

**MINUTES OF THE ARAPAHOE COUNTY
BOARD OF COUNTY COMMISSIONERS
MAY 17, 2005**

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:

Lynn Myers, Chair	Present
Bernard L. Zimmer, Chair Pro Tem	Present
Susan Beckman, Commissioner	Present
Rodney Bockenfeld, Commissioner	Present
Frank Weddig, Commissioner	Present
Kathryn Schroeder, County Attorney	Present
Nancy A. Doty, Clerk to the Board	Absent & Excused
Jennifer Gayer, Deputy Clerk	Present

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ADOPTION OF THE AGENDA

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

The motion passed unanimously.

ADOPTION OF THE MINUTES

There were no minutes to approve.

CEREMONIES

There were no ceremonies.

CITIZEN COMMENTS

JM Fay, 2575 S. Syracuse Way, approached the podium; Commissioner Myers asked Karen Richman, Director of the BOCC Administration Department to read Ms. Fay's statement.

Karen Richman read the statement, a copy of which has been retained for the file.

CONSENT AGENDA

The motion was made by Commissioner Zimmer and duly seconded by Commissioner Bockenfeld to approve the Consent Agenda as presented.

The motion passed unanimously.

GENERAL BUSINESS AGENDA

Item A – Resolution No. 050285 - 050287 – Public Hearing, Whisper Rock, Final Development Plan, Case No. P04-014; Preliminary Plat, Case No. P04-015; Final Plat, Case No. P04-016

Assistant County Attorney Tom McNish established jurisdiction for the Board to consider this Item.

Carol Kuhn of the Planning Division presented the staff report, a copy of which has been retained for the file. She said the applicant is requesting approval of 212 condominium units on 13.02 acres with a density of 16.3 dwelling units per acre located slightly north of Parker Road and Beeler Street. She said the preliminary plat and final plat are to consolidate three lots in Harrison Estates and four un-platted parcels into one lot. The proposal is for two three-story buildings with prairie-style architecture. She reviewed the history of this project. She said the PDP was known as Legacy Apartments and was approved on July 21, 2003, and allowed 21.5 DU per acre. There were 1800 apartments and the application was submitted on July 30. The name was changed to 1750 Parker, but the Planning Commission suggested that the Developer consider a different name, which is now Whisper Rock. She said phase I comments were due to the applicant on August 17 and phase II comments were due on October 20. The Planning Commission hearing was on December 7. She said public testimony was taken and the case was continued with five conditions of approval: the name change and the change to the physical address; enhancement of landscaping; revised architecture and right in/right out on Parker Road to eliminate left hand turns; and the applicant was directed to work with the County regarding drainage requirements. The applicant met with the residents on December 13th and discussed the revised architecture, agreed to plant 20' evergreen trees along Parker Road and introduced the name change. The proposal was submitted to the Planning Commission on February 1, and was approved. She said staff met with the residents and the applicant on March 14 to discuss drainage issues and concerns. Ms. Kuhn stated that yesterday staff received a phone call from Travis Harris from the Division of Wildlife. She said two Swansen hawks, which are federally protected, are currently nesting on the site. She referred to a letter from the Division of Wildlife requesting that the applicant wait to begin construction until July 15. She said there is a ¼-mile radius of a buffer so the birds can properly nest. The applicant can begin construction 10 days after the chicks have flown away and the nest is empty. She said she would like to add a condition of approval regarding that to be Item G.

Commissioner Zimmer said the letter regarding the hawks indicated the northwest corner if, which is just off of Parker Road. He wondered how far the nest is off of Parker Road.

Ms. Kuhn said the DOW gave the GPS coordinates and the DOW was surprised that the hawks chose that noisy spot for nesting.

Commissioner Zimmer asked to see a photograph to identify the location of the nest.

Ms. Kuhn displayed an aerial photograph and identified the trees on the northwest corner of the property. She assumed that is where the nest is located. She referenced Beeler Street and Parker Road. She said there is another

clump of trees in the area and she does not have the exact location of the nest, as the DOW has asked that no go near the nest to look at the birds.

Commissioner Zimmer said the bird has chosen that nest and is apparently not uncomfortable with the traffic, etc., and that implies that whatever was done to the property before July 15th did not bother the bird. He said if the construction stays away from that corner, it could possible start sooner.

Commissioner Beckman said staff is recommending that the County follow the DOW's guidelines and that would be a condition of approval.

Ms. Kuhn agreed.

Peter Kudla, president of Metropolitan Homes, presented a Power Point presentation. He introduced a number of team members and gave some background on Metropolitan Homes, Whisper Rock, and the individual home. He said Metropolitan Homes is locally owned and privately based. He said he has done a number of projects in Arapahoe County and the market has grown regarding the different types of living arrangements. He said there has been growth of infill sites. He said the changes have been enormous over the past 20 years. He said Metropolitan Homes has concentrated on low maintenance environments and is not a conventional homebuilder, as each community features low maintenance and maintenance-free environments. He said there are four communities under way with 3 communities in Arapahoe County. He said there is a strong commitment to the community developments, which is proven. He said this is a company that has concentrated on in-fill, empty nesters, retirees and active adults. He added that less than 5% of the Metro Homes communities have children because of the buyer demographics. He said Metropolitan Homes is committed to community public art. He said the company commissions Denver Colorado artists. He said the applicant is also suggesting a public art program at Whisper Rock. He said Metro Homes is developing a community in Douglas County and is creating a study program where students would participate. He said the partnerships and relationships that the developer has had include Arapahoe County, Lakewood, and Aurora, Douglas County, Denver, Littleton, Westminster, Longmont, and Lafayette. He said most of these entities would state that Metropolitan Homes is one of the most sensitive and facilitating groups in the home building business. He said that is because of the type of product Metro builds, which is very manageable.

Mr. Kudla stated that there has been a lot of history for this parcel. He said this parcel is an in-fill site and is probably the same thing that a number of homeowners in the area have seen. He acknowledged that there has been a lot of growth. He said the PDP was approved on December 1, 2001 with zoning for multi-family. He stated that there is a current restriction in the 4-Square Mile Area for re-zonings only. He said there has been a tremendous amount of contact with residents in the area. He said this project far surpasses the number of professional hours spent by an in-house team and third-party consultants. He said when this particular site was approved the neighborhood group had major problems and objected to the total number of units on the site and they were against rentals. He said the plan showed approximately 312 rentals and the majority of the site was surfaced parked and the buildings were all three stories. He said when comparing the plans with the community groups it was important to re-design the existing PDP. He said the homeowners have the statistics. The number of homes being proposed is now 212 versus 312 that were approved on the PDP. The average size of the homes is 1160 square feet versus 870 square feet. Mr. Kudla said because of the two building types, the number of floor plans is 11 versus 5. He said the price point would be \$150,000 to 230,00 compared to a rental program. He said the transient nature of rental was also an issue. He said the density was lowered from 22.4 dwelling units per acre to 16.3 D.U. He said the storm drainage has been another discussion and Arapahoe County has been intimately involved. He said the detention program is designed for this specific site versus a retention program that was originally proposed. He said there are now eight 2-story buildings and twenty 3-story buildings. He said because of the "for sale" component, the applicant is offering 244 garage spaces and there were originally 72 spaces. He said that is a big difference regarding surface lighting and accessibility. He said there are 485 parking spaces versus 609. He said there are six acres of open space; 1.1 acres are detention. He displayed a technical drawing.

Mr. Kudla said the neighbors are concern about the transient nature of renters. He said because of the infill nature of the site, the buyers would likely come from a 2 to 5-mile radius of the site. The age profile, the activity profile and the demographics are very similar to the people who currently live in the area. He said the forecast for Whisper

Rock indicates that the residents would be 25-55 years old, would be single, and less than 5% would have children. The average single salary would be \$40,000 to 50,000 and the average dual income is \$85,000-100,000. He said the buyers would not be transient and there would be a minimum of 4 years before the average buyer decides to sell.

Mr. Kudla then discussed the landscaping. He said the County and the neighborhood groups looked at the original plans very carefully. He invited the County to visit a few sites that Metro Homes has built because the landscaping component has a commitment to oversize quantities and sizes of landscaping. He said Metro Homes has committed to a landscape plan that would be one of the nicest in the immediate area. He said there would be a tremendous green space that would be an amenity. He said a number of amenities have been blended such as outdoor fire pits, outdoor art and outdoor cooking. He described the cabana area and said there are pockets of special art in a number of special spots. He said the applicant is proud of the landscape plan and the commitment of integration of outside living within this community.

Mr. Kudla said the applicant met with the Planning Commission twice. He said the project was originally named 1800 Parker, then 1750 Parker and because of the insistence of the neighborhood groups, the applicant decided to name the site Whisper Rock. He said regarding the landscaping, the applicant has a written commitment to plan 20' tall trees along Parker and within the community and also committed to pine trees. He said he found it interesting that the type of pine trees were debated.

Mr. Kudla discussed the revised architecture, which, he said, was significant. He said the applicant had evaluated market conditions and product design. He said in the Metropolitan Homes portfolio, there are no cookie-cutter designs. He said the originally proposed building reflected a more urban design with flat rooftops. He said the elevations were created per market data. He said due to the neighborhoods needs, the architecture was revised to include a more rustic look. He said the environment is a cross between Beaver Creek and old world stucco and stone. He said that was a big change the applicant agreed to.

Mr. Kudla said another major point of discussion was the "pork chop". He said the traffic along Parker Road has been an issue and the Colorado Department of Transportation has been active with Arapahoe County. He said the original pork chop, or traffic control device, received a permit from CDOT. He said the neighborhood groups said they were most concerned about illegal turns and that was a respected point. He said the applicant worked diligently with Arapahoe County and the consultant. The new design has been reviewed by a number of professional consultants that agree that the new design is a good response to the standard pork chop to help avoid illegal turns.

Mr. Kudla then discussed the drainage. He said Beeler Street would be at an acceptable level during a 100-year flood event by way of design. He said there would be minor modifications to a box inlet along Parker Road to increase flow. He said there was a requirement of a minimum separation of 3-feet between the bottom of ponds and water tables. He said there was also a maintenance agreement executed.

Mr. Kudla said infill projects have very delicate process. He said that is because people have lived in the area and envisioned the environment. He said the goal is to minimize urban sprawl and these communities have heart and soul and passion. He said the applicant has worked hard by down zoning the number of units and addressed garage parking versus surface parking. He felt that the applicant did a great job in terms of designing parking and garage facilities. He said he is sensitive to the neighbors' concerns regarding "transient" renters and Metro Homes did a good job of downsizing the community and bringing in real estate values that would add value along Parker Road.

Mr. Kudla said the applicant worked hard on creating architecture that everyone could be proud of. He said the landscaping and open space speak for themselves.

Mr. Kudla concluded and said he is a local builder and is very involved in the operations of the company. He said his goal is to bring Arapahoe County and the neighborhood a notable, livable community.

Commissioner Beckman wondered about the detention ponds that have walls around them. She asked if the community would have access to the ponds.

Mr. Kudla said Brett Blank should answer the specific details of the wall system.

Commissioner Beckman asked for clarification regarding the 4.9 acres of open space and the 1.1 acres of detention.

Brett Blank, Metropolitan Homes, Land Development manager, discussed the detention pond. He said the pond would be in the southeast corner, where the wet areas would be. He said the area would be seeded and sodded and would be an active, usable space. He referred to the plaza area, which has a fire pit and seating area. He pointed out the retaining wall and the stairs that lead down into the detention area. He said the eastern edge is at grade and there is a gentle slope that leads to the area.

Commissioner Beckman asked how high the retaining walls are.

Mr. Blank said the two walls would be 30" or less with a landscape buffer in between. He said the idea is to create a large pedestrian walkway around the outside edge with a tree street feel and pedestrian lighting for nighttime use. He described the other detention pond, which is located in the northwest corner; there is a 30" retaining wall and there would also be a safety fence. This pond would not be used as active space and there would be no accessibility.

Commissioner Beckman asked about the remaining 4.9 acres of open space and if it is intertwined throughout the community.

Mr. Blank said yes. He explained that there is a connecting trail that leads pedestrians throughout the site. He said the detention ponds are 1.1 acres in addition to the 4.9 acres. He said the 1.1 acres cannot be included in open space acreage, and that is shown on the plan merely for reference.

Commissioner Weddig understood the agreement regarding the maintenance of the detention ponds is for both ponds. He said the County should not be involved in the maintenance of the pond that would be used for active recreation.

Mr. Blank said both ponds are treated the same. He said the trickle channels, the irrigation and the maintenance would be done by the builder. He said that has been worked out with the County. He said Metro Homes wants to have the ability to get into the site and perform necessary operations. He said per the maintenance agreement, the County is responsible for the outlet structure; everything else is maintained by the HOA. There is a provision that the County can come in and do inspections at any time.

Commissioner Weddig understood that the County's obligation is only to maintain the structural integrity and the usefulness of the conduits leaving the property from both ponds.

Mr. Blank agreed.

Commissioner Myers asked for an explanation of the garage system.

Commissioner Weddig said in the presentation, it was stated that there would be 485 parking spaces and in the FDP indicates only 457. He asked that the discrepancy be explained.

Mr. Blank said the FDP is correct. Mr. Blank displayed a plan view of the 20-unit building. He said all the homes are accessed via central corridors. He explained that the homes are at the front of the building on the first floor and on the 2nd and 3rd floor, the homes are at the front and rear of the building. He said the garages are across the back. He said the garages are 1-car bays; all the units on the 1st and 2nd floors have direct access to their own garage. He said pointed out the storage area. He said the top eight units have detached garages and there would be storage towards the front of the vehicle. He said every home has its own private garage. He said the 8-unit building has 3 homes on the bottom floor and 5 units on the 2nd floor, all of which have direct access to a 2-car tandem garage. He stated that this style of home has been used for seven years and is very successful. He said does not create a massive garage feel and there are tremendous amounts of storage.

Commissioner Myers asked about guest parking.

Mr. Blank referred to the cover page of the Final Development Plan. He said there are 69° pull-in spaces and 4 ADA accessible 90° spaces with a total of 73 guest spaces. He said the requirement was exceeded by 20 spaces.

Commissioner Weddig said in front of the tandem garages, there are 140 spaces that are in the driveways. He asked about the utilization of those spaces in every day circumstances. He said other developments have used this concept and he wondered if the HOA has been successful regarding enforcement. He added that the note the Planning Commission added seemed difficult to enforce.

Mr. Kudla said this concept was used in several locations including Littleton, Boulder, Aurora and Lowry. He said parking has not been a problem. He said if it were a problem, Metro Homes would not continue using this plan. He said Metro wants to create comfortable, livable, usable communities. He said the applicant has demonstrated, in a number of municipalities, that the parking has been a benefit.

Commissioner Weddig was concerned regarding long-term problems. He said per his calculations 388 spaces out of 457 are 100% controlled by individuals, and the guest spaces would be utilized by the residents.

Mr. Kudla said it is respectable to consider comparable developers who have no driveways and no accessibility to the homes. He said the applicant's calculations for parking meet and exceeds requirements and works based on proven experience. He said he understands why Commissioner Weddig might not agree with the concept. He said the demographics are significantly single adults and more people utilize Light Rail and minimize cars.

Commissioner Weddig said he is concerned that some units have 3 bedrooms and have 2 tandem spaces.

Mr. Kudla said the tandem garage spaces are specific to four buildings. He pointed out those buildings on the site plan. He said that is a total of 32 homes that have the 2-car tandem garages. He said in that product, there are 8 plans and there is a 2-bedroom, 2 bath and there is a 2 bedroom plus 2.5 bathrooms with a study. He said that study is typically used as such and seldom used as a third bedroom.

Commissioner Weddig said that could be correct, but the second indoor parking space, which is counted as part of the minimum, is never going to be used. He said he anticipates that there would be at least two cars for every unit and he is concerned. He said there are 69 spaces that could be used for residents that have more vehicles or visitors.

Mr. Kudla said the neighborhood HOAs believed that traditional garages would be filled with storage items and the cars could be left on the driveway. He said he has committed to adding language to the HOA documents that the garages cannot be used for primary storage and the cars must be parked within the garage. He said the statistical information has supported the decision to design communities similar to what is being presented today.

Ms. Kuhn said regarding parking, there are 28 parallel on-street parking spaces. Due to the definition in the Land Development Code, the applicant cannot count those towards off-street parking. She said those 28 spaces can be used for guest parking. She said that, combined with the 69 spaces gives the applicant a total of 97 spaces for guest parking. She referred to the parking areas on the map.

Commissioner Weddig asked if there is a commitment to label the spaces either "reserved" or "visitor parking". He wondered what kind of controls there would be.

Ms. Kuhn said the applicant indicated that the spaces could be labeled "guest parking only".

Commissioner Weddig said that would be a good way to get the message out.

Ms. Kuhn said the applicant is open to other suggestions from the Board.

Ms. Kuhn then referred to the letter from the DOW. She said the DOW is requesting a ¼ mile area around the site where the hawks are nesting, free of human activity. She said she asked about Parker Road, and the cars are an exception.

Chuck Haskins, Arapahoe County Engineering, said the Division provided a May 3, 2005 update in which staff recommended the Preliminary Plat and FDP and Final Plat favorably subject to a number of conditions. He said the staff report has eight findings. He said he would like to discuss drainage, storm drainage, ground water and he would like to update the Board on the CIP projects the County is currently working on. He said the large pond in the middle, pond B, is a pond that is serving Whisper Rock and upstream areas not currently served by on-site detention. He said the engineering division commissioned analysis by Icon Consultants who identified the need for additional detention on the upstream side of Parker Road. He said instead of a 1.1-acre foot detention pond a four-acre foot storage facility was suggested to address downstream conveyance issues. He said the applicant was gracious to work with the County and pond B would be a sub-regional pond. He said it does not meet Urban Drainage's requirements for a regional detention pond. He said because of that, the County is crediting some of the basin fees to the applicant for construction of the pond. He said the County is also entering into a maintenance agreement with the property owner, which is a condition of approval. He said the applicant would provide routine maintenance to the pond; in the event of catastrophic failure, the County would provide some assistance regarding repairs to the pond. He added that the County is committing to annual inspections of the pond to ensure it is functioning as designed and to ensure that the property owner is providing adequate routine maintenance. He said the County has the right to enter the property to perform any type of remedial improvements or repairs to ensure that the pond does not threaten any downstream properties.

Mr. Haskins said other issues relate to storm drainage and surface flooding and ground water fluctuations. He said regarding surface flooding, the improvements of pond B and the Parker Mexico Basin improvements, the 100-year capacity of the system would be about 410 Cubic Feet per Second. He said the estimated 100-year flow to that system is estimated at 401 CFS, and staff feels that the downstream system could handle flows from the upstream area in a 100-year storm event. He said that matches Arapahoe County's criteria. He added that the system could actually provide additional flows under pressurized conditions.

Mr. Haskins then discussed ground water and concerns for fluctuation in the area. He said the County has studied the issue and would continue to do so. He said this area is located approximately 1 mile from Cherry Creek and this sight and adjacent parcels are located in a shallow aquifer. He said the County has reviewed the records over the last 30 years from 1979 through this year. He said the groundwater elevations are 8 to 24 feet below the surface. He said the whole area is plagued by a shallow aquifer. He said staff checked with the US Geological Survey and there is a geo-hydrology report of the aquifer and that confirms the depths that the County saw. He said the shallow aquifer is in the Dawson sandstone, which is still unconsolidated. He said a lot of complaints are the retention ponds in the 4 Square Mile area are contributing negatively to the ground water conditions. He said staff feels that there is no significant correlation between the ponds and ground water elevations. He said fluctuations are related to precipitation, although that is not a major contributor because of the recent ongoing drought. He said irrigation could contribute, as most of the turf in the metro area is over irrigated. He said another problem could be discharge from the aquifer. He said in the past, every one in the area was on a well system and water was discharged from the shallow aquifer. He said that is rare now and most properties are connected to the Cherry Creek Valley's water system and the lack of pumping from the aquifer could be contributing to the ground water fluctuation. Mr. Haskins further stated that the gravel roads in the area could be contributing to the ground water fluctuation.

Mr. Haskins said generally, recharging the groundwater is a good thing but there is a problem when basements and foundations are affected. He said staff does not believe that the groundwater problems are related to retention ponds, but with the Parker/Mexico outfall system, the County would be able to convert the existing retention ponds to detention. He said the project is underway and the outfall should be completed in July 2005. He named some ponds that neighbors have complained about. He explained that as soon as the Parker/Mexico system is in place, the owners of the ponds would be notified that the ponds must be converted to detention. That was noted on the Final Development Plans. He said if that obligation is not fulfilled, the County has financial guarantees in place to perform that work. He said with the applicant's cooperation, the County is committing to monitoring ground water elevations and there would be a few monitoring wells on this site both up gradient and down gradient from the pond. He said staff feels that the groundwater table has always been high in this area and will always be high.

Mr. Haskins said there would be paving improvements to Beeler Street, the storm sewer on Colorado Avenue would be completed and that would begin in June pending a letter from the DOW, because those projects are located within ¼ mile of the tree that was discussed earlier. He stated that the County has spent \$9.5 million for infrastructure in this area over 8 years. He said the County is committed to addressing the issues.

Commissioner Zimmer understood that pond B is a gathering area and would have grass.

Mr. Haskins said yes.

Commissioner Zimmer understood that pond B is also a sub-regional retention/detention pond. He said if that is true, he would assume that there might be problems with flooding and would need time to dry out after major occurrences. He said if the area is blue grass, being under water for a week or so would cause problems. He asked for a clear explanation of how that system would work.

Mr. Haskins said the small area of that pond would be reserved for water quality and would have a wet bottom. He said that is done to allow for longer drain times, which improves the quality of water that is discharged from the site. He said in storm events, the area would not be available for recreational purposes, and that applicant has taken that into consideration.

Commissioner Zimmer said that is a one-acre site and is designed to hold four acre-feet of water. He said that is 4-foot deep at some point.

Mr. Haskins said the 4-acre feet capacity is for both ponds.

Commissioner Zimmer said the water depth would exceed 2 feet, and that would take some time to drain off and dry out.

Mr. Haskins agreed. He said there is usually a 48-hour drain time, which is how the facilities are designed. He said there is a challenge to keeping the grass alive.

Commissioner Weddig said the detention pond would not serve as an actual component of the drainage system regarding credit from Urban Drainage. He asked if there are any properties up stream that are within a 100-year flood zone.

Mr. Haskins said no. He said the reason he mentioned the Urban Drainage criteria but the pond could be characterized as a sub-regional pond. He said none of the properties are located in the 100-year flood plane.

Commissioner Weddig then discussed parking. He said there was a request from the applicant that there be no parking on Beeler Street. He said it seems appropriate to put parking there. He wondered if that would be reassessed at a later time.

Mr. Haskins said yes. He said Beeler Street would be 44 feet wide, flow line to flow line within a 60-foot right-of-way. He said Beeler is only 2 lanes. He said there is adequate space for parking but the County wants to be sure that the parking is on site so that there are no problems. He said with these types of projects there are a lot of complaints regarding parking. He said the County could erect parking signs if there is a problem, but there would not be signed originally.

Commissioner Weddig said if the area was signed originally, people would park up and down the street and the overflow could be a problem.

Commissioner Beckman asked why the ponds would go from retention to detention.

Mr. Haskins said staff has been recommending retention ponds because it is similar to a bathtub without plumbing. He said the plumbing was not in place to convey the storm drainage from the pond to Cherry Creek. He said with

the Parker/Mexico storm sewer, the plumbing is in place. He said the ponds could now get smaller because the County does not have to rely on percolation and evaporation for discharge of the retained volume. He explained that the water could be discharged as the pond is filling up. He said pond B would be a detention pond. He said if construction is delayed until July...

Commissioner Myers explained that the infrastructure is being completed this summer and Parker/Jewell is almost done.

Commissioner Beckman addressed the high water tables. She asked if Mr. Haskins could guarantee the neighbors that this development would not have a negative impact on their property and the ground water tables.

Mr. Haskins said it is difficult to make a guarantee. He said most of the groundwater complaints are up gradient of this property. He said typically groundwater flows down gradient. He said the direction of the groundwater flow in this aquifer is northwest. He said without extensive mapping of the groundwater system, it is difficult to guarantee. He said the improvements would get the storm water off the Parker/Mexico area sooner.

Mr. Blank addressed the parking. He said the applicant would support parking on Beeler, which would provide direct access to the homes for guests. He said regarding the detention pond, there are two points of flow and 99% of the time that would be irrigation water. He said there would be 6' trickle channels that will take the water into the wetlands area, where water quality will be addressed. He said in the even of a 100-year storm, the 3-½ feet of water would flow into the wet area with the 48-hour drain time. He said that would be during extreme storms.

Commissioner Zimmer said he is concerned that each year there are storms that may equal or exceed the 100-year amount in a very small area. He said if the pond would be sub-regional, there would be water from significant areas outside the development. He said because of that, the pond could be wet more often than expected.

Mr. Kudla said Commissioner Zimmer's concerns are valid. He said the investment is the landscape plan and tying it to the drainage plan was a delicate balance. He said he has depended on a blend of experts from the County and Metro Homes experts to devise a system that enhances the flows and the operation along with the aesthetics. He said long-term preservation is a priority.

Ms. Kuhn said this application conforms to the Land Development Code, the subdivision regulations and staff recommends approval of cases P04-014, P04-015, and P04-016, with the addition of one condition of approval. She said that would be Item G regarding the wildlife protection: "the applicant shall address all of the Division of Wildlife issues and concerns outlined in the correspondence dates May 16, 2005".

Commissioner Weddig asked if it is necessary to address the visitor parking issue with a condition.

Ms. Kuhn said the Board might add a condition of approval, if it desires.

Richard Gross, 9340 E. Mexico, lives in the first house directly to the east of this project. He said the reason why there have been a number of professional hours spent on this project is because Mr. Kudla is trying to fit a square peg in a round hole. He said there are numerous problems with this project that a normal project doesn't have. He said this pork chop thing is a nightmare. He said there is already a pork chop at Renaissance and he sees someone making a left turn, illegally, at least once a week. He said he has had one near miss so far and he doesn't know how long his luck will last. He said the pork chop is a bad mistake and as Parker Road gets more congested, the County would have deaths and major accidents. He said if that is the price that one has to pay for progress, then a few deaths are okay so that Mr. Kudla could make money. He said there are other major problems with this. He said there is not one green and lovely detention pond in that neighborhood. He said each detention pond is full of mud, cattails, mosquitoes, and dead birds from West Nile. He said this is an arid country and now we have wet lands that bring in all sorts of disease. He said Mr. Kudla has a price point between \$150,000 – 230,000 but this is going to be single folks. He asked how someone on a \$40,000 salary live in a \$200,000 condo? He said that doesn't add up. He said the parking is a nightmare. He said it is not true that people like tandem parking and it would not work. He said right now there are record foreclosures in Arapahoe County and we don't need more condos. He said the beautiful Renaissance project was originally \$1,200 for a 2-bedroom unit and now rent for \$650 for a two-

bedroom unit. He said the area does not need more of this type of urban product. He wondered how this project produces a rural feel from that kind of density. He said there is no transition from 16 DU to .5 DU per acre. He said the engineer was kind enough to say that he doesn't think there is any correlation. He said fluctuation means the water goes up and down. He said the water table that is adjacent to this project has been going up and he is very concerned. He said he has been to enough of these hearings to know how the Board is going to vote and he said he didn't think the Board has the guts to stop this really bad mistake of a project. He said he understands that the Board wants to be hospitable to development and that is why the Board bends over backwards for development. He said if the Board doesn't have the guts to stop this project, maybe there is a judge that does.

Keith Homberger, 9357 E. Mexico Avenue, lives 300 feet of this project. He said one thing the developer mentioned was prairie-style architecture with a rural feel. He said a 3-story building is proposed that is surrounded completely by houses. He said his neighborhood is 1-2 DU per acre and the neighborhood to the west of this project is big houses on big lots. He said in the presentation, nice 1-2 story units were displayed, however the buildings are three story units. He said there is currently high water at Parker and Beeler at the Aspen Commons Water fallout. He said the depth of the water there is about two feet of the gutter elevation. He said the corner unit in Brookstone Gate hit water when the 8-foot deep foundation was being built. That developer came in and filled the hole with a couple of feet of rock. He said then Andy Bailey built a project behind Brookstone Gate and hit water again. He said his house was built with this specific water table in mind. He said his building permit for his house shows the water table in the area and it is very shallow and is getting worse and worse by these types of projects. He said Mr. Kudla said he is very neighborhood oriented, however the were not invited to any of the meetings. He said he considers himself a neighbor and was never invited. He said there might be neighborhood meetings but not inviting the neighbors to the neighborhood meeting is a farce. He said the developer never asked him to look at four or five of his developments, as was expressed this morning. He said he is on the neighborhood HOA, Paula Dora, the neighborhood that this project is in, there is an active HOA, and he is a member of it. He said he was never invited to any neighborhood meetings that this developer is claiming took place. He said his neighborhood is typically 1-2 houses per acre. He asked if the Board is aware of the sub-area plan that was created last year. He said this development contradicts the months of cooperation the County had amongst the neighborhood, which was to obtain a 1-2 DU per acre. He said he noticed how much staff cooperates with the developer. He said when any of the residents ask staff about the project, they get shut down.

Commissioner Myers informed Mr. Homburger that is time was up.

Mr. Homburger said this is his home and he had a few things to say then he would be quiet. Mr. Homburger said the developer's changes must be in writing. He said some of these changes are not made. He said this subdivision is in the lowest down gradient lot in the neighborhood and is the lowest point in the entire area. He said everyone's water from the entire neighborhood rolls onto this lot. He said the developer's answer to this problem was to bring in dirt and rise the elevation. He said if the hole is filled, the neighbor's would be impacted. He said he is one of the neighbors that is immediately around. He said this problem would not go away.

Commissioner Weddig asked about the notification process.

Commissioner Myers said staff could answer that question.

Raylene Owens, 1741 South Parker Road, biologist, said the Swenson Hawks are from Argentina and come to the area from April 1 to September 1. She said she has watched these hawks in that area for 25 years. This is a long standing nesting area. She said the birds are 20 inches tall and have a 4.5-foot wingspan. She said they feed on rabbits, rats, snakes, etc. She said the reason for the ¼ mile buffer is because the hawks need that area in which to hunt and the need prey habitat. She said the two trees are 75 feet off of Parker Road and are in the detention pond area, which provides a good buffer between the birds and Renaissance. She said these birds come all the way for Argentina to nest here. She said in the early 1900's, the birds came through by the thousands. She said once these birds are fledged in the second week in August, the disruption would cause the birds to go elsewhere. She said there are other hawk species in the area. She said this is a delicate process. She said this issue has more to do with a developer being cooperative. She said in order to get the process underway; there must be neighborhood meetings. She said the residents' concerns had to do with fitting into the neighborhood. She said everything that was indicated to Mr. Kudla at the first meeting had to do with that and Mr. Kudla chose to ignore that. She said Mr.

Kudla said the way the process works is that the residents present their side and he would present his side and wait to see what happened. She said what has happened is that the process has taken longer and has been more contentious because of a lack of cooperation. She said there have been some good understandings at this point. She said she is concerned with the drainage. She has two wells on her property and she would offer those as monitoring wells. She said she is very concerned.

Mark Lampert, Yorkshire Estates, thanked Mr. Kudla and Metropolitan Homes for meeting with the homeowners. He said Mr. Kudla underestimated the involvement and dedication of the residents of this area. He said the Board knows how dedicated the residents are to preserving the development rights of developers and the residents' wishes to maintain the beautiful rural setting. He said people would always prefer vacant fields, but he knows that would not happen. He said most residents are pleased with the project and the developer coming up with additional trees and being understanding of the appearance. He said the residents understand that the developer has gone above and beyond and hope that will continue.

Mr. Lampert said regarding the drainage, Yorkshire is very concerned. He said there are sump pumps that have never been activated and there is concern that that could change. He said he would offer home sites as monitoring sites because downstream is the issue, not up stream. He said the residents are sorry to see the hawks leave, as they are natural predators to control the over abundant rabbit situation. He said tandem garages are a dangerous precedent. He said there are tandem garages at Lowry and there are not many that have 2 cars inside. He said HOA's have no right to tell one what could be stored in personal property.

JM Fay, Hunters Run, presented a statement. Mr. Lampert read the statement, a copy of which has been retained for the file.

Jerry Atencio, 1776 S. Uinta Way, president of Mountain View Gardens HOA, said most of these homes are southeast of Parker Road and there are 10-15 residents downstream of the water drainage issues. He thanked the staff. He said he is a trial lawyer and difficult questions have not been answered regarding storm drainage. He said there are no guarantees, and Arapahoe County staff cannot say if there would be a negative impact downstream. He said many of the neighbors have significant investments in their homes. He said Mr. Kudla respected that point of view, but did not answer. He said there is now a built in delay, thanks to the nesting hawks. He suggested taking this delay and looking at the information in more detail. He said he met with staff and asked if there would be negative adverse consequences to the water tables, the residents in Paula Dora, or Mountain View Gardens, who are down stream. He said regarding water storm drainage, he was told it should significantly improve with the system coming on line. He said regarding the water tables, there was no opinion offered. He suggested that the County take the time and that this request be tabled. He said this commission should have answers to these questions before there is another development approved.

Mr. Kudla said there has been a significant amount of time spent evaluating the design, the impact and the overall relationship of this community. He thanked the County staff and the Planning Commission who reviewed a lot of the data. He said the applicant is trying to take objective data and trying to provide a community that will be livable, notable and have long-term integrity. He said the applicant has met and/or exceeded all of the requirements of Arapahoe County. He said the density was decreased compared to the current and approved PDP. He said the applicant did work diligently with neighborhood groups that and that could be easily verified by all of the communicates. He said it is unfortunate when people make representations that are different. He said regarding the parking situation, tandem parking is not a new rage. He said the developer has used tandem parking over 7 years ago and listed the places it has been used. He said CDOT's approvals are in place and the applicant has worked diligently on the drainage. He said he is prepared to make a notation for guest parking identification. He said he would also require that people park their cars in the garages, which is different than saying that one cannot use the garage for storage. He said cars would not be allowed to park on the driveways overnight and he is prepared to put that in writing. He said because of the combination of product design, site planning, community development, and sensitivity to all of the issues from the first presentation to current, he is very proud, although he was disappointed and challenged at times. He promised that he would deliver a community that Metro Homes would be tied to for an extended period of time.

Commissioner Weddig requested that staff do some research for the Board and report back regarding how the proposed parking has worked in other communities. He said Arapahoe County's code regarding required space should be reviewed.

Ms. Kuhn said Melissa Kendrick has indicated that staff would make site visits to look at areas that are using tandem parking.

Commissioner Weddig said the applicant has abided by the rules as they are today and he cannot be discounted for that.

Commissioner Beckman said the approved zoning allowed more density than what is being requested today.

Ms. Kuhn said yes.

Commissioner Beckman said that was approved in 2001. She clarified that there is pre-existing zoning on this property for more density.

Ms. Kuhn said the applicant was allowed to go to 21.5 DU per acre and is at 16.3.

Commissioner Beckman said the 4 Square Mile area did not down zone property.

Ms. Kuhn said no, it did not.

Commissioner Beckman said property rights are still in effect.

Ms. Kuhn said yes, the zoning was in place and the moratorium was set for new zoning, but this is not a rezoning, just the Final Development Plan, which is the second phase of the zoning. She said the initial zoning was done in 2001.

Commissioner Zimmer made the motion in the case of P04-014-Whisper Rock, Final Development Plan and in the case of P04-015-Whisper Rock, Preliminary Plat, and in the case of P04-016, Whisper Rock, Final Plat, 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 staff findings 1 through 7 including all plans and attachments as set forth in the staff report dated May 4, 2005, and approve this case subject to the following conditions:

- a. Applicant shall make all changes and minor modifications requested by the Planning Division and the Engineering Division prior to scheduling these items for consideration by the Board of County Commissioners.
- b. Applicant shall fully address the requirements and standards outlined in the Engineering Staff Report and submit all required documentation to the Engineering Case Manager prior to recordation of the Final Plat.
- c. Applicant shall enter into a Subdivision Improvement Agreement (SIA) with the County. This SIA will address all public and applicable private improvements and the associated guarantees.
- d. The regional storm sewer outfall system (Line E - Parker/Mexico outfall) must be completed and operational prior to the approval of the Construction Plan and Phase III Drainage Study, or interim retention facilities are required.
- e. The Applicant shall address all comments and concerns from CDOT.
- f. The applicant will pay a total of **\$136,273.60** in cash-in-lieu fees, prior to recordation of the mylars.
- g. The applicant shall address all of the Division of Wildlife issues and concerns outlined in their correspondence dated May 16, 2005.
- h. The applicant shall provide guest parking signage throughout the site.

Seconded by Commissioner Bockenfeld.

Commissioner Weddig said the applicant has done a lot of work over an extended period of time trying to come up with a project for this location that was previously zoned to densities greater than this. He stated that the applicant has made a valiant attempt to make it all come together. He said the Board owes Mr. Kudla thanks for those efforts. He said the question is whether this project complies and meets with the compatibility and other more subjective things. He acknowledged that this is a tough call in some ways and in other ways, this is an exemplary project for what it would do for storm drainage. He said he is having a hard time deciding but infill parcels are never easy.

Commissioner Myers said she has been on this commission for five years and the County has been promising and trying to deliver infrastructure. She said it is finally coming together in 2005. She said the Parker/Jewell project would be done soon and Parker/Mexico would be done this summer. She said the paving of Beeler and other paving project are excellent strides that have taken place. She said the County would continue to focus on infrastructure. She said the County has had limited finances and has worked with Urban Drainage. She said this has become a priority for the County and a lot of work in the 4 Square Mile area has taken place.

The motion passed 4-1, Commissioner Weddig opposed.

Commissioner Myers said there have been a number of comments related to parking at the Bel Rea Institute. She said zoning would be working with the school because the issue gets better, then gets worse again.

COMMISSIONER COMMENTS

There being no other business before the Board, the Chair adjourned the hearing at 11:42 AM.

ARAPAHOE COUNTY BOARD OF COUNTY COMMISSIONERS

**NANCY A. DOTY, CLERK TO THE BOARD
BY JENNIFER GAYER, DEPUTY**