration of Affordable Units and Affordable Lots in the Project. The County agrees that the Affordable Units and Lots shall be integrated into the Project and individual Phases as required by the Ordinance and Regulations.

5. Final Plat Recordation. This Affordable Housing Agreement must be filed and recorded simultaneously with the Final Plat for the Project or the phase to which this Agreement relates. Should the Final Plat be filed and recorded without this Affordable Housing Agreement, such filing and recordation shall be null and void and without any legal effect.

6. Marketing Plan. In accordance with the Affordable Housing Plan, Applicant agrees to market the Affordable Units through print advertising, fliers and other promotional media, notice to affordable housing agencies whose mission it is to promote affordable housing and assist first time homebuyers, and notice to real estate brokers.

7. Incentives. In consideration of Applicant's obligations hereunder and in accordance with the Ordinance, County has agreed to provide the following incentives to Applicant:

A. Density Bonus. County agrees to grant Applicant a density bonus of (i) nine (9) units for the provision of the Affordably Priced Housing Units identified in Paragraph 2 hereof and (ii) two (2) units for the provision of the Entry Market Housing Units identified in Paragraph 2 hereof, for a total density bonus of eleven (11) units over and above the number of units it would have otherwise been entitled to under the Santa Fe County Land Development Code for Tierra Bello and Spirit Wind which is then transferred to Cimarron.

B. Relief from Development Fees. County agrees to waive all development fees for each Affordably Priced Housing Unit and Entry Market Housing Unit to be provided by Applicant hereunder.

C. Relief from Additional County Water Utility Connection Charge. County agrees to waive any additional water connection charges that exceed the cost of the water meter for each of the Affordably Priced Housing Units and Entry Market Housing Unit to be provided by Applicant hereunder; provided, however, that nothing herein shall relieve Applicant of any obligation it may have under any Water Service Agreement with the County to provide a line extension or other infrastructure to the Affordably Priced Housing Units and Entry Market Housing Units.

D. Energy Efficiency Measures. Applicant agrees to provide the following energy efficiency measures within the Project as a whole:

1. Units [Single-Family Residential and Manufactured Homes] will be constructed to meet Energy Star standards and receive Energy Star Verification from a third-party using either the HERS Ratings or Builder Option Packages.

2. Applicant shall submit Energy Star Verification from a third-party for each affordable Unit in the Project. The Energy Star Verifications shall be submitted to the Affordable Housing Administrator periodically, but no less frequent than monthly, for each Unit completed during the subject period.

Pursuant to §10 of the Ordinance, these energy efficiency measures allow Applicant to earn incentives it otherwise would not be eligible for on Entry Market Housing Units, which incentives are reflected in subparagraphs A through D hereof.

8. Successors, Assigns, and Buyers of Affordable Lots. Applicant's obligations hereunder shall be binding upon its successors and assigns as well as any developer, contractor, or other third party (other than an Eligible Buyer or Entry Market Buyer) to whom an Affordable Lot identified in Paragraph 2 and in Exhibit A is transferred. Applicant agrees to provide County with ten (10) business days' advance written notice of its intent to transfer an Affordable Lot to someone other than an Eligible Buyer or Entry Market Buyer, such notice to include a copy of the sales contract or other agreement by which such third party shall irrevocably assume Applicant's obligations hereunder with respect to such Affordable Lot. County shall have the right to (i) request further assurances that Applicant's obligations with respect to the Affordable Lot are being assumed by the transferee; (ii) require changes to the portion of the sales contract or other agreement concerning the transferee's assumption of Applicant's obligations; and (iii) attend the closing of the transfer to assure that the sales contract or other agreement whereby the transferee assumes Applicant's obligation is executed.

9. Closing of Qualified Transactions. [Reserved]

10. Remedies.

A. Applicant acknowledges and agrees that, but for this Affordable Housing Agreement, County would not have approved the final plat for the Project or the phase of the Project to which this Affordable Housing Agreement relates. Applicant further acknowledges and agrees (i) that, because the integrated Affordable Units to be provided by Applicant are a public good, no adequate remedy exists at law to remedy Applicant's failure to fulfill its obligations hereunder; and (ii) that it would be inconvenient and infeasible for County to accurately measure the value of some of the incentives that Applicant received hereunder; and (iii) an appropriate remedy for Applicant selling or renting Affordable Units or Lots to non-Eligible Buyers or non-Entry Market Buyers, as the case may be, is to pay County the Maximum Target Home Price for those units, so as to enable County to provide affordable housing elsewhere. Accordingly, County shall be entitled to the following remedies for the indicated

breaches by Applicant of this Affordable Housing Agreement, which remedies Applicant acknowledges and agrees are fair and reasonable.

B. Selling or renting Affordable Units or Lots to Non-Eligible Buyers or Non-Entry Market Buyers: In the event Applicant rents or sells homes built on Affordable Lots to someone other than an Eligible Buyer or Entry Market Buyer, County shall be entitled to:

(i) an injunction halting all construction or development on the Project until such time as Applicant remedies its breach and complies with its obligations hereunder;

(ii) refuse to grant preliminary or final plat approval for any future phase of the Project;

(iii) collect all development fees that were waived, pursuant to Paragraph 7(B)-(C) of this Affordable Housing Agreement, for each house on an Affordable Lot Applicant sold to a non-Eligible Buyer or non-Entry Market Buyer, as the case may be;

(iv) collect as damages the Maximum Target Home Price for each Affordable Unit that Applicant was required to build on the Affordable Lot that it improperly sold to a non-Eligible Buyer or non-Entry Market Buyer, such damages to be paid into the fund or trust established pursuant to Section 18(G) of the Ordinance.

C. Breach of Agreement to Provide Energy Efficiency Measures. In the event Applicant fails to provide the energy efficiency measures identified in Paragraph 7(E) throughout the entire project, County shall be entitled to:

(i) an injunction from a Court of competent jurisdiction requiring Applicant to comply with its energy efficiency obligations; and/or

(ii) refuse to grant preliminary or final plat approval for any future phase of the Project.

D. Failure to Timely Build Affordable Units or Lots. In the event the Applicant fails to time build Affordable Units or Lots, the County shall be entitled to:

(i) an injunction halting all construction or development on the Project until such time as Applicant remedies its breach and complies with its obligations hereunder; and/or

(ii) refuse to grant preliminary or final plat approval for any future phase of the Project.

11. Miscellaneous Provisions

A. If any provision of this Agreement or the application thereof to any person or circumstances is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

B. This Agreement shall be construed and enforced in accordance with the Ordinance and Regulations and the Laws of the State of New Mexico.

C. No actions taken by the parties following a breach of any of the terms contained in this Agreement shall be construed to be a waiver of any claim or consent to any succeeding breach of the same or any other term.

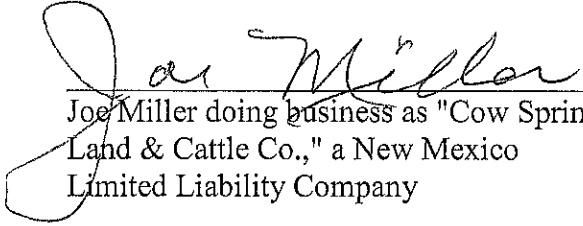
D. This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

E. This Agreement shall not relieve Applicant from complying with present or future County ordinances, duly adopted resolutions or regulations applicable to affordable housing.

F. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

G. This Agreement shall become void or may be subject to amendment in the event that Ordinance No. 2006-02 is amended or repealed or if the affordable housing ordinance is judicially declared to be invalid or to constitute an unconstitutional taking. However, if incentives are contracted-for pursuant to Section 7 of this Agreement and any lots have been sold in Tierra Bello or Cimarron Village, this Agreement will remain in force and effect. In the event no lots have been sold as provided in the previous sentence, this Agreement shall be voidable at the Applicant's election so long as the Applicant applies for and receives approval for appropriate modifications to the master plan (as appropriate) and plats (preliminary and/or final) from the County to delete the incentives and pays any applicable fees that have been waived.

IN WITNESS WHEREOF, the parties have duly executed this Affordable Housing Agreement as of this ____ day of _____, 2012.


Joe Miller doing business as "Cow Springs
Land & Cattle Co.," a New Mexico
Limited Liability Company

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

By: _____
Chair

Attest:

Valerie Espinosa, County Clerk

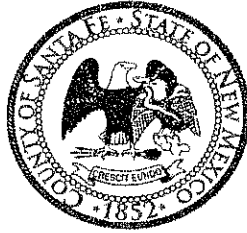
Approved as to form:

Stephen C. Ross, County Attorney

Danny Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. V 11-5190

VARIANCE

BERT SCOTT, APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as “the BCC”) for hearing on November 8, 2011, on the Application of Bert Scott (hereinafter referred to as “the Applicant”) for a variance of Ordinance No. 2002-9 (La Cienega/La Cieneguilla Traditional Community Zoning District), Section 6.4.3 to allow a Small Lot Family Transfer Land Division of 5 acres into two 2.5 acre lots. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicant requests a variance of Ordinance No. 2002-9 (La Cienega/La Cieneguilla Traditional Community Zoning District), Section 6.4.3 to allow a Small Lot Family Transfer of 5 acres into two 2.5 acre lots.
2. The property is located off Paseo C De Baca at 31 La Lomita, within Section 6, Township 15 North, Range 8 East (“Property”).
3. A residence and conventional septic system are located on the Property. The property is served by an on-site well.

4. Ordinance No. 2002-9 requires a minimum lot size in this area of 50 acres per dwelling unit. With proof of 100-year water supply, through a geohydrologic reconnaissance report and application of water covenants, the maximum density may be increased to one dwelling unit per 12.5 acres. If an adequate 100-year supply of water and no impairment to neighboring wells is proven, by an on-site geohydrological well test or connection to the County Utility, land may be further divided to a maximum density of one dwelling unit per 2.5 acres.

5. The Applicant stated it is beyond his and his family's means to pay the ten to twenty thousand dollar cost for preparation of a new hydrologic report on the existing well.

6. The CDRC recommended approval of the variance Application.

7. The BCC proposed the following conditions for approval.

A. Water use shall be restricted to 0.25 acre feet per year per lot. A water meter shall be installed for both lots; this shall be noted on the Plat. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office.

B. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval.

C. No further division of either tract shall be permitted. This shall be noted on the Plat.

D. The Applicant shall record a signed shared well agreement with the Office of the County Clerk.

E. The Applicant shall connect to the County Water System when it becomes available within 200 feet of the property line.

- F. The newly created lot shall not be sold for a period of three years.
8. The Applicant agreed with the conditions proposed by the BCC.
9. A public hearing was conducted and no members of the public spoke in favor or in opposition to the Application.

WHEREFORE, The Board of County Commissioners hereby approves a variance of Ordinance No. 2002-10. (La Cienega/La Cieneguilla Traditional Community Zoning District), Section 6.4.3 to allow a Small Lot Family Transfer Land Division of 5 acres into two 2.5 acre lots on property located at 31 La Lomita based upon the Applicant complying with the conditions contained in paragraph 7.

IT IS SO ORDERED

This Order was approved by the Board of County Commissioners of Santa Fe County on this ____ day of January, 2012.

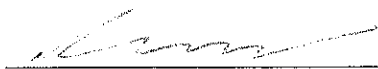
By: _____

Board of County Commissioners, Chair

Attest: _____

Valerie Espinoza, County Clerk

Approved as to form:



Stephen C. Ross, County Attorney

Commissioner Holian, as the movant accepted the amendment as did Commissioner Stefanics. The motion as amended passed by majority [4-1] voice vote with Commissioner Mayfield casting the sole “nay” vote.

XIII. G. Matters From the County Manager

This item was deferred.

XIV. PUBLIC HEARINGS

A. Special Presentations [See page 12]

B. Growth Management Department

- 1 CDRC CASE # V 11-5190 Bert Scott Variance: Bert Scott, Applicant, requests a variance of Ordinance No. 2002-9 (La Cienega/La Cieneguilla Traditional Community Zoning District), Section 6.4.3, to allow a Small Lot Family Transfer Land Division of Five acres into two 2.5-acre lots. The property is located off Paseo C De Baca at 31 La Lomita, within Section 6, Township 15 North, Range 8 East (Commission District 3).**

Wayne Dalton, Building and Development Services Supervisor, read the case caption and provided his staff report as follows:

“On September 15, 2011, the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the Applicant’s request for a variance by a 4-1 vote.

“ The applicant requests a variance to allow a Small Lot Family Transfer Land Division of five acres into two 2.5-acre lots. There is currently a residence and conventional septic system on the property. The existing residence is served by an on-site well. The property is located in the Traditional Historic Community of La Cienega within the Basin Fringe Zone. Ordinance 2002-9 requires the minimum lot size in this area of 50 acres per dwelling unit. With proof of 100-year water supply, through a geohydrologic reconnaissance report and application of water covenants, the maximum density may be increased to one dwelling unit per 12.5 acres. If an adequate 100-year supply of water and no impairment to neighboring wells is proven by an on-site geohydrological well test or connection to the County Utility, land may be further divided to a maximum density of 2.5 acres per dwelling unit.

“On September 5, 2007, the La Cienega/La Cieneguilla Development Review Committee met and recommended denial of this request for a variance. The recommendation was based on the determination of the County Hydrologist that the hydrology report, dated June of 1984, submitted by the Applicant did not meet

Code requirements due to the lack of data and failed to demonstrate sufficient water to serve two dwellings. The Applicant provided a well log of the existing domestic well on the property. It was estimated that even with a complete hydrology report it would be difficult to demonstrate water availability using a domestic well. This request was also scheduled to go before the Board of County Commissioners on January 8, 2008, however, the Applicant's parents withdrew the request prior to the Board meeting.

"The Applicant has now received consent from his parents to make an Application and request a variance for a Small Lot Family Transfer Land Division. The Applicant states that it is beyond his means to purchase land in or near Santa Fe and if his mother and father are allowed to share the property with him, it would mean the world to him... The Applicant also states it is beyond his and his family's means to pay the ten to twenty thousand dollar cost for preparation of a new hydrologic report on the existing well.

"On September 2, 2011, Land Use staff met with the Utilities Department regarding this request. It was determined that the Applicant's property is approximately 1,200 feet from the County Utility and connection to the water line is feasible. The Utilities Department received a draft petition on August 17, 2011, for the formation of a Special Assessment District to fund the extension of a water line to serve residents on La Lomita. A reliable water supply is necessary due to poor water quality and marginal supply in existing domestic wells. The opinion of cost to extend the waterline is estimated at \$150,000, but may change due to various factors. The draft petition proposes a means to divide the cost of the line extension among property owners and repay over a twenty-year period. The petition will be forwarded to the Legal Department for review prior to execution.

"Connection to the Santa Fe County Utility allows the creation of a 2.5-acre lot to serve a residential dwelling within La Cienega/La Cieneguilla Traditional Community Zoning District without the burden of demonstrating water availability, as defined by the Land Development Code."

Mr. Dalton said that staff reviewed the application and based on Ordinance No. 2002-9 which requires a minimum lot size in this area as 50 acres per dwelling unit; the Applicant's lot size is only 5 acres; the hardship described by the Applicant is not the type of variance hardship contemplated by the Code; the Applicant has not justified a hardship which is required by the Code; strict compliance with the requirements of the Code would not result in extraordinary hardship to the Applicant; to allow further reduction of the Code density requirements would nullify the purpose of the Code, connection to the County Utility is feasible and would eliminate the need for a variance; therefore, staff recommends denial of the Applicant's request.

If the decision of the BCC is to recommend approval, Mr. Dalton introduced the CDRC and staff recommended conditions:

1. No development permits shall be issued for the newly created lots unless connection to the County Utility has been completed and both lots are connected to Community Water. The applicant may submit a geohydro report proving available water and not wait for the water system.
2. The existing well on the property shall be disconnected from residential use. The well may be used for Traditional water usage.
3. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval.
4. No further division of either tract shall be permitted. This shall be noted on the Plat.

Duly sworn, Bert W. Scott, Albuquerque, the applicant and the property owners' son, appeared before the Commission. He presented what he referred to as the "original" conditions of approval that he agreed to [*Exhibit 1*] and a petition signed by neighbors supporting his request [*Exhibit 2*].

Mr. Scott said he was a native Santa Fean and grew up in La Cienega and wants to be near his parents. He mentioned his relatives in the area and his desire to provide his children with access to his parents.

He said the original conditions [*Exhibit 1*] would have allowed him to use .25 acre-feet of groundwater and when the County's system was within 200 feet of his home he would tie into the line and tap the well for domestic use. He stated he accepts that condition, but making him wait until a special assessment district is created is unfair.

Mr. Dalton pointed out that condition one allows the applicant to build if he provides a geohydro report proving water availability.

The Commission questioned why the conditions presented by the Applicant that he agreed to differ than those proposed by staff. Mr. Dalton said the conditions the Applicant refers to were revised prior to this case being heard by the CDRC. Staff ascertained that the property lacked sufficient groundwater and revised the conditions.

Mr. Scott said while there may not be enough water on the property to sustain the development for 100 years, surely the County's line will be installed by that time. He mentioned the expense of conducting a geohydro report. Mr. Scott referred the Commission to the petition [*Exhibit 2*] signed by his immediate neighbors.

Mr. Dalton confirmed that the conditions presented in his report were those imposed by the CDRC.

Karen Torres, County Hydrologist, said the County does maintain geohydro reports on file for public use. She said it is very difficult to prove water in this area and referred to the 1984 VaneKlasen geohydrology report, and indicated that said report failed to prove adequate water.

There were no other speakers on this case.

Commissioner Anaya moved to approve CDRC Case #V 11-5190 with the conditions presented by the Applicant and adding conditions 6 as follows:

1. Water use shall be restricted to .25 acre-feet per year per lot. A water meter shall be installed for both lots this shall be noted on the Plat. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office.
2. The Applicant shall sign and record a shared well agreement with the Office of the County Clerk.
3. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval.
4. No further division of either tract shall be permitted. This shall be noted on the Plat.
5. The Applicant shall connect to the County Water System when it becomes available within 200 feet of the property line.
6. The newly created lot shall not be sold for a period of three years.

Commissioner Mayfield seconded and the motion passed by majority 3-1 voice vote with Commissioner Stefanics casting the sole "nay" vote and Commissioner Holian not present for this action.

XV. ADJOURNMENT

Having completed the agenda and with no further business to come before this body, Chairwoman Vigil declared this meeting adjourned at 9:00 p.m.

Approved by:

Board of County Commissioners
Virginia Vigil, Chairwoman

ATTEST TO:

VALERIE ESPINOZA
SANTA FE COUNTY CLERK

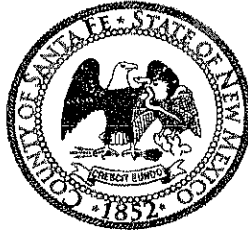
Respectfully submitted:

Karen Farrell, Wordswork
453 Cerrillos Road, Santa Fe, NM 87501

Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

**SANTA FE COUNTY
BOARD OF COUNTY COMMISSIONERS**

**CASE NO. Z/S 02-4325
LA PRADERA SUBDIVISION
GARDNER ASSOCIATES L.L.C. AND LA PRADERA ASSOCIATES L.L.C.,
APPLICANTS**

ORDER

THIS MATTER came before the Board of County Commissioners for hearing on September 13, 2011, on the application of Gardner Associates L.L.C. and La Pradera L.L.C. (the "Applicants") for a Master Plan Amendment to allow for the creation of 27 new residential lots within the previously approved La Pradera Subdivision and to allow for the previously approved 32,667 sq. ft. of Commercial/Residential area, parking lot and 11 condominiums to be replaced with 17 single-family residential live/work lots. The application also sought modification of the original approval related to water reuse. The application also sought Preliminary and Final Plat and Development Plan approval for the 27 new lots, several lot line adjustments and modification of the type of units developed and Master Plat approval for the 17 single-family residential live/work lots. The BCC, having reviewed the Application and supplemental materials, staff reports and

having conducted a public hearing on the request, finds that the Application is well-taken and should be granted and makes the following findings of fact and conclusions of law:

1. The Application requests the following modifications to the original Master Plan:
 - a. Creation of 27 additional lots within the subdivision;
 - b. Replace the previously approved 32,667 sq. ft. of Commercial/Residential area, parking lot and 11 condominiums with 17 single-family residential live/work lots;
 - c. Remove from the Plan use of reclaimed water for irrigation and toilet flushing on all private lots;
2. The Application also sought Preliminary and Final Plat and Development Plan approval for the 27 additional lots requested through the Master Plan Amendment and Master Plat approval for the 17 single-family residential live/work lots.
3. The property is located within the Community College District, west of Richards Avenue between I-25 and the Arroyo Hondo, within Sections 17 &18, Township 16 North, Range 9 East (Commission District 5)
4. BCC heard testimony from staff, the Applicant's Agent, and members of the Public.
5. The Master Plan, Preliminary and Final Development Plan and Plat, are subject to the Land Development Code and the Community College District Ordinance.
6. At the September 13, 2011, BCC meeting, members of the public spoke both in favor of and against the Application. Favorable comments were made in regards to replacing the commercial development with live/work units. Many of the neighbors who spoke in opposition to the development were concerned about the increase in density and how that would affect property values.
7. Staff recommended approval of the Application subject to conditions.

8. The Master Plan Amendment and Preliminary and Final Plat and Development Plan are in conformance with the Community College District Plan and Ordinance and the County Land Development Code.
9. Under the circumstances and given the evidence and testimony submitted during the hearing, the Application should be **APPROVED SUBJECT TO THE**

FOLLOWING STAFF CONDITIONS:

- a. Provide a minimum of 8 residential units (30%) for affordable housing. A mix of housing types is required for the entire development. The affordable housing lots must be identified on the Final Development Plan. The affordable housing agreement must be modified to reflect the additional lots and must be approved by the Affordable Housing Administrator prior to Final Plat Recordation.
- b. Development of the Master Plat lots, which are located within the Neighborhood Center, shall comply with the minimum Floor Area Ratio (FAR) of .25 and the maximum of 2.0 as required in the CCDO. This shall be noted on the Final Plat and Development Plan.
- c. Coordination with the Utilities Department on final modification of the water lines and meter locations.
- d. Modification and re-filing of Water Restrictive Covenants to reflect new dwellings and maximum water use per dwelling prior to Final Plat Recordation.
- e. The live/work units must be sold as a single unit/lot and can't be condominiumized or sold separately. This shall be noted on the subdivision plat as well as on the individual plats and included in the disclosure statement.
- f. The property must be brought into full compliance including removal of stockpiles, trash and detritus and shall be revegetated prior to final plat recordation.

WHEREFORE, the Board of County Commissioners hereby:

- A. Approves the application for a Master Plan Amendment to allow for the creation of 27 new residential lots within the previously approved La Pradera Subdivision and to allow for the previously approved 32,667 sq. ft. of

commercial/residential area, parking lot and 11 condominiums to be replaced with 17 single-family residential, live/work lots.

B. Modifies the original Master Plan which proposed the use of reclaimed water for irrigation and toilet water flushing on all private lots. The use of potable water is now authorized. Reclaimed water will be used to irrigate common areas only.

C. Grants Preliminary and Final Plat and Development Plan approval for the 27 new lots and several lot line adjustments in Phases 2-6, and 4 Master Plat lots which can be developed into a total of 17 single-family, live/work lots in Phase

I.

IT IS SO ORDERED:

**THE BOARD OF COUNTY COMMISSIONERS
OF Santa Fe COUNTY**

By _____
Virginia Vigil, Chairperson

ATTEST:

Valerie Espinoza, County Clerk

Approved as to form:



Stephen C. Ross, County Attorney

- XIV. A. 5. **CDRC Case # Z/S 02-4325 La Pradera Master Plan Amendment, Plat and Development Plan.** Gardner Associates, LLC and La Pradera Associates LLC (Alexis Girard) Request a Master Plan Amendment to Allow for the Creation of 27 New Residential Lots within the Previously Approved La Pradera Subdivision and to Allow for the Previously Approved 32,667 Sq. Ft. of Commercial/Residential Area, Parking Lot and 11 Condominiums to Be Replaced with 17 Single-Family Residential, Live/Work Lots. The Application Includes Modification of the Original Approval That Proposed the Use of Reclaimed Water for Irrigation and Toilet Water Flushing on All Private Lots. The Use of Potable Water is Now Proposed. Reclaimed Water Will Be Used to Irrigate Common Areas Only. The Request Also Includes Preliminary and Final Plat and Development Plan Approval for 27 New Lots and Several Lot Line Adjustments in Phases 2-6 and Four Master Plat Lots Which Could Be Developed Into a Total of 17 Single-Family, Live/Work Lots (11 Condos and 16,334 Square Feet of Residential Space as Previously Approved to Be Converted to Single Family Lots) in Phase I. The Property is Located within the Community College District, West of Richards Avenue Between I-25 and the Arroyo Hondo, within Sections 17 & 18, Township 16 North, Range 9 East (Commission District 5). Vicki Lucero, Case Manager [*Exhibit 7: Letters in Support; Exhibit 8: Letters in Opposition*]

MS. COBAU: Madam Chair, I'm taking the case for Vicki. This is a little unusual. I'm going to give you a chronology of events. It's included in your staff report on the top of page 2. On June 16, 2011 this case was scheduled to be heard by the CDRC. However, the case was tabled by the CDRC because at the time the applicant was not present. The case was then scheduled to be heard by the CDRC on July 21, 2011 due to lack of a quorum. On August 18, 2011 and with only four members present the motion ended in a tie vote resulting in tabling of the case. Those minutes are included in your packet as Exhibit H.

Due to non-action by the CDRC the applicant has requested that this case be taken directly to you, the BCC for action. Note that the Land Development Code doesn't preclude this action and the BCC can act on this case or direct staff to wait for recommendation by the CDRC. So, Madam Chair, I can go on and read the staff report and you can take action on this or you can have me take it back to the CDRC for a recommendation.

CHAIR VIGIL: Thank you. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Shelley, so the first meeting you said the applicant didn't show up to the CDRC meeting?

MS. COBAU: That's correct. The cases went through the CDRC agenda I think more quickly than the applicant had anticipated and they arrived about five minutes after the CDRC decided they didn't want to wait any longer.

COMMISSIONER ANAYA: Then the second meeting there was not a quorum of CDRC so no action was taken at all at that meeting?

MS. COBAU: There was no meeting because there was no quorum of the CDRC. We have been having issues with members showing up on the CDRC.

COMMISSIONER ANAYA: I want to ask about that in a second. But in the third meeting there was a quorum but it was a 2-2 tie.

MS. COBAU: That's correct. Because we only had four members. So there were two for and two against.

COMMISSIONER ANAYA: Madam Chair, just given the timelines on the project and the fact that it went to the CDRC three times I don't have a problem hearing the case.

CHAIR VIGIL: Anyone else? Okay. This is a public hearing. The applicant is here.

MS. COBAU: Madam Chair, would you like to take a vote on hearing it and then I'll read the staff report on it?

CHAIR VIGIL: Well, is there anyone that wants to move forward with this or is there anyone that wants to take a motion to send it back to CDRC? It's your pleasure. Do you want to move forward? Okay, I'm seeing a consensus to move forward. Shelley, you can present the case.

MS. COBAU: Okay. Thank you. In the summary of the staff report there's a chronology of events regarding La Pradera with approvals from 2003 to the present. It's kind of a laundry list of things that have gone on with La Pradera and I won't go through that. You can read that chronology. The applicants are now requesting a master plan amendment for the La Pradera Subdivision in order to create an additional 27 residential lots. The twenty-seven proposed lots will be created by adjusting lot lines of existing lots to reduce the size of some of the oversized lots in Phases 2 through 6. The applicant states that these smaller lot sizes are dictated by the significant changes to our economy and the market demand for entry-level housing. Six residential lots from the previously approved 16,334 square feet of residential space will be combined with 11 previously approved condo units from Phase I, for a total of 17 lots, in order to create a village concept which will have the potential of being live-work units.

The previous master plan approval was granted with the proposal of utilizing treated effluent for irrigation of common areas as well as for toilet flushing and irrigation of private lots. The proposal was for each home to install a dual plumbing system. The applicants are requesting an amendment to modify their original approval to allow for irrigation of common areas only with reclaimed water. County staff has met with the New Mexico Environment Department who stated that they are supportive of this change because it is very difficult to control what individual property owners do with the treated effluent which leads to a concern for health and safety.

The applicants are also requesting preliminary and final development plan approval for the 27 new lots and several lot line adjustments in Phases 2-6 and master

plat approval for 4 lots which could be developed into a total of 17 single-family, live-work lots in Phase 1.

The project has been reviewed for compliance with zoning allowances for the requirements of live-work units in the Community College District Ordinance, for water and wastewater, for fire protection, for solid waste, roads and access, terrain management, open space, landscaping and archeology, affordable housing and the homeowners documentation will be revised should this be approved.

Therefore the staff recommendation is that the proposed master plan amendment and master, preliminary and final plat and development plan are all in conformance with the Community College District Plan and Ordinance and County Land Development Code. Therefore staff recommends approval of the request subject to the following conditions.

1. Provide a minimum of 8 residential units (30%) for affordable housing. A mix of housing types is required for the entire development. The affordable housing lots must be identified on the Final Development Plan. The affordable housing agreement must be modified to reflect the additional lots and must be approved by the Affordable Housing Administrator prior to this case being heard by the BCC.
2. Development of the Master Plat lots, which are located within the Neighborhood Center, shall comply with the minimum Floor Area Ratio (FAR) of .25 and the maximum of 2.0 as required in the CCDO. This shall be noted on the Final Plat and Development Plan.
3. Coordination with the Utilities Department on final modification of the water lines and meter locations.
4. Modification and re-filing of Water Restrictive Covenants to reflect new dwellings and maximum water use per dwelling prior to Final Plat Recordation.
5. The live/work units must be sold as a single unit/lot and can't be condominiumized or sold separately. This shall be noted on the subdivision plat as well as on the individual plats and included in the disclosure statement.
6. The property must be brought into full compliance including removal of stockpiles, trash and detritus prior to final plat recordation and shall be revegetated prior to final plat recordation.

And I would like to enter the first five conditions to the record, Madam Chair, and note that I believe the applicant has complied with condition 6 regarding the property being brought into compliance with code and they've removed the stockpiled trash and detritus from the site. And I would just like that condition to be restated to say that the property must be revegetated in these areas prior to final plat recordation.

Thank you, Madam Chair, and I'll attempt to address any questions you may have.

CHAIR VIGIL: Are there any questions? Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair. Shelley, on condition number 3. Did staff consider the use of an independent water engineer?

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MS. COBAU: The conflict issue was resolved. I don't believe Mr. Guerrerortiz was involved with this at all. Rich Silva did the review and the letter for the County Utility, and these conditions come from Rich Silva, utilities engineer.

COMMISSIONER STEFANICS: So should we in fact – it says coordination, future, going forward, not past. Should we in fact say something about it would not be Mr. Guerrerortiz?

MS. COBAU: I believe that you could do that, Commissioner Stefanics. We do have the letter in Exhibit D from Mr. Silva. Let's see if I can find which page that is. If you look on NBD-37, you can see that the letter came to Vicki from Karen Torres through Rick Silva, the utility infrastructure manager, and those conditions were directly from him.

COMMISSIONER STEFANICS: Okay. That settles it. Thank you.

CHAIR VIGIL: Further questions for staff. Seeing none, is the applicant here? Please step forward. Is there anything you'd like to address the Commission.

KARL SOMMER: Madam Chair, my name is Karl Sommer. My mailing address is Post Office Box 2476, Santa Fe, New Mexico. I represent Gardner Associates and La Pradera Associates and those are just two entities that are owned by John McCarthy, Alexis Girard for Greer Enterprises and Bobbie Lee Trujillo who's here tonight. Also with us tonight is Oralynn Guerrerortiz. She's the project engineer. She's been on this project from beginning to end. She can answer just about every technical question and code question you might have. We'll be as brief as possible. Staff has on a few occasions now drafted a very, very thorough report and they have accurately laid out the request and the conditions of recommendation. The recommended conditions are acceptable to my client.

What I'd like to do is just briefly tell you why we're here and then go through what it is exactly what we're asking for, how we've addressed the application, and then conclude by what we've done since May when this was in front of you with the master plat request. At any time if you have any questions we can answer them even out of order if you think it's appropriate.

Why are we here? We are here for one principal reason, and that is that the downturn in the real estate market in this country and in this community has had a devastating effect on many, many property owners, developers, homeowners and landowners, banks, everybody has felt the pinch. This development is no exception. We've seen in this community several failed developments, at least one in the Community College District. We saw how Suncorps which was doing Rancho Viejo packed up and left. So the downturn in the economy has had a devastating effect.

Well, what effects are those? It has principally tightened credit on all sides, and by that I mean banks are less willing to lend to borrowers who buy, and banks are constrained from lending to landowners who develop. So the consequence has been a drop in the market. Well, that drop in the market has a consequence on the banks' portfolios, and what you have is banks have a loan/value collateral that they must maintain or they start to call the notes, even though they might be performing. When prices of real estate fall, their collateral drops, and what we are trying to do is maintain our collateral, put this development in a secure financial position so that it can move forward and continue to be a successful venture that will provide housing to working

families in this community. That's why we're here. We wouldn't be here but for that reason.

We're here also asking you for a master plan amendment that was fully within your authority. We're not asking for a variance, we're not asking you to change any policy. We're not asking you to do anything other than add to our density by less than ten percent or about ten percent, which is well within the Community College District constraints. But we're not here just with our hands out asking you. We have done everything we can possibly do to make this a successful venture. They have partnered up with a local non-profit. They are producing housing or working families in chunks of 14 that has cost them money by donations of lots and the like. They have done everything they possibly can to shore up their position and this is part of that effort.

What are we asking for specifically? Mr. McCarthy will go through it. But if you look at the staff report we've met every condition of approval in our last approvals and we are in agreement with every condition that they have here. I will not belabor the point about the economy but in short we're asking for an increase in density, a recognition that the water use that we have established is sufficient, even though we have to transform the effluent use from private to the common areas for the reasons that are in the staff report. We are asking for the conversion of the master plan of the commercial units to live-work units because the market does not support small commercial in this kind of environment and in this development.

We have also addressed the complaints that have been voiced by some of the neighbors. What are those complaints? They deal with basically the untidiness of the development and for a while there the property was being used as a stockpile for debris. There were areas that were being used for the storage of soils and other materials inappropriate and unsightly. Those have been cleaned up. And as Ms. Cobau has indicated the only condition left is revegetation of the areas that have been scarified by virtue of that storage area. All the other stuff has been taken care of.

They're in compliance with all the permits from the State Environment Department. The issues related to the wastewater treatment plant have been complied with and Ms. Guerrerortiz can tell you all about that if you have any questions.

The one remaining issue that I think remains with some of the neighbors and most of the in the Vista Ocaso neighborhood which is a legal non-conforming development made up of 2.5-acre and 5-acre lots directly south and adjacent to this development center around density. This Board knows and has had much experience in the Community College District. The Community College District is where this Commission has put its money in infrastructure. It has said this is where we're going to grow. And the policies of the Community College District are to densify and avoid sprawl and 2.5-acre and 5-acre development and bring people around transportation, the utilities, and still at the same time maintain 50 percent open space. Well, that's called density.

And essentially, this plan is well within the limits of the Community College District Plan. The Vista Ocaso people to the south are worried. They're worried about the values to their 2.5 and 5-acre properties. They're worried about what the neighborhood will become if more people move in. Well, they live in the middle of the Community College District where density is called for. There are floor area minimums, not maximums. Now, I understand their concerns and we've met with them over the course

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of the months since we were last here in May, and we are not going to be able to resolve among us the density issue. They would like us to come down in the density requests. We are simply unable to do so. This development is on the order of being able to make it. We are in the process of doing everything we possibly can. The density is a key component. We're asking about ten percent of the original density increase, which is again not outside the realm of the policies of this Board and we are maintaining the 50 percent open space.

The buffer, in terms of the distance to the houses to the south in Vista Ocaso is being maintained. We're not moving houses into that open space area. Essentially what we're doing is taking larger lots and reducing their size and increasing them by 27. We're not going to be able to negotiate that because there is no room for us to be able to do it. I wish there were because we'd avoid a controversy. We can't. We simply can't.

On all the other issues related to cleanliness or the appearance or compliance with those we are and have addressed them. With that I'm going to turn it over to Mr. McCarthy or to any questions you all might have of us related to this application. And I'll just simply conclude and turn it over to the experts.

CHAIR VIGIL: Karl, let me just find out if anyone has any questions of you. Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. Mr. Sommer, have you had meetings since our May meeting with the residents of La Pradera?

MR. SOMMER: Yes, there have been many meetings since then with members in the association and there were people outside the subdivision that also attended.

COMMISSIONER HOLIAN: Right. But I'm mostly concerned with whether you've had meetings with the people who actually live in La Pradera.

MR. SOMMER: Absolutely, and I believe that where we started out in May, we've come a long way in terms of coming to agreement with people inside the development.

COMMISSIONER HOLIAN: Thank you.

CHAIR VIGIL: Okay. Any other questions? Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair. You have association rules or regulations?

MR. SOMMER: Yes, there are covenants and there are bylaws in the subdivision.

COMMISSIONER STEFANICS: So do the covenants -- let's talk about solid waste. Do the covenants allow individuals living there to use the County or to engage the services of a company?

MR. SOMMER: I'll leave that to Mr. McCarthy but I believe the homeowners association -- do they do it individually, John? It's done on an individual basis and they're not required to use Environmental, Inc. or anybody. There is no requirement either way.

COMMISSIONER STEFANICS: Okay. I guess I should ask staff this next question. Is there any way -- this development is not tied to County water.

MR. SOMMER: It is.

COMMISSIONER STEFANICS: It is?

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MR. SOMMER: It is.

COMMISSIONER STEFANICS: So the new units would be tied to County water as well.

MR. SOMMER: As well.

COMMISSIONER STEFANICS: Okay. That's all my questions for right now.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Mr. Sommer, you made a comment earlier about the surrounding neighbors and you said that they were in the illegal lots and then you said non-conforming. Is it –

MR. SOMMER: Legal non-conforming.

COMMISSIONER ANAYA: Okay.

MR. SOMMER: Their subdivisions were legally approved.

COMMISSIONER ANAYA: It's non-conforming use. I've got it. That's the only clarification I wanted to ask, Madam Chair.

CHAIR VIGIL: Okay. Any other questions? Proceed with your presentation.

MR. SOMMER: I'll turn it over to Mr. McCarthy for his comments and again I encourage you, Ms. Guerrerortiz has the technical information if you have questions about that.

CHAIR VIGIL: Thank you. Welcome, Mr. McCarthy.

[Duly sworn, John McCarthy testified as follows:]

JOHN MCCARTHY: My name is John McCarthy. I reside at 825 Allendale Street in Santa Fe, and I'm the managing member for La Pradera and Gardner Associates for La Pradera Associates. We've had to adapt to the changing economic times as Mr. Sommer has mentioned. What that means specifically is that we're building homes from the \$229,000, three-bedroom, two-bath, two-car garage range to up around \$325,000. This is where our demand exists in Santa Fe such as it is right now.

Since the primary concerns relate to our relationship to our La Pradera homeowners I'd like to mention right now that after our May 10th meeting we asked several members of the La Pradera Homeowners Association, about six of the homeowners to form an advisory committee to assist us in communicating and making the correct decisions for everyone in La Pradera moving forward. Some of those suggestions included our housekeeping and we have cleaned up the site as mentioned. We've also put the second wastewater treatment plant on line. We shut down the first plant and have extensively rebuilt it. So currently we have resolved those problems and what we've also done as a result of meeting with the Vista Ocaso neighbors as well as our La Pradera neighbors is addressed the density issues and we have made changes based on meetings with the advisory committee and with our homeowners. Specifically, the changes that we made were to reduce the density in the Phase 1 area from 20 originally requested own to 17 units. Now those 17 units we ended up with in Phase 1 are comprised of the originally approved 11 condos and only six additional units that were put in place in substitution for the commercial so the commercial is eliminated.

To put the phase 2-6 request in context, all but about 27 of our lots out of the originally approved 152 lots in phases 2-6, all but about 27 of those lots are about 80-foot frontages. So our request is to make it so those 27 supersized lots, and what I mean by that is

they had frontages up to about 135 feet, so our request is not to decrease the size of the norm but to decrease the size of these extra large lots into conformity with the mean size of the lots. And the reason for that is that we can build any of these homes on a 78 to 80-foot lot size.

Secondly, we've conformed with all of the conditions we've represented at the time to our Vista Ocasá neighbors and that includes setbacks from Dinosaur Trail, we provided a 195-foot buffer minimum. We added an additional road section because of concerns about traffic next to Vista Ocasá. So we don't need those extra lots. I could point out where the majority of those lots are located for the benefit of the Commission, but essentially they're on the southern tier, adjacent to the 190-foot to 300-foot buffers that exist between our neighbors to the south. So I'd stand for questions.

CHAIR VIGIL: Questions? Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. Will future residents purchase just the lots or will they purchase a lot plus a residence?

MR. MCCARTHY: Madam Chair, Commissioner Holian, our preference would be to sell lots because that was our original business plan. Part of our adapting to the current market conditions is we find that we have to work with builders in conjunction to put these homes up. The short answer is both are available but the likelihood of an individual buying a lot without a home is very remote because the lending community will not extend credit for a lot and in many cases won't extend credit for a builder to build a spec house. So what's being defined by external issues is that you have to have a buyer in place before you can build a home and consequently absorb the lot.

COMMISSIONER HOLIAN: Okay. Thank you, Mr. McCarthy. And then I have some questions that have to do with water, so is there going to be a presentation on that? Should I save those questions for later?

MR. MCCARTHY: Madam Chair, Commissioner Holian, I can attempt to answer those and ask Oralynn for supplemental information.

COMMISSIONER HOLIAN: So my first question is is all the treated effluent now going to water landscaping it or is some of it still going to homes that exist?

MR. MCCARTHY: Madam Chair, Commissioner Holian, all of the treated effluent is now going to common area landscaping.

COMMISSIONER HOLIAN: Okay. And also has the water treatment – are there one or two water treatment plants on the property?

MR. MCCARTHY: Madam Chair, Commissioner Holian, there are two discrete plants.

COMMISSIONER HOLIAN: And have they been inspected recently?

MR. MCCARTHY: Madam Chair, Commissioner Holian, we're obligated to provide monthly reports to New Mexico Environmental Department and that goes into metrics to make sure that we're in compliance.

COMMISSIONER HOLIAN: And I remember reading something in the packet that you were going for a five-year renewal of the permit and I just wondered if that had been approved yet.

MR. MCCARTHY: Madam Chair, Commissioner Holian, we do not have that final approval. It's quite a lengthy process.

COMMISSIONER HOLIAN: Thank you. And I guess one other question I have is with regard to the live-work units. Has the developer done, or whoever, done any

surveying to determine what the demand might be for those kinds of units out there in our community?

MR. MCCARTHY: Madam Chair, Commissioner Holian, we constantly do update ourselves, but if I could describe the unit that we're building in this way. It's basically a detached single-family home that has an exterior entrance that would allow, for example, a music teacher or tutor or someone other of that type to be able to maintain privacy while having a home occupation business. So our product differentiation is not such that it takes us outside a standard single-family home. It enhances it in those cases where someone would like to have a home occupation.

COMMISSIONER HOLIAN: Thank you, Mr. McCarthy. That's all for me.

CHAIR VIGIL: Commissioner Stefanics.

COMMISSIONER STEFANICS: Madam Chair, and I apologize if somebody's already asked this question. Are you willing to accept all the conditions?

MR. MCCARTHY: Madam Chair, Commissioner Stefanics, yes we are.

CHAIR VIGIL: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. A question for staff. Shelley, did you guys go out and do a site inspection of this property?

MS. COBAU: Madam Chair, Commissioner Mayfield, subsequent to the initial application and some of the complaints that were received regarding the wastewater treatment plant, myself, Ms. Lucero, members of Mr. McCarthy's team and the New Mexico Environment Department went out and inspected the wastewater treatment plant. We have also sent code enforcement out there to make sure that the debris piles and stockpiles were removed as required. So I've been personally to the project and members of my staff have been out there on several occasions subsequent to this application being submitted.

COMMISSIONER MAYFIELD: Thank you. And Madam Chair, Mr. McCarthy, you indicated that there's a homeowners association out in the area that kind of looked at some of your suggestions and they are participants in this also?

MR. MCCARTHY: Madam Chair, Commissioner Mayfield, the advisory committee is comprised of the six or seven homeowners in La Pradera, and they're the ones that have been working with us closely.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Did those folks go out and do the site inspection along with you? Were they invited to?

MS. COBAU: I don't recall any members of the homeowners association were there the day that I was out there for site inspection. I believe it was just Mr. McCarthy's team and County staff at that time.

COMMISSIONER MAYFIELD: Thank you, and Mr. McCarthy, I may have some questions for Ms. Guerrerortiz. But one thing, is the wastewater system plant 1 online or offline?

MR. MCCARTHY: Madam Chair, Commissioner Mayfield, Plant #1 is offline. Plant #2 which is a new, state of the art plant is operating. Both plants can be cross-connected at this point.

COMMISSIONER MAYFIELD: Madam Chair, Mr. McCarthy, why is Station 1 offline?

MR. MCCARTHY: Madam Chair, Commissioner Mayfield, because it has been in operation over five and a half years and in addition to the lightning strike there was

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wear and tear that we had to come in and totally replace all the pumps, essentially all the pumps, install lightning arresters and do a general rehab of the plant.

COMMISSIONER MAYFIELD: Madam Chair, Mr. McCarthy, on that point, are you guys going to rehabilitate Plant 1, are you in the process of doing it, are you going to do it in the future? How are you going to interconnect the two if this is offline?

MR. MCCARTHY: Madam Chair, Commissioner Mayfield, we have completed the rehab at this time. We have also completed the cross-connect plumbing and the only issue remaining is cross-connecting the electronics. We have two discrete electronic control systems and we're trying to combine those but still maintain the ability to operate these plants independently.

COMMISSIONER MAYFIELD: Thank you, Madam Chair and a question again for staff. Shelley, so on your scenario that you gave to us in your memorandum, under the wastewater and water, is this for Plant 1 or Plant 2, what the capacity is?

MS. COBAU: Commissioner Mayfield, this is going to apply to the entire site. We do have, if you look at the NBG-41 in Exhibit D, there is correspondence from the New Mexico Environment Department that indicates that their discharge permit remains fully effective and enforceable by the New Mexico Environment Department who oversees the wastewater treatment plans at La Pradera. The County doesn't oversee those, and I would just say that Orallynn can answer specific questions I'm sure regarding the functionality of those plants.

COMMISSIONER MAYFIELD: Thank you, but Ms. Cobau, going back to your memorandum, the current capacity of the plant exceed 40,000 gallons per day. So is that the capacity of both plants together, or just one or just two?

MS. COBAU: I can't answer that question, Commissioner Mayfield.

COMMISSIONER MAYFIELD: Ms. Guerrerortiz?

[Duly sworn, Orallynn Guerrerortiz testified as follows:]

ORALYNN GUERRERORTIZ: I'm Orallynn Guerrerortiz with Design Engenuity. We're at 1421 Luisa Street. The two plants together have a capacity of 48,000 gallons per day.

COMMISSIONER MAYFIELD: What does each individual plant have?

MS. GUERRERORTIZ: The first plant has capacity of 12,000, and the second plant has a capacity of actually 30,000, so together it's actually 42,000.

COMMISSIONER MAYFIELD: Ms. Guerrerortiz, what is the current homeowners out there using?

MS. GUERRERORTIZ: I believe – John would know this better – 70 homes are connected. We've got flows of about 8,000 to 9,000 gallons a day.

COMMISSIONER MAYFIELD: And just from testimony back in May there were concern with Plant 1. What were the big issues if you guys had capacity on Plant 1? You weren't being able to sustain the 8,000 at the time, you had 12,000 capacity? What were the issues?

MS. GUERRERORTIZ: No, actually, we were having problems communicating with the plant and we found that the plant had probably either dealt with a lightning strike or a surge. Several of the pumps had been blown, and so the plant wasn't really operating. So that's why we brought the other plant on line immediately. Luckily, we have two parallel plants and they're very well interconnected.

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COMMISSIONER MAYFIELD: And with future growth of this proposed subdivision, what do you anticipate capacity coming in?

MS. GUERRERORTIZ: We anticipate a flow close to 32,000 gallons, so we have excess capacity in our plant.

COMMISSIONER MAYFIELD: And going back to the permitting, you still need to wait on some permitting from the state?

MS. GUERRERORTIZ: We made our submittal, I think it was in February. The Environment Department is a little understaffed currently and our staff planner went on maternity leave for several months. She said because we've never had an issue with our plant we're a fairly low priority, so we're kind of low on her pile. But she's told me that the submittal is complete and we're just waiting to get to the top of the pile for it to move through.

COMMISSIONER MAYFIELD: Could you give me a statement of this somewhere, how do you get back to online? You don't have to have it permitted to get it online? You don't need final approval to get it online?

MS. GUERRERORTIZ: When we got phases 2-6 approved, we actually constructed the second plant fully, built the entire thing out, and we had it just sitting on the ground not operating. We filled it with clean water and left it there. And so it was always ready to go.

COMMISSIONER MAYFIELD: Madam Chair, do you have it online now?

MS. GUERRERORTIZ: Yes, it's currently working. It's actually an Arenco plant that's set up as a number of pods, and so we've brought several pods online, and as we find we need more capacity we can add additional pods. Not add them, just turn them on. They're already out there.

COMMISSIONER MAYFIELD: Do you need state approval to have that operating plant online right now?

MS. GUERRERORTIZ: No, we have our state approval.

COMMISSIONER MAYFIELD: For Plant 1?

MS. GUERRERORTIZ: For both plants, sir.

COMMISSIONER MAYFIELD: For both plants.

MS. GUERRERORTIZ: Yes.

COMMISSIONER MAYFIELD: So then what are you waiting state approval for then?

MS. GUERRERORTIZ: Oh, it's your renewal that happens every five years when you have a groundwater permit. Every five years you're required to resubmit and just tell them we know where you are and kind of document the capacity and where the current flows are and that kind of information in a nice clean package. So we did that as is required.

COMMISSIONER MAYFIELD: Okay. Thank you, Madam Chair. Thank you.

CHAIR VIGIL: Okay. Any other questions? Seeing none, is there anyone else from the applicant that would like to address the Commission? This is a public hearing. Is there anyone out there in favor of this project that would like to address the Commission? Would you please stand and come forward. Is there anyone else? Please come forward. And you do need to get sworn in. And you can, sir, wait and get sworn in.

[Duly sworn, Ellen Heath testified as follows:]

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ELLEN HEATH: My name is Ellen Heath, and I live at 65 Bosquecillo in La Pradera. And I'm coming here, I own a home in Phase 1 and I'm coming here in support of the revised master plan. I also served on the advisory committee that Mr. McCarthy in the effort to develop a consensus on the revision of the plan. And I know that there's concern among some of the original owners in La Pradera about dropping property values and the increased density that's being asked for. And I'm coming from the position that the world has changed around us and that we're being asked to change with it in order to get things moving again, and that this is a good way for us to start here.

With regard to the details of the master plan, none of us on the advisory committee like the idea of the commercial area, and we didn't think it was viable anyway, and so the live-work homes seemed a really good alternative. When we were concerned about the number of them the developers agreed to reduce the number to everyone's satisfaction.

I can see people who are accountants, teachers, consultants, therapists, moving into those homes and being quite an asset to the community, so I'm very much in favor of it. And with regard to the increased density in phases 2-6, a ten percent increase does not seem excessive to me. And also there's a concern that even if the master plan is approved the buyers may not necessarily come. And my perspective is affected by the fact that I drive through Oshara every day and it's a very sad reminder that a wonderful idea can fail in this economy, and I hope that doesn't happen to us. And I know that we need a certain number of homeowners paying dues to maintain our landscape and our roads and our community areas, and I know that we need a certain number of homeowners to bring the dream of La Pradera to the reality. And we all bought into that vision and hope that it will succeed.

And there's no magic bullet under these difficult circumstances but I think this master plan gives the developers the flexibility they need in order to adapt to these very difficult times and to ensure that all of us in the long run have made a very good investment in this wonderful idea. And thank you very much and I hope you will approve.

CHAIR VIGIL: Thank you, Ms. Heath. Next. Please state your name and address for the record and be sworn in.

MICHAEL HENDRICK: My name is Michael Hendrick. I live at 103 Bosquecillo in La Pradera, in Phase 1.

[Duly sworn, Michael Hendrick testified as follows:]

MR. HENDRICK: Like Ellen Heath did I'd like to speak in support of the revisions. Ellen was very thorough. There's not a lot I can add to what she said. I really reiterate the notion that situation at Oshara, we'd hate to see that repeated in La Pradera. I personally feel, living in Phase 1 as I do, I think Phase 1 and 2-6 will all benefit if we have an increased number of homeowners living out there. I think one issue that will improve will be safety. The more people we have living out there the better we're going to be as far as being safe and free from robbery and that kind of thing.

Families that are moving into phase 2-6 now are young families, most of whom have children. They are people who are where I was 40 years ago, probably where a lot of you were then too. This is a big step up for them, to own their own houses, detached houses. These are nice houses, and I think that the plan, in addition to the things that it does for La Pradera that Ellen has mentioned, basically supports some of the goals that Santa Fe and Santa Fe County have in terms of providing housing for people that otherwise could not afford to live in the Santa Fe area. This project addresses those needs.

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I understand, I've talked to people who live up in Vista Ocaso. I understand those concerns. Those are nice houses. They're big lots. They're horse properties. If I lived up there I might feel differently. But I don't. I live down in La Pradera and I think that the plans the developers have will benefit everybody that currently lives in La Pradera and the people who will come in later. Some times some people have concerns about the work-live arrangement. My understanding, and you're better informed than I am, obviously, but I think pretty much anybody in the county can have a live-work situation in their house as long as they limit the number of people who come on a daily basis to see them, whether an accountant, an attorney, a tutor, a piano teacher or not because there's not going to be people flooding in here. We were at a meeting and someone was concerned that the person was going to buy a house, they were going to operate a church and there'd be 300 people coming in there on Sunday morning. This is ridiculous.

The work-live notion is very modest. It will not increase density, to my understanding anyway, much at all. Again, as Ellen said, the idea of the commercial property was a nice idea. It was part of the Community College District idea. It was a good idea; it didn't work. It didn't work at Oshara, and there are a couple of businesses at Rancho Viejo that are hanging and there in fact you approved a liquor license for one of them tonight. It's a new restaurant that took the place of Lucky Bean and we hope the Capitol Grill does well. There's a lovely market there, the Rancho Viejo Village Market that seems to be thriving, but there's just two small businesses. So that concept didn't work.

Well, now let's try something different. Let's build some affordable homes. We've got the Community College which is a resource. We've got the church. We've got the area where growth is beginning to happen in Santa Fe. Some people don't like that; I can understand it. But this is something that's going to be positive in the long run and I really, sincerely don't think that it will negatively affect the folks up in Vista Ocaso. They've had to live with Rancho Viejo to the south. We're a much smaller operation. There won't be much traffic and I think basically this will work.

I'm sorry to be so long-winded. Thank you for your time.

CHAIR VIGIL: There's a question for you. Hold on, Mr. Hendrick.

COMMISSIONER ANAYA: Mr. Hendrick, would you support this applicant at this time if the density would have increased in the Phase 1?

MR. HENDRICK: It did. We've increased – we've added 17 units to Phase 1. They're right around the corner from my house.

COMMISSIONER ANAYA: As I'm reading your letter and the staff recommendations it went from 21 to 17. So clarify that for me. I guess I don't understand what you mean.

MR. HENDRICK: I think there were some situations – when they took the commercial property, the square footage and divided it down, there were lots very close to commercial property. Now, one in particular would have been impacted by houses very close to it and the buyer had no idea it would ever be there. Several properties. So these – I think there were two, possibly three – these owners were concerned about this. They bought lots, built houses with the assumption that they were going to be looking at what might be commercial property down the road much later. And now they were going to be looking at houses close to them that they hadn't anticipated. So the needs of those individuals, the advisory committee met with the developers on behalf of the homeowners and argued for a

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reduction of density because of that fact. Because these were existing houses that were there and in good faith had not expected to have [inaudible] So that's why it dropped from 22 to 17.

COMMISSIONER ANAYA: Okay, Madam Chair. I wasn't picking on you, Mr. Hendrick. I was just reading your letter and you're supportive in your letter. You say, I favor the developers' plans to increase density in all phases. I understand their concerns. However, the developers have modified their original La Pradera plans and are building four fewer homes in Phase 1.

MR. HENDRICK: This is because they were affecting homes that were already there.

COMMISSIONER ANAYA: Thank you, Madam Chair. Thank you.

CHAIR VIGIL: Any other questions. Thank you, Mr. Hendrick. Is there anyone else who's in favor of this development that would like to address the Commission? Hold your hand up or forever hold your peace, because there will be a closure of the public hearing after we hear from the opponents. Seeing none, Mr. Graeser, did you want to speak in favor? Okay. We're going to now here from those who are opposed to it. Mr. Graeser.

CHRISTOPHER GRAESER: Good afternoon, Christopher Graeser, 227-M East Palace. I'm an attorney acting under oath. I think the primary concern - I do represent several neighbors in both Vista Ocaso and La Pradera. And there's three primary reasons they object here. The first is simply a procedural one. As you heard, CDRC met on this, they heard it, they took a vote. It was a tie; they had to wait for their next meeting. The developers are under a time crunch and they don't want to have to wait for that. But you know what? The code requires them to go to CDRC. Article V, Section 5.2.6.b of the code says any substantial change in land use or an increase in density or intensity of development in the approved master plan requires approval by the County Development Review Committee and the Board. It has to go to CDRC and CDRC has to recommend approval. That hasn't been done and with all due respect I think that needs to happen before this Commission can act on it.

It's not just a hoop, it's an important part of the process because the CDRC is charged with evaluating the application on a number of bases, among those, impact on adjacent lands, viability of proposed phases. That's what we're here talking about is the viability of this development. The CDRC needs to look at that and make a recommendation to you so that you can act on the basis of that recommendation and with the benefit of that recommendation. This isn't a situation in which the CDRC sat on this and didn't act for six months. There was no quorum one month. That's not fair to the developer but it happens. They met on it. They tried to act. They didn't get a motion passed so we simply have to wait for the next meeting.

The second one is a fundamental fairness issue. [Exhibit 9] In 2005, when this was approved, it was an initial approval and an amendment, the developers met with the neighbors and they made an agreement. There was a lot of back and forth. There was a lot of negotiation and they reached an agreement on density and on lot layout. In fact they agreed on everything. There was one remaining issue which was they didn't agree on the width of the buffer and in fact the CDRC, or the EZC at the time simply accepted the buffer the applicants were proposing and nobody appealed that. But at the time what got them approval is the developer agreed to reduce the density of lots in phases 2-6 from 201 to 158, and to put the large lots along the southern side of the development which faces Vista Ocaso. And those were two very important points of the agreement. And now they're asking for a do-over on that. They made

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their agreement, their business plan didn't work out, and now they're coming to you for a bailout. And simply that bailout is on the backs of the Vista Ocaso residents.

The concern – what's the point of making an agreement if it's not going to be an agreement, it's going to change as market conditions change. It's not like no one understands that market conditions change and as Mr. Sommer said this development is on the brink or on the border of being able to make it, but it would be worse is for the development to be approved and then it still to fail, and then to have all these small lots out there with no developer working on it.

The second issue just has to do with the submittals. You can look at this as a ten percent increase. You can also look at this as a new 27-lot subdivision, 27 plus 6-lot subdivision. We don't have particular heartburn with the change from the commercial to the residential so we're not making an issue of that. But adding 27 new lots, that's a good sized subdivision that would come before you and there have been issues with this subdivision. There have been utility issues; the reclaimed water thing didn't work out. The septic treatment plants weren't working, they were stinking up the neighborhood, and for that matter there was junk all over. None of that was cleaned up until they needed approval to come back and it's already been a couple months and I don't think anybody, at least that I represent has confidence that in fact those utilities are going to continue working, the septic is going to continue working, that water lines are adequate to serve all this development and just being split. And we don't feel that the developer has made full new submittals for what is just going to be an increase in intensity. It simply is not well enough thought out at this point. It's not a minimal change; it's a significant change.

I don't want to give the impression that my clients aren't willing to work with them. As Mr. Sommer said, quite honestly we have no common ground; there's nowhere to go. It's simply a decision that this Commission needs to make. As far as what we're asking for, we're asking for you to deny the amendment, to uphold the original agreement that the developers made with the neighbors and that the neighbors relied on. The gentleman that just spoke, Mr. Hendrick said, well, we reduced the density from the initial proposal because people were living there and they hadn't anticipated new houses and in good faith they didn't expect new houses. Well, you know that applies to my clients too. And they did in good faith because they in good faith negotiated.

We're asking, if you do approve it, which we request that you do not, that you do not allow administrative approval of the lot layout, which is what they're asking for, since the lot layout is such a big issue. The negotiated agreement was that the large lots would be along the southern boundary. If we allow administrative approval of lot layout then that's not a public process and we don't really have input on that very significant issue so we're asking you not to allow that to be done by the Land Use Director but to require it to come to committee.

And we ask you not to allow subdivision of any of those lots on the southern boundary.

The third issue is the covenants. [Exhibit 10] The covenants of the subdivision and Commissioner Stefanics, you asked about covenants. Well, in fact the covenants prohibit subdivision. Section 3.2, no subdivision of any lot shall be permitted. I understand the Commission doesn't have authority to enforce the covenants but I think the covenants give you an idea of what everybody in La Pradera bought in expecting, and what the neighbors expected to see and what the developers initially intended. Now, they don't want to comply

with that. So while you can't enforce that covenant, that would have to be another one of my clients to enforce that in a separate action, you can – you have full discretion to deny this because it doesn't comply with the agreement originally made in the concept that everyone originally had.

Calling a 135-foot lot supersized I think ignores the real issue which is they were big because the agreement was made, and the issue is density but the issue is significantly lot layout also. That's all I have if you have any questions.

CHAIR VIGIL: Thank you. Are there any questions for Mr. Graeser?
Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, and Mr. Graeser, I don't know if you're the appropriate person to answer this, but does the homeowners association meet regularly? Are there regular meetings?

MR. GRAESER: I'm sorry, Commissioner Mayfield. I'm not the person who can answer that. I'm sure that one of the applicants could.

COMMISSIONER MAYFIELD: Thank you.

CHAIR VIGIL: Would someone like to answer that from the applicant's end?
Do the homeowners association meet regularly?

MR. MCCARTHY: Madam Chair, Commissioner Mayfield, there is mandated annual meeting with the homeowners and with this current situation since I believe February we've had repeated meetings with our own homeowners to which the public at large was also invited to those meetings. The public was notified within 200 feet of La Pradera boundaries.

COMMISSIONER MAYFIELD: Thank you, Mr. McCarthy.

CHAIR VIGIL: Thank you, Mr. McCarty. We are on the section of the hearing to hear from the public with regard to those who oppose this project before us. Can I see a show of hands of those who oppose it? Okay. And how many of you would like to address the Commission? All of you who would like to address the Commission would you please stand and be sworn in simultaneously?

[Duly sworn, Ron Gallegos testified as follows:]

RON GALLEGOS: The name is Ron Gallegos, 120 Old Dinosaur Trail.

CHAIR VIGIL: Welcome, Mr. Gallegos.

MR. GALLEGOS: As I said, myself and my neighbors are here to oppose this action. The first thing, we are a little insulted that they didn't feel it was necessary to abide by the CDRC's decision and come forward and basically say we don't care what the say or what they're going to do, we're coming before the BCC. I think that says a lot to the constituents that the developer can not abide by the rules and everybody else will have to.

Another thing, they're talking about all the meeting that were had with residents of La Pradera and you did ask a question about where were the meetings held with the owners of La Pradera. Residents of the surrounding areas don't attend those meetings. We did have one meeting with them at the Community College, very contentious between the residents of Vista Ocaso and residents of La Pradera. It was essentially, the tone of the meeting was that no concessions would be made. Shortly after that meeting Mr. McCarthy contacted residents of – most of them were from Phase 1 that were concerned about the commercial plan that was scheduled for that area and they arranged a

deal with the residents of Phase 1 to eliminate the original plan and go with a lower density. That's why you have the individuals here saying we support this because that is the area directly surrounding their property lines and they could get the reduced density that they were asking for.

They are so – first of all, commercial property in that area which as we all know they never had any intention of them building. They're also being threatened with failure as the Commission was. If this doesn't happen, we're going to fail. It's going to be like Oshara. You're going to have to pick up the pieces, scared the residents of Phase 1. If this doesn't pass, if you don't support this we're going to fail just like Oshara and that's not what you want. They were speaking about the buffer that we have with Rancho Viejo. That's a very different story. The buffer is at least 600 feet so it's quite a bit of a difference, and there is no thoroughfare through that area. It's all open space. So it's not like the one we had originally negotiated with La Pradera which is much smaller than 600 feet. And like the lawyer said, the reason these supersize lots are so big along that area is because that's what was negotiated. And these lots in Phase 2 actually happen to share property lines with myself. That's one of my big concerns. That's directly going to impact myself, just like it was directly impacting the residents of Phase 1.

I feel for their financial position. I own property around Santa Fe and we all come into situations such as this, but it's not the County's responsibility to provide collateral to a builder. The CDRC tabled it last and the reasoning behind that was that they allowed La Pradera to meet with the residents of Vista Ocaso to try to work it out as CDRC and BCC have recommended several times in the past [inaudible] We did meet with their lawyer this past Friday and pretty much the outcome was we're not willing to do anything. We did try to suggest several options, options that would even allow them to have the collateral if they would, but if conditions improved that they would go back to the lower density, but it was made pretty clear that they weren't willing to – they were supposed to get back to us but it was made pretty clear that they weren't willing to do any negotiating with us. The negotiating was already done; they took what they had to the Phase 1 people because it looked bad to have residents of La Pradera here objecting.

Commissioner Mayfield, if you recall, you had seen the pictures of the waste that was there before and they said that they made a good effort to clean it up. They make it sound like it's all taken care of but essentially what they did is they took the large debris out and then they just spread the rest of it out into the depressions that were there. So if you walk out there it's debris, aggregate, tree stumps, other such construction materials that were just spread out over that property, probably raised it up a good foot or more in some areas.

Their lawyer talks about abiding by the Community College District. Well, they asked to be in the Community College District. They can't use that as a ploy. Our 2.5-acre lots, we had an expectation. We came to an agreement in 2005 that that's the way it was going to be. He also used words like anti-sprawl to kind of go with Ms. Holian who is anti-sprawl.

That pretty much covers everything. I'm willing to answer any questions.

CHAIR VIGIL: Any questions? Commissioner Mayfield.

COMMISSIONER MAYFIELD: I have a question for staff. Madam Chair, Mr. Ross, Mr. Gallegos and also Mr. Graeser brought up maybe that we should not hear this based on our rules. Can you give me your thoughts on that please?

MR. ROSS: Madam Chair, Commissioner Mayfield, I was just talking to Jack about that and I understand it has been on the CDRC agenda without a decision and the decision was made to bring it up because normally three times is the limit of the notice. The code limits the viability of the notice to three meetings. Otherwise you have to readvertise the whole thing and start over again. So the decision was made to bump it up.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Ross, does the code allow it to be remanded directly to us or does it say it has to be noticed again?

MR. ROSS: Madam Chair, Commissioner Mayfield, it doesn't address this specific situation but it does address the three-notice issue.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Ross, what is your recommendation to us as legal counsel?

MR. ROSS: Well, I don't think it offends the code to hear it. The CDRC is just a recommending body on a master plan; you're the final decision makers.

COMMISSIONER MAYFIELD: Thank you. Thank you, Madam Chair.

CHAIR VIGIL: Any questions for the testifier? None. Thank you very much. Next.

[Previously sworn, Adriene Simpson testified as follows:]

ADRIENE SIMPSON: My name is Adriene Simpson. My address is 15 Los Caballeros.

CHAIR VIGIL: Please proceed and welcome.

MS. SIMPSON: Madam Chairperson, Commissioners, I think none of us are really – I wish this was a two-part argument. None of us are against the changes that were made in the commercial part of this development. All we're opposing is the 27 lots. So we're not being unreasonable. They can do whatever they want except for those 27 lots as far as we're concerned. Because we had this argument in 2005. And part of the reason that Rancho Viejo is probably successful is that it is surrounded by larger lots. That was part of their recipe for success there. Now we're talking about taking the larger lots, of which large is kind of a euphemism. I don't think any of them are even as large as lots in Phase 1.

So they're proposing to divide those down into tiny lots and I think the only reason we're here really is because of finances. Their note is coming due and they need collateral and it's all been devalued and somehow I supposed the bank is valuing it by the lot. So by approving these we're letting banks dictate the development of Santa Fe County, basically. I'm sure the economy is a variable to dictate development I suppose, but in this case we've already made some concessions. It's not like they can't move forward. I think they're about 40 percent bought out of the lots that are available with at least 60 percent of the lots still to be developed.

So now they are proposing to degradate the neighborhood more by dividing these into the tiniest lots they can, and then partnering with Joe Boyden, the builder, to complete them. I don't know how many of you saw the Channel 4 news story on Joe Boyden and the quality of the homes he built in Edgewood that are in question. I've seen

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the quality of the homes that are going up in Phase 2 and they're nothing like the quality of the homes that were in Phase 1. We had no problem. When I moved out there 25 years ago I was in a conforming Extraterritorial Zone area that was 2.5-acre minimum. There was nothing illegal or non-conforming about them. That's how it was. I thought the area would be developed – this property had about 80 homes on it.

So now I've accepted the fact that the Community College District development program is a fact of life so I'm accepting that there's four times already the amount of homes that would have been on there. And it's supposed to be dictated by water requirements. I think the original 2.5-acre parcels were based on the availability of water and now that they have County water out there there is no limit. There's literally no maximum of homes per acre. So maybe the water's not limited but their wastewater facilities are questionable at best. I'm not sure how everything is operating now. I know obviously we've gone over the problems in the past.

I was under the impression that the first wastewater plant, or the second one that is now supposed to be operating, all this time it's been a big holding tank that they were just pumping over to the other one. There was no treatment going on there at all. Now, I don't know what the status of that is. It just goes to show that this is a scramble to save themselves. So they're not going to invest anymore in infrastructure to dig up the street and put in the proper water lines to these lots. The County is probably going to approve it because they have no regulations and codes like the City of Santa Fe. So these are going to be homes that once again, are not going to be up to code. Well, they'll be up to County code but there is no County code. So they're going to be up to whatever the Utility Director thinks is okay.

A 3/4-inch service line is not going to serve two houses efficiently. They'll have water but they won't have the proper pressure. And they're not going to dig up the street and do it the way it should be done. And we did meet with Mr. Sommer this week to try and come up with an alternative with the collateral situation. We agreed that maybe they could add some more lots on the interior, still leaving the exterior lots bigger in line with the way Rancho Viejo was developed and hopefully any future development. And we also suggested that maybe Phase 6 take on more lots because the likelihood of them – Phase 6 is the big debris pile, basically. The likelihood of them investing more money to put the infrastructure in there to complete Phase 6 might be questionable. So if they added more lots there we may never see them in reality.

So I just want to say that I don't think that the bank should be dictating the development of Santa Fe County and that they should stick with the original agreement or meet with us and agree on a limited number of lots on the interior and in Phase 6. That was the original intention, I believe, of the CDRC to delay this was so that we could meet and come to some sort of agreement. But they don't want to negotiate, so that was a waste of time.

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Did you provide any number of lots that you suggested? A specific number of lots?

MS. SIMPSON: Ten.

COMMISSIONER ANAYA: You said you submitted, as a group you submitted a recommendation.

MS. SIMPSON: It was an oral suggestion at the meeting. We were there as a group. Nobody objected to that.

COMMISSIONER ANAYA: Thank you, Madam Chair.

CHAIR VIGIL: Any other questions? Ms. Simpson, where is Los Caballeros in relation –

MS. SIMPSON: In Vista Ocaso.

CHAIR VIGIL: Where is it in relation to La Pradera?

MS. SIMPSON: It's on the ridge right above La Pradera. I look down.

CHAIR VIGIL: You're on the north side?

MS. SIMPSON: On the south side. The freeway's on one side and I'm on the other.

CHAIR VIGIL: Okay. I understand. Thank you very much, Ms. Simpson.

MS. SIMPSON: And as far as the 2.5-acre lots being horse properties, I have one of the horse properties out of the 38 or so homes out there, there are six of us with horses. It's not some sort of elite community. And most of the people are the same types of people that are buying into this. They've been there for years, it seems like to the people that are buying into this new phase of La Pradera. The Phase 1 La Pradera homes cost probably three to four times more than any of our original homes did. So we're just trying to keep a median home price out there, somewhere between \$250,000 and \$350,000, I suppose, just to maintain our property values. And also to discourage the gang signs that have been turning up on all of our junction boxes and things around our neighborhood ever since these new lower-cost Homewise homes have gone in there. I don't know. I'm not saying that they're all gangsters over there but it's a different kind of neighborhood than what we've had in the past.

CHAIR VIGIL: Thank you very much, Ms. Simpson. Is there anything else you'd like to add?

MS. SIMPSON: No, thanks.

CHAIR VIGIL: Next. Please state your name for the record and your address.

[Previously sworn, Maureen Cashmon testified as follows:]

MAUREEN CASHMON: My name is Maureen Cashmon. I live at 20 Arroyo Viejo Road, and thank you for letting us address you. I was proud of the group when this first plan came before the EZC and the EZA and we negotiated in good faith. The homes that were proposed, the density was way too high. We negotiated down, the Commission, the EZA approved a lower density. They thought that La Pradera had negotiated in good faith with us and they thought that the reduction in density was appropriate. And even though we requested a 300-foot buffer like our neighbors, Rancho Viejo have given on the other side of the development, the Commission at that time, or the EZA felt that 195-foot buffer was adequate, even though the Community College District plan allows for special provisions for existing neighborhoods.

Now to go ahead and change the density and if you approve this you are bringing it very close to what was originally proposed. We're asking this Commission to keep that good faith effort that you gave to us as voters. We know economic conditions have

changed. I can sell my house if I choose to right now, but it's at a very different economic condition than it was in 2005. La Pradera can sell those lots right now. At market value, just like I would have to sell my home at market value, not what I hoped to get in 2005; what is existing right now. This is America. That's what happens. They took an investment risk. They were hoping to realize a profit just like my home. When I sell I hope to realize a profit. Right now we wouldn't sell our home. We first love where we're living, but we wouldn't sell it. It would be very different than what we could get in 2005.

The Community College District, I have pored over that since 2005 when we met and we discussed La Pradera. One of the things, one of the centerpieces of the Community College District Plan allows for we don't want the sprawl. We want mixed use commercial and residential development. So we can have a rich network of highways and roads that everyone doesn't have to go into town. We can reduce the traffic on our infrastructure by eliminating that commercial development, which was envisioned, maybe a little coffee shop, maybe a little bit of ice cream store that my children would bike to. Now that has been eliminated.

I understand why Phase 1 might not want commercial development, and we can live with that. But I think also if you approve this what you have done and what the last night is you pitted neighbor against neighbor. You heard people from Phase 1 talk about, well, we negotiated with the developer to reduce the density in Phase 1. Our people in our development have tried to talk to the developers and saying, okay, we understand you want more density. We don't believe it should happen. But if you do, please don't put it on the side right next to the existing neighborhood.

Now, to say that the CDRC met three times, well, we've been here for all those meetings. It was not our fault that the developer didn't show up at the first meeting and we waited, and the CDRC waited, and they said we will give the developer a certain amount of time to show up. The developer didn't show up. So to say now, okay, three times, but now you have to go ahead and look at this, it should go back to the CDRC. However, I sit on boards for Santa Fe Public Schools, so I know also too that CDRC is only a recommending body. You are the approval officials.

I know that La Pradera has said that they've tried to be a good neighbor. However, I can tell you many in the existing neighborhood of Vista Ocaso do not believe that and one example, and I think there is some disappointment, some outrage to be back here in front of this Commission. La Pradera decided they were going to gate our road that belongs to the County. That we have used for many, many years. Only, only until we hired a lawyer at our own expense did they decide they would not gate those roads. That was a suggestion from Phase 1. They wanted a gated community. We don't want to live in a gated community. This is Santa Fe. This community should be for all of us; not for a select few. But it was only until we'd hired a lawyer to stop those gates going up – we tried to talk to the developer and say, don't put up those gates. How are our school buses going to get to our community? Well, we'll make sure that we open it up. But we said, what happens when the school bus comes early? Well, the school bus has to reroute around it. That's not being a neighbor.

So we're asking, we're asking that you keep the faith that we had when we came back here and we negotiated in 2005 with the EZC and the EZA. They approved a development. We know market conditions have changed. Market conditions will change

again. We all believe that. Whether it's in five years or ten years, this will have changed. We are a dynamic community. We're a dynamic country. We will get back to where we were. We're asking don't make a short-term decision that has long-term consequences for our area. If you do decide to approve this, we ask, and I think you've heard everyone from [inaudible] say please do not put that density on those lots on the south side. Put them up next to the highway. Will that take the developer some effort to do that? Yes. But we shouldn't have to have the density next to us.

And so that's – we would like you to first of all honor the – I know everyone has said they're okay to let the commercial development go. I'm not necessarily in agreement with that but that's a decision of this Commission because later on, Rancho Viejo, when they started out could not support a coffee shop, could not support a grocery store. They're supporting those now. Later on the commercial development might support a little book store, a little coffee shop, a little ice cream place. That's part of the Community College District Plan. So everyone doesn't have to come back into town to get basic things. To have a community. A community is more than just houses.

So we would ask you not to support this plan as it is being brought forward to you. If you do approve it we are asking that you do not approve the way that they want to put those 27 homes. I find it interesting that Phase 1 is supporting the development because the contractor/developer was willing to negotiate down a level of development. We from Phase 2 through 6, and this has been a history of that property, 2 through 6, we're going to put in the high density there.

We've lived there many, many years. We understand, as Ms. Simpson said that times have changed. We have changed. We support the Community College District. But don't just gut and pick and choose from that plan. The whole point of that was to develop mixed use, residential, commercial. That was the plan. I've seen that plan work in other communities. It isn't easy to get to that point but it does work. It may take longer than what you hoped and that was part of the thing with Oshara. By the time they finally got their approval market conditions had changed. Does that mean that Oshara's concept is dead? No. It may come back. But will there be somebody different developing that? Probably. And will it take many years? Sure.

Santa Fe has been here for over 400 years. We've got a rich history. La Pradera will be here for many, many years. Vista Ocaso has already been here for many years. So we're asking you please do not support 27 more lots in phases 2 through 6. Honor the commitments of previous Commissioners, commitments to this community.

CHAIR VIGIL: Thank you, Ms. Cashmon. Anyone else? Do you have any questions of Ms. Cashmon? Okay. Questions? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, I have three questions and whoever can answer them I'd appreciate it. On the Phase 1 build-out, is that 100 percent? What's the percentage on Phase 1?

MR. MCCARTHY: Madam Chair, Commissioner Mayfield, Phase 1 had originally approval for 80 dwelling units, of which 11 were the condos. Out of the remaining units we have sold approximately 61 of the standard lots, and that includes duplexes. So we're up around 68 units sold.

COMMISSIONER MAYFIELD: Thank you. Madam Chair, Mr. McCarthy. Phase 2, has anything been built on any piece, any lot in Phase 2?

MR. MCCARTHY: Madam Chair, Commissioner Mayfield, in Phase 2 there have been 15 lots already built upon and homes.

COMMISSIONER MAYFIELD: Is that 1-5 or 5-0?

MR. MCCARTHY: 1-5.

COMMISSIONER MAYFIELD: Thank you. On any other phase has anything been built?

MR. MCCARTHY: Madam Chair, Commissioner Mayfield, in Phase 3 the similar number has been built.

COMMISSIONER MAYFIELD: Thank you. Madam Chair, a question for Mr. Ross or Mr. Kolkmeier. Would there be anything right now to prevent a homeowner in Phase 1 or the current homeowners in Phase 2 that have built, or Phase 3 to come here and ask us for a lot split to put more density on the current lot they own?

MS. COBAU: Madam Chair, Commissioner Mayfield, as part of a previously approved subdivision with a pretty strict water budget I don't think you could anticipate any further land divisions will be occurring in La Pradera Subdivision. Certainly someone could come in and ask for a variance and there's nothing that would preclude them from doing that but it wouldn't be supported because it wouldn't have the water. I'm sure that the covenants in the subdivision themselves prevent further subdivision.

COMMISSIONER MAYFIELD: But Madam Chair, Shelley, that's kind of like what we're asked to do right now on this Phase 2. There was already agreement a while back that was approved by this Commission and now the applicants are coming in and asking us to change those lot lines. So why would that prevent somebody who's already purchased a home and owns a home on one of the existing lots to come and ask for a variance to split that?

MS. COBAU: Madam Chair, Commissioner Mayfield, just let me go through the numbers and maybe it will make it easier to understand. Phase 1 was originally approved for 69 residential lots, 11 condominiums, 16,334 square feet of commercial space, which is much more than a small bookstore, and 16,334 square feet of residential space, which were I guess the live-work units. Phases 2 through 6 were approved for 158 residential lots for a total of 238 residential lots, 16,000 square feet of commercial and 16,000 square feet of additional residential.

Now they're coming in with a current proposal of 271 residential lots as opposed to 238, 11 of which can be live-work. I don't think that it's unusual for a developer to come in prior to development of subsequent phases and ask to modify that phasing and the ideas that they had. A master plan is just an idea.

COMMISSIONER MAYFIELD: Madam Chair and Shelley, could the developer come in and ask for a modification of Phase 1 on the vacant lots they have?

MS. COBAU: They could. They'd have to get approval of this body before they could do that and there would be a public hearing process.

COMMISSIONER MAYFIELD: Thank you. But Madam Chair and Shelley, the homeowner who's already purchased on Phase 1 could not come and ask for a variance to split that.

MS. COBAU: Yes, they could. They could come in and ask for a variance unless they were subject to covenants and restrictions by the subdivision that would

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preclude them doing that. We don't – the County doesn't enforce those covenants so there would nothing from that person coming forward and asking for a variance. Whether or not it was supported would depend upon the conditions and certainly things like water availability and everything else. But there's nothing to preclude them from coming forward.

COMMISSIONER MAYFIELD: Madam Chair, in staff's opinion should the developer be subject to the same covenants?

MS. COBAU: Well, they are. I think they participate in the homeowners association and are subject to the same covenants.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. That's all the questions I add.

CHAIR VIGIL: Did you want to add something to that, Mr. McCarthy?

MR. MCCARTHY: Yes, Madam Chair, Commissioner Mayfield. There's two distinct issues here. One is that when we purchased the land it was already deed restricted for the purpose by the sellers for the purpose of avoiding guesthomes. So no matter what size of the lot the deed restrictions preclude coming in and asking for additional dwelling or lot splits on a lot, no matter what size.

COMMISSIONER MAYFIELD: Thank you.

COMMISSIONER ANAYA: On that point.

CHAIR VIGIL: On that point, Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, was it those same deed restrictions that referred to a 1,500 square foot minimum house size or is that different set of restrictions that are referenced in some of the documentation I have in front of me? Was that in the same document or was that different? There's a document in our packet that says there's a minimum size of a house of 1,500 square feet. Where did that come in?

MR. MCCARTHY: Madam Chair, Commissioner Anaya, I believe there's two separate documents. The one that restricted 1,500 square feet per dwelling unit, and it was interpreted through an affidavit of the people that placed that restriction that the 1,500 square foot was total not deeded. But I believe it was a separate document that did deed-restrict the land from further subdivision for the purpose of guesthouses.

COMMISSIONER ANAYA: Separate from the 1,500 square foot document.

MR. MCCARTHY: Madam Chair, Commissioner Anaya, I believe that is correct. We bought the land in 1999 so I'd have to refresh my memory, but I believe that's correct. But the condition does exist, whether it's in one document or two.

COMMISSIONER ANAYA: Thank you, Madam Chair.

CHAIR VIGIL: Okay. Any further questions? Okay, is there anyone else opposed to this project that would like to address the Commission. You need to be sworn in. You weren't sworn in with the original group. I need to ask one more time, anyone else opposed that wants to speak to this, because after this the public hearing will be closed. Please state your name for the record and your address and we'll have you sworn in.

JANE GILLENLINE: My name is Jane Gillentine and I live at 2256 Calle Caciue.

[Duly sworn, Jane Gillentine testified as follows:]

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MS. GILLENLINE: Madam Chair, Commissioners, I represent the forgotten neighbor to the east. My family owns five lots directly east of this. We have not been involved. We have received mail letting us know of your meetings and the CDRC. We have not been involved in any of the meetings nor have we been invited. This development was presented to us when it first started. The large lots adjoin ours as does some of the open space. It was presented to us as a phased in large lots, not so large, smaller, smaller. This present plan destroys that. It is our land. We've owned it over 35 years and we would like to see some integrity remaining out there.

Our other major concern, and we don't live out there any more so this is a concern for the people that do live out there. A 24-foot wide roadway is not going to accommodate the kind of traffic this development is going to bring. I think you should give it really serious consideration. Thank you.

CHAIR VIGIL: Thank you very much Mrs. Gillentine. This will close the public hearing and I'll just defer to my Commissioners up here in terms of what direction they would like to go. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I have a question going back to a comment that was made by one of the individuals that came forward of staff. It had to do with the timeliness or lack thereof of a commercial development within a subdivision or an area. Does staff want to comment on the comment that was made that today might not be the right time to deal with commercial here but the future could be the right time? Does staff want to comment on that in the context of everything that's happening? What comes to mind, it may be a lot different but a scenario that comes to my mind is Eldorado.

Eldorado was subdivided and it was absolutely no commercial. Do not do it. No way. We don't want it. We'll go to Santa Fe for our commercial. And now you see that it's an essential part of that community in that segment of Eldorado that makes a lot of sense for commercial. So it maybe wasn't the right time in 1976 or 74 or whenever it was originally developed by AMREP but it certainly is now. Jack, do you want to comment on that? Having been part of the Community College District Ordinance and the development therein. Shelley, you as well.

MR. KOLKMEYER: Madam Chair, Commissioner Anaya, there's actually do things that have gotten complicated here. One is the types of centers that were designated in the Community College District. Employment centers, village centers, and neighborhood centers. Again, this is 12 years ago when this was all created, so the idea was there would be a difference in scale of what would happen in these particular types of centers. Employment centers would be predominantly commercial with other mixed use. Village centers would be in the larger residential centers, and the neighborhood centers would be in the smaller subdivision areas.

Secondly, the idea of mixed use was originally to be a mixture of not only just commercial and residential but other things as well – institutional uses, open space, open community areas. And what we found, in 2005 we did a fiscal impact study for the whole Community College District and what was suggested to us at that time was that there were too many village centers in the whole Community College District and there may be too many neighborhood centers. We didn't redo that at that time under the assumption that the developers who came in would make those kinds of decisions themselves and

come up with the appropriate kinds of development. But what we've found now, as has been mentioned by all sides of the argument here is that the times have changed.

So the request here, part of what is adding to the density discussion is that to eliminate some of the commercial for what? And that has been for live-work which we still consider a form of mixed use, and to continue to have the open space but to continue to make up the difference with residential. So the problem, and again your example of Eldorado – of course none of that commercial was even built in the subdivision of Eldorado. It was built in the outside subdivision.

But the point is we've had to adjust somehow in our thinking about what was originally intended from the Community College District to what we're seeing happen right now, which is a shift of some kind. The problem for all of us is shift to what? How are we supposed to make the decision about what's right for the amount of commercial? What's right for the mixed use concept that has now asked to be changed and to move forward. And I think the only way we really get there is through this public kind of negotiation.

This is a really good thing for us to be discussing because this is going to set the precedent for a lot of the other smaller neighborhood type centers that are going to occur throughout the Community College District. So how we arrive at those numbers we're not really sure because we can't say a definitive number, like Shelley said before, 16,334, that's a lot of commercial space for a neighborhood center. It's not going to support it. So what do we pick? What number do we pick and how do we do that? And I think it really is a combination of having the neighbors and the developers really work this out.

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I went back and I apologize to anybody that thinks I wasn't paying attention because I was looking down, but I went back and read two to three times the comments and discussion that took place at the last meeting, and during that discussion I was asking a whole lot of questions as were my fellow Commissioners about what was going on with the last phase. And if you remember there was a lot discussion about, are we talking about 22 units or 21? I remember Shelley and staff was probably frustrated with me but I was trying to really get to the core of what are we really doing here at the last meeting. And we had a long discussion about what's reasonable and what makes sense? We talked a little about the commercial aspect at that meeting as well.

And when we left that discussion, the discussion was to go forward with allowing the 11 actual 10 additional units if you go back and look at the minutes. And then what was – and it was our other staff member was presenting. Her name escapes me right at the moment – Vicki – Vicki was presenting. And I said you keep bringing up this other factor, 27 units. Well, we're back here to have the discussion on the 27 units again. You have the same community members that have voiced concerns with the project, and you have the developers here that it doesn't seem like having a whole lot of discussion at this point. And what I asked earlier, was there any proposal between the 27 units and any increase, and I only asked one person. It was the lady back there, Ms. Simpson, I believe, who said 10. And other than that, other than those comments there's a separation between the 10 and the 27. But I think, and I want to hear from my colleagues, but I think to just

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walk away completely from the commercial, I don't know. I would have to agree with some of the comments made by the earlier lady about walking away from that all together. I don't know that that's necessarily the right thing to do either.

I do have one specific question for the applicant, is to help me understand and I understand the frustration of the development community and the market and the fact that you're trying to make a living and you're trying to be able to sell homes and sustain the development so it doesn't fall apart. Help me understand the need to go from the discussion we had at master plan last time for the ten additional units to the full-blown 27 units additional for all phases. Is there some middle point that you could get to that I'm looking to you, Bobbie Lee and John, whichever one of you wants to respond. Is there some midpoint associated with some of the subsequent phases that helps you with your financial predicament, if you will, but tonight, doesn't pull us all the way to 27?

The other question that I have, is there some compromise associated with additional residential units and holding some of that commercial back? Not 16,000 square feet, but, I don't know, maybe 5,000 in each phase. Was that possibility discussed on your end and could you give me any feedback associated with those questions or thoughts?

MR. MCCARTHY: Madam Chair, Commissioner Anaya, to answer your first question, we are not giving up commercial. What we're doing is micro-business, allowing for micro-businesses through these live-work or home occupation programs. So there could be a small coffee shop or an exercise tutor or music teacher or whatever within the commercial. So we're retaining that – for want of a different word, that commercial aspect in Phase 1.

As far as the distribution – let me back up a little bit. The ten units, through negotiation with our advisory committee and our immediate neighbors we've reduced that as previously testified from ten down to six. In terms of the 27 units, they're distributed through all phases, 2,3,4,5 and 6. So Phase 6, for example, has I believe four additional units. Phase 6 hasn't recorded. Phase 3 has 5 additional units.

COMMISSIONER ANAYA: Give me those one more time again. Each one.

MR. MCCARTHY: Of the 27, Phase 6 has four additional lots. Phase 5 has 3. Phase 4 has 7, which is not yet platted. Phase 3 has 5 and Phase 2 has 8. So phases 2 and 3 have already been platted and recorded and we've sold a combined total of 30 units, 30 homes in those two phases. The way we originally laid out La Pradera utilizes 50 percent open space not only as the buffer. This has the 195-foot buffer from the centerline of the road to the back of this house, and this is about 300 linear feet here. We did put some larger supersized lots along this corridor here but remember that my comments were also limited by the number of units we're putting in each phase.

So again, Phase 2 we're proposing to add 8 lots in here that will be distributed, and in Phase 3 we're adding 5 which were distributed through here. But you also have this big backyard. So you've got an 80-foot front lot with 195-foot backyard. Then you have the other side of the 50-foot right-of-way, 25 feet more on the opposite side. And if I may correct the record, Phase 4 is where the pile of debris was which has been cleaned up now, not the other phase, Phase 6. So Madam Chair, Commissioner Anaya, I hope that answers your questions.

COMMISSIONER ANAYA: Madam Chair, Mr. McCarthy, the answer to my question associated with is there any other way from your perspective economically to not have all 27 approved today, the answer is no? That's the only way? The only way, to put it more straight, from your standpoint to be able to succeed is to be able to have the 27 lots?

MR. MCCARTHY: Madam Chair, Commissioner Anaya, that is the absolute minimum.

COMMISSIONER ANAYA: I don't have any questions right now, Madam Chair.

CHAIR VIGIL: Further questions? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Mr. McCarthy, with the map you have up, where is the wastewater treatment plant?

MR. MCCARTHY: Madam Chair, Commissioner Mayfield, the wastewater treatment plants are located in this area right here.

COMMISSIONER MAYFIELD: Okay. Maybe it's not you I'm asking this question. Would there be a need for a third wastewater treatment plant, which all the phases at complete build-out?

MR. MCCARTHY: Madam Chair, Commissioner Mayfield, based on our engineer's calculation which was accepted, planning-wise but the NMED, no.

COMMISSIONER MAYFIELD: Thank you.

CHAIR VIGIL: Okay. Any other questions? Okay. Seeing none, what is the pleasure of the Commission?

COMMISSIONER ANAYA: Mr. Martinez, Madam Chair. Mr. Martinez, do you want to address the Commission?

CHAIR VIGIL: I actually closed the public hearing.

COMMISSIONER ANAYA: Relative to the economics. I mean as a partner –

CHAIR VIGIL: Oh, on the question you were posing.

COMMISSIONER ANAYA: A question as a partner on the economics. Madam Chair, the reason we went through the dialogue and the last time, and the need for us as a Commission to try and provide some economic development, an opportunity to get some houses built and sold, I think it's important. But on that point, you'd concur that there's no other alternative that you have at this time, other than what's being brought before us today.

[Duly sworn, Bobbie Lee Trujillo testified as follows:]

BOBBIE LEE TRUJILLO: My name is Bobbie Lee Trujillo and I reside at 3 Hacienda. Madam Chair, Commissioner Anaya, we've studied this. We met with people. We've worked out the details. We knew that the total of the 32,000 square foot commercial would never work. It just hasn't worked in other subdivisions and I won't start pinpointing the other subdivisions, but we've worked on how do we make this happen so that we can produce a product that can be purchased, that somebody might want to actually purchase the lot and build something. We've switched that thought to us going in and getting with a builder and with the Santa Fe Trust and building houses.

So we're attacking it from every point of view we could possibly do. And I think this is sort of where we're at. I really do. I think that if you see that the 27 lots that we're

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trying to get in addition on phased 2 through 6, 27 lots on about – I'll just guess, probably in about 90 acres. Because I believe the entire subdivision is somewhere around 160, 170 acres so we're talking about 27 additional lots on about 90 acres. I might be wrong on the exact calculations. But if you look at it like that it's not a lot. It's not a lot and if you look at the drawings it's not an impact at all.

COMMISSIONER ANAYA: Madam Chair, if I could. I'm sorry I called you Mr. Martinez. Mr. Trujillo, if you could comment on your base minimum price for a house and a lot, what's the minimum that you could see on any of the phases?

MR. TRUJILLO: Well, the minimum right now is \$129,900. I mean \$229,900, excuse me. And we brought a model in at \$325,000. So our plan was to be somewhere between \$229,900 or \$229,500 and \$350,000. Of course it can go up from there as well.

COMMISSIONER ANAYA: Thank you, Madam Chair. Thank you, Mr. Trujillo.

CHAIR VIGIL: I did have a couple of clarification questions for staff before we move forward. There's a couple of – just two pieces of information that I heard in the testimony that I think needs to be clarified for the record. I did hear testimony from the opponents that there is no County code. Would you clarify that, please? There does exist a County code and I don't know why – I just wanted to clarify that for the record. When was it adopted?

MS. COBAU: Madam Chair, this project was reviewed for compliance to both the Santa Fe County Land Development Code that was adopted in 1981 and also the Community College District Ordinance which I believe was adopted in 2001. It was checked for compliance to both those ordinances, Madam Chair.

CHAIR VIGIL: Okay. And one of the other statements that was made that I'd like staff to comment on is that there's a 24-inch wide road that is insufficient for this development? Would you comment on that?

MS. COBAU: Madam Chair, the subdivision regulations of the Land Development Code have pretty clear requirements on roadway widths and 24 feet is one of the wider roadways. It's two 12-foot lanes. We're going currently with the Community College District standards, I think even allow a narrower lane than 12 feet. And road design is based on traffic volume and we have a traffic report that has been generated by a licensed professional engineer who has assured as that the design of the surrounding roads is adequate.

CHAIR VIGIL: Okay. Those are the only two outstanding questions I had. So are there any other questions? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, question for staff or maybe you or one of the other Commissioners could answer this. Is there ever any plans or have there been plans for DOT to cut off ramps right there by the Richards Avenue exit? Is that something that could happen in the foreseeable or near future?

COMMISSIONER STEFANICS: On that point, the MPO has placed a Richards Avenue exit on its priority list. It's a very large amount and would probably not be funded as one of the regular federal or state projects, but would require some major appropriation from one of our congressional representatives. But it is on the priority list for the MPO.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Thank you, Commissioner Stefanics.

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, we're in a tough climate right now. There's a lot of people here in Santa Fe County that are still not able to even find houses to purchase, and at \$229,000 on the low side, that's still a lot of money in this community but it's an opportunity. I guess one last question and then I'm going to make a motion. How fast, how much time would it take in your plans to push through your phases, to actually get to build-out? What's your target planning on build-out of the subdivision?

MR. MCCARTHY: Madam Chair, Commissioner Anaya, based on today's absorption we're looking at probably seven years to fully build out La Pradera.

COMMISSIONER ANAYA: And Madam Chair, Mr. McCarthy, within those price points, especially on the \$220,000 side, how much of the development in the early going in the next two years is going to be within that scale or price point?

MR. MCCARTHY: Madam Chair, Commissioner Anaya, based on what we're already experiencing, today it's about 95 percent in the \$220,000 to \$265,000 range. If we don't see much movement that number will probably come down over 2 1/2 years to an 80/20 mix. And then we're hoping that the ratios would start to flip after that period, after the presidential election and economic recovery and job creation, which is what we're trying to do locally.

COMMISSIONER ANAYA: So Madam Chair, Mr. McCarthy, if this is approved these units would increase the number that would be in that price point of \$220,000 to \$265,000?

MR. MCCARTHY: Madam Chair, Commissioner Anaya, that's correct?

COMMISSIONER ANAYA: How many of those 27 would you say?

MR. MCCARTHY: Madam Chair, Commissioner Anaya, 27.

COMMISSIONER ANAYA: All 27.

COMMISSIONER ANAYA: Madam Chair, it's on that point and for that reason that I would move for approval.

COMMISSIONER HOLIAN: Madam Chair, I would like to second it and during discussion I would like to make a few comments.

CHAIR VIGIL: I have a motion and a second. You can proceed with your comments.

COMMISSIONER HOLIAN: Thank you, Madam Chair. I do have sympathy for the neighbors of this development. I know that they had a vision of what they wanted that area to look like, but times are changing and there's just no way around it. I really feel that this type of development that has been proposed is much more in line with what our existing market looks like, that is the live-work units and I believe that the 27 new lots are really more targeted to first-time homebuyers. I have a friend who's a real estate agent and she says those are the kind of units that are moving in Santa Fe at this point.

It is also consistent with the Community College District Ordinance and I don't believe that the La Pradera commercial center as it was originally envisioned would be

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successful at all. Those kinds of commercial centers have not worked in many, many other developments in the last ten years and I think that the live-work units really make sense. I believe that approving these changes actually increases the chances that this development will be successful and I believe in turn that increases the chances that property values in that area, not only in La Pradera but also in the neighboring communities will start stabilizing as well.

COMMISSIONER STEFANICS: Madam Chair.

CHAIR VIGIL: Commissioner Stefanics.

COMMISSIONER STEFANICS: Does the motion include all the conditions listed on page 6?

CHAIR VIGIL: Would the motioner include that please?

COMMISSIONER ANAYA: Yes.

CHAIR VIGIL: The seconder?

COMMISSIONER HOLIAN: I agree.

COMMISSIONER STEFANICS: Thank you very much.

CHAIR VIGIL: Okay. Is there any other question, comments?

The motion passed by majority [4-1] voice vote with Commissioner Mayfield casting the nay vote.

[The Commission took a five-minute recess.]

- XIV. A. 6. **CDRC Case # V 11-5200 Jesus Garcia-Solis Variance. Jesus Garcia-Solis, Applicant, Requests a Variance of Ordinance No. 2002-9, (La Cienega/La Cieneguilla Traditional Community Zoning District), Section 6.4.2 to Allow a Second Dwelling Unit on 2.53 Acres. The Property is Located in the Vallecita de Gracia Subdivision, off Los Pinos Rd. (County Road 54) at 1 Corte Gracia, within Sections 22, 27, & 28, Township 16 North, Range 8 East (Commission District 3) Wayne Dalton, Case Manager**

MR. DALTON: Thank you, Madam Chair. The applicant requests to allow a second dwelling unit on 2.53 acres. There is currently a residence and conventional septic system on the property. The property is served by a shared well system which serves five additional lots. The property is located in the Traditional Historic Community, within the Basin Zone. Ordinance #2002-9 requires the minimum lot size in this area as 10 acres per dwelling unit. With proof of 100-year water supply through a geohydrologic reconnaissance report, and adoption of water use covenants the maximum density may be increased to one dwelling unit per 2.5 acres.

The Vallecita de Gracia Subdivision was granted preliminary and final plat and development plan approval by the Board of County Commissioners on March 10, 2005. The approval consisted of an 11-lot subdivision. On July 13, 2010, the Board of County Commissioners approved a request for preliminary and final plat and a development plan