



**MINUTES OF THE ARAPAHOE COUNTY
BOARD OF COUNTY COMMISSIONERS
March 3, 2009**

State of Colorado, County of Arapahoe. At a public hearing of the Board of County Commissioners for Arapahoe County, Colorado held at 5334 S Prince St. Littleton CO 80166 there were:

Susan Beckman, Chair	Present
Rod Bockenfeld, Commissioner	Present
Pat Noonan, Commissioner	Present
Jim Dyer, Commissioner	Present
Frank Weddig, Commissioner	Present
Kathryn Schroeder, County Attorney	Present
Nancy A. Doty, Clerk to the Board	Absent & Excused
Joleen Sanchez, Assistant Clerk to the Board	Present

When the following proceedings, among others, were had and done, to wit:

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ADOPTION OF THE AGENDA

Jack Bush stated that there is a request from the Sheriff's Office to add one item to the Consent Agenda. He explained that Consent Item 7 would be authorization for the Chair to sign a grant application for submittal to the Colorado Division of Criminal Justice for a Justice Assistance Grant for the Arapahoe County Aftercare Project. He said this would be the third year of this grant application. He further stated that this is a joint project with the City of Aurora and the Aurora Mental Health Center for aftercare for inmates who are released from the County's detention facility to receive additional mental health counseling and other services.

The motion was made by Commissioner Weddig and duly seconded by Commissioner Bockenfeld to adopt the Agenda as presented.

The motion passed 5-0.

ADOPTION OF THE MINUTES

There were no minutes to adopt.

CEREMONIES

There were no ceremonies.

CITIZEN COMMENTS

Mark Lampert, representing the 4 Square Mile area (4SM), said he would like to point out three items. He said 4SM has a new crown jewel-the new library. He said in the past, 4SM has been known for other “jewels” but now there is a library that everyone is very proud of. He said the Eloise May Library honors 37 years of the director’s service. He said 4SM is very proud to have her grace the name of that building. He said the first weekend the building was open there were over 4,000 people. He said the second item is that he would like to thank Commissioner Noonan for the fast action at the intersection at Parker and Florida. He stated that there was a recent fatality and that little area is a dark street. He said because of Commissioner Noonan’s hard work, he is hearing good things. He said the light is forthcoming. Mr. Lampert then stated that when the Commissioners attend meetings with organizations such as ACCORD and 4SM, when the Commissioners tell people that they read the comments that are in the packets, that is very important. He said many times people have asked, what good does it do to write a letter. He said when the Board says they read those letters, that is very important.

Raylene Owen, 1741 S Parker Road, said regarding the Steering Committee for the Arapahoe County Fairgrounds, she wants to invite everyone to the Charettes that are going on all day today. She said there is a public meeting tonight from 7 to 8:30. She said the Committee is looking for ideas or input related to the development of the master plan for the Fairgrounds. She stated that this is a wonderful opportunity and there is a lot of potential. She thanked the Commissioners for their support.

Karen Richman for JM Fay, PO Box 22675, Denver, 80222, said Ms. Fay has four issues. She said the first is a sidewalk ordinance for snow shoveling for all areas with sidewalks. She said the second issue is that residents still need sidewalks by the new library all the way down to the trail. She said regarding Wabash Discount Liquor, the Commission, along with others, has been asked by 4SM to keep 4SM informed as to when there is a new application for a liquor license. She said this liquor board did not notify 4SM when this was done in August of 2008, not any other meetings that they had. She said this was approved and she is wondering if the Board or the Planning Department informed the liquor board of plans to realign Wabash for the school, bridge, etc. which could have influenced the decision to award this license. If not, she said, that is a breach of the Board’s fiduciary responsibility to the community. She said there is also matter of six others, including one 14,000 square-foot store and she wonders if the liquor board realizes that they have turned 4SM into the highest per capita area for liquor, which is something 4SM does not want. She said the next item is that she is still waiting for a public meeting to be held for the bridge for the Arapahoe residents in the area, as well as concrete information with regards if the school has the money to realign at the same time the bridge is built. She said asked if it’s true, as the school says, that the County is going to loan them the money to realign.

CONSENT AGENDA

The motion was made by Commissioner Dyer and duly seconded by Commissioner Weddig to approve the Consent Agenda as amended, with the addition of Consent Item 7, as recited by Mr. Bush.

The motion passed 5-0.

GENERAL BUSINESS AGENDA

Item A – Resolution No. 090206 – General Business: Case No. C08-007, Right-of-Way Acquisition, Southwest Corner of Quincy Avenue and Gun Club Road, Approval of Memorandum of Agreement (MOA) and purchase in the amount of \$1,267,500.00

Tom McNish, Assistant County Attorney, announced that this is a general business matter and there are no public notice requirements.

Jon Williams, Engineer, presented a Power Point presentation, a copy of which has been retained for the record. He said this is a discussion regarding the parcel acquisition of the corner of Quincy and Gun Club Road for a future roadway expansion. He said the purpose of this action will be for authorization to expend \$1,267,500.00 for future right-of-way (ROW) purchase and approval of a Memorandum of Agreement for this parcel and finalize the acquisition of ROW on that same parcel. He explained that the preliminary design began in 2007 to determine the needs for a roadway expansion to an eventual 6-lane corridor on Gun Club Road. He said staff focused on the actual intersection at Quincy and Gun Club because of the high traffic volumes that are anticipated. He said it was determined that today, four lanes are necessary on Gun Club Road to accommodate the 16,600 vehicles per day. Mr. Williams said staff anticipates up to 100,000 vehicles entering the intersection; 60,000 from Quincy Avenue and 40,000 from Gun Club in the year 2030. He explained that four different alternatives were analyzed for that intersection to work functionally, and those alternatives included a grade separated intersection, a full continuous flow intersection, and a partial continuous flow intersection and expanding the intersection to meet the needs of the traffic volumes out there. He presented a rendering of the intersection. He further stated that it was determined that with the expansion of the intersection to add lanes to accommodate the volumes, the cost of that would \$9.7 million at the intersection, but the level of service would never be able to accommodate the volume of traffic. He said with the grade separated intersection, the level of service could be accomplished, but the cost would be more than \$26 million to bring Gun Club Road over Quincy Avenue. He stated that a full continuous flow intersection was considered, but E-470 was a key player in that and the County had a difficult time getting concurrence from them. He said what was agreed to in the end, and supported by the Board was a partial continuous flow intersection, which was also agreed to by CDOT (Colorado Department of Transportation) and the City of Aurora. He said that will render the southwest corner of the intersection as undevelopable because the roadway needs will take up too much of the parcel to make development practical. Mr. Williams went on to explain that the design and alternatives were presented to the Board for discussion and recommendation. He said the Board directed staff to acquire the corner property in August during a study session. He said in February the proposal was again brought to the Board in Executive Session to make sure that the Board still supported the planned acquisition on this parcel. He said on August 11, 2008, the County issued a Notice of Intent to Acquire for this parcel; on November 11th the appraisal was generated for that parcel. The criteria from the appraisal were listed. Mr. Williams presented a discussion tree that was used to ensure that the Board was supportive. He said other options for acquisition were to wait until development occurs, wait until construction occurs, or proceed and purchase the parcel now. He said the Board did support continuing with the proposed partial continuous flow intersection and there was less support for the actual purchase; that is the discussion today. Mr. Williams stated that \$633,750.00, would come from RTIF (Regional Transportation Impact Fees) fees and the County would pay \$633,750.00. He recommended approval of the MOA and acquisition of the property for future preservation of the ROW.

Commissioner Bockenfeld said this intersection requires four lanes today in order to provide a level of service that is supposed to be there, however north Gun Club Road is owned by the State of Colorado, and Colorado has no plans to improve that road in the near future. He said enhancement of four lanes does not create any efficiency at this point in time because of that. He asked if that is an accurate statement.

Mr. Williams stated that CDOT realizes that the corridor needs widening but the State does not have the money to accommodate that. He said his impression was that there would not be anything in the next few years to accommodate expansion on that corridor. He said there is a need, but it is not immediate because of all the other transportation needs the State has.

Commissioner Bockenfeld said the County cannot reach the efficiency that is needed because of north Gun Club Road, which is currently two lanes, and there are no plans to enhance the northbound lane, so the efficacy cannot be created today.

Mr. Williams said the County received traffic counts from Aurora that show a large turn volume from northbound Gun Club onto westbound Quincy, so saying nothing can be done to improve that intersection may be too much, but at the same time, there are 16,600 vehicles on the Gun Club Road corridor south of Quincy and there are 16,000 vehicles per day on Gun Club Road. He said there will be minimal efficiency.

Commissioner Bockenfeld wondered if there is an option to wait until the economy stabilizes.

Mr. Williams said no.

Commissioner Bockenfeld said most of the developments in this intersection were projects that were driving this future need. He asked what those projects are.

Mr. Williams said there is no intention to expand the intersection in the near future, because the projects are not coming. He said acquiring the ROW now seems like a good idea because if the County waits for the increased traffic projections, the cost is unknown but experience shows the cost would be much higher. He said acting sooner rather than later is in the County's best interest.

Commissioner Bockenfeld said regarding this intersection, when it was initially discussed, the Lend Lease project and the Sky Ranch project were significant and were considered. He stated that both projects were drivers for the future flows in that intersection, but they have both been pulled and are no longer factors. He asked if that has had any affect on the decision to buy this land now.

Mr. Williams said the four-lane corridor is necessary, regardless of what the future holds. He said the traffic volume with those developments was intended to be 100,000 vehicles per day through that intersection; without Lend Lease, 60,000 are anticipated through that intersection. He said Lend Lease is now off the table, but in the next 20 years, staff is confident that there would be some kind of development.

Commissioner Bockenfeld noted that the staff report states that the acquisition is necessary to limit the potential for higher acquisition in the future. He said due to the current financial crisis, many think that the County is at the top of the market today. He asked how staff supports that statement, knowing that there is a movement in the economy. He asked what Mr. Williams' personal feeling is, just by watching T.V. and business reports, about what direction the economy is moving today.

Commissioner Beckman stated that the Board should not ask staff about their personal beliefs about what the economy is going to bring. She said staff is here to present a staff report of the projections. She said staff should not speculate on the economy.

Commissioner Bockenfeld said he is establishing a foundation for a proposal and this is necessary to allow him to establish that foundation.

Commissioner Beckman said the Board should look at facts and not staff's personal opinions.

Commissioner Bockenfeld argued that staff made a recommendation that the acquisition of this property is going to cost the County more into the future. He asked why his question about what staff thinks the current trends are is out of order.

Commissioner Beckman asked Mr. Weimer to address the projections over the next 20 years.

Mr. Weimer said in the past, without preserving ROW for future expansion, development comes in and the County has to approve the development or buy the property at that time. He explained that if the County approves the development and the County needs the improvement at a subsequent date, the County not only buys the property,

but also buys the businesses that are there and has to relocate those businesses as part of the ROW acquisition and that is where the additional costs come in. He said one of the decisions was whether or not the Board wanted Public Works to acquire the land now, if the land should be acquired during development, or if the land should be acquired prior to development, but later and what would those triggers be. He asked if the triggers would be deflated land value or driven by the need for the actual project and construction being imminent. He said those are they types of questions that were discussed when the decision was reached to acquire the land.

Commissioner Bockenfeld said the staff report states that the subject parcel was sold for \$100,000 from the taxpayers of Arapahoe County through the E470 Authority, and now two and a half years later, the property is being sold back to the taxpayers of Arapahoe County for approximately \$1.3 million. He asked how the consultant established this price and justified this wide range of discrepancy in value.

Mr. Williams said he received a call from Mr. Frank who said that the Assessor card shows the purchase of the parcel for \$100,000, but there were a number of other items and negotiations that occurred with that. He explained that the price was based on fair market value and on an analysis done in the region for other properties. He noted that the appraisal occurred in November and the market was at a better price at that time. He said he does not have any information regarding the property value reductions. He said staff has discussed this with the ROW consultant, who has done a number of these acquisitions and has indicated that the County would not get a significantly better price for this parcel, even if the parcel was re-analyzed.

Commissioner Bockenfeld stated that half of the money that is being justified to purchase this land is coming from the Regional Transportation Impact Fees. He asked if these are fees that have already been collected in this area or are they fees that are anticipated.

Mr. Williams confirmed that the fees have already been collected.

Commissioner Bockenfeld said the MOA states that the owner of the property is willing to give the County a special warranty deed, not a general warranty deed. He asked if there have been discussions about this. Commissioner Bockenfeld explained that a special warranty deed gives the owner of the property no liability if there are any future title issues or any other issues in regards to this property and it becomes the sole responsibility of the County if there are other issues. He said a general warranty deed would give the County some additional protections on how the owner bought the property and what it had occurred to it from that time.

Mr. Williams explained that it was discussed and was deemed acceptable. He said when this parcel was purchased from E470, a special warranty deed was issued for that, so staff felt it was consistent with the previous purchase.

Commissioner Weddig said the appraisal shows that part of the value of this property is based on a contract that was entered into in May 11, 2007. He asked if that is an appropriate way to look at the value of this property as well. He said the contract was between the current owners for a price that exceeds what the County is being asked to pay today.

Mr. Weimer explained that there were four parcels that were evaluated as part of the comparison. He said the contract that existed between the current owner and the future owner was not taken into account as part of this comparison, so as the comparison was done, they looked at other parcels that had recently sold and looked at then making adjustments based on market, site visibility, and access to come up with a fair market value. He said that is a standard practice. He said typically appraisals can be done with a cost approach or with an income approach or with a comparison or market approach. He said because there is no development on this parcel the cost and the income approach do not make much sense, so the comparison approach was utilized.

Richard Frank, PO Box 100757, Denver, 80250, announced that he is the managing partner of Gun Club Investors, LLC. He explained that Gun Club Inventors (GCI) made a trade with E470. He said E470 approached GCI because GCI had property that E470 wanted and had several parcels that GCI could use. He said 12 acres of GCI land was traded for 12 acres of their land plus \$150,000 in cash. He said GCI internally allocated \$100,000 to this particular piece of property just to put some basis on it, and that had nothing to do with value or the negotiations. He said GCI and E470 made an even trade for property and GCI ended up with this piece. He further stated that

GCI zoned and platted the land, and the land is developable, and there was a contract with a developer who was going to build a convenience store and a bank, but when the plat was going to be recorded, the County stepped in and said it needed this ground. He said that is when the contract went away because the County wanted to acquire this parcel. He said the \$100,000 shows up in the records, but that is not the whole story.

Commissioner Weddig confirmed that statement by saying that he called John McClusky at E470, who confirmed that the transaction was part of a simulations exchange of property rights. He said Mr. McClusky stated that in 1998, the dollars were quadrupled by the E470 authority. He said the E470 board thought that was a good deal.

The motion was made by Commissioner Dyer to authorize the Chair of the Board of County Commissioners to accept and sign the Memorandum of Agreement by and between Arapahoe County and Gun Club Corner, LLC., related to the right-of-way acquisition associated with the Quincy Avenue and Gun Club Road Intersection, Project No. C07-006 and C08-007 in an amount not to exceed \$1,267,500.00, pursuant to the terms contained therein.

Duly seconded by Commissioner Weddig.

Commissioner Bockenfeld stated that he would vote against this motion, because the circumstances since the time that staff initially looked at this project have changed substantially. He said the drivers for the project no longer exist that were in existence at the time when the Board initially had these discussions. He said, "Since that time, we became submerged into a financial crisis, a crisis where even the best of the experts cannot determine the depth or full impact of this economic crisis." He said it is well known that during a financial crisis, cash is king. He asked if it is prudent today for the County to use the cash balances today, under these circumstances, to meet a future need. He said that would create an unnecessary risk. He said this is discretionary spending on an uncertain future. He said if the County feels the financial impact on revenues in the future, it will be the General Fund appropriations to the Capital Improvement Program that would be squeezed first. He asked if it makes sense to protect the money today for the most neediest of our near-term projects and not long-term projects that currently have no drivers. He said he can't help but think that the taxpayers of Arapahoe County have not been fleeced in this transaction. He said the taxpayers sold this property for \$100,000; that is what the record says. He said that was a little more than two years ago and now the land is being purchased back for \$1.3 million, rounded. He said this purchase needs to be highly scrutinized by this Board and much more due diligence is necessary. He requested a "nay" vote.

Vote:

For: Noonan, Weddig, Dyer

Opposed: Beckman, Bockenfeld

The motion passed 3-2.

Item B – Resolution No. 090207 – Public Hearing: Case No. P08-011, Prospect Village, Final Development Plan

Assistant County Attorney Tom McNish established jurisdiction.

Carol Kuhn, Senior Planner, introduced the case. She said Case No. P08-011, Prospect Village Final Development Plan (FDP), is a 16.13 acre site is located at the northwest corner of Iliff and Peoria. She said along with this application, the applicant is proposing 328 residential units with 21,371 square feet of retail in a vertically mixed development. She said the applicant is also concurrently processing a vacation-of-easement case and replat case. She said these two items are not heard by the Planning Commission (PC) but are on the Board's agenda as General Business Items following this FDP public hearing. She said these two items are necessary to facilitate development

if this FDP is approved. She stated that staff has provided a lengthy staff report and a lot of background material that also includes the PDP and the minutes from the November 3, 2008 and December 18, 2007 BOCC hearings. She further stated that on February 3rd, the PC heard this case and provided a recommendation of denial based on findings that the FDP does comply with the PDP, particularly with respect to lack of transitional stair stepping. Ms. Kuhn said additional correspondence has been provided that was submitted after the printing of the staff report, which was distributed today by the Assistant Clerk to the Board, Joleen Sanchez. She said staff has also been fielding phone calls and concerns raised regarding the existing prairie dog colony on the site; after discussing the concerns with County legal staff as well as the Division of Wildlife (DOW), the applicant is within their rights to eliminate the prairie dogs on the site, as there are no local, state or federal protections in place for prairie dogs. She said since the Planning Commission hearing, staff has updated the conditions of approval and findings based on the information submitted by the applicant on February 10th. She said staff has also provided revised findings and motions for a continuance as well as a denial. She said staff will answer initial questions; Irene Valenzuela and Chuck Haskins from the County's Engineering Division are also present. She said regarding the prairie dog issue, the applicant is required to conduct the burrowing owl survey on the site prior to any earth work. She asked if the Board would like her to review the details; if not, the applicant's team would make a presentation. She introduced Diana Rael of Norris Design and Michael Sheldon.

Michael Sheldon, 5290 DTC Parkway, Ste. 160, Greenwood Village, said over a year ago this Board voted 4-1 and approved the preliminary development plan (PDP) with specific density, heights, and setbacks from the Huntington neighbors, which did show stair stepping to the west and to the north to break up the mass of the proposed buildings. He said staff acknowledges, in the staff report, after Engineering evaluated the traffic stacking from the main entrance on Iliff, that the buildings had to be shifted to the north towards the neighbors. He said that required a redesign of the buildings that made the buildings more compact, but that redesign also had to respect all the criteria that the Board set forth in the PDP such as setbacks from 1, 2, 3 and 4-story elements. He said the heights were slightly lowered and the outdoor pool complex was relocated interior to the buildings, which resulted in removing a contentious issue that the developer had been talking with the neighbors about; that was the hours of operation and the screening of the pool complex. He said therefore the redesign gave the applicant the opportunity to put the pool complex inside the building, thus eliminating that contentious issue. He said in all cases, the new design met and far exceeded the setbacks that the Board approved for the PDP. He said prior to formally submitting the FDP, the applicant had several meetings with both the Huntington and 4SM neighborhood groups. He said there were not a lot of neighbors that attended these meetings, but their leaders did state publicly that the architecture and quality of the buildings were exceptional, but they did request several significant changes. Mr. Sheldon explained that the neighbors asked, and the applicant complied, with moving the westerly pad 60 feet to the east; that the pad not be used for 24-hour operations; that there be no drive thoughts for that pad other than a bank. He said the request was incorporated in the FDP. He said the applicant continued to meet with the neighborhood leaders before and after the PC hearing and made additional concessions. He said at the PC meeting, one commissioner requested that the developer increase the off-site landscaping allowance for the neighbors closest to the westerly pad. He said that westerly pad is 12 feet closer than the original PDP, yet is still 228 feet away from those neighbors and is clearly outside the 100-foot setback mandated by the Board. He said that PC commissioner asked that the applicant increase the off-site landscaping allowances and the applicant doubled it. He said another planning commissioner requested that the project be tabled for several weeks to continue negotiations with the neighbors. He said the comment was made by that commissioner that "you're pretty close now, why just not continue it for a few more weeks and see if you can come to some agreement..." Mr. Sheldon said the applicant has been negotiating with these neighbors for over three years and the applicant doesn't believe that it would be a realistic prospect to reach a consensus; in addition, the applicant stated publicly that the applicant had a rare, fully funded construction loan for this project, which required certain dates to commence construction, so the applicant did not agree to continue the case. He said the applicant believes that planning commissioner's request resulted in the vote of 2-3 for the approval of the FDP. He stated that there were to PC members absent that night; now the case is before the Board.

Mr. Sheldon explained that at the PDP hearing a year ago, Chairwoman Beckman requested that the applicant attempt to humanely relocate the prairie dogs from the site. He said the applicant engaged a well respected environmental consultant, ERO, who contacted all relevant state and local agencies, including the neighborhood groups who were actively involved in this issue. He said the developer attempted to relocate the prairie dogs but could not find a relocation site.

Commissioner Beckman stated that the Board had discussions regarding prairie dogs, and said if she lets Mr. Sheldon continue, then she would have to allow a great deal of testimony regarding prairie dogs. She explained that the Board has read the emails regarding the extermination of prairie dogs on the subject property. She stated that it is clear under existing law, that the property owner has a right to exterminate prairie dogs and that is something that the Commissioners do not have jurisdiction over. She acknowledged that she did make those comments, probably in error, on the human side. She said she would like no discussion regarding prairie dogs, since the law does not allow the BOCC to make determinations.

Mr. Sheldon stated that Diana Rael would present a Power Point. He concluded that the applicant has enjoyed staff's support for this project. He emphasized that staff has determined that the applicant has technically complied with the stair stepping requirements but have appropriately left it up to the Board to determine the amount of transition that should be made under these unique circumstances and the history of this case.

Diana Rael, Norris Design, 1101 Bannock Street, Denver, presented a Power Point presentation, a hard copy of which has been retained for the record. She introduced the development team. She said there were four critical areas that resulted in the changes to the plan. She presented the site map and said the site is north of Iliff and south of Parker and west of Emporia and is just over 16 acres gross. She said when additional ROW from Emporia and Iliff there are just over 15 acres net. Ms. Rael said there would be 328 dwelling units which is consistent with the approved PDP. She said 16 of those units are live-work and there is just over 21,000 square feet of commercial area. She said that is an important factor in some of the changes that went along with the plan because the town center is designated as mixed use in the 4SM subarea plan. She explained that some of the site plan changes were precipitated by the retail component; there has been some shifting in the free standing pad locations between the PDP and the FDP. She said the landscaped area is over 36% and the open space is over 42% of the total site.

An illustration of the FDP was presented. Ms. Rael referenced the former location of the clubhouse. She said it was a single-story building with a pitched roof and a 35-foot height maximum with an outdoor pool. She said there was concern about pool hours and noise. She said once more detail went into the FDP design the clubhouse was located internally to building no. 1. She said now there is a courtyard with a pool interior to the building. She said the applicant felt that was a great benefit to the surrounding neighborhood. She discussed the second change. She said the applicant was working closely with Cunningham Fire Protection District and a fire access lane was located on the western perimeter, and the applicant worked diligently to maintain the 100-foot landscape buffer. She said that area is significantly landscaped. She said the fire lane is restricted by bollards and would not be a vehicular throughway, but would be a connection for pedestrians from Parker to Iliff. She said the third change is the retail pads and the associated parking. Ms. Rael said the pad was moved away from the building so there could be surrounding parking; initially the pad was located closer to the detention pond but after discussions, the pad was moved and there is good parking access to that area. She referenced the other retail area and referenced the original location of pad site 2. She said that pad now has better parking as well. She commented that the key to successful retail is the ability to have users drive by and know that they can park close to the stores. She said the former plan anticipated that there would be some of that parking within a garage and retail experts agreed that that would not work. She said the last component was the stacking component at the main entry from Iliff and Dayton Way. She said more room was needed for cars to come in and out to avoid blocking the intersection. She said that was a critical safety item that had to be addressed. She said as a result there has been some movement between the PDP and the FDP. She said the team has worked with the County staff to come up with the best solutions for those situations and the design and architecture would maintain between the PDP and the FDP.

Ms. Rael said there are four items that need a determination by the Board, as listed in the staff report.

- Stair stepping
- Garage No. 1
- Garage No. 1
- Tower element as the community identifier

Ms. Rael then presented an overlay of the PDP and the FDP. She referenced the prior and current location of pad 1, the change to the access, and the movement of the roundabout. She said as a result of shifting the buildings, some of the areas between the buildings and the neighbors are greater and some areas are closer. She said the garage in building 1 was configured east to west and is now sitting in a north-south configuration. She said the reason for doing that is because the developer was trying to continue to compress these buildings. She said the main concern

was to keep the buildings as far away from Huntington Estates as possible. She said the last thing the applicant wanted to do was move everything towards the 100-foot buffer. She said there was a similar change in building 2; that garage is now in an east/west configuration. She said the open ended side of that garage was 225 feet along Emporia and is now 105 feet. She said noted that one part of the garage was formerly enclosed and is now open ended, however with architectural articulation, that end of the garage would look like the architectural façade of the buildings themselves. She referenced the slide and noted the setbacks that were determined at the time of the PDP: 100 feet for 2-story elements, 125 feet for 3-story elements and 150 feet for 4-story elements. She said the actual setbacks are 131 feet for two-story elements, 125 feet for 3-story elements, and 156 feet for 4-story elements. She said at the time of the PDP, a graphic was presented that showed the stair stepping elements to the west of building 1 and to the north of building no. 1 and to the north of building no. 2. She said it also had a three-story element for a portion of building no. 2. She said there is more information now such as a framework development plan and a detailed grading plan and drainage plan, and the applicant is able to present how the building steps on the site. Ms. Rael presented a graphic with the stair stepping color coded. She said there are different levels to the buildings; in building no. 1, the stair stepping that was approved in the PDP was maintained. She said in building no. 2, there is a four-story element, but it steps one full story below the upper level of that wing. She said the same occurs with building no. 1. She referenced the graphic and said the finished floor of the main building is at 55 feet and 35 feet and said the yellow-coded area is a full story below the red area. She said parking garage would be wrapped with an architectural façade and that element would be dropped to a 3-story element, which makes up for the wing that is missing that was originally on the PDP.

Commissioner Beckman asked if the parking garage would be encompassed by a structure.

Ms. Rael said yes. She referenced the garage that would be wrapped and noted the area that would have a false façade. She said there would be stucco squaring patterns and a stone base. She stated that she would present a graphic later in the presentation.

Ms. Rael then discussed the shadow study. She said today, there is more accurate information because the grades, architecture, and roof planes of the buildings are known. She presented the shadow impact that represents December 21st at 9 a.m. She said the shadow's edge does not impact the Huntington neighbors' boundary. She said the shadow analysis was prepared in the Norris Design office using the 3-D Studio Max software, which enables the operator to take the existing grades, existing buildings and model that to give an accurate representation of that shadow. She said the software also allows the operator to specify a point in time in Denver, Colorado to be as accurate as possible. She presented a graphic of shadow conditions at noon at December 21st and a 3 p.m. shadow. She said the morning shadow would be the longest shadow that reaches to the west and does not touch the Huntington Estates boundary.

Ms. Rael then presented the north face of the garage in building no. 1, as it was presented prior to the PC hearing. She commented that it looks like an open ended garage. She said at that time there was no architectural fenestration encompassing that end of the garage; at the time of the PC hearing, the applicant had prepared another graphic, which was presented. She explained that there are now stucco squaring patterns, roof elements, stone detailing and other architectural elements that are on the main portion of the building. She said there would be one garage door and said the landscaping depicted on the presentation is accurate, per the plan. She said it was realized that the façade could be changed to jog the building from a 4-story to a 3-story and back to a 4-story, which creates the stair stepping requirement that is part of the PDP. She then presented the elevation along Emporia for garage in building no. 2. She said there are tower elements and roof plane breaks every 100 feet, which was a requirement that the developer placed on the project at the time of the PDP to create interesting architecture. She said the architecture is diverse and varied. She presented the east elevation of building 2 and the retail area. She said the garage end has been reduced from 225 feet to 105; the stepping and the garage access was referenced. She stated that the applicant felt it was more important to keep this garage slightly more open than the garage in building no. 1 for safety reasons, because it is along a public ROW. She said the applicant felt that the open exposure to the street was vital for safety.

The tower elements were discussed. Ms. Rael presented a perspective of the area and said there would be full towers or turrets and roof plane breaks. She said pointed out that there are small towers and turrets throughout the architecture; in addition, the retail pad architecture has been changed and now the pads have pitched roofs and

tower elements. She said that brings forth the European architecture that was discussed at the PDP level. She stated that the perspective gives an idea of what the area would feel like. She referenced building 1 and building 2 and the tower elements. She said the applicant feels that the community identifier is the architectural tower. She presented a rear perspective towards the southwest from Parker Road into the buffer. She referenced the 8-foot masonry wall, the landscaped buffer and the trail.

Mr. Sheldon discussed the effect of this project on the County. He presented the economic stimulus to the County and said the applicant has a rare, fully funded loan available for this project to go forward. He said this project would create between 400-500 jobs on site. He said fees of \$2.8 million would be paid to the County, and there would be \$750,000 of off-site improvements. He said the property taxes from this project would be \$350,000 annually.

Mr. Sheldon then discussed the concessions that have been made to the neighbors through this entire process. Concessions that were agreed to in the PDP and FDP were listed. He said even though the applicant has not been able to reach a consensus with the neighbors, the applicant has taken the negotiations seriously. He said at the PDP level, a 100-foot buffer was created, the density was reduced from 380 to 328 units and committed to build a double-sided 8-foot masonry wall. He said the applicant also committed to financial compensation for the abutting neighbors, there are significant design standards, the commercial uses were restricted, and the Board approved a 78-foot maximum building height. He said the most important of those early concessions were the setbacks, which were listed. He said during the FDP, the pads' roofs were replaced with pitched roofs, the site plan was redesigned to meet the neighborhood comments and the building 1 garage elevation was enhanced to look like part of the building. He said the height was reduced to 75 feet and the financial compensation was doubled for the five lots that are closest to the pad on the west side, and the applicant committed to not allow drive thoughts except banks.

Commissioner Beckman said the FDP went through the Planning Commission, who requested that the applicant commit to no drive through except banks for the pad site and commercial users. She said that motion was made at the Planning Commission hearing and did not pass. She said that would have to be recommitted in a motion.

Ms. Kuhn said the plans submitted to the Board already have that statement there. She said it is an allowed use in the PDP.

Commissioner Weddig asked about condominiums versus rentals and if there are impediments to converting these units to sales.

Mr. Sheldon said there are no impediments, and the ability to convert is totally in tact. He said that is GenCap's plan. He said the current market favors high-end rentals right now, but the plan is to convert the entire project to for-sale condos and there are no impediments in the plan that would prohibit that.

Commissioner Weddig asked about the size of the units.

Mr. Sheldon said that was one of the first concessions the applicant made. He said the unit size was increased to 1,100 square feet average from 900 square feet.

Commissioner Weddig asked if there would be separate water meters.

Mr. Sheldon committed that the units' water usage would be metered separately, which is appropriate for a high-end unit.

BREAK

Commissioner Beckman said there is a long list of people who have signed up to speak. She explained that there is a request from Bruce Peterson, representing Huntington Estates, to follow an agenda in order to consolidate the presentation from the homeowners' association (HOA); the Board appreciates that as it makes for a good process. She said there is a sign-up sheet as well and there would be an opportunity for everyone to speak. She said the Board received many emails and letters regarding the extermination of prairie dogs. She stated that it is clear, under

existing law, that the property owner has the right to exterminate prairie dogs on its property; consequently, the Board will not receive any testimony regarding the prairie dogs on the property. She asked everyone to limit their comments to the proposed FDP, the land uses, and the manner they are proposed on the property. She said it would help the Board delve into the issues that it can decide on, but the Board does not have jurisdiction over the prairie dog issue. She further commented that the school districts have not objected to this project and in a referral, they said they can have the capacity, therefore, the Board cannot legally support any statement that the schools cannot provide the services to this area. She said those are two areas that the Board has no legal grounds on. She asked that the testimony be narrow so the BOCC can understand what the issues are and have the ability to make decisions on.

Public Comments

Bruce Peterson, 2161 S. Alton Way, said he is a 30-year resident of Huntington Estates and a representative of the HOA. He thanked the Commissioners for an open meeting so the pros and cons can be fully explored. He welcomed the Houston executives, representing GenCap, to Denver. He said he hopes they feel welcome and said the residents look forward to cooperating with them in any way possible. He said his purpose today is to reiterate, on behalf of the neighbors, the HOA's willingness to cooperate with the general developer. He said the HOA wants to make this a financially successful project, but the HOA wants the project to be compatible with the statute and wants it to be compatible with the surrounding residential neighborhood. Mr. Peterson said last January, after the Board approved the PDP, he approached the homeowners regarding whether or not the HOA should appeal the Board's decision. He said there was some legal merit to that and the vote was not unanimous. He said on the other hand the vote was unanimous to endorse what the Commissioners had recommended and approved. He said the neighbors also appreciated what GenCap was doing, as they made many compromises in order to make this project compatible. He said obviously the neighbors are at a state where they don't think that GenCap is adhering to the spirit of the Board's intent. He further stated that the Board has an executive summary which outlines the Board's written transcripts regarding the Board's feelings towards this project, and it also represents what Mr. Sheldon and his representatives said that they were going to do. He said it was interesting to see that Commissioner Weddig asked a question about making these units for sale, and Mr. Sheldon turned around to get permission for that. He said that indicates that if no one asked questions, that maybe this would have been missed, so everything should be in writing. Mr. Peterson said that is an example that is not in writing, and is by innuendo. He said there have been a couple of meetings with the general contractor but there must have been meetings that he was not aware of because he doesn't recall so many meetings that were referred to. He said he has participated with Mr. Sheldon and said he is a gentleman and is amenable to listening to the residents. He said very seldom have the people had the opportunity to participate in developing the plans. He said the question was always, "which of the two alternatives do you want." He complimented the staff and said Ms. Kuhn and Ms. Yeckes have been terrific, but the problem is that staff doesn't get all of the information until the day before the meeting, as in yesterday's case, which gives a volunteer group a very limited opportunity to evaluate what the Board has had. He said he also found out that there were handouts during the meeting and there were attempts to comply after the meeting. He said that is not in the spirit of a cooperative attitude.

Mr. Peterson presented a PowerPoint presentation, a hard copy of which has been retained for the file. He said Ms. Rael stated that the plan is confusing, so he is going to make it simple from the perspective of a homeowner. He presented a slide representative of orientation. He referenced Iliff, Emporia and Parker. He referenced the adjacent homes and the entrance to the complex. He said the first representation is based on the PDP. He then displayed a rendering of the FDP. He commented that he was assured by the people who created these slides that the renderings are accurate. He pointed out that the pad has been moved. He then presented renderings looking towards the east from behind the homes. He said the stair stepping has been taken out and that has a significant impact on what the buildings look like to the neighbors. He said the reason it looks so much more dense is because it is 30-40 feet closer to the neighborhood. He referenced the pool. He said Mr. Sheldon accurately stated that because of the County rules, the developer was required to extend to the north. He said it was never stated that the buildings had to extend to the west. He said this was in addition to retail parking. He reiterated that there were no requirements by the County that the buildings must extend to the west. He said the only thing the County was referring to was the stacking of the cars, and that is the amount of cars to come into or leave the complex. He said no where does it say the buildings had to be moved to the west. He further stated that the residents had a concern about noise, and he said the neighbors hear the people from the Cherry Creek Country Club all the time, and he said the neighborhood would be noisy if people in the new development had a party. He said with no consultation from the neighbors, the

developer decided to eliminate that objection. He said the neighbors didn't have objections to the stair stepping, but when the stair stepping concept is removed, there is an impact, but that had nothing to do with the neighbors. He said that is an example of the arbitrary decisions that the developer has made.

Mr. Peterson then presented a slide of a shadow study. He referenced a building and said it used to be two stories and now it is a four story building. He said that makes a fantastic impact on the neighborhood and is exactly the opposite of what the Commissioners are asking for. He said the neighbors are trying to work with the developer and he does not think the neighbors have worked with the developer to the extent of fair trade, but the developer has always been amenable when the neighbors have contacted them. He said the HOA's agreement with the applicant would be quite simple. He read the proposed agreement, "We accept the original footprint and heights of the building as you approved, if GenCap wants to discuss a relocation of the clubhouse, retail pads as well as the widening of the entrance. We are very willing to have this discussion but the plan as presented to us does not meet your transitional standards and does not meet with ours. In the even that you reject this final development plan, we would still be willing to meet and discuss these items along with the proposed fence and other staff recommendations with Mr. Sheldon and his representatives, and report back to you within two weeks. We have always said that. This plan has been changed significantly and has a very major impact on the neighbors." He said most every graphic presented by GenCap has been comparative, but when they show the shadow study, they only show that the shadow came up to the neighbors' back yards. He said the comparative study shows that the shadow is quite different than what was presented with the FDP. He thanked the Board for their patience and for the open hearing.

Phillip Eck, 2295 S. Dayton Street, said he is not a hired gun, but he is a resident of Huntington Estates of ten years and said he cares about his community. A PowerPoint presentation was presented, a hardcopy of which has been retained for the file. He said he is representing the HOA. He stated that Huntington Estates is an interesting neighborhood with about 200 homes located on approximately 80 acres immediately west of the subject property. He said the neighborhood is very interested in improving the community and is interested in making this a better place to live in Arapahoe County. He said this is the final stage of the PUD development and there are regulations within the Land Development Code (LDC) that say the final documents must achieve the nine objectives stated in the code as well as be an application that is desirable. He said the Commissioners are well aware of the history of this case. He said there were three public hearings about a year and a half ago and there were significant discussions at that time to address a number of issues related to transition, which is the issue he would address today. He said at that time there was discussion about setbacks, height, stair stepping, and screens and buffers; there was also discussion about where the density on this property would be located to try to make the development more compatible with the neighborhood. He said if all the representations and statements made fifteen months ago had been complied with in the FDP, he would not be here. Mr. Eck stated that he is here because the FDP does not bear the same level of compatibility as the PDP. He said the PC agrees, so it is not just the neighbors. He said the PC stated that this project lacks the compatibility necessary to move forward. He said there is some concern from the developer about the rare financing and the ability of this project to move forward. He said this property will be developed, as the neighbors are not opposed to development, but the residents want to spend the time necessary to get it right the first time. He commented that whatever is built on this parcel would be a neighbor for the next 40 years, so the compatibility required by Arapahoe County must be observed. He argued that the developers financing is not a point of consideration for this Board, and is outside the nine goals that are stated in the LDC. He said if discussions regarding prairie dogs are going to be curtailed, then discussions regarding the financing should also be curtailed.

Mr. Eck said presented the LDC goal related to compatibility (slide 3). He read the definition of compatibility. He said since 2002, Arapahoe County has issued design guidelines for the urban service area. He said the design guidelines have been around for a long time and certainly predated any activity on this parcel. He said the design guidelines mention specific goals, which he read into the record. He pointed out that another goal is the protection of the residential neighborhoods that are the adjacent properties to development. He referenced Section 2.6.2 of the LDC and said protection is again stated in Section 3.4 that addresses multifamily developments and multifamily transition. He read Section 3.4 into the record. He said there is a lot of guidance in the Arapahoe County LDC that everyone should be paying attention to. He said that guidance is provided to the residents and developers in the area. He presented Section 2.7.1, which addresses scale and a diagram. He said the diagram shows up in multiple places in the design guidelines.

Mr. Eck then addressed compatibility. He said the developer has represented its view of setbacks, which is the distance from its structure to the property line, but there isn't just a single property owner adjacent to this development. He said if each individual parcel is considered, the Board would get a much better perspective of what the setbacks are and how they changed. He said he has completed a complex analysis in the comment letter that was submitted prior to the Planning Commission meeting. He said a number of the setbacks have been decreased while building heights have increased. He said he was trying to understand the setbacks but he doesn't have a tape measure that is 150 feet long. He commented that he stepped out of his front door yesterday and he looked at the house across the street, which is 150 feet from his front door. Mr. Eck said 150 feet is the distance from one's front door to the neighbor's property across the street. He said the difference is that his neighbor's house is about 25 feet high. He said the mass and scale that is being talked about is actually quite different when dealing with Prospect Village. He pointed out that the buildings in Prospect Village are roughly the size of a football stadium (he presented a photo of Invesco Field at Mile High). He said he doesn't mean to imply that the project is the size of Invesco, but this would be a building that is 380 feet long, about 300 feet wide, and 60 feet high. He said an entire football field could be wrapped with bleachers about six stories high, so there would be a dramatic difference and a dramatic increase.

Mr. Eck said he would like to address compatibility through stair stepping. He presented a slide that had been previously presented by the applicant. He said approximately 70% of the 4-story buildings were actually screened by lower height buildings. He said it seems like all the buildings had multiple stair steps and there were stair steps blocking everything that came into Huntington. He said there were 1 story, 2 story, and 3 story elements as part of the buffer and transition. He said commitments were made at the time that all buildings would be stair stepped from two stories and that was on the public record; technically, the buildings that have come back as part of the FDP may have a small bit of 2-story stair stepping, but that is the bare minimum. He presented some of Mr. Peterson's slides and said these slides show the dramatic difference.

Mr. Eck then discussed buffering. He presented a slide that was used during the PDP process by the applicant. He said through the trees, one can still see the height of the buildings, which has not changed. He said the trees in the photo have had three to five years of growth. He said the planning code says that buffers and screens can serve as an affective means to increase the transition. He said even with the representations that have been made about the allocation for offsite landscaping, the increased allocation of offsite landscaping made at the PC hearing and the findings with regard to the wall, the PC still found that this was an inadequate barrier to achieve the transition necessary and required by code.

Mr. Eck presented a slide showing the transitional planning zones. He said this slide was presented by the applicant in the December meeting. He said there is a linear transition, as the bands are fairly wide. He explained that locating the residential density to the far southeast corner on this property increased the compatibility with the adjacent land use. He said at that time, this graph demonstrated that that could be done. He said he was interested in looking at the FDP and understanding what it might look like. He described the zoning areas as looking more like a voting district in Texas than a logical use of land planning. He presented a perspective that he created with possible zoning districts. He asked that the Board deny the FDP because the proposed development is not compatible with surrounding land uses. He said the property will be developed and there could be a delay in that development, but the residents are not saying that nothing could ever be developed there. He said the citizens can do a better job of maintaining the integrity of the land development process with this as well. He said a reasoned, thoughtful, practical approach and sharing information on a timely basis will help every citizen in Arapahoe County.

Mr. Eck summarized and said should this Board decide to approve the FDP, he would like to a number of representations that were made incorporated into the record. He said there was discussion about better screening and the additional commitment for the offsite landscaping. He said there have been comments about limiting the drive through uses. He said there were 26 points specified through the PDP, which Mr. Sheldon referenced, that he has not seen on the record, and he wants to make sure they get into the record. He said there were restrictions on uses that were referenced again, and that is the list of "dirty 13" that are in the 4SM that should be included in the record.

Valerie Nuanes, 2102 S. Clinton Street, Denver, said she lives in Huntington Estates. She commented that she is at a loss because of the limitations of discussion of prairie dogs. She said it had been established that the applicant had the right to kill prairie dogs, however, the applicant made a commitment in front of 200 people that they would relocate the animals at the Board's request. She said that could still change, however, the applicant misled the public by not saying that they didn't have to do that. She said most of the residents had no idea that the applicant had that right. She said Mr. Sheldon has worked in this County for many years and he must have been aware that he did not have to honor that agreement. She stated that the applicant also had to have known that relocations have not been done in this County for many, many, many years so representing to the Board that their agent had contacted different agencies to see if the animals could be relocated is a mute point because it cannot be done. She said Mr. Sheldon has been in this area for so long, it would be inconceivable that he did not know this; on top of that, the neighborhood did not know that the plan was going to change. She said the killing started right after the PC hearing. She said the neighbors didn't know about this until a week and a half ago. She said had the neighbors known, it wouldn't have saved the prairie dogs but the neighbors might have had an option to see if there were other agencies or non-profits that could have relocated them in some other county. She said the residents were never given that opportunity. She said one of the neighbors talked to the trap owner who said he was having trouble trapping the prairie dogs but he never mentioned that the prairie dogs were going to be killed; that is a misrepresentation, one of many that GenCap has made and not honored.

Mark Lampert, 9022 E. Colorado Drive, representing Yorkshire Estates and 4SM, said the amount of work to get to this point has been astronomical. He said the time and effort that went into this is mind boggling. He said the volumes of paper that were put out and so many changes, it was so difficult to keep up with these changes, that he is still a little confused as to what's there or not. He said today is the neighborhood's final chance to get the Board to make sure these items are put in the mylar, put in the notes, because too many times what happens is that there is a mutual agreement but somehow, some way, the items never make it into something that, in two years, five years, ten years, we can remember. He said he needs to go through the 26 items plus the famous "dirty 13". Mr. Lampert presented the list of 26 conditions proposed by the residents, a copy of which has been retained for the file. He said what the Board heard Carol Kuhn said is exactly what she said to the Planning board. She said the staff, the citizens and the developer are looking to the Board to make a decision that seems to be, either way, is going to hurt somebody. He said the staff leaves the decision to the PC to decide if they see fit that the transitional guidelines were met; obviously we know now that they did not. He said the word "technically" is highlighted and underlined in the staff report. He said not so often do we see the words, "they meet technically the guidelines." He said that must mean that staff had a little bit of doubt that the developer did meet the guidelines to the PDP to the FDP. He called attention to the January 8th BOCC meeting. He said when this came up, there were to public hearings. He said one was continued and then it was continued a third time with no public hearing and that was January 8, 2008. He said at that point there were so many things flying off the table from the dais that it was unbelievable-no one was copying them down. He said he doesn't think all of the notes got written. He said one of the things that Commissioner Bockenfeld stated was, "...his biggest concern was transition and buffering and adequate steps were taken to build a better transition and buffer between the existing community and the development." He said what the Board saw today, there is some movement on that and the plan is almost there. He said somehow, some way, the entire plan, from the PDP to the FDP changed because staff told the entire project had to be moved to the north for stacking of cars. He asked if that could be waived. He said that seems to be the crutch of the whole matter and that is what the entire developer is hanging his whole hat on this. He stated that if the plan didn't have to be moved to the north, the stair stepped plans that the Board approved would have been presented. He said Commissioner Beckman had stated that the plan was too massive and too bulky. He asked if that was discussed to waive that, that possibility of the targeting. He said the types of businesses should be considered. He said things are changed and waived all the time and he asked if this is not something that could be possibly be waived and go backwards and get that taken care of so that the plan matches the PDP. Mr. Lampert said, "bait and switch." He then discussed garage windows. He said originally the residents were "sold" that the garages were going to be surrounded by residential and the neighbors would not be looking at garages. He said with all due respect to Cunningham Fire, firefighters are okay to look at garages; at that point in time the residents said Huntington wasn't. He said today, firefighters in Station 61 can look at the garage and they are not even going to be with the fancy windows. He said the residents of Huntington shouldn't have to look at a garage. He said no matter what the applicant does to that it will still look like a garage. He said every garage has to be lit 24 hours per day, most likely with fluorescent lighting. He said that lighting coming through, he didn't hear there would be glass on it, so the garage would be open. He said he doesn't know if anyone has florescent lights in their bedrooms that shine like what's going to shine out into those

windows of Huntington residents. He said the garage has to be wrapped. He then discussed the towers as the community identifier. He said the neighbors want something that would identify the 4SM. He said a clock tower was originally discussed but there is no clock tower, just towers. He said he's not sure that is what 4SM wants to be identified as, other than the fact that that would represent the four story structure that is put into back yards. He said that is not a community identifier and the neighbors were never asked, other than at the beginning, what would they like to see and everyone like the idea of a clock tower. He said the Board needs to know that when there was talk of the landscape doubling to the five residents that are from the south part of the property moving in, that was made at the time; instead of \$1,200 going to the home owners association for each of the residents, those five home owners were going to get \$2,400 as a peace offering or buy out for moving that parcel of commercial to the north. He said the Board needed to know what the dollars were. He said the 26 items are now down to just a few and he doesn't see these anywhere on the notes, yet these were the hard fought items back in November of 2007. He said there is a commitment that the minimum percentage of evergreen trees can be as high as 75%; commit that the live/work businesses uses must be complimentary with residential uses. He said the Lowery development is the closest development to 4SM with a live/work plan. He said those live/work offices are usually a psychiatrist, a psychologist, a computer expert, or other things that have a very limited amount of people coming and going. He said more than one or two at a time is not compatible. He said he didn't hear anything about the construction hours, which were restricted from Monday through Friday from 7 a.m. to 7 p.m. and Saturday from 8 a.m. to 2 p.m. He said these need to be written in because as we leave here today, he guarantees, that watching this development from Yorkshire Estates, when there was Metropolitan Homes, there was a verbal agreement, then the residents had to back to staff to get those taken care of. He said that is not fair. Mr. Lampert then stated, "The issue that we want to make sure, I did see that, but I'm sure that no developer would not warranty any of the trees for at least a year and then pass that warranty on to the HOA." He said the mitigation of the construction dirt, dust, trash, and all that, that is set up by the soils guidelines, but again, these need to be reiterated. He said the wall must be constructed within two to three months of the construction beginning. He said the residents want a commitment that it would be done. He said the neighbors want to restrict the dumpster pick up hours to the same as residential pick up hours. He said the lighting is down cast, that we've got. He said the restaurant outdoor seating area must be located on the east side of the building, not the west side, but a building developer is not necessarily going to put that on there; it's going to be on the west side because that's where the view is. He said the 24 hour operation was heard by the Board, but it's not written down; on site RV and boat storage isn't written down either. He said there would be no outdoor storage permitted on the balconies, and that must be written in, even though it would be in the HOA guideline document. He said the portable toilets will be on the Emporia side, not the Huntington side. He said construction access would be only from Emporia. He said those are the items that we're talking about.

Commissioner Beckman clarified that staff never received a copy of that list and asked Mr. Lampert to submit a copy. She asked if these items were just things that were discussed or if there was an agreement.

Mr. Lampert said he believes these were agreed upon in many meetings, and yet they seem to fall aside.

Commissioner Beckman stated that Mr. Lampert is getting these issues on the public record and asked him to submit the list to the clerk for the Board's review.

Mr. Lampert then reviewed the "dirty 13". He said no where on the notes does it say that there will be restricted uses specifically and the residents want those restricted uses specified. He said the residents know what happens; the Board will change and the neighbors will change but the hard fought efforts of the citizens and residents should not go unnoticed without it being presented now. He thanked the Board for the time and said this is the first project where he has appeared so many times.

Commissioner Beckman commented that the Board is looking at the PDP and making sure that some of the commitments are noted. She said the Board understands that the neighbors desire a written commitment.

Commissioner Beckman said that concludes the organized presentation from Huntington Estates. She said most everyone who signed up yielded their time to the speakers. She asked if there is anyone who would like to add anything and asked that speakers refrain from repeating testimony.

James Reilly, 2296 S. Dayton Street, Denver, said his house is right next to Iliff and behind the restaurant and holding pond. He said he is concerned about the pond and asked if there would be standing water and who would be responsible for maintaining the pond. He said when the homes go from ownership to rentals, it's just like a rental car-you're excited when you first get it but you bring it back dirty. He said the same thing will apply here. He said the pond will be forgotten and the residents won't have anyone to go to. He said the neighbors need a central point of contact to make sure it is taken care of. He said the true owners of the land are the field mice, snakes and prairie dogs. He said there is going to be an invasion of the homes once the earthwork begins, and the animals would go towards the houses. He asked if there is a provision for someone to service them and who would be the point of contact for that. He said he would like that to be included somehow.

Daniel Rifkin, 1541 S. Pennsylvania, Denver, said he represents a large group of Arapahoe County citizens for wildlife. He said he would like to address Ms. Kuhn's comments regarding the burrowing owls nests and earth work. He said he is aware that burrows have been plugged in efforts to poison the prairie dogs that have not been caught; development is proceeding before the arrival of the burrowing owls and earthwork has been observed on the site at this time. He commented that he understands there are time restraints that allow the developer to do some earthwork prior to a certain date but he plans to research this and seek the council of wild riparian to legally challenge this Department of Wildlife information. He further stated that this is not what he would describe as an accomplishment for Arapahoe County. He said a Texas development corporation, GenCap, destroys a last remaining regional native prairie habitat, poisoning all wild life to build a likely low rent, high density, multifamily housing complex with some retail. He said you need only to look south to Wind Stream to see what that results in. He said there are many vacancies and many defaults on ownership and low rents. He said he is here to speak to saving our last native wild life spaces. He said he is sure some of the Commissioners have constituents that regard wild life as nothing more than agricultural pests or impediments to progress. He said he is here to say that it is time to rethink this view and not to rely on archaic laws. He said the time that native wild life can just be eliminated with cheap poisons or simply bulldozed over have to end. He said Prospect Village is such an example. He said to GenCap partners, this 16-acre parcel with approximately 300 prairie dogs, 200 rabbits, countless song birds and raptors is only a barren piece of land and an opportunity to develop. He stated that there are a lot of people around Parker and Iliff, some of them here, who are heart broken and distraught and are very tired of this approach and short-sighted management of our shrinking natural resources, watching wild life die slow, agonizing deaths as well. He said the killing of the remaining wild life habitat that have lived in Colorado for hundreds or thousands of years, is unconscionable and unacceptable and is a shameful legacy to our children when all we have left is buildings.

Gary Guinn, 9400 E. Iliff Avenue, Denver, said he lives in Wind Stream, which is immediately south of the proposed development. He explained that he is speaking on behalf of himself and his wife as individuals and he is in no way representing the Wind Stream board of directors or association. He said he and his wife have been residents of Arapahoe County for 30 years and he has lived in Wind Stream for the last 11 years. He said one of the things that he has observed in the Iliff corridor from Quebec to Havana is that it is a mixed bag of zoning and development. He said there is just about everything from single family to multifamily to retail and commercial, office and industrial. He said much of that development has been unremarkable and some was an actual eye sore. He said he has always felt that this site was an eye sore. He said he has also been concerned about the light industrial zoning that was on that property. He said he used to think, "Those poor people at Huntington Estates that border that property. What is it there going to get and what is Wind Stream going to get." He said one of the things that he has been pleased about is the recent change in the development along the Iliff corridor; little by little the Board has improved the quality of development; tired old commercial buildings have new face lifts and the Cherry Creek Country Club is one of the premier developments in Arapahoe County; it has improved the walking experience along the High Line Canal and it has improved the streetscape along Iliff. He feels that the proposed development would add to that continuing betterment of the quality of what we're seeing happen gradually along Iliff. He commented that he had no idea what to expect when development was proposed there and he is very, very pleased with the site plan, the elevations, the buffers, and the perpetual landscaping. He believed this development would be an asset and he is very impressed with the quality of the development and the concessions that the applicant has made.

Jerry Atencio, 1776 S. Uinta Way, Denver, said he has been a resident of Mountain View Gardens (MVG) in Arapahoe County for 14 years. He said he has been involved with the 4SM and was past president of the MVG HOA to make this a better place to live. He said he would not go through the history of this section of Arapahoe

County because the Commissioners know the history. He said it is a mess because of previous decisions that have been made by government officials; what is important is the context of what statements have been made to the Commissioners today. He said he was involved in the very beginning discussions with GenCap and when Mr. Sheldon said there were negotiations, that word is used very loosely. He said ever since the very beginning the residents have been presented with "A" or "B". He said the neighbors have never been in a consultative-type relationship where they have been able to present their ideas or concepts with the exception of elevations. Mr. Atencio stated that the diagrams that were presented today make the buildings look like a prison and he would not want to look at a four story structure that is 150 feet away and he said the Board members would not want to look at that either. He said he took a back seat when the Huntington people came and had many meetings with GenCap, but what was found was two steps backwards. He said that development is much worse today than when it began. He said the record should reflect everyone who signed in and has opposed this. He said not everyone is going to stand up and speak to the Board. He further stated that the transition does not meet the spirit nor the letter of the Board's approval last January. He said this FDP should be denied.

Raylene Owen said she lived for 39 years at 1741 S. Parker Road, and she has been in the 4SM area for that period of time. She said after the building of Whisper Sky, which is directly across the street from her old house, and looking at 3 story apartment buildings and dealing with all of the discrepancies and all the difficulties with that particular builder, it finally drove her to Elbert County. She said she now resides in Elbert County but still owns the old place. She said every time she goes back and looks out her kitchen window at three stories right across the street, which is probably 100 feet from her window to Whisper Sky. She said those three story apartment buildings are like being down in a dark canyon and it completely ruined her quality of life there. She said that has driven her out of Arapahoe County. She further stated that certain people have the ability to make cow patties look like apple butter and when talking about concessions that were supposedly made to say that they doubled the hundred-foot setback and without that they couldn't have met their open space requirement. Ms. Owen said it really isn't a concession as it is something they would have had to do have done anyway. She said she is a little confused as to why one place says there is 35% open space and a slide that Mr. Sheldon presented showed 46% open space. She said considering all of the irregularities and discrepancies, since the Board approved the PDP, and the discrepancies between the PDP and what came forth in this FDP, she earnestly suggests and asks that the Board deny this FDP.

Olga Getsina, 4315 S. Gibraltar Street, Aurora, said she is nervous because she is talking about something she cares about. She said she is really disappointed and upset about what she is hearing today. She said the majority of what she is hearing is about profit and what this would do to the building but she doesn't see any sign of corporate responsibility. She said one thing that they teach in business school is that when you want to do business, you owe something to society and something to the land and something to the nature that you build on and she doesn't see any of it here. She said there has been no consideration of what they actually do to the land and how much damage it causes. She said this plan is simply for profitability and there is no respect for any wild life. She said she doesn't know how they treat the wild life in Texas, but in Colorado, we are proud of it and want to preserve and sustain it. She said, "People care about prairie dogs and bunnies and people might think that is a waste but to us it's our pride." She felt that it is not right for the residents not to be heard and for the public not to be considered.

Ms. Richman read for JM Fay, PO Box 22675, Denver, 80222, who asked about a new traffic signal. She said the only plan is to change a three way to a four way which would have to be done already. She said this is again Michael Sheldon's misrepresentation.

BREAK

Sharon Coggan, 2525 S. Dayton Way, said she lives across from this development and she is extremely disturbed about the attitude. She said there is a slash and burn mindset and people think they can just come in and destroy whatever is in their path. She said it is so ironic that we are looking at the picture of the Native American, which is the County's logo, and the same mindset destroyed a continent full of people and now the same thing is happening, although not at the same level. She said the extreme arrogance and naked greed is destroying the wild life in her neighborhood. She said she learned how hideously the poor little animals are dying. She said GenCap has engaged exterminators but could pay a little more to give the prairie dogs carbon monoxide which they would just go to sleep and not feel anything, but no, because it's a little more expensive, these poor little animals have to squirm in agony and breathe this hideous gas for 10-20 minutes in absolute agony before they die. She said if the Board

thinks they can just pass off this issue so easily, the Board should know that she is not the only person who feels agonized. She said there is another attitude and world view that could come out and rule and engage in our world and that would be an attitude of empathy and respect for all life, for wild life, for all the neighbors. She said this would be an attitude that would value all living things. She said we are agonizing, but not nearly as much as the poor little prairie dogs. She said the neighbors were told by GenCap that they were doing everything they could to look into resettling prairie dogs. Ms. Coggan said she has a list of agencies that the applicant claims to have called and she called them all and none of them ever received any call from any representative from GenCap, so they have not lived up to what they claimed that they would do. She said now there is a person who has been engaged to go out with a rifle to shoot coyotes at random.

Commissioner Beckman clarified that that is not in Arapahoe County's jurisdiction.

Ms. Coggan said if the prairie dog communities weren't being removed, there wouldn't be problems with coyotes taking pets. She said the Board has heard all day that the neighbors don't want this GenCap development from Texas. She said the project is cursed and no one wants it. She said the applicant has killed in agonizing and horrible ways. She said it is also irresponsible. She said in this economic climate, there are empty condos and rental units up and down this street; once this is built it will stand empty. She said this project is irresponsible and the applicant hasn't lived up to their pledges.

Public Comment closed

Mr. Lampert submitted a list of the "dirty 13" to Ms. Sanchez. The list was given to the attorney.

Ms. Kuhn said four options were provided for the Board in the staff report. She asked if the Board would like her to read the options into the record.

Commissioner Beckman said there is a list of 26 points. She said the Board does not have the list of "dirty 13" but said it is on one of the PDP plats. She said the Board needs clarification.

Ms. Kuhn said the use issues were addressed in the PDP, and that is where use, bulk, mass, scale, setbacks, etc., are addressed. She said the "dirty 13" are included in the PDP with the exception of a drive through. She said that was precluded and wasn't included in the PDP. She said that use is allowed, however, there is a note on the FDP that states that the drive through use would be limited to a bank only. She said in the zoning document it is an allowed use. She acknowledged that staff just received a copy of the 26 points that were discussed. She said a copy of that would be provided to the clerk for the record.

Ms. Kuhn explained that staff has presented four options in the staff report; one is conditional approval with amended findings and conditions, one is for denial, which would be consistent with what the PC recommended, the other is that if there are significant issues that the Board would like to see changed, there is a recommendation for a referral back to the PC, and there is a recommendation for a continuance; these have all been outlined with revised findings in the staff report. She asked what the Board's pleasure is.

Commissioner Weddig said he has no idea what is on the list of 26 items. He felt that some of those items have been covered and there are others that might have some confusion about them. He said he would hate to see this Board approve or disapprove this case based on some items without knowing what that list is about.

Ms. Kuhn stated that the list is also new to staff, as staff has never seen it in writing. She said she does now have the list, but many of the items are not issues that the County can address such as covenants and restrictions that would be on the property.

Ms. Kuhn presented the list to Ms. Sanchez, who delivered the list to Chair Beckman.

Commissioner Beckman said the Commissioners would not include that list into any motion without having a discussion.

Commissioner Weddig said many of those items are not appropriate to be placed on an FDP or PDP and are covered by other documents.

Ms. Kuhn said that is correct, such as CCR's (Covenant Codes and Restrictions) and HOA restrictions, but they are not appropriate for a zoning document or a site plan document.

Commissioner Weddig asked how a homeowner would enforce those stated promises in the future if this plan is approved.

Ms. Kuhn asked the attorney to answer that. She said some of the items on the list are not within the purview of the FDP.

Mr. McNish stated that the Board's power is limited in this zoning matter to what is reasonably related to the use of the land. He said County's do not possess the powers that municipalities have, but the County does have some regulations on some of these items, but they are not germane to the land use approval. He stated that the issues have been set forth by Ms. Kuhn and the neighbors very eloquently, but these are land use concerns only and the Board cannot get into other areas as desirable or undesirable as they may be to the Board. He said those are areas outside of the County's authority in a zoning context.

Commissioner Weddig asked how there could be control on construction hours and the location of the sand and those little things have an affect on a neighborhood. He assumed that there is normally some give and take.

Ms. Kuhn stated that is not a land use issue and is usually done through an HOA or covenants, but at this point there is no HOA or any similar entity.

Commissioner Weddig mentioned that there has been a promise to build the 8-foot wall prior to construction.

Ms. Kuhn said that the wall is in the zoning document but it is not clear as to when that wall would be built. She said the requirement for a wall is also reflected in the FDP.

Commissioner Weddig said the applicant could speak to that because that is one item that needs clarification. He said the 24-hour uses are clarified.

Ms. Kuhn agreed that the wall is noted in the zoning documents.

Commissioner Beckman asked about the retention pond and confirmed that there have been past issues regarding retention and detention ponds, which have had significant maintenance issues.

Irene Valenzuela, County Engineering, explained that there would be a detention pond and there would be some standing water within the out structure, which is a requirement by Urban Drainage. She said the pond would not be deep enough to promote mosquito larvae formation. She said the outlet structure is designed to drain in approximately 72 hours. She further stated that the property owner is responsible for maintenance and cleaning the pond and drainage structures, however if the owner fails to perform that maintenance as stated in their maintenance and operation manual, which is filed and recorded, the County and or the Southeast Metro Stormwater Authority will have the authority to access the property and provide that maintenance and the owner's cost.

Commissioner Beckman asked how the area would be landscaped.

Ms. Valenzuela explained that there can only be landscaping above a certain water surface elevation but other than the turf within that area, outside of that they are allowed to plant shrubs and trees.

Commissioner Beckman asked if there would be grass.

Ms. Valenzuela answered yes. She then discussed the existing traffic signal, which is required to be upgraded by the development. She said the signal is under the jurisdiction of the City and County of Denver. She said the

applicant has submitted plan for Denver's review and has copied the County as a courtesy review, however, Denver will be mandating that approval. She said from the plans that she's reviewed there would be a full upgrade of that approval. She said regarding other signals, Cunningham Fire requested an analysis at Iliff and Emporia. She said the consultant provided that analysis and the fire district has not seen anything further as far as the need for that signal, so they have since provided documentation to that effect.

Commissioner Weddig asked about the stacking.

Ms. Valenzuela pointed out that the PDP has notes that say access points are conceptual. She explained that the PDP, at that time, didn't take into account the infrastructure design standards, which specifically state minimum distances from access isles, especially at a signalized intersection. She clarified that staff has worked with the applicant and the requirement is 200 feet from the property line, however, staff has since had the consultant provide some traffic analysis to reduce that to 100 feet.

Commissioner Beckman asked why that was not identified in the PDP.

Ms. Valenzuela said typically those types of issues are not reviewed at the PDP stage and that is why the note regarding conceptual drawings is included. She added that this case was reviewed by the Technical Review Committee.

Chuck Haskins, Engineering Services, said there were comments about the access this morning, and it would be appropriate to provide a history. He said staff did not make that comment during the PDP and that has brought up a lot of problems. He said this is a major arterial roadway carrying thousands of vehicles per day. He said in light of safety there is a good engineering reason to separate access points. He referenced the site plan on the screen and said there is not sufficient queuing available for outbound movements. He said there would be queuing in the internal intersection and that would not allow free flowing traffic ingress from Iliff, which means traffic would be back up into Iliff. He said with numbers like 57,000 vehicles per day, the safety problems could be anticipated. He further stated that the standard states 200 feet but the standard doesn't account for the range of traffic volumes, so the applicant had to model the traffic with the actual traffic volumes to show that the maximum probable queue is around 100 feet, which allows for four vehicles. He said staff does not recommend that anything be done to compromise that distance further and staff feels that the 100 feet is adequate.

Commissioner Dyer asked about timing and the necessity to come to a decision today versus time to deliberate further.

Mr. Sheldon requested that the Board make a decision today. He commented that the genesis of the various points was part of the negotiation that was occurring between the applicant and the neighborhood leaders over the years; it was designed to find some sort of agreement that would be civil in nature. He said it would be a contract stating that the applicant would agree to do these things in exchange for the neighbors' non-opposition. He said they were never able to get to the point of non-opposition. He said if the applicant was willing to do that, the applicant is still willing to do that. He said for instance, the applicant agrees to build the wall within the next 90 days, even though it may not be enforceable by the County. He said if the applicant was willing to do that then, the applicant is still willing to do that now even though the neighbors have not come to a non-opposition agreement. He publicly committed that the applicant will enter into an agreement with Mr. Peterson's group, who has negotiated with the applicant in good faith over the years, if the Board is inclined to approve this FDP, that prior to the mylar being recorded, the applicant will enter into a civil agreement which would be enforceable civilly by the neighbors on the points that have been discussed. He said if the Board is inclined to approve the FDP, the mylar shouldn't be signed until and unless the applicant has demonstrated that they have entered into the civil agreement with Mr. Peterson's group on the various points. He said he believes there are not 26 left because some of them have gone away, but he would agree to do the ones that are left.

Commissioner Weddig asked what that agreement would look like.

Mr. Sheldon said if the agreement is no longer for non-opposition, the applicant would say that the developer is burdening its property by covenants that make Huntington the beneficiaries of these agreements so Huntington would have a civil remedy. He said that is the best way to deal with this issue, given the timing issues.

Commissioner Weddig said he has not seen the list, but he heard something regarding construction times. He said the applicant might not have as much control over that. He cautioned Mr. Sheldon to not give that impression. He said he doesn't know what the critical items are.

Mr. Sheldon said he would assume that Mr. Peterson would continue his good faith relationship with the applicant, and said he is confident that this could be worked out. He said a letter would be forthcoming from the neighbors and from GenCap to say that the agreement has been reached.

Ms. Kuhn stated that the conditions for approval are outlined in the staff report. She asked the Board for a decision.

Mr. Sheldon closed by saying this has been a long process of discussion and negotiation and many of the changes that have been made at the neighbors' request are good and would benefit. He said the applicant cannot satisfy everyone. He said carbon monoxide was used to remove prairie dogs when a relocation was not possible. He said many of the changes that were made were good changes and would benefit the community. He said the applicant believes this would be a project that everyone will be proud of and it will be compatible. He said GenCap will honor the commitments that have been made.

Commissioner Weddig said for purposes of a motion, statement no. 5 under Conditions states that any additional conditions must be read into the record. He said Mr. Sheldon just talked about the list of items that are not part of the final development plan documents. He said that list would be one of the items that would be considered to fall under Condition No. 5.

Commissioner Beckman pointed out that some of those items cannot be in the document, per the County attorney.

Commissioner Weddig said reaching a civil agreement with Mr. Peterson could be a condition.

Mr. McNish said that could be made a condition of approval, that the developer will, in good faith, reach an agreement with the HOA. Mr. McNish said each point should be specified.

Mr. Sheldon read from the list of commitments, a copy of which has been retained for the file. He noted which items the developer would agree to:

1. DONE
2. NO LONGER APPLIES
3. DONE
4. DONE
5. IN THE PLANS
6. NO LONGER APPLIES
7. NO LONGER APPLIES
8. NO LONGER APPLIES
9. AGREE
10. AGREE (7-7 MONDAY THROUGH FRIDAY / 8-2 ON SATURDAY)
11. AGREE
12. AGREE
13. PART OF PDP
14. AGREE
15. AGREE
16. IN THE PLANS
17. AGREE
18. AGREE
19. AGREE
20. NO LONGER APPLIES

21. AGREE
22. AGREE
23. AGREE
24. COMMIT THAT THE SANDLOT BE ON THE EASTERN SIDE, SUBJECT TO ANY OSHA RULES
25. NO LONGER APPLIES
26. PART OF PLAN
27. NO LONGER APPLIES
28. DONE
29. DONE
30. YES-This plan calls for expensive structured parking. If the applicant does not follow the plan, it would be enforceable by injunctive relief.
31. AGREE- The applicant will use its best efforts to record the agreement subject to lender approval.

Mr. Sheldon said the documents will be prepared and reviewed with Mr. Peterson and would be presented to the County prior to the mylar being recorded.

There was a comment from the development team that the recording of the agreement is subject to lender approval. Mr. Sheldon said the applicant would use best efforts to record the agreement, subject to lender approval. He said some lenders will dictate what kind of covenants can be placed on the land. He said it is the applicant's intent that these issues be enforceable civilly.

Commissioner Weddig said this has been a long process and he struggled with what was presented to the Board today. He said it has been a struggle for the people who live in the area and for the owners of the property, as they try to figure out what can be built. He said there are a lot of variables regarding what the applicant can commit to, yet there have been some good faith negotiations over the years from both sides. He stated that there were seven or eight lots on this property when this project began, and some of those lots had an industrial nature. He said the plan has come a long way and the process has resulted in what is before the Board today. He said he would move for conditional approval based on today's testimony and the back-up materials with the Board Summary Report.

It was moved by Commissioner Weddig, that, in consideration of Case Number P08-011 – Prospect Village Final Development Plan, the members of the Board of County Commissioners have read the Staff Report dated February 23, 2009, considered the recommendation from the Planning Commission following its public hearing on February 3, 2009, and received testimony at public hearing held March 3, 2009.

The Board of County Commissioners finds itself in general agreement with the Staff's analysis of the application, including all plans and attachments as set forth in said Staff Report, and concurs with Staff findings 1 through 9 with the following modifications, provided the conditions of approval are met:

1) Concur with Staff findings: The Board finds that the proposed Prospect Village Final Development Plan (FDP), Case No. P08-011, appears to be in general conformance with the adopted Arapahoe County Comprehensive Plan for land use and general development standards.

2) Concur with Staff findings: The Board finds that the proposed FDP appears to be in general conformance with the adopted Arapahoe County Four-Square-Mile Subarea Plan for land use and general development standards.

3) Concur with Staff findings: The Board finds that the proposed FDP is generally complete and appears to contain all of the required information and materials to allow the County to consider conditional approval of the FDP.

4) Concur with Staff findings: The Board finds that the proposed FDP appears to be in general conformance with the standards and requirements of the Arapahoe County Land Development Code for an FDP.

5) Modified from Staff findings: The Board finds that the building transition, as presented in the proposed FDP, using stair-stepping in number of stories, stair-stepping effect occurring with change in property grade, and other elements of the site design as presented during this public hearing, complies with the requirements and intent for transition and neighborhood compatibility approved with the Preliminary Development Plan, Case Number Z06-003.

6) Modified from Staff findings: The Board finds that the proposed FDP substantially complies with the requirements of the Preliminary Development Plan, Case Number Z06-003, for the following project elements as presented in the Staff Report and at this public hearing:

- a) Garage locations, design and architectural treatments for Building One (facing the Huntington Estates neighborhood) and Building Two (facing Emporia St.), plans as amended February 10, 2009;
- b) Use of architectural towers to provide a community identifier as required by the Preliminary Development Plan and recommended by the Four Square Mile Subarea Plan, as presented in the FDP;
- c) Roof design to provide the required breaks in plane at least every 100 feet, as presented to the Planning Commission February 3, 2009.

7) Concur with Staff findings: The Board finds that additional standards of the Land Development Code appear to have been met for a FDP.

8) Modified from Staff findings: The Board finds that the proposed FDP appears to meet the minimum standards and requirements of the Preliminary Development Plan, Case Number Z06-003, zoning criteria and standards of the MU-PUD zoning sufficient to allow the FDP process to move forward and that the plans presented at the Planning Commission hearing on February 3, 2009, for roof-plane and the plans submitted to the Planning Division February 10, 2009, updating garage architecture and other elements, substantially meet the requirements of the approved PDP.

9) Modified from Staff findings: The Board finds that, with the Staff's recommended conditions of approval, as presented in this Staff Report to the Board of County Commissioners and incorporating recommended modifications and additions from the initial Planning Commission motion for approval, and based on information presented during the public hearing before the Board of County Commissioners, this FDP is appropriate and should be approved.

Based on these findings, the Board of County Commissioners APPROVES the application for Case Number P08-011, Prospect Village Final Development Plan, subject to the following conditions:

1. The applicant shall make all minor changes and corrections identified by the Planning and Engineering Services Divisions, including any outstanding items identified in the Engineering Services Staff report dated February 20, 2009.
2. An sum of \$1200.00 for off-site landscaping shall be paid to homeowners for each lot adjacent to most western retail pad (lots 11-14 in Huntington Estates), as noted on the plan set dated February 10, 2009, in addition to off-site landscape commitments approved with the Preliminary Development Plan, as offered by the applicant at the time of the February 3, 2009, Planning Commission public hearing.
3. Although the Preliminary Development Plan does not prohibit drive-through uses for the property, any drive-through uses proposed as future amendments to the Final Development Plan shall be limited to commercial banking for the stand-alone retail pads, as noted on the plan set dated February 10, 2009, and agreed to by the applicants at the time of the February 3, 2009, Planning Commission public hearing.
4. This FDP approval is subject to the approval and recording of the replat and vacation of easements, Case Nos.P08-010 and V08-006.

5. The perimeter wall must be built within 90 days after the approval and recording of the replat and vacation of easements, Case Nos.P08-010 and V08-006.
6. The developer will make a good faith effort to reach an agreement with the Homeowners Association in regard to the Items that Mr. Sheldon read into the record.

Commissioner Weddig said certainly the proper protocol requires that the applicant make the best efforts to reach that agreement and the County will hold the developer to that, to the extent that it can, understanding that the County has limitations. He said there are an additional five items after the nine that are listed in the approval proposal. He said those are part of the approval as well.

Duly seconded by Commissioner Beckman.

Commissioner Bockenfeld stated that he would vote against this motion because he believes that one of the four options available is to refer this case back to the Planning Commission to consider further revisions of substance to be made by the applicant. He said this has been a difficult case but it seems that they are very close. He said if this deal is going to come together for the applicant, the financing will come, so for that reason he is going to vote against this motion.

Commissioner Noonan concurred with Commissioner Bockenfeld. She said there are some compatibility issues that might be able to be worked out and she'd like to see that happen.

Commissioner Weddig said he would have moved to defer this case for three weeks to give additional opportunity, but this case has been around so long and it has had so many opportunities to come to some real resolution. He said this project has lost a little quality since the last time he saw it. He said there are some areas that were superior and there have been good changes and bad changes. He said he has to rely upon the applicant's words that the financing is a critical item and one that can't be further delayed. He said he is relying on that testimony to see if the development can be built, even with that promise that seems to be there now, otherwise, the applicant will go back to square one in two or three years and he would hate to put everyone through that again. He said this is a bird in the hand that has met a lot of requirements and it's at a point where it should move ahead.

Commissioner Beckman said it gets very confusing when concessions are made and we keep moving the ball. She said there was some quality lost and that was something that had to be done because staff required that. She said there was also quality that was gained from some of the concessions. She said when she looks at this plan she sees some good things and some bad things. She said originally this property was zoned Light Industrial and that was not compatible. She said everyone has been through a very long process with this case. She stated that in her ten years as an elected official, she has seen the neighborhood get very active for a site like this and they pass on a good development and a few years later, something comes back and it has much less compatibility and has higher density and it has happened more than once. She further stated that no project is perfect, but there has been a lot of thought and a lot of negotiations and it is wonderful that there is an agreement that a wall will be built in the next 90 days. She said her concern is that if this case is sent back to the PC the issues will get muddied and there are many issues the Board cannot control. She said there is a good faith commitment between Mr. Peterson and Mr. Sheldon, who have worked on this for many hours to try to get the best possible development. She said she would support it; the other issue is that when Boards make decisions from the bench, it is very dangerous because the full impact is not known and she is concerned. She said there is not one Board member who knows every concession that hasn't been vetted through staff and that is her concern because she has seen good developments with decisions made on the dais that really made no sense. She believes that there would not be much more of an improvement if this case went through the PC again and the case has gone as far as possible with concessions.

Vote:

For: Commissioners Dyer, Weddig, Beckman

Opposed: Commissioners Bockenfeld, Noonan

The motion passed 3-2.

Item C – Resolution No. 090207 – General Business: Case No. P08-010, Prospect Village Subdivision Filing No. 1 Final Plat and Case No. V08-006, Vacation of Easement

Ms. Kuhn said typically these cases would be on the consent agenda, but since the Consent Agenda was approved prior to the Prospect Village FDP, staff asked that these be a General Business Item. She said the applicant has submitted an application to replat the existing lots to one lot of 16.12 acres with a ROW dedication of 21,122 square feet for a net lot size of 15.64 acres. She said in addition, the applicant has to vacate several easements in order to facilitate the development. She said new easements will be dedicated with this replat.

The motion was made by Commissioner Dyer in the cases of Case No. P08-011, Prospect Village Replat and Case No. V08-006, Vacation of Easements, that the Board of County Commissioners has read the staff report and received testimony at the public hearing. The Board of County Commissioners finds itself in agreement with the staff findings including all plans and attachments as set forth in the staff report dated February 20, 2009 and approves this case with the following conditions:

1. The applicant must make all minor modifications to the Final Development Plan Replat, and Vacation of Easement exhibits as requested by the Public Works and Development Department.
2. The applicant must address the Division of Engineering's comments and concerns, contained in Engineering Staff Reports.
3. The applicant will execute a Subdivision Improvement Agreement with the County.
4. The applicant will pay \$210,838.40 in cash-in-lieu fees as outlined in the staff report.

Seconded by Commissioner Weddig.

The motion passed 5-0.

COMMISSIONER COMMENTS

Commissioner Beckman stated that she has a memo from Daniel Einarsen from the Open Space Department, who was unable to attend the drop-in study session yesterday. She said Mr. Einarsen had a question for the Board regarding Infinity Park and the Glendale Seminary Park. She said the Glendale City Council wants to use artificial turf on Seminary Park; this is not the area in which the County has given acquisition Open Space money to, but is the area in which they have received a small grant from the Arapahoe County Open Space Board. She said OSTAB (Open Space and Trails Advisory Board) has seen a presentation from Glendale and has voted to approve the request. She said Mr. Einarsen is asking the Board to let him know if there is any opposition.

Commissioner Dyer said there is no decision needed by the Board, but any objections should be directed to Mr. Einarsen.

Commissioner Beckman said Mr. Einarsen wants to know if there are any objections to the synthetic turf at the Glendale Seminary Park. She said this is not the area where acquisition dollars were used for passive open space. She asked if there are any conditions from the Board.

The Board agreed that there is no opposition.

Commissioner Beckman commented regarding the purchase of the land on the ROW acquisition of the southwest corner of Quincy Avenue and Gun Club Road. She said that appraisal did not reflect what the property was worth but her vote reflected the economic situation that we face and her concern for the future revenues coming into the County.

There being no other business before the Board, the Chair adjourned the hearing at 1:00 p.m.

ARAPAHOE COUNTY BOARD OF COUNTY COMMISSIONERS

NANCY A. DOTY, CLERK TO THE BOARD
BY JOLEEN SANCHEZ, ASSISTANT CLERK TO THE BOARD