

October 13, 2004

Vicki Lucero
Development Review Supervisor
Santa Fe County
P.O. Box 276
Santa Fe, NM 87504-0276
Fax No. (505) 986-6389

CERTIFIED RETURN RECEIPT
ANTICIPATED BY FAX

Re: EZC Case # S-04-4550 Oshara Village

Dear Ms. Lucero:

On September 23, 2004, the Office of the State Engineer received additional/amended documents regarding the water supply proposal for the referenced subdivision. This office met with the developer, at his request, on October 6, and discussed the water demand analysis and the water conservation measures. Following the meeting, the developer provided a letter amending the water budget to the County and to this office.

“Oshara Village”, which is planned to be completed in six (6) phases, will encompass 470.6 acres, and will include 1.3 million square feet of commercial space and 735 residential dwellings. The proposed development is located east of Richards Avenue and south of I-25, within Section 16, Township 16 North, Range 9 East, NMPM. The developer proposes to obtain water from Santa Fe County Water Utility (SFCWU). This office had previously reviewed the proposal. For details on the reviews, please refer to the letters dated February 27, 2002, August 10, 2004, and September 13, 2004.

This submittal was reviewed pursuant to the Santa Fe County Land Development Code, the Community College District Land Use and Zoning Regulations, and the New Mexico Subdivision Act. It is the opinion of this office that the developer has not proved that he can furnish water sufficient in quantity to fulfill the maximum annual water requirements for Phase I of the subdivision, and for the proposed subdivision at full build out, pursuant to Section 47-6-11.F(1) of the New Mexico Subdivision Act. Therefore, a negative opinion is issued at this time.

WATER DEMAND ANALYSIS & CONSERVATION MEASURES

The developer has quantified the maximum annual water requirement for the Phase I of the project, as well as for the whole development.

The water use for each residential unit has been estimated at 0.144 acre-feet per year, assuming three (3) persons per dwelling, the installation of front load cloth washers, low flow toilets using 1.6 gallons per flush, shower heads using 2.5 gallons per minute, and no evaporative coolers. This amount covers only indoor use, because the subdivision will have a private community sanitary sewer system connected to a reclamation plant, and only treated water will be used for landscape irrigation. It is the opinion of this office that this residential water budget is attainable, because of the numerous water conservations measures aimed to minimize water use. Also, the developer has allowed some margin of flexibility, by basing the calculation on three (3) persons per dwelling (while the overall occupancy might be lower, due to fact that part of the 735 dwellings will consists of studios, townhouses, and apartments), and by taking into account 20% distribution losses (while, if the system is properly maintained, these losses should not exceed 10%).

The developer has quantified the water demand for the commercial uses, which will be included in Phase I of the project, pursuant to Section 6.6.2 of the County regulations. This phase will include a limited service restaurant (1.75 acre-feet per year), a grocery store (0.25 acre-feet per year), and 27,500 square feet of retail space (0.67 acre-feet per year). None of this water would be used for landscape irrigation or toiler flushing. This office concurs with the procedure used to calculate this portion of the water budget, and with the resulting figures.

The developer has also estimated the water use for the 1,300,000 square feet of commercial/retail/office space planned for the full build out at 0.55 acre-feet per year per 10,000 square feet of space, and has added 15.13 acre-feet per year for miscellaneous/restaurant use. The 0.55 acre-feet per year per 10,000 square feet is slightly lower than the average of the water use for non-medical offices, wholesale, and retail stores recently published by the City of Santa Fe (see "*Water Use in Santa Fe – A Survey of Residential and Commercial Water Use, February 2001*"). This office's opinion is that this amount is reasonable, given the low water use of these commercial operations, and the fact that none of this water will be used for landscape irrigation and toilet flushing. However, we would request that the County forward the water budget for the subsequent phases, when the nature of the commercial operations will be known with more certainty, to this office for review.

This office's opinion is that the water budget for the residential units and for the commercial units anticipated for the first phase of the development is reasonable. However, to ensure that the estimated amounts are not exceeded, it is essential that unequivocal water conservation measures are included in the Disclosure Statement and in the Restrictive Covenants. This issue was raised, by this office, during the aforementioned meeting with the developer, who agreed to write a letter assuring the County and the OSE that detailed conservation measures will be included. The letter, dated October 6, 2004, specifies the measures requested by this office (namely, only reclaimed water will be used for irrigation and for commercial toilets filling, only electronically activated faucets will be installed in the commercial spaces, no evaporative coolers may be installed, only low flow toilets, front load washers, and low flow shower heads may be installed). It is also important that the maximum water allotment for each commercial business foreseen for Phase I is specified in the Disclosure Statement and in the Restrictive Covenants.

WATER AVAILABILITY ASSESSMENT

The proposal indicates that the developer has a contract for 30 acre-feet per year of water with Santa Fe County Water Utility (SFCWU), which would cover Phase I of Oshara Village. The OSE records indicate that SFCWU is not in possession of enough water rights to supply this phase. They also indicate that a good portion of the water rights relied upon at this time are San Juan/Chama diversion rights, which will expire on December 31, 2016.

The proposal also states, "*Oshara Village LLC has a contractual agreement in approximately 87 acre-feet of Pena Blanca water rights and our partner, Greer Enterprises, has begun the process of moving the first of those rights in cooperation with Santa Fe County. The final point of diversion is still to be determined by Santa Fe County*". The proposal does not specify if 87 acre-feet per year is the consumptive use associated with surface irrigation rights, or if it is the amount of the surface water irrigation rights, but in any case, they would only partially cover the estimated total water budget for the subdivision. Further, an application to transfer these water rights into one or more of the Santa Fe County/City of Santa Fe points of diversion has not even been filed with the Water Rights Division of the OSE. Until an application is submitted, and a permit has been approved by the OSE, the Pena Blanca water rights cannot be considered a guarantee for a portion of the water supply for the subdivision.

Section 47-6-11.F(1) of the New Mexico Subdivision Act requires an opinion from the State Engineer to determine "*whether the subdivider can furnish water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision*". The proposal does not demonstrate that the developer can provide the maximum amount of water required for Phase I of the "Oshara Village", and for the whole development. For this reason, this office is issuing a negative opinion on the proposed subdivision.

If you have any questions, please call me at 505-827-4273.

Sincerely,

Mara Smith
Senior Water Resource Specialist

cc: John W. Longworth, OSE Water Use and Conservation Bureau Chief
OSE Water Rights Division, Santa Fe Office