

- Excerpts from the City Council Meeting Minutes, dated September 20, 2005
 - Ordinance No. 1927, approving PUD-05-01M, dated September 20, 2005
4. Exhibit C-3: Vesting Tentative Tract Map 7399, Northstar Development
 - City Council Staff Report, dated September 16, 2003 (without attachments)
 - Excerpts from the City Council Meeting Minutes, dated September 16, 2003
 - City Council Resolution No. 03-105, reaffirming the City Council's prior approval of Vesting Tentative Tract Map 7399, dated September 16, 2003
 5. Exhibit C-4: PUD-5, Apperson Ridge
 - City Council Staff Report, dated June 5, 2001 (without attachments)
 - Excerpts from the City Council Meeting Minutes, dated June 5, 2001
 - Ordinance No. 1832, approving PUD-05, dated June 5, 2001
 6. Exhibit D: Lot Sizes on the Berlogar Site, Tract 7399, Silver Oaks Estates
 7. Exhibit E: Findings for PUD-05-02M
 8. Exhibit F: Development Agreement between the City of Pleasanton and Kenneth R. Chrisman & Pamela L. Chrisman, recorded November 18, 2002
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BACKGROUND

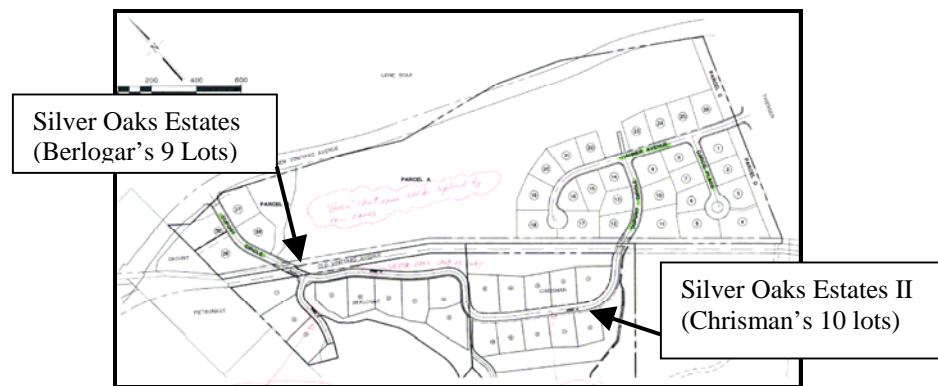
PUD-05 was a proposal by Centex Homes for a 19-lot single-family residential community known as Apperson Ridge (Ordinance No. 1832). It was covered by the Vineyard Avenue Corridor Specific Plan and Final Environmental Impact Report. The original approval consisted of two properties: the Berlogars located at 2200 Vineyard Avenue and the Chrismans located at 1944 Vineyard Avenue. The approval included design review for all nineteen production homes. This approval was followed by a tentative tract map approval that was denied by the Planning Commission but subsequently approved by the City Council.

On October 4, 2005, the City Council allowed the separation of the overall Berlogar/Chrisman development into two phases (PUD-05-01M), and the establishment of design guidelines to replace the approved production home designs for the Berlogar's parcel (Ordinance No. 1927). On April 4, 2006, the City Council approved a nine-lot (lots 11-19) subdivision that is situated on the Berlogar site, known as Silver Oaks Estates. Subsequently in June 2006, the Planning Commission approved a set of detailed design guidelines for Silver Oaks Estates. This nine-lot subdivision is served by two streets: Silver Oaks Court (Lots 1-3) and Silver Oaks Lane (Lots 4-9).

The modification to the PUD initiated by the Berlogars originally included the Chrisman property as well. The City had received an application for both, however, while processing the request, the Chrismans indicated that they were not quite financially prepared to pursue construction and that they recognized there may be some issues related to their conditions of approval that could delay Berlogars proceeding. At that time, the PUD was processed as a phased project in order to allow the Berlogars to

continue. Staff recognized that both sites had come in together and believed that the design guidelines established for the Berlogar modification would be the same as for the Chrismans in the future.

The Chrisman site, though separated by development phases, is still connected to the Berlogar's site via Silver Oaks Lane. Mr. and Mrs. Chrisman wish to use the design guidelines approved for Berlogar's Silver Oaks Estates, and make their 10-lot development as Phase II of Silver Oaks Estates. As such, the Chrismans submitted an application for a PUD major modification to change the design of the homes from the previously approved production homes to custom homes utilizing the approved Silver Oaks Estates design guidelines and to have homes that are consistent with those that will be designed for the Berlogar development.



The Berlogars are in support of using their guidelines to provide a compatible neighborhood regarding architecture style and materials. The Berlogar modification was also conditioned to require that there be only one homeowner association for the two development phases.

Planning Commission

On July 11, 2007, the Planning Commission reviewed the proposed PUD modification to allow the 10 residential lots to be custom rather than production homes. The Planning Commission requested staff provide additional information/clarification concerning the following:

1. Definition of FAR (Floor Area Ratio);
2. Production home sizes that were approved by PUD-05 (Apperson Ridge);
3. Visual analysis of the proposed homes, especially the homes that would be located on Lots 1-5 facing Old Vineyard Trail, per PUD-05;
4. The original approval for Centex Homes
5. Installation of landscaping in the common area and private property on lots 6-10;
6. Grading and haul routes;

7. Sports court
8. The Chrismans' continued use of the well on the Brozoskys' property after City water service is provided to Chrismans' property
9. Development Agreement
10. Conditions of Approval

The staff report is prepared in the order of responding each issues addressed above.

ANALYSIS

1. Definition of FAR (Floor Area Ratio)

The Planning Commission requested staff to return with clarification of how to calculate floor area ratio, if it was considered in the original approval and what the proposed planned unit development modification intended.

The Floor Area Ratio is defined two ways in the Pleasanton Municipal code for properties that lie within straight zoned districts; the original PUD did not alter those definitions.

18.08.190 Floor Area, Basic:

“Basic floor area” means the total amount of gross floor area a building contains, expressed as a percentage of the total area of the lot.

18.08.195 Floor Area, Gross:

“Gross floor area” means the sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same site excluding: basement or cellar areas used only for storage; space used for off street parking or loading; steps, patios, decks, terraces, porches, and exterior balconies, if not enclosed on more than three (3) sides. Unless excepted above, floor area includes, but is not limited to, elevator shafts and stairwells measured at each floor (but not mechanical shafts), penthouses, enclosed porches, interior balconies and mezzanines.

The Planning Commission wished to have clarification of what is or is not considered square footage that is used for the calculation of floor area ratio. As shown above, the code excludes and excepts certain uses. It is of note that garages, e.g. “space used for off street parking or loading” is not included in square footage for purpose of calculation FAR (Floor Area Ratio). Also not added into square footage calculated for floor area ratio are areas that are second floor empty unusable space between floors such as stairwells.

The original PUD-05 conditions for the approved production homes did not amend the Zoning Ordinance definition of FAR and defaulted to the R-1-40,000 development standards if standards needed to be interpreted. The modification to the first phase of

development for the Berlogar lots (Lots 11-19) did not condition the project to modify the FAR calculation method, but did identify in the Silver Oaks Estates Subdivision, Site Development and Architectural Review Guidelines, Phase I, a different calculation method (pgs 7-8). This method would be carried through to the request made by the Chrismans in that the same design guidelines are being requested to implement the Phase II of this previously approved planned unit development and tract map. These are:

- To exempt up to 600 square feet of garage area from the FAR calculation (the same amount for Berlogar's PUD modification); garage floor area exceeding 600 square feet would be included in the FAR calculation;
- To include floor area where the finished ceiling height is greater than fourteen (14) feet at two times the actual floor area, except for one-story buildings; and,
- To include covered porches that are not open 85% on at least two sides.

These changes reflect the types of conditions normally implemented in design guidelines for other planned unit development projects. Staff believes these requests are consistent with Ordinance No. 1927, the Berlogar PUD modification, and will continue to provide consistency and uniformity within the two phases of development.

These modifications to the floor area ratio calculation method can be implemented because the project is a planned unit development, which allows the Planning Commission and the City Council discretion to consider these types of changes. Staff notes that PUDs routinely modify the Code definition of FAR, particularly relating to garages, to fit the situation.

2. PUD-05 Approved Home Sizes (Apperson Ridge, Centex)

The Planning Commission expressed concern with the originally approved home sizes and how that related to the proposed modification that would allow for an FAR of 40%. It felt that this FAR may allow for homes that would be considerably larger than the approved production homes which could impact the character of the surrounding area. The following table shows the PUD approved production home size for each lot. The original approval for PUD-05 did not provide an FAR or limit the house size because the approval was for production housing based on setbacks, etc. However, for comparison purposes, staff has prepared two tables depicting the original approvals (Table 1) and also has prepared two FARs that show how the calculation changes with and without a garage exemption. In Table 2, one of the calculations includes the overall building area (house, garage and second unit), and the other includes only the house and garage. The lot sizes for the 10 home sites on the Chrisman site have been provided by RJA, Civil Engineer for the project.

Table 1: Lot Size and Approved Production Home Size

Lot No.	Lot Size (sq. ft.)	Approved House (sq. ft.)	Garage Size (sq. ft.)	Second Unit (sq. ft.)
1	21,528	3,791	898	
2	19,075	4,333	925	
3	18,426	4,121	962	
4	19,271	4,333	925	
5	22,657	4,333	925	
6	17,095	4,652	970	
7	16,839	4,357	1,020	782
8	16,152	4,652	970	
9	16,051	4,357	1,020	782
10	15,811	4,357	1,020	782

**Table 2
Lot Size, Approved Production Home Size, and FAR Calculation for Lots 1-10**

Lot No.	Lot Size (sq.ft.)	Approved House/ Garage Size (sq. ft.)	FAR (Including garage sq ft)	FAR (Excluding 600 sq. ft. of garage)
1	21,528	3,791/898	21.7%	17.6%
2	19,075	4,333/925	27.56%	22.7%
3	18,426	4,121/962	27.58%	22.4%
4	19,271	4,333/925	27.28%	22.5%
5	22,657	4,333/925	23.21%	19.1%
6	17,095	4,652/970	32.72%	27.2%
7	16,839	4,357/1,020 (2 nd U =782)	36.57%	30.5%
8	16,152	4,652/970	34.81%	28.8%
9	16,051	4,357/1,020 (2 nd U =782)	38.37%	32%
10	15,811	4,357/1,020 (2 nd U =782)	38.95%	32.5%

At the last Planning Commission meeting, the applicant stated that if the Planning Commission has concerns regarding the proposed 40% FAR, the Chrismans would be willing to keep the home sizes that were allowed for the previously approved production homes. Some of the Commissioners commented that this may be a reasonable solution.

Mr. Steve Brozosky, an immediate neighbor of the Chrismans, stated that a 40% FAR would yield house sizes that are too big for the lots. In discussion of the FAR issue with staff, Mr. Brozosky stated that he feels comfortable with a 25% FAR for Lots 1-5 and a 30% FAR for Lots 6-10. Staff notes that the calculation of FAR and the size of homes are directly related to the lot size, therefore, the smaller lots would not be able to have the same maximum home size as a larger lot.

The Planning Commission requested additional information related to other development in the surrounding area. The Greenbriar Homes “Chateau Estates” across Vineyard Avenue Trail consists of 26 production homes. The lot sizes range from 12,911 square feet to 24,981 square feet. The home sizes range from 3,871 square feet to 4,183 square feet with a garage size between 718 square feet and 800 square feet. Chateau Estates has a similar density as the proposed development; however, the lot and home sizes are proportionally smaller than the proposed development.

Table 2 above provides a calculated range of FAR for the production homes ranging from 21.7% to 38.95% including the garage square footage. Similarly, applying the now proposed exemption of 600 square feet of garage area, the FAR results in a calculated range from 17.6% to 32.5%. In either consideration, the City Council supported and approved the production home sizes; this approval was not based on FAR, but more specifically on home sizes and siting on the proposed lot layout.

Staff initially recommended to the Planning Commission consideration of a 40% FAR based on the calculation noted in the Phase 1 Silver Oaks Estates design guidelines (pg 7-8) in order to maintain consistency in home size, style, and detail with the previously approved modification establishing those guidelines.

At the Planning Commission hearing, the applicant’s representative, Jim Happ, noted that the Chrismans could support the size of homes established for the lots for production homes, could support a calculated FAR ratio approved for the production home development as noted above, whether the garage area was exempted or not.

Staff has considered the question of home size related to FAR and recommends that Lots 1-5 have a FAR of 25% due to having a greater visibility to Vineyard Avenue. Likewise, because Lots 6-10 will be screened by Lots 1-5, these lots could have a FAR of 30%. In each calculation staff would recommend excluding 600 square feet of garage area. Staff notes that the FAR would be taken from the gross square footage of each lot.

With staff’s recommendation, the following table shows the potential home size and the overall building area for each lot:

Table 3: Proposed home size for Lots 1-10

Lot No.	Lot Size (sq.ft.)	Proposed 25% FAR (sq. ft.)	Proposed 30 % FAR (sq. ft.)	Total Square Footage including 600 sq.ft. of Garage Area (sq.ft.)
1	21,528	5,382		5,982
2	19,075	4,768		5,368
3	18,426	4,606		5,206
4	19,271	4,818		5,418
5	22,657	5,669		6,269
6	17,095		5,129	5,729
7	16,839		5,052	5,602
8	16,152		4,846	5,446
9	16,051		4,851	5,451
10	15,811		4,743	5,343

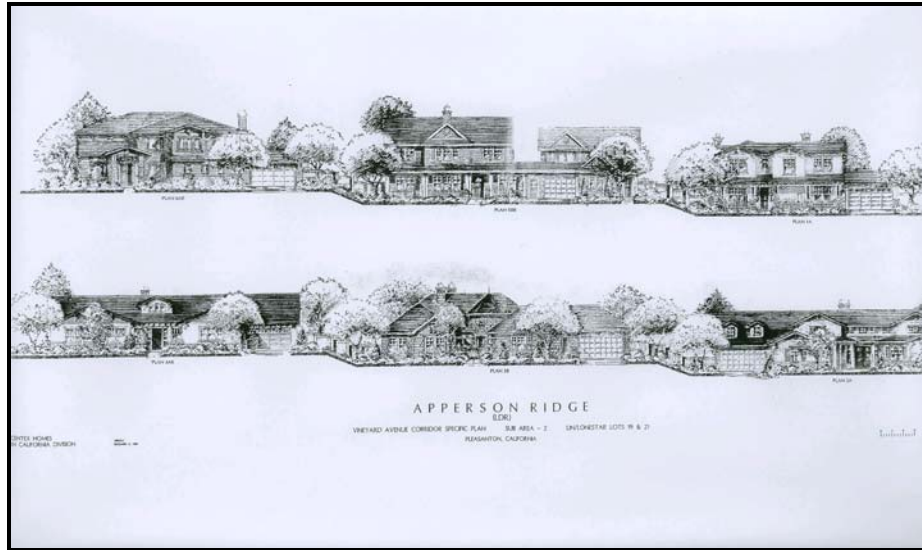
The FAR calculations exempt 600 square feet of garage area. The last column, “Total Square Footage including 600 sq.ft. of Garage Area”, provides the total area that could be constructed on the lots noted.

3. Visual Analysis

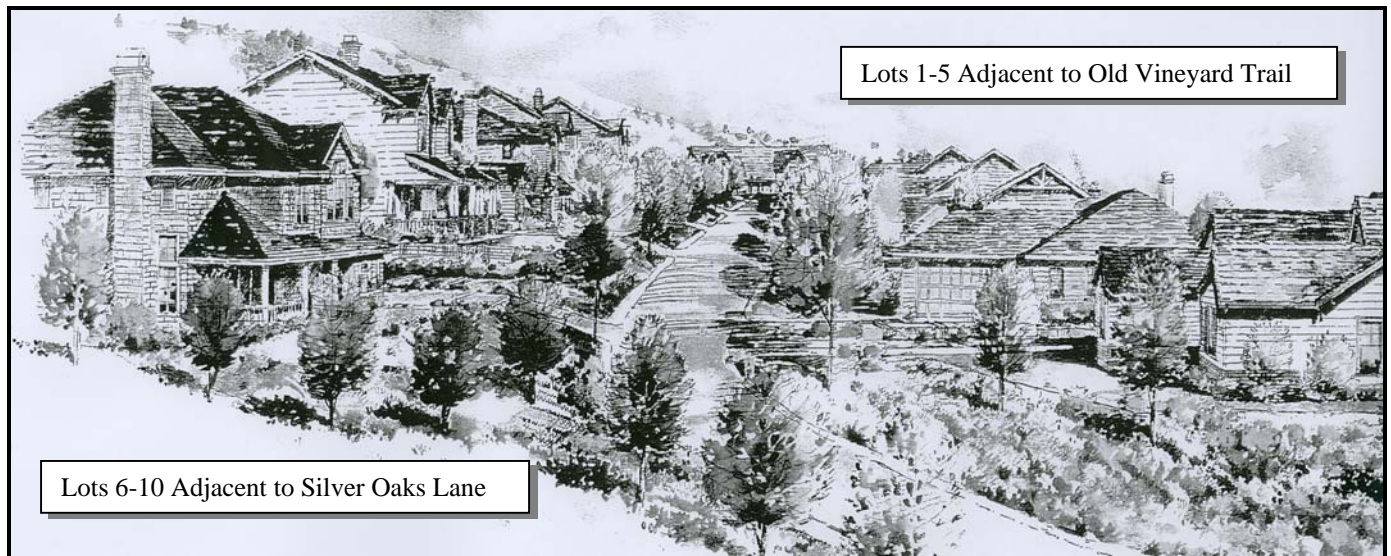
The Vineyard Avenue Corridor Specific Plan (page 28) requires projects to provide a visual analysis to screen the view of all improvements in areas exceeding elevation 475 feet from off-site areas.

Homes on Lots 1-5, shown on the preliminary development plan approved as part of PUD-05, have a pad elevation that ranges from 443 feet above sea level to 462 feet above sea level, which does not exceed the required elevation for a visual analysis. These are the lots most visible from Old Vineyard Trail. Homes on Lots 6-10 have pad elevation ranges from 450 feet above sea level to 467 feet above sea level; these finished pad elevations are also lower than the threshold requiring visual analysis. However, the common practice for any project in the City of Pleasanton is to provide colored elevations and renderings in order to provide decision-makers with additional information as to how a project will look and fit in to its surrounding area.

A visual analysis was provided to the Planning Commission and City Council for the original approval of the production homes.



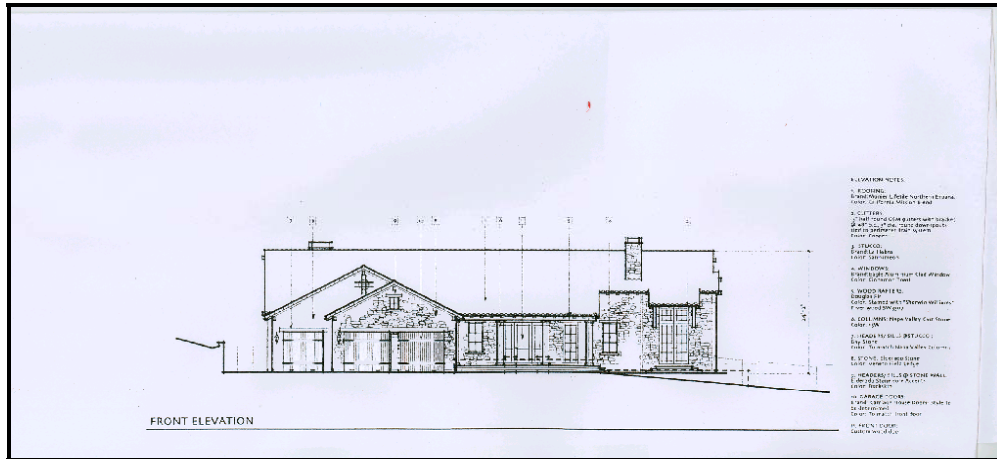
This same rendering was shown to the Planning Commission at the last meeting and is now attached as Exhibit C and shown below.



The Planning Commission expressed concern that the original visual renderings would not reflect what the applicant was proposing at this time. There was some interest in having additional visual rendering done as an example of the type and style of home that might be constructed.

The Silver Oaks Estates Site Development and Architectural Review Guidelines, for Phase 1, which is recommended for adoption of the Chrisman Phase II development, have been designed, according to Mr. Gorny (the architect), to provide the greatest flexibility in the design of the homes for these ten lots. The guidelines require each

home to provide elevation or perspective renderings as a part of the submittal requirements to the architectural review board as well as for submittal to the City (pg.5). An example of a recently approved home for the Berlogar development is shown below:



A separate condition of approval has not been provided because the requirement exists in the design guidelines which would be adopted if approved by the City Council. However, a condition of approval could be added requiring the visual renderings.

4. The original Centex Homes Approval

The Planning Commission also questioned why the approved plans could not be constructed. The plans are owned by Centex, not the applicant. Staff has discussed the project with a Centex representative who has indicated that the applicant would need to purchase the development designs from Centex before developing construction documents.

Staff supports the proposed modification to a custom home development in that the recent approval for the same modification for the Berlogar development phase was approved, and the changes would enable more variety of home styles in the development, subject to the same design guidelines which would ensure a certain theme and level of quality to the designs.

However, there are numerous examples citywide that reflect differing architecture in adjacent developments. The Planning Commission has an opportunity to evaluate what the optimum architectural development type ought to be for the second phase of development; to have it remain as approved, or to allow it to be revised to a custom home development that will utilize the same design guidelines as those approved with the previous PUD modification that the Berlogars used to change their project from production to custom homes.

If the proposed modification is not supported or approved by the City Council, the previous approvals remain intact, providing the applicant with the continued opportunity to construct the project under those original conditions and approvals.

5. Landscaping in the Common Area

The Planning Commission listened to the testimony and requested that staff return with additional information regarding the proposed landscaping in the common and private areas of the development. They wished for clarification as to how other projects have handled common landscape areas that are maintained by a homeowners/maintenance association or by maintenance agreement. There are two areas that were discussed at the previous hearing. The first area is comprised of the open space area near Lots 1-5 fronting on Old Vineyard Trail.

Condition No. 13 of Tentative Vesting Map 7399 states:

“ The landscape plan included in PUD-5 shall be modified to incorporate shrubs to be planted on the downhill side of the retaining wall behind Lots 1-5. These shrubs shall be native type, drought-tolerant species which are compatible with the wildfire management scheme contained in the Draft Open Space Management Plan and Wildland Fire Protection Plan, dated November 8, 2002. Final selection of the species, their number and sizes at planting, shall be subject to the review and approval of the Planning Director; the planting shall be sufficient in number to screen the wall and are anticipated to be accomplished with a mix of five gallon and one gallon sized shrubs.”

Typically, the City will accept these improvements along with all other improvements, such as roads and/or utilities that are installed. The acceptance of these facilities may occur after the last lot is built. This typical scenario has created some concern for adjacent neighbors in that it is conceivable that the area may not be planted or maintained until all ten lots are sold and homes constructed there, leaving the potential for an unimproved, unattractive area in the Vineyard Avenue Corridor.

To ensure that the landscaping is installed prior to the occupancy of any homes, staff recommends that this condition be modified to require that installation of common area landscaping be completed and accepted by staff prior to the sale of the first lot.

The second area of concern is related to the private area on Lots 6-10. A two-tier retaining wall is proposed to be constructed on Lots 6-10 in the rear yards of those private lots. This wall would be constructed with the subdivision improvements, prior to sale of the individual lots. Given the topography of the lots, these retaining walls would be temporarily visible from rights-of-way prior to the construction of each custom home.

While it is certainly within the discretion of the Planning Commission and City Council to require that landscaping be placed at the completion of the construction of these private

walls in the rear yard areas of Lots 6-10, this is not a typical condition that has been imposed. It poses some difficulty in the separation of the payment and maintenance of the landscaping. For example, if the plant materials are irrigated by the water supply of the HOA, it could be difficult to fairly distribute those costs when any of Lots 6-10 are sold. After a lot sale the new owner will need some time to develop plans and obtain a building permit. If the water supply is severed immediately, there is no assurance that there will be water service on the newly sold lot. Secondly, the walls will be screened once the homes are there, and the new owners will likely wish to develop their own landscaping plan thus removing materials that have been planted.

If the Planning Commission wishes to impose such a condition, staff recommends that landscaping, i.e. trees and/or shrubs, be planted between the retaining walls to mitigate visual impacts. The required landscaping shall be installed along with the other public improvements and shall be completed prior to the first lot being sold. The landscaping could be maintained by the developer until such time the new homes are constructed and occupied. At that time, the homeowners would be responsible for such landscaping in their rear yard. Staff has a condition of approval that could be included in Exhibit B:

Landscaping, e.g. trees and/or shrubs shall be installed between the retaining walls on Lots 6-10 along with the other public improvement and shall be completed prior to the sale of the first lot. Said landscaping shall be maintained by the developer until such time the new homes are constructed and occupied.

6. Grading and Haul Routes

The application in question does not change the lot configuration or grading as shown in the approved PUD-05 development plan (Exhibit C). The development on each lot would be required to conform to the PUD-05 and tentative map approval unless otherwise modified by this application.

Public testimony was taken sharing concern that the number of truck trips could impact the condition of Vineyard Avenue. Recently, the City has invested significantly in median plantings and new porous asphalt. The question posed to staff was what impacts there might be, if any, and what conditions would mitigate any damages from the construction of this project.

Vesting Tentative Map 7399 included the following condition concerning the hours allowed for hauling trucks:

- “32. In addition to regulating the haul route to and from this project pursuant to PUD Condition No. 106, the City Engineer shall regulate the hours of all truck traffic so as to avoid conflicts with school traffic during peak school drop-off and pick-up hours and shall preclude use of the school loop road as a portion of the approved haul route.”

Additionally, the Vineyard Avenue Corridor Specific Plan (page 49) requires:

“All trucks hauling excavated materials shall be covered with tarpaulins or other effective covers”.

Additionally, staff requested the applicant provide an estimate of trips and quantity of off-haul material due to site grading. RJA estimated that there would be 148,000 cubic yards of material off hauled which would require approximately 12,333 truck trips.

In addition to the conditions noted above, the City conditions all projects to replace any damaged off-site improvements as determined by the City Engineer. This condition exists in the original PUD-05 approval which states:

114. Any damage to existing street improvements during construction on the subject property shall be repaired to the satisfaction of the City Engineer at full expense to the project development. This shall include slurry seal, overly, or street reconstruction if deemed warranted by the City Engineer.

The Planning Commission may wish to repeat the condition in Exhibit B to ensure that it is captured and that no misunderstanding will occur at the end of the project.

7. Sports Court

The Vineyard Avenue Corridor Specific Plan (page 31) states:

“Tennis courts should not be permitted on existing slopes which exceed seven percent.”

Projects lying within the Vineyard Avenue Corridor Specific Plan Area are often located on hillsides. Any sport would create an echo effect during play within this area. The City has begun a practice of not allowing sports courts within this area for noise considerations.

8. The Continued Use of the Well by the Chrismans After City Water Service is Provided to their Property

There is an existing well on the property owned by the Brozoskys that adjoins the Chrismans' property. It is a joint well in the sense that the Brozoskys and the Chrismans use the well for domestic and non-domestic purposes. Although located on the Brozoskys' property, it is undisputed that the Chrismans have a legal right to use the well and have an easement over and on the Brozoskys' property for maintenance, etc. purposes. The Chrismans continued use of this well after City water service is provided to their property has been the subject of considerable discussion when this project was originally approved and during this proposed modification.

Although there was considerable discussion at the time of the original approval (both at the PUD and vesting tentative map stage) regarding Mr. Brozosky's concern that the well would fail and therefore that the Chrismans ought to abandon their interest in the well once City water was provided to the Chrismans, the City Council, when it approved the tentative map, did not impose that as a condition. The Council only imposed a condition to require the Chrismans to provide to the Brozoskys an alternate water source in the form of a temporary water supply. The City Council did not require the Chrismans to abandon the use of or their rights to the well nor the easement with which they access the Brozosky property in order to service their pumps in the joint well at the time that they would be provided with City water.

The City Council imposed the following condition no. 23 of Vesting Tentative Map 7399, which states:

“When the developer of the Chrisman property extends the water line providing City water to the Chrisman residence, the developer shall extend the water line from the Chrisman driveway to the Brozosky property line within the EVA area shown on the tentative map. The size of the water line shall be the same as the size of the water line that serves the Chrisman residence. The developer of the Chrisman property shall also pay for and install at the edge of but within the Brozosky property at 5/8-inch water meter, which meter shall serve the Brozosky property only. Payment includes the standard connection fees for such meter. Prior to the installation of the water line to the Brozosky property, and prior to the installation of the meter, the Brozoskys may increase the size of the water line and/or the meter at their own expense. The Brozoskys may connect to the meter. Use of this water line shall be on an interim basis and shall be discontinued at such time as the Brozosky property is connected to the City water system under the Vineyard Avenue Corridor Specific Plan. This condition may also be satisfied by a separate agreement signed by the Chrismans/Brozokys.”

Implied in this condition of approval is the Chrismans' continued use of, and access to, the well. At that time, the Brozoskys objected to the Chrismans' continued use of the well on their property for agricultural purposes after water service is provided to the Chrismans' property. The Brozoskys continue to have that objection. At the Planning Commission hearing Mr. Brozosky cited various documents reflecting his belief that Chrismans' right to use the well should be abandoned.

Mr. Brozosky first cites the comments included the Draft EIR for the Specific Plan, at pages 4.3-10 through 4.3-12, that addresses the impact of water degradation due to salt loading. Under the Plan, there would be an increase in the use of lands for vineyards and there would be increased landscaping for the new residences, both of which would require irrigation. Assuming that groundwater would be used for those purposes, this increase in agricultural operations and irrigated landscaping would be expected to increase the discharge of salts into surface and subsurface waters due to the high salt content of the groundwater in this area of the groundwater basin. In that context, the Draft EIR provides that the proposed vineyards would be irrigated with groundwater

supplied by on site wells; all other irrigation needs—in an effort to reduce salt loading in and to the groundwater basin would be met by use of City water.

Mr. Brozosky also cites to the “Land Use” section of the Vineyard Avenue Corridor Specific Plan (page 22). One of the land use districts identified in the Specific Plan is the Vineyard District. Only certain parcels within the Plan area are designated Vineyard, and the Chrisman parcel is not one of them. Those parcels are intended to be planted, at least in part, with vineyards, and parcels so designated are intended to maintain the agricultural use of the area, reinforce the agricultural character of the area, be pleasing aesthetically to motorists, and buffer future residential uses from traffic along Vineyard Avenue. For those parcels within the Vineyard District, in the event that vineyards prove infeasible, “related agricultural uses would be permitted.” (emphasis added.)

Mr. Brozosky further cites to the “Public Facilities, Water” section of the Specific Plan (page 78). The Plan provides that conceptually the City will provide water for all uses, except the irrigation of vineyards and other agricultural activities. (emphasis added.) More specifically and as to existing residences, the Plan provides that property owners who choose to subdivide are required to connect their existing residences to the City water system at the time service is extended to the subdivided land. Moreover, as to existing residences, “Well water *may* be used for irrigation...”. (emphasis added.) Perhaps inconsistent with the prior sentence, the Plan then sets forth certain water conservation provisions including “Well water shall be required for irrigation of vineyards and related agricultural uses.”(emphasis added.)

Because the EIR indicates that vineyards (as opposed to other uses needing irrigation) are to be irrigated with groundwater from wells and because the same terminology—related agricultural uses—appears in that part of the Plan that addresses the Vineyard District and that addresses when well water shall be required, Mr. Brozosky concludes that well water is not required for agricultural uses on parcels not within the Vineyard District. From that conclusion, he believes that a condition of approval could be imposed on the Chrisman PUD by the City Council that would require the Chrismans to give up their right to use well water once the City water system is extended to their subdivided land as the Chrisman parcel is not within the Vineyard District and the use of well water for irrigation is discretionary in other zoning districts within the Specific Plan area.

As to their continued use of well water from the well on the Brozoskys’ property once City water is provided to their site, the Chrismans contend they should be allowed to retain that right. The Chrismans point out that the Specific Plan states that the “City will provide water for all uses, except the irrigation of vineyard and other agricultural activities” (page 75). The Specific Plan, in context of putting future residents on notice that agricultural uses may be located nearby, provides that “agricultural uses are defined as including but not limited to day and night time activity relating to livestock grazing, the keeping of livestock, the growing and processing of agricultural crops, and any commercial operations.” (page 48). The Chrismans state that they have existing

agricultural uses on their property which are to be retained after the approval of the final map for the development on the lower portion of the their property. At that time, their existing home and the new development will be connected to the City water, but they want the existing agricultural uses to be able to continue to use well water.

The Chrismans further believe that the size of the waterline installed by the City for the Specific Plan area and further along Vineyard Avenue are adequate for domestic use but are not adequate for domestic and agricultural uses. Therefore they believe they must have well water to irrigate agricultural uses. Staff has indicated that the sizing of the new water supply including the new water tank in the Vineyard Avenue Corridor located at the Reznick property, was not sized for any use other than a domestic potable water supply and did not include agricultural uses.

The Brozskys are also concerned that the Chrismans' continued use of an easement on their property to access the shared well will unreasonably interfere with their ability to subdivide their property in the future (the Specific Plan allows the Brozskys the potential to develop three lots on their property, in addition to creating a separate lot for the existing house. Staff recognizes that given the topography of their site, it is possible that one of the proposed lots could be situated where the existing easement in favor of the Chrismans currently exists. Accordingly, subdivision of the property and/or location of the proposed house where the easement exists may present challenges.

The Planning Commission has the discretion to maintain the original condition for the temporary water line from Chrismans to Brozskys.

Option One

The Planning Commission has the discretion, in context of this PUD modification, to recommend that the existing condition of approval for the temporary water line from the Chrismans to the Brozskys not be changed. This option would affirm City Council's condition of approval No. 23 as noted above.

The implementation of this condition would also require that an easement be granted from the Chrismans to the Brozskys over their [the Chrismans'] property for access and maintenance by the Brozskys. Additionally, if the temporary service were to be used, it would require City staff to read the meter via traveling into the private Chrisman property some distance away from the public right of way.

The existing condition does not require the abandonment of well water access and rights that the Chrismans currently enjoy. However, the Commission could agree with the Brozskys and find that the use of well water is not required for irrigation purposes and, accordingly, recommend a revision to the conditions to eliminate the right of the Chrismans to use the well on the Brozsky property (because it would not be required for irrigation purposes) once City water service is available to the Chrismans' property.

Option Two

In an effort to address the Brozoskys' concerns, since the last Planning Commission meeting, staff has been working with Mr. Brozosky and the applicant to create an alternative solution to this issue of providing an alternative temporary water supply and well use. Staff evaluated the issues related to the previous approval. Staff considered the history of the development which created the original condition and if those circumstances were held in abeyance, and the City were to consider how installation of meters and temporary services could be constructed for the benefit of a development overall, the City would typically construct new improvements such as waterlines and meters within access and rights-of-way convenient to the City and City staff for meter reading, maintenance and repair.

Thus, an alternative to the existing condition would be to provide a permanent meter at the northeast corner of the Chrisman property within the public right-of-way, and to require the Chrismans to finance the construction of a temporary water line along the easterly property boundary on the Brozosky property at such time that the Brozoskys would like it to be installed. The provision for a temporary water service would be to meet the intent of the original concern held by the previous City Council regarding water service to the Brozosky residence in the event the well failed. There are various ways to manage the installation of the temporary water line along the westerly Brozosky boundary; 1) the Brozoskys could undertake to retain a contractor of their choice to install the line at the expense of the Chrismans, 2) the Chrismans could retain a contractor to install the water line at their expense, or 3) the Chrismans could deposit funds based on an engineers estimate to the City in order to ensure the construction of that line and help coordinate a contractor that will meet the necessary qualifications for such work. Should the cost of the work exceed the estimate, the Chrismans would be required to pay the difference. The waterline would need to be constructed within a reasonable date certain, such as within 1 year of the filing of the final map, for example.

For vineyards and other agricultural uses on those properties within the Vineyard District (of which the Chrisman property is not one), the use of well water for irrigation purposes is a requirement under the Specific Plan. It is, however, certainly discretionary to require well water to be used for irrigation purposes for properties, such as the Chrismans, that are not within the Vineyard District. In addition, the domestic water line that will serve the Chrismans' development is not properly sized for agricultural purposes.

The Planning Commission may choose the alternative design on the water line (i.e., Option Two) which allows the Chrismans to retain their right to use the well water for irrigation and related agricultural (animal husbandry, for example) purposes. It requires the Chrismans to pay for the installation of water service for the benefit of the Brozosky property. Further, this option would not unreasonably impede future development of additional lots on the Brozosky property. This is staff's recommendation.

Conditioning the project with this alternative would require the Chrismans to install a two-inch permanent water line that would be located within the area on Chrismans' site that will be dedicated to the City as the right-of-way for access purpose for future development to the Brozosky site. In addition, the Brozoscys would install a two-inch water line on their property (for which the applicants would reimburse them) in order to obtain City water service. The Brozoscys would, as required by the Financing Program of the Specific Plan, pay for their share of the Specific Plan fee only when they permanently connect to the City water. This condition would avoid creating an easement in favor of the Brozoscys on the Chrismans' property as well as ensure that City staff would not be required to travel onto private property to read a meter.

Because, however, this new condition as written does not eliminate any existing rights that the Chrismans have to use the well on the Brozosky property, nor eliminate the easement that the Chrismans have on the Brozosky property to access the well, the Brozoscys are not satisfied with this alternative. The Brozoscys would like the condition to eliminate the rights of the Chrismans' to use the well and, by extension, to extinguish their easement rights to the well.

The benefit of this alternative is that it will provide a solution that has the same intent as the original condition by providing a temporary source of water in the event the existing well should fail, does not create new easements, and does not require City staff to read meters that would be located significantly away from public roads.

As with Option One, the Commission could find that the use of well water is not required for irrigation purposes and, accordingly, recommend a revision to the conditions to eliminate the right of the Chrismans to use the well on the Brozosky property (because it would not be required for irrigation purposes) once City water service is available to the Chrisman property.

Option 3

As a third option, the Planning Commission may wish to recommend rescinding the entire condition and not require the Chrismans provide any temporary water source to the Brozoscys. This option would relieve the Chrismans of the obligation to install a water line for the benefit of the Brozosky property. This option would maintain the status quo with both property owners.

As with the other options, under this scenario the Planning Commission could recommend that the Chrismans' right to use the well be abandoned upon water service to the Chrismans' property. The Commission could find that the use of well water is not required for irrigation purposes and, accordingly, recommend a revision to the conditions to eliminate the right of the Chrismans to use the well on the Brozosky property (because it would not be required for irrigation purposes) once City water service is available to the Chrisman property.

9. Development Agreement

The Planning Commission had questions concerning whether the Development Agreement (DA) between the City and the Chrismans needs to be amended if the City Council approves a PUD amendment to change the project from production homes to custom homes.

The City Attorney's Office has reviewed the Development Agreement and has concluded that an amendment to the Development Agreement is not necessary. Staff provides the following analysis:

- Section IV, D states: "Nothing herein precludes the Property Owner and the City from mutually agreeing to modify any existing or subsequent Project approval, and no amendment to this Development Agreement shall be required for such amendments."

Based on this language, the DA does not need to be amended to reflect the PUD modification.

- The only reference in the DA to the Centex development is in paragraph D of the recitals. It states: "Property Owner, through its then optionee Centex Homes, has proposed a development plan for ten new residential lots on the Property and the existing residence." In sum, the types of homes to be built, i.e., production versus custom, was not a central issue in this DA that would require an amendment.

10. Conditions of Approval

The Planning Commission also requested that the conditions of approval be a combination of the project specific guidelines and the existing approved conditions from the original PUD-05, PUD-05-01M, and Tentative Vesting Map7399. The Commission made this request because there were too many "Exhibit B's" and the Commission was having difficulty referring to the correct Exhibit B, whether it was for the current project or a previously approved project.

The City has been undergoing a process to try to eliminate duplication of conditions and, therefore, to eliminate the need to refer to those previous approvals. In an effort to continue to streamline the conditions for the Commission's convenience and not include conditions that have been revised by later Council action, staff has provided Exhibit 'B', which is a comprehensive list of conditions for the project and is easier to reference and understand. However, the condition of PUD-05-02M only continue to be on Exhibit "B".

PUD DEVELOPMENT PLAN FINDINGS

Please refer to the PUD findings listed in Exhibit E.

ENVIRONMENTAL ASSESSMENT

Environmental review for the proposed project was undertaken with the Final Environmental Impact Report (EIR) approved by the City Council for the Vineyard Avenue Corridor Specific Plan in conformance with the standards of the California Environmental Quality Act (CEQA). There are no substantial changes to the project or to the circumstances under which the project is being undertaken that involve new significant environmental effects or that substantially increase the severity of previously identified effects. Furthermore, there is no new information of substantial importance, which was unknown at the time that the Final EIR was approved by the City Council regarding the project or its effects, mitigation measures, or alternatives. Any previously identified effects or impacts are mitigated to a level of insignificance, with the mitigation measures incorporated into the project's design or imposed on the project pursuant to the conditions of approval. Therefore, no new environmental document accompanies this staff report.

Summary

Gorny & Associates, an architectural firm, was the author of the design guidelines for the Silver Oaks Estates. The information contained in the design guidelines is detailed and comprehensive. In addition to the setbacks, building height, and floor area ratio requirements, the approved design guidelines for Silver Oaks Estates includes written text with diagrams, photographs, and drawings, providing clear concise direction for the future individual homeowners at the Silver Oaks Estates Phase II development. The detail of architectural elements, such as dormers, shutters, bay windows, roofline, etc., provided in the design guidelines ensures the homeowners and their design team's successful translation from guideline statements to physical designs. Staff believes that the proposed guidelines would provide this comprehensive level of detail and direction to the future homeowners regarding all aspects of the designs of their homes.

The applicants propose as a modification to PUD-05 to:

1. Replace the previously approved production homes with design guidelines approved for Silver Oaks Estates, and make this 10-lot subdivision as Silver Oaks Estates, Phase II.
2. Request the design review approval for these homes be conducted by the Zoning Administrator following standard City procedures with additional procedures, increasing the approval time to 20 days, as well as pertaining to the notification provided to the Planning Commission.

The request for this modification to substitute the approval for production homes and allow the use of design guidelines mirroring that previous approval processed by the Berlogars for the first phase of the development of Apperson Ridge. Although seemingly unrelated, the Planning Commission and City Council may consider any aspects of the previous approval. The Planning Commission may recommend various

modifications to the approved conditions of approval to the City Council. If the Planning Commission were to consider modification of the previously approved condition number 23, staff would suggest the consideration of all of the options noted above and provide such recommendation.

Although all of the options as described above would work, staff believes that if the intent of the previous City Council action were to be maintained, that Option 2 provides a solution that is appropriate to today's site constraints, does not impact staff now or in the future by requiring accessing public infrastructure within private property and meets the concern regarding the future viability of the existing well to sustain two households over time.

In all of the options the Planning Commission could find that the use of the well is not required for irrigation purposes and, accordingly, recommend a revision to the conditions of approval to eliminate the right of the Chrismans to use the well on the Brozosky property once City water service is available to the Chrisman property.

Likewise, while not perfect, Option 1 remains an alternative that the Planning Commission can reaffirm the previous City Council action.

Staff believes that through discussions with Mr. Brozosky that he remains unconvinced that alternative Option 2 is viable option, believes that his family would be impacted by an alternative route providing a temporary water supply, and believes that the use of the well should be abandoned by the Chrismans.

The applicant has described that they are receptive to any of the alternatives, but do not agree to the requirement that they ought to abandon their water rights to the existing well, nor abandon their rights to an easement lying on the Brozosky property for the purposes of maintaining their well pumps and equipment.

CONCLUSION

Staff recommends that if the Planning Commission wishes to recommend a specific action to the City Council, that it should recommend allowing the modification to the planned unit development be allowed to mirror the previous approvals to replace the existing approved Centex production homes with the Silver Oaks Estates Design Guidelines to construct custom homes, and to meet the intent of the previous concerns related to water availability to the Brozoskys and recommend Option No. 2 noted above to the City Council. Staff is confident that Option No. 2 presents a sound solution from a planning perspective in that it follows the Council's intent of providing water service benefiting the Brozosky property but without the burden of creating private easements for the benefit of the current and future neighbor and ensures efficiency of City staff to maintain and access any public infrastructure.

STAFF RECOMMENDATION

Staff thus recommends the Planning Commission recommend to the City Council the following actions:

1. Make the finding that the proposed modification is covered by the previously approved Final Environmental Impact Report for Vineyard Avenue Corridor Specific Plan and that no additional environmental review is needed;
2. Make the finding as listed in Exhibit E that the proposed modification is covered by the previously approved PUD development plan findings for PUD-05; and,
3. Approve the proposed modification subject to Exhibit "B", Draft Conditions of Approval.

Staff Planner: *Jenny Soo, (925) 931-5615; email: jsoo@ci.pleasanton.ca.us*