City of El Paso – City Plan Commission Staff Report

Case No:	SUSU12-00019 Cimarron Unit 1 Replat A
Application Type:	Resubdivision Combination
CPC Hearing Date:	May 3, 2012
Staff Planner:	Raul Garcia, 915-541-4935, *garciar1@elpasotexas.gov*
Location:	North of Northern Pass and East of Resler Drive
Acreage:	0.4211 acre
Rep District:	1
Existing Use:	Single-family residence
Existing Zoning:	R-3A/c (Residential/condition)
Proposed Zoning:	R-3A/c (Residential/condition)
Nearest School:	Hut Brown Middle School (1.64 miles)
Nearest Park:	Cimarron Park (0.30 mile)
Park Fees:	N/A (Parkland requirements were met with the original plat and the applicant in not increasing density.)
Impact Fee Area:	Not in Impact Fee Area
Property Owner:	Ernesto A. Ochoa and Lluvia Torres
Applicant:	Ernesto A. Ochoa and Lluvia Torres
Representative:	CAD Consulting Co.

SURROUNDING ZONING AND LAND USE

North: R-3A/c (Residential/condition)/ Single-family development
South: R-3A/c (Residential/condition)/ Vacant
East: R-3A/c (Residential/condition)/ Vacant
West: R-3A/c (Residential/condition)/ Single-family development

THE PLAN FOR EL PASO DESIGNATION: G4 Suburban

APPLICATION DESCRIPTION

With this replat the applicant proposes to remove a private open space easement that existed on the original plat. The applicant is providing a 10' wide pedestrian easement to a future park site to the south.

As of the writing of this staff report, two letters in opposition have been received. One from the legal counsel representing Hunt Communities Holding L.P., the developer of the Cimarron subdivisions, and one from the legal counsel representing the Home Owner's Association. (See Attachemnt)

DEVELOPMENT COORDINATING COMMITTEE

The Development Coordinating Committee recommends **denial** of Cimarron Unit One Replat A on a **Resubdivision Combination** basis based on non-compliance with Section 19.07.050.B-*Plat Vacation* as lots have been sold within the original Cimarron Unit One subdivision and the applicant has not obtained the required signatures from all property owners within the original plat.

Section 19.07.050 states that; *If no lot subject to the recorded plat has been sold, the property owner may apply for a plat vacation. If any lot in a subdivision has been sold, the recorded plat or any portion thereof may be vacated only upon application of all lot owners in the subdivision. A plat vacation application shall be accompanied by an application for a land study, preliminary plat, or final plat for the land subject to the recorded plat or portion thereof to be vacated, prepared in accordance with this article. A plat vacation application also shall be accompanied by an unconditional waiver of right to thirty-day action (mandated by the state for general approval of plats) for the plat vacation application, pending approval of a new final plat application for the same land.*

Open Space Advisory Board:

No recommendation. Neither a motion to approve nor a motion to deny was seconded.

Planning Division Recommendation:

Denial based on non-compliance with Section 19.07.050.B-*Plat Vacation*.

Engineering & Construction Management-Land Development:

We have reviewed subject plan and recommend Approval; Developer/Engineer needs to address the following comments:

- No Objection

Department of Transportation:

Transportation does not object to the proposed subdivision; but provides the following comment:
1. Additional driveways to be located on the proposed subdivision shall be coordinated with the Department of Transportation to ensure adequate sight visibility as the lot is located on a curve.

Note: All existing and/or proposed paths of travel (accessible sidewalks, wheelchair access curb ramps and driveways) within public rights-of-way shall follow the City of El Paso Design Standards for Construction and be ADA/TAS compliant.

Parks and Recreation Department:

We have reviewed Cimarron #1 Replat "A", a re-subdivision combination plat map which is composed of One Single-family dwelling lot; applicant is proposing to remove the "Private Common Open Space Area" with-in lot therefore, we offer Applicant / Developer the following comments:

1. Parks Department recommends against the removal of said "Private Common Open Space Area" since this area has been carefully planned /coordinated with the "Original Developer" and serves as the main pedestrian / walking connectivity route from the existing park located within Cimarron #1 and the two (2) proposed "Parks" & "School Site" within the adjacent subdivision known as Cimarron Sage #2 which will serve all the residents within this area.

2. Also, please note that per recorded covenants Instrument No. 20070089231 for the "Original Subdivision" known as Cimarron Unit One, per Chapter 19 – Changes in the Common Areas, Section 19.3 – Partition, the "Common Area" shall remain undivided, and no Person shall bring any action to partition of the "Common Area" with-out the written consent of all Owners and Mortgages which are the governing authority.
3. Any disturbance to this area needs to be stabilized, restored, and re-vegetated if required by the restrictive covenants.
4. Also, please note that construction drawing for the two (2) parks have been reviewed and approved since 08/01/2011

(Comments are based on recommendations and not on non-compliance with a particular Section in the subdivision code.)

El Paso Water Utilities:

1. EPWU does not object to this request

Water:

2. There is an existing 8-inch diameter water main within the 25-foot EPWU easement, the water main is located approximately 5-ft south from the northern property line.

3. EPWU records indicate a 3/4-inch water meter serving the subject property from the existing 8-inch diameter water main along Brays Landing Drive. The service address for this meter is 7372 Brays Landing.

Sewer:

4. There is an existing 8-inch diameter sanitary sewer main within the 25-foot EPWU, the sewer main is located approximately 15-ft south from the northern property line.

5. There is an existing 8-inch diameter sanitary sewer main extending along Brays Landing Drive that is available for service, the sewer main is located approximately 5 feet east from the center line of the right-of-way, but it changes alignment to 11-feet south from the center line.

General:

6. No building, reservoir, structure or other improvement, other than asphaltic paving (HMAC), shall be constructed or maintained on the above referenced EPWU-PSB easements without the written consent of EPWU-PSB. The Developer shall refrain from constructing rock walls, signs, buildings, or any structure that will interfere with the access to the PSB easements. There shall be at least 5-foot setback from the easement line to any sign or structure.

7. EPWU requires a new service application to provide service to the property. New service applications are available at 1154 Hawkins, 3rd floor and should be made 6 to 8 weeks in advance of construction to ensure water for construction work. A site plan, utility plan, grading and drainage plans, landscaping plan, the legal description of the property and a certificate-of-compliance are required at the time of application. Service will be provided in accordance with the current EPWU – PSB Rules and Regulations. The applicant is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

Stormwater:

No comments received.

El Paso Fire Department:
No comments received.

911
No comments received.

Sun Metro:
No comments received.

El Paso Electric Company:
No comments received.

Texas Gas Company:
No comments received.

El Paso Independent School District:
No comments received.

Additional Requirements and General Comments:

1. Submit to the Planning & Economic Development Department – Planning Division the following prior to recording of the subdivision.
    a. Current certified tax certificate(s)
    b. Current proof of ownership
    c. Release of access document, if applicable
    d. Set of restrictive covenants, if applicable
    e. Deed for property to be dedicated as parkland.
2. Every subdivision shall provide for postal delivery service. The subdivider shall coordinate the installation and construction with the United States Postal Service in determining the type of delivery service for the proposed subdivision. In all cases, the type and location of delivery service shall be subject to the approval of the United States Postal Service.

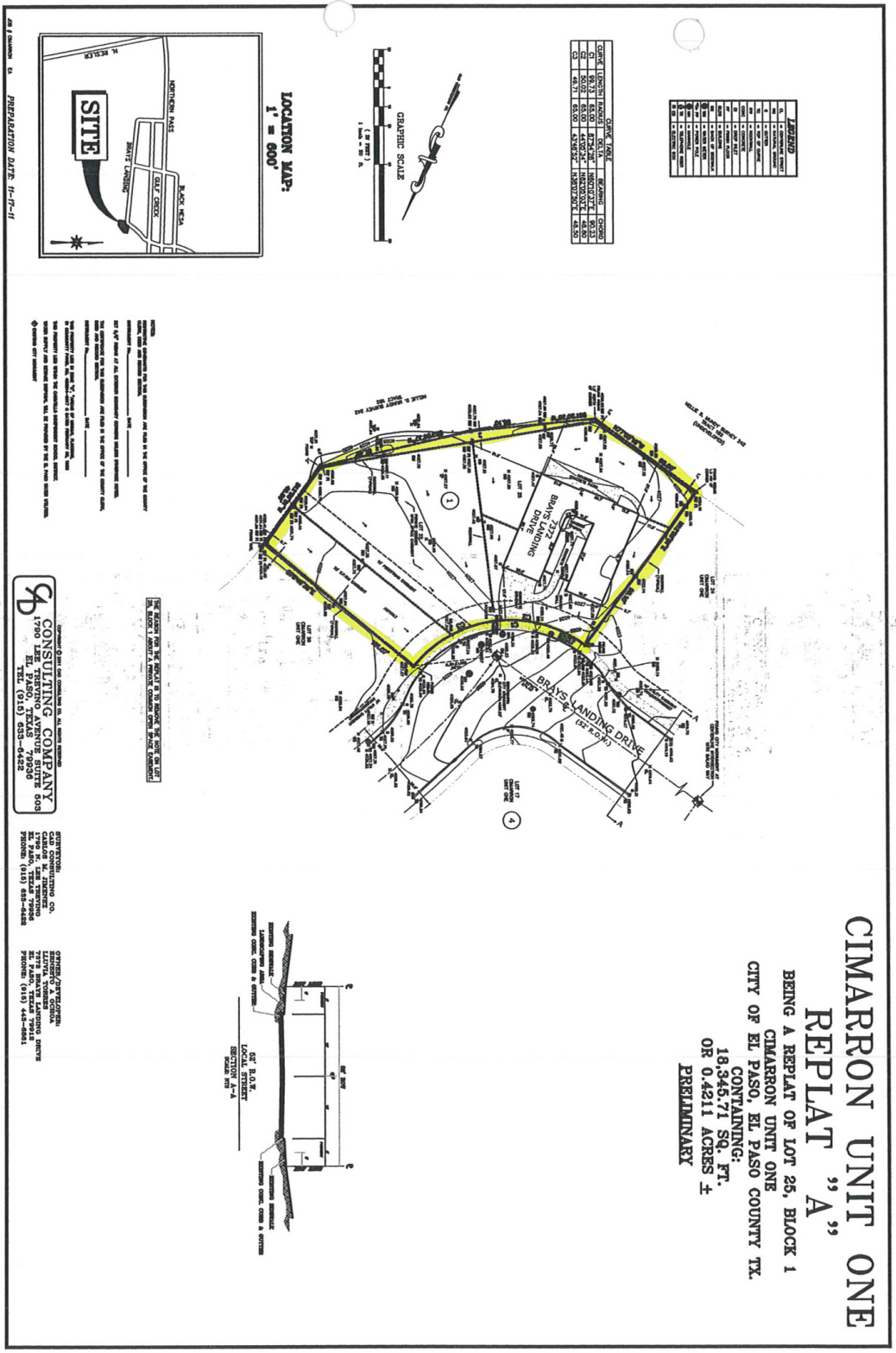
Attachments

1. Location map
2. Aerial map
3. Preliminary plat
4. Final Plat
5. Letter in opposition from counsel representing Hunt Communities
6. Letter in opposition from counsel representing the Home Owner's Association
7. Application

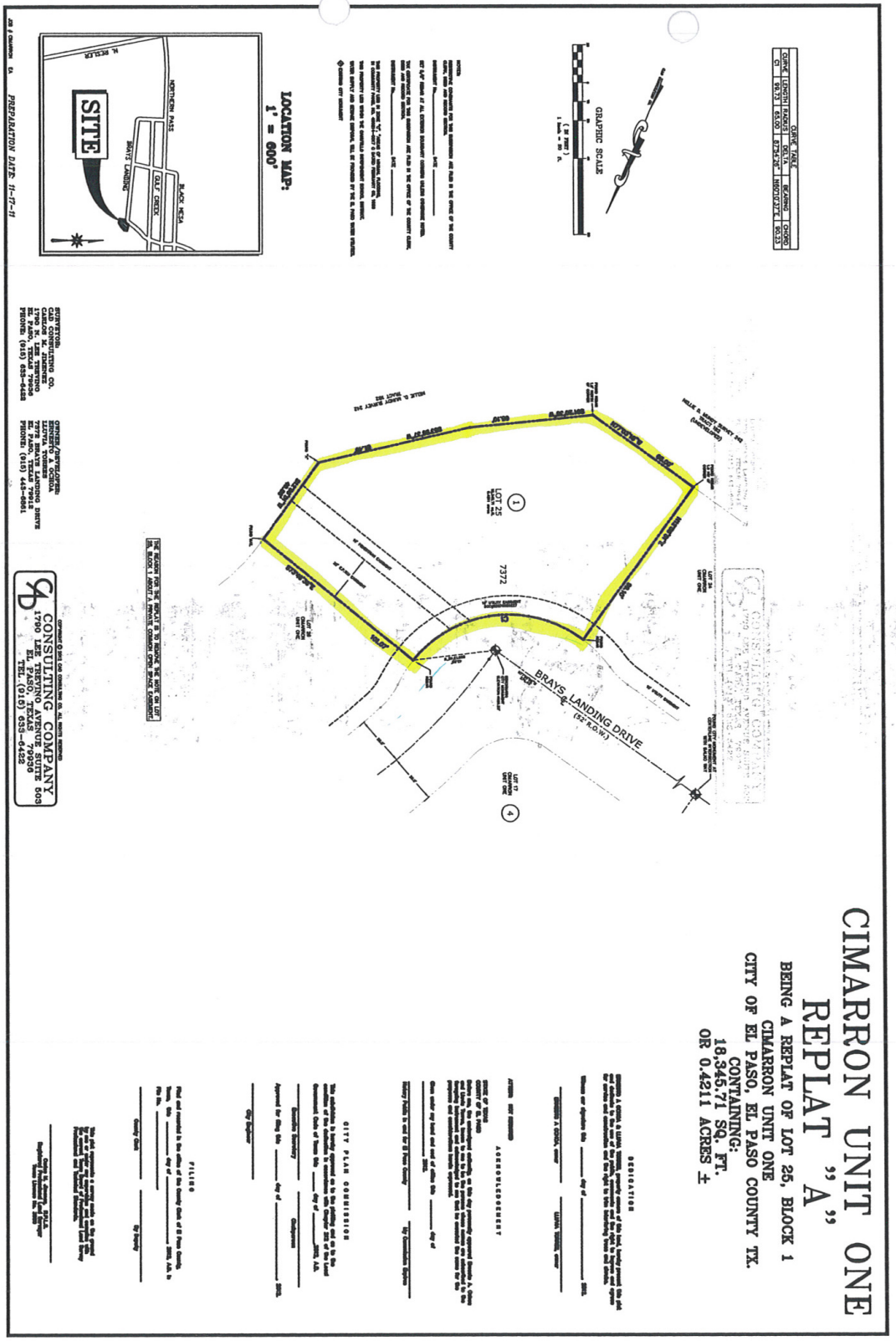
ATTACHMENT 1

ATTACHMENT 2

ATTACHMENT 3



ATTACHMENT 4



ATTACHMENT 5

HYATT & STUBBLEFIELD, P. C.
ATTORNEYS AND COUNSELORS

Wayne S. Hyatt (GA, NY, TX)
Jo Anne P. Stubblefield (GA)
David A. Herrigel (GA)
Federico A. Boyd (CA, GA)
Janet L. Bozeman (GA)

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www.hspclegal.com

March 21, 2012

Mr. Lupe M. Cuellar
City of El Paso, Texas
2 Civic Center Plaza
El Paso, TX 79901

Re: Proposed replat of Lot 25, Block 1, Cimarron Unit One

Dear Mr. Cuellar:

We represent Hunt Communities Holding, L.P. ("**Hunt** "), the developer of Cimarron in the City El Paso. It is my understanding that Ernesto A. Ochoa, a lot owner in Cimarron, has applied to the City for approval to replat his lot to remove a private common/open space easement. Hunt strongly objects to the proposed replat because removing the easement from the plat gives one reviewing the public record the impression that no easement exists, which will only lead to confusion and likely title problems down the road.

When Hunt filed the subdivision plat for Cimarron Unit 1, the City of El Paso ordinances did not permit subdividers to plat private parks or common open space reserves with a lot and block description. The only way Hunt could create areas for common enjoyment was by creating a "common open space easement" and making it part of a lot. The easement was shown on the recorded subdivision plat, which was approved by the City, and dedicated to the homeowners association, Cimarron Owners Association, Inc. ("**Association**"), for the benefit of the Association and its members, which are all of the homeowners in the Cimarron community. The dedication of that easement to the Association made the easement area a part of the Association's "Common Area" and "Area of Common Responsibility," which is the Association's responsibility to maintain, as described in Sections 3.1 and 9.2 of the Community Charter for Cimarron recorded in the El Paso County records as Document No. 20070089231 (the "**Charter**"). This Charter is a covenant running with the land that burdens all lots in the community and was in place prior to Mr. Ochoa's purchase of Lot 25. The relevant portions of the Charter are attached to this letter.

As I am sure you will agree, an easement may not be terminated without the consent of the holder of the easement. The Association is the holder, and thus, the easement may not be terminated without the Association's consent. The removal of the easement from the plat would not terminate the easement. Since the easement is a part of the Association's Common Area, the easement may not be terminated except through one of the methods described in Chapter 19 of the Charter. As described in Chapter 19, the methods for altering the Common Area and terminating the easement generally require either condemnation by a governmental authority or a vote of the members of the Association, neither of which has occurred in this case. Obviously,

should the City's actions constitute a taking of the Association's easement, compensation would have to be paid for the taking.

We fail to see the benefit or purpose of removing the easement from the recorded plat if the easement will nonetheless continue in effect. What we do foresee, however, is a problem with the Association attempting to enforce its easement rights in the lot if future owners of this lot are misled into thinking there is no easement on the lot where the plat in the public record fails to properly show the easement. We also fail to see why the City would be interested in contributing to potential confusion and strife. We strongly urge the City to deny Mr. Ochoa's request that the private common/open space easement be removed from his lot.

If you have any questions, please do not hesitate to call me.

Sincerely,

Janet L. Bozeman

cc: Justin Chapman, Hunt Communities Holding, L.P.

573803/Corres

ATTACHMENT 6

HECTOR PHILLIPS, P.C.
A PROFESSIONAL CORPORATION
ATTORNEY AT LAW

Hector Phillips

1017 MONTANA AVENUE
EL PASO, TEXAS 79902-5411
TELEPHONE - (915) 838-8000
FACSIMILE - (915) 838-7060
HPHILLIPS@HECTORPHILLIPS.COM

March 28, 2012

Mrs. Lupe M. Cuellar
City of El Paso
2 Civic Center Plaza
El Paso, TX 79901

Re: Proposed replat of Lot 25, Block 1, Cimarron Unit One

Dear Mrs. Cuellar:

I represent Cimarron Owners Association, Inc., (the "Association"), the homeowners association that is responsible for enforcing the Community Charter for Cimarron One (the "Charter"). We understand that Ernesto A. Ochoa, the owner of the referenced lot, has applied to the City of El Paso for approval to replat his lot to remove a private common/open space easement. The Association strongly opposes the removal of the easement in question.

The Association and its members own the easement in question and are responsible for maintaining it. This easement is part of the Association's common area and is for the use and enjoyment of all lot owners within the Cimarron community. As such, neither the City nor Mr. Ochoa can interfere with the use of the easement by the Association and its members. The members of the Association purchased property in reliance on the plat showing the easement and many probably would not have purchased their property if the easement did not exist. The Association and its members have a vested property interest in the easement.

The easement cannot be terminated except through one of the methods described in Chapter 19 of the Charter. As described in Chapter 19, the methods for altering the Common Area and terminating the easement generally require either condemnation by a governmental authority or a vote of the members of the Association, neither of which has occurred in this case.

The easement benefits hundreds of property owners in the Cimarron community. It is the Association's position that there exists no public interest that would justify removing the easement and affecting hundreds of property owners. Moreover, the City cannot remove the easement without compensating the Association and its members for this taking and the compensation that the City would have to pay to the Association and its members would be substantial.

Finally, Hunt Communities Holding, L.P., the developer, dedicated the easement for the use and enjoyment of members of the Association through the recordation of the subdivision plat recorded in File No. 20070089231 of the Real Property Records of El Paso, Texas. As such, the easement must be rescinded or modified, if at all, according to statutory provisions, including section 212.014 of the Texas Local Government Code. This section prevents replatting of all or part of a subdivision if the replatting would amend or remove any covenants or restrictions. It is the Association's position that the City cannot replat any portion of the subdivision plat in question because in doing so, it would amend or remove the covenant or restrictions contained in the Charter.

Removing the easement will also cause confusion among current and future lot owners and might benefit one lot owner while harming hundreds of other lot owners. We do not see any purpose in removing the easement in question and request that you agree not to approve the replatting of this easement. Please let us know what might be the next steps in this decision process or if it is necessary to schedule a meeting to further discuss this issue.

I look forward to hearing from you soon.

Sincerely,

HECTOR PHILLIPS, P.C.

By: _____
Hector Phillips

HRP:dm

cc: Roger Kinney
Associa Canyon Gate Real Estate Services
4141 Pinnacle, Ste. 211
El Paso, TX 79902

Mr. Raul Garcia
c/o City Planning Commission
City of El Paso
2 Civic Center Plaza
El Paso, TX 79901

ATTACHMENT 7

CITY PLAN COMMISSION APPLICATION FOR
RESUBDIVISION COMBINATION APPROVAL

DATE:_____ FILE NO. SUSU12-00019

SUBDIVISION NAME: CIMARRON UNIT ONE REPLAT A

1. Legal description for the area included on this plat (Tract, Block, Grant, etc.)
LOT 25 BLOCK 1
CIMARRON UNIT ONE

2. Property Land Uses:

	ACRES	SITES		ACRES	SITES
Single-family	0.4211	1	Office		
Duplex			Street & Alley		
Apartment			Ponding & Drainage		
Mobile Home			Institutional		
P.U.D.			Other (specify below)		
Park					
School					
Commercial			Total No. Sites		1
Industrial			Total (Gross) Acreage		0.4211

3. What is existing zoning of the above described property? R3 AC Proposed zoning?_____.

4. Will the residential sites, as proposed, permit development in full compliance with all zoning requirements of the existing residential zone(s)? Yes_____ No ✓.

5. What type of utility easements are proposed: Underground_____ Overhead_____ Combination of Both_____.

6. What type of drainage is proposed? (If applicable, list more than one)

7. Are special public improvements proposed in connection with development? Yes _____ No ✓.

8. Is a modification or exception of any portion of the Subdivision Ordinance proposed? Yes _____ No _____
If answer is "Yes", please explain the nature of the modification or exception_____

9. Remarks and/or explanation of special circumstances:_____

10. **Improvement Plans submitted?** Yes _____ No ✓

11. Will the proposed subdivision require the city to review and decide whether this application is subject to the standards in effect prior to the effective date of the current applicable standards? Yes _____ No _____

If yes, please submit a vested rights petition in accordance with Section 19.47- Vested Rights (See Attached).

12. Owner of record ERNESTO OCHOA LILIA TORRES 443-6861
(Name & Address) (Zip) (Phone)

13. Developer _____
(Name & Address) (Zip) (Phone)

14. Engineer CAD CONSULTING CO. 633-6422
(Name & Address) (Zip) (Phone)

CASHIER'S VALIDATION
FEE: $1,083.00

OWNER SIGNATURE: Ernesto Ochoa Lilia Torres

REPRESENTATIVE: _____

NOTE: SUBMITTAL OF AN APPLICATION DOES NOT CONSTITUTE ACCEPTANCE FOR PROCESSING UNTIL THE PLANNING DEPARTMENT REVIEWS THE APPLICATION FOR ACCURACY AND COMPLETENESS.