

Atrisco Grant's 64,000 acres (TR 11178).<sup>126</sup> [The record contains no comparable figure for Pajarito's 27,000 acres<sup>127</sup> but the tenor of the evidence generally indicates a similar situation there].

149. What we are looking at in the Pajarito and Atrisco Land Grants is obviously nothing like the "constraint" of the Sandia Mountains on Albuquerque's East Side. While clearing an ancient title may take a little time, it seems safe to assume that, if and when there is sufficient real demand to develop Pajarito and Atrisco land, the process of clearing title will be expedited. In such case the "constraint" of confused titles is likely to disappear rather quickly. Be that as it may, even Carruthers, who refused to see development possibilities west of the "escarpment" simply because the City does not want to service that area, estimated there are now available for development lands in the Spanish Grants totaling 12,600 acres.<sup>128</sup> This leaves about 75,000 acres west of the "escarpment" which we think could be developed if there were really enough demand to justify development but which, out of an abundance of caution, we will not classify as "immediately available".

150. West of the Rio Grande River and north of the Pajarito and Atrisco Grants lie several developments that still have some vacant land. One, called Volcano Cliffs, [142] was estimated by Planner Carruthers to have 2,400 to 3,000 acres of vacant, developable land left when he testified (TR 10834).<sup>129</sup> Another, the Taylor Ranch (from whose original 12,000 acres Horizon Corporation's Paradise Hills was carved) still has about 1,000 acres available for development (TR 10835, 10911).<sup>130</sup> Horizon's Paradise Hills, immediately adjoining Respondent's Rio Rancho Estates, is said to have 6,000 acres still undeveloped (TR 10835, 11006-07).<sup>131</sup> All together these represent a total of about 10,000 acres but Carruthers explained that an adjustment should be made for 1,500 acres of Volcano Cliffs and 2,000 acres of Paradise Hills, which require blasting with dynamite to build foundations (because of the nature of the escarpment) (TR 11166-68). Accordingly, we calculate that there are about 6,500 acres of land immediately available for building northwest of Albuquerque but short of Rio Rancho Estates.

<sup>126</sup> The 5,000 figure presumably refers to 2,400 developable acres in Snow Vista ("SV"), the original Atrisco Village, (TR 10825); 1,200 developable acres along Central Avenue ("BC") (TR 10826); and other, unidentified land.

<sup>127</sup> The portion denoted "P" on CX 552 contains only 3,000 acres (TR 10825). The portion denoted "P2" contains 24,000 acres (TR 10830).

<sup>128</sup> The components of this 12,600 figure are: College Park ("CP") and surrounding area, 6,000 acres (TR 10837); the easterly end of the Pajarito Grant ("P") 3,000 acres (TR 10826); Snow Vista ("SV") 2,400 acres (TR 10824-25); and the Central Avenue corridor ("BC") 1,200 acres (TR 10826-27).

<sup>129</sup> Identified on CX 552 as "VC".

<sup>130</sup> Identified on CX 552 as "TR".

<sup>131</sup> Identified on CX 552 as "PH".

e. *The inner city*

151. Having reviewed the vacant land available in areas just *outside* Albuquerque's city limits, it should be added that, as in most cities, there is also a certain amount of vacant land left *inside* the city limits, the residue of leap-frogging growth and so-called "urban sprawl". Periodic studies have indicated that there is some, although not much such land.

152. A "Vacant Land Study" published by the Albuquerque/Bernalillo County Planning Department in 1972 found only 14,035 gross usable vacant acres within the City's then-existing (1972) boundaries (CX 547H). Of this 14,035 acres, 9,670 acres were holdovers from a total of 20,059 vacant acres found in 1962 (when the City limits were somewhat smaller), while 4,365 of the vacant acres in 1972 were among the [143] peripheral lands that had been annexed by the City of Albuquerque between 1962 and 1972 (CX 547H). Of the total of 14,035 vacant acres the Planning Department noted, however, that over one third were not zoned residential (CX 547H). Moreover, Complaint Counsel's principal expert on this branch of the case (City Planner Carruthers) agreed that so much of this vacant land was not immediately available for development (*e.g.*, because of utilities problems) (TR 11133-36) that the City could fairly be said to be about "out of land" (TR 11131-39, 11156). A later "Vacant Land" Review in 1977 confirmed that the City's supply of vacant land within its own bounds in 1976 was still about 15,000 acres or 27 percent of the City's 1976 area (57,000 acres) (CX 649Y) and we adopt that figure here.

153. While necessarily accepting the results of the City's "Vacant Land" Surveys, we note the extreme conservatism of these studies with reference to the condition of what is known as "the Valley". This is the low-lying land on both sides of the Rio Grande River, which flows through Albuquerque in a southerly direction. North of Central Avenue it is known as "the North Valley" while south of Central it is called "the South Valley" (CX 547K).<sup>132</sup> The 1972 study showed only a relatively small amount of vacant land in "the Valley" (1,314 gross acres; 689 residential acres) because most of "the Valley" is now in use for grazing and agriculture (and so was not considered "vacant") (CX 547K). Planner Carruthers explained that it is the considered policy of the Planning Department to keep the Valley that way and prevent conversion of farm land to residential use because there is a very limited amount of irrigated farm land available (TR 1827, 11121).

154. Carruthers made it clear, however, that "big parcels" of land in the South Valley (TR 10827) and "a great deal" of land in the North

<sup>132</sup> The 1972 Vacant Land Study defined "the Valley" as bounded by the freeway (I-25) on the east, Coors Blvd. on the west, and the City limits on the north and south.

Valley (TR 10815) *could* be developed "residentially" but for the City government's official opposition. Since the conversion of suburban [144] farm land to urban uses (and values) is a very normal phenomenon in American history, it seems quite possible that, if the pressure of population were to become more intense than it has been thus far, Albuquerque's policy might well be changed or overridden in this regard. That, in turn, could add very large supplies to the metropolitan area's stock of developable residential land.

f. *Summary of available vacant land*

155. Our review of the supply of vacant lands fairly available in the near future for new residential construction in Albuquerque and those parts of Bernalillo County immediately adjoining the City yields the following *minimum* availability:

Figure 11

<u>Area</u>	<u>Available land (in acres)</u>
City of Albuquerque	15,000
<u>Northeast suburban areas</u>	
Elena Gallegos (Sims)	3,000
North Albuquerque Acres	1,500
Tijeras Canyon	3,500
<u>Southern suburban areas</u>	
Montessa Park	200
Four Hills	300
University/New Mexico	3,500
<u>Western suburban areas</u>	
(Atrisco/Pajarito Grants)	
College Park area	6,000
East end of Pajarito Grant	3,000
Snow Vista	2,400
Central Ave. corridor	1,200
<u>Northwestern suburban areas</u>	
Volcano Cliffs	1,000
Taylor Ranch	1,000
Paradise Hills	<u>4,000</u>
Total available vacant land:	45,600 acres [145]

156. Assuming continuation of Albuquerque's historic housing density of about five persons per acre (TR 12298), *our review reveals that about 228,000 more people could be absorbed just on the vacant land immediately available in and around Albuquerque* even without taking into consideration 234,000 acres of nearby Pueblo Indian lands to the north and south of the City, 78,400 acres of Spanish Grants to the west, beyond the "escarpment", 6,000 acres in the old North Albuquerque Acres development and "a great deal" of farmland in the

Rio Grande Valley. If metropolitan Albuquerque were to continue to grow at the same rate after 1975 that characterized its growth between 1960 and 1975 (*i.e.*, an increase of 108,000 people during 15 years or 7,200 persons per year), metropolitan Albuquerque would still not be out of buildable vacant land for three decades.<sup>133</sup>

157. In light of this summary review of the vacant land available for building in and around Albuquerque, it becomes plain that Respondent's main selling point—that the City is surrounded on three sides by various constraints and can therefore expand *only* in the direction of Rio Rancho Estates—is false and misleading. The alleged constraints in fact do not constrain the growth of Albuquerque's population—and *will probably not do so for at least three decades*—because there is enough adjoining land immediately available to take care of the City's likely growth needs during that period, without recourse to one lot at Rio Rancho Estates.

158. Finally, it is by no means clear that what Respondent calls constraints today will really prove to be constraints when it matters, early in the 21st century. [146] To assume that even then there will still be no subdivision of any part of the nearby Indian lands nor any solution of the Spanish Grants' title problems nor any opening up of Valley farm lands to residential construction seems rash and unjustified. Respondent's admittedly plausible "frame" theory may be good for business but it bears little resemblance to the facts of life in Albuquerque.

#### B. Silver Springs Shores

159. At Silver Springs Shores Respondent has not employed the "frame" theory used so successfully at Rio Rancho to the effect that due to constraints on growth in all other directions, an inevitable overflow population from the nearest city will have no place to go except to Respondent's development. Instead, the promotional theme at Silver Springs Shores seems to have been simply that more and more retirees and others who want a warm climate are moving to Florida, referring particularly to Central Florida, and that Silver Springs Shores and Marion County as part thereof have shared and will continue to share in that growth (CX 58P-S).

160. Any assumption that Marion County will automatically share in the population growth of Central Florida or that Silver Springs Shores will necessarily share in the population growth of Marion

<sup>133</sup> Our use of a simple straight-line projection of metropolitan Albuquerque's population increase from 1960 to 1975 for a rough idea of further growth to the year 2007 seems quite conservative. A 1974 projection by the Commerce Department's Bureau of Economic Analysis of which we take official notice anticipated a 1990 population of only 423,000 or 70,000 less than the 493,000 yielded by our straight-line projection based on 1960-75 experience. U.S. Department of Commerce, Social and Economic Statistics Administration, Bureau of Economic Analysis, "Area Economic Projections, 1990" (1974), p. 76.

County is plainly unjustified. Respondent has tried to insulate itself from a charge of deception in this respect with a fine print, barely readable disclaimer of such logic tucked away in a corner of the rear cover but not, we think, effectively.<sup>134</sup>

170.\* Moreover, Respondent has grossly exaggerated the growth of Ocala, the city nearest to Silver Springs Shores. We do not refer to such mere puffing as "A one-in-a-million location" (CX 58B) but to unambiguous quantitative [147] misstatements in advertising copy prepared for Respondent in 1972 which represented that "Silver Springs Shores is [directly]<sup>135</sup> in the path of tremendous growth" (CX 73). There follows this statement: "Ocala, the city adjacent to Silver Springs Shores, has grown over 66% from 1960 to 1970" (CX 73A).

171. The fact is that this claim of growth was based *entirely* on a redrawing of Ocala's city limits during the decade; the population of what was Ocala in 1960 actually *declined* during the ensuing decade (CX 476H, P). Respondent's carelessness of the truth enabled it to advertise a growth rate nearly twice what a realistic figure (34 percent for all Marion County) would have dictated (CX 476L).

172. Finally, Respondent's representations of locational advantage have been misleading because they have focused attention solely on the demand for building lots, to the exclusion of the supply factor. The testimony of Withlacoochee Regional Planner Mimms was that there were (as of 1977) at least 94 land developments of more than 100 acres size (each) in Marion County and that in the aggregate they contain over 135,292 acres (TR 6795-96).<sup>136</sup> Mimms thought it reasonable to assume a density of about two housing units per acre (that being the lower end of a Marion County range from 1.8 to 11) and further to assume a Marion County average of 2.9 persons per household unit (TR 6802-03).<sup>137</sup> On these very conservative assumptions Mimms estimated that 270,548 units could be placed on the 135,292 acres of land in the 94 subdivisions in Marion County (TR 6802) and from this he further calculated that Marion County currently (1977) had enough subdivided land to accommodate a population of 784,693 persons (TR 6803). [148]

173. Unless the population of Marion County in the future grows at a rate greater than that experienced during the 15 years from 1960 to 1975, there thus already exists enough subdivided land in Marion County to house the growth of its population for 280 years or well into the second half of the 23rd Century A.D. Under such conditions a

<sup>134</sup> Information obtained in this booklet is general to the central Florida area. Property offered for sale in Silver Springs Shores may or may not be affected by the events or predictions described (here) (CX 58X).

\* There are no Findings 161-169.

<sup>135</sup> The word "directly" was apparently removed before the State of New York approved this copy (CX 73A).

<sup>136</sup> For a map of these 94 developments see CX 479.

<sup>137</sup> The witness used 2.8 on page 6802 and 2.9 on page 6803.

representation of keen demand for land without an accompanying explanation of the plenitude of supply can be disastrously deceptive.

### C. *Eldorado at Santa Fe*

174. Respondent's promotional literature for Eldorado at Santa Fe owes something to both the Silver Springs Shores and Rio Rancho themes. The former may be seen in Eldorado's effort to tie its own growth to that of the sunbelt generally:

... [W]ith a dramatic increase in population of over 23% in the past decade, Santa Fe has been growing right along with the golden southwest, today the fastest growing region in the U.S.A. (CX 173C)<sup>138</sup>

175. However, it also stresses something very much like Rio Rancho's "frame" theory:

As more and more people move to Santa Fe, the question asks itself: Where will they live? Where will they find land? (CX 83D)

And Respondent answers its own question:

Here the great open spaces are jealously guarded. *Approximately half the land in Santa Fe [County] is reserved . . . federal and state-owned lands . . . lands for parks and recreation, closed to residential living* (CX 83D) (emphasis added).<sup>139</sup> [149]

Then, in language a Rio Rancho salesman could repeat by heart, this Eldorado brochure continued:

*With much of Santa Fe's potential growth blocked on the North, West and East by mountain and reserved lands, the most logical direction for Santa Fe to expand is to the South. The community of Eldorado is located in the general path of the Southward expansion . . . only 7 miles from Santa Fe!* (CX 83D) (emphasis added).

Such a statement is literally true, but only in the sense that Chicago's expansion might theoretically be limited by the Atlantic Ocean, the Pacific Ocean and the Gulf of Mexico.

176. The record here shows that immediately to the *west-northwest* of the City of Santa Fe—one of the supposedly "blocked" directions—lies the 9,000 acre Weil Ranch, just beginning to be subdivided for sale (TR 10488–89). At the rate that Santa Fe County's population grew between 1960 and 1975 (1,219 persons per year)<sup>140</sup> and assuming

<sup>138</sup> See also CX 84W ("growing vigorously") and CX 83D ("nothing short of extraordinary").

<sup>139</sup> See also CX 173H ("More than 44% of all the land in Santa Fe County is either reserved Federal or State land. It is simply not for sale") and CX 84W ("[A]vailable sites [are] sharply limited by Reserved Federal and State land and by mountains that embrace the town . . .").

<sup>140</sup> U.S. Department of Commerce, Bureau of the Census, *County and City Data Books for 1972 and 1977*, pp. 318; calculations by Administrative Law Judge.

Santa Fe's present urban density rate (4.5 persons per acre) (TR 10481), *it would require approximately 33 years to sell out the Weil Ranch alone.*

177. Even excluding the Weil Ranch and the even vaster (40,000 acres) Jarrett Ranch located just southwest of the City, Santa Fe City Planner Moul found four categories of developable land totaling 14,090 acres, in and around Santa Fe and calculated that at normal Santa Fe density (4.5 persons/acre) the 14,090 acres could support 63,400 or the whole County's probable population growth for the next 51 years (TR 10479-81). Plainly the picture Respondent has been painting of Santa Fe "blocked on the north, west and east" and Eldorado lying "in the general path of the Southward expansion" of Santa Fe (CX 83D) is grossly misleading and unfair. [150]

#### D. Oakmont Shores

178. During the brief four year tenure as developer of Oakmont Shores on Table Rock Lake in the Missouri Ozarks Respondent did not, so far as this record indicates, employ a sales theme similar to its "frame" theory at Rio Rancho Estates but stressed the great demand and limited supply of "recreational land" in general (CX 102C)<sup>141</sup> and zeroed in on the drawing power of the Ozark mountain country in particular:

In the first place, it is in the unspoiled and unpolluted Ozarks. In fact, a panel of experts from the U.S. Dept. of Interior recently chose the Ozarks as one of the seven best places to live in the entire country. This was the only location they chose between the Rockies and Eastern Virginia (CX 102C).

179. In particular, Respondent's advertising looked to "the closeness of Oakmont Shores to [Table Rock Lake] the second largest man-made lake in the nation (which) means that the demand-and-prices-can be expected to go only one way—UP!" (CX 102C).<sup>142</sup>

180. In the case of Oakmont Shores this record contains relatively little quantification either of Respondent's optimistic representations or objective reality. It did assert that "there are over 60 million people living within a 600 mile radius of Oakmont Shores" (CX 102C) and that "the Corps of Engineers informs us that the (Table Rock Lake) area draws over six million visitors a year, with the number constantly growing" (CX 102C). [151] In a vague way this does suggest a potential market for building lots.

181. However, as with Respondent's other subdivisions, there is

<sup>141</sup> ("land directly associated with water-based recreational opportunity . . . (is in) strong demand . . ."); CX 140F ("no secret that recreation land is becoming increasingly scarce.")

<sup>142</sup> (Being on the shores of Table Rock Lake was said to be important because an "authoritative" Interior Dept. report stated that "lands directly associated with water-based recreational opportunity . . . (are in) strong demand.")

already a great deal of similar land equally available. Table Rock Lake even now boasts 290 subdivisions (ranging from 5 to 1,500 lots each) (TR 9173-74) and 75 percent of the shoreline properties are as yet undivided (TR 9175). On this limited evidence, however, we are unable to make a proper judgment as to the alleged deceptiveness of Respondent's promotional literature during the brief period it operated Oakmont Shores.

## II. INVESTMENT REPRESENTATIONS

### A. *Special significance of investment representations*

182. The truth or falsity of representations made by Respondent concerning the investment value of its land is of the utmost importance because a heavy preponderance of Respondent's customers have been solely or primarily concerned with reselling their lots at a profit rather than with retiring or for some other reason taking up residence there. That this has been the case is evidenced in several ways.

183. Respondent's land contract, in order to determine whether the Truth-in-Lending Act applies to the transaction in question, requires a buyer to indicate whether he expects to use the property purchased as his "principal residence" (CX 152A, CX 154A, CX 155) or "current or future principal place of residence" (CX 106A). Examination of the 185 such contracts in this record reveals that about 80-85 percent of all buyers say they do *not* intend to use their lots as a "principal residence". While the language quoted does not exclude use of such lots to build second homes, the economics of second homes being what it is, it seems reasonably certain that most purchases are primarily for eventual resale at a profit, *i.e.*, for investment.

184. Such a conclusion is strongly confirmed by the circumstance that most buyers have never, in fact, built on their lots. At Rio Rancho Estates 75,134 lots had been [152] sold by Respondent as of 4/30/76 (CX 459J), yet as late as 1978 there were still only 2,400 residential units built and 800 more a-building (CX 162N; TR 19675, 19680). At Silver Springs Shores 19,426 lots had been sold by Respondent as of 4/30/76 (CX 459K), yet there were still only about 661 homes completed and another 38 under construction (CX 164G).

185. One of Respondent's builder-witnesses expressed his opinion that Rio Rancho's thousands of lot buyers are likely candidates to move to Albuquerque and will look first at their Rio Rancho building lots when they do (TR 19831-32) but Respondent's experience with its oldest subdivision (Rainbow Lakes in Central Florida), which was sold out years ago, has been that no more than 7 percent of the lots there were ever occupied by their buyers (TR 12948-51, 24167). Brochures and movies might feature Spanish patios and championship golf



courses but it has plainly been the possibility of land boom profits that has motivated most of Respondent's customers.

186. That Respondent's management has been thoroughly aware of the investment orientation of most of its prospects—and indeed has actively encouraged it—need not be left to inference. In evidence is a transcription of a tape recording (CX 108) of a 1968 lecture by one of Respondent's top-drawer sales managers (Hollander) to a group of its salesmen, making this point crystal clear:

Don't come up with all these little tidbits of facts that you have learned . . . and take that newspaper article that you have that's very, very beautiful and throw the goddam thing away . . . because you are talking about something that these people couldn't care less (about). All they want to do is eat that damn dinner and get out of there. *They didn't care about Rio Rancho and they don't care about 55,000 acres or 40,000 acres or 90 square miles or sagebrush or beautiful roads. All they care about is money and how can I get some of it. That's all they care about.* So you tell them how they can make money. *You implant in their minds greed. . . .* And then you'll close. And then you'll write business (emphasis added) (CX 108U). [153]

And the same AMREP official put it even more unabashedly when addressing a dinner party for prospective purchasers about the same time:

It is not important that you live there [at Rio Rancho Estates] or that you retire there or even that you visit there. *The only thing that's important is that you want to make money* (CX 110D) (emphasis added).

187. Respondent's investment representations fall generally into three classes. *First* are assurances that the land in question is offered for sale at bargain prices. *Second* (and most important) are assurances that this will be a good investment, *i.e.*, will yield a handsome profit. *Third* are assurances that this is not only a good money-maker but a safe place to put one's money—sometimes called a no-risk investment. We shall now document each of these three facets of Respondent's investment representations.

#### B. *Three principal investment representations*

##### 1. A bargain buying price

188. Respondent's prospective purchasers have always been assured that Respondent is selling its land at bargain prices, commonly with an explanation that such "low" prices are made possible by alleged efficiencies of its large-scale operations. Thus the 1972 version of one of Respondent's principal promotional brochures ("How To Live - Retire - Invest In The Sunny Southwest") refers to "the wonderful VALUE we are offering" (CX 30Q) and the "low cost made possible

through our large-scale planning and operations" (CX 30H).<sup>143</sup> An earlier version of the same brochure advertises: [154]

Now comes an opportunity to secure "your place in the sun" at land prices far below market value (CX 393E)

and:

Only our low mark up, large-volume policy makes such an outstanding land bargain possible. . . . (CX 393W)

The 1972 version of Respondent's other principal brochure ("This Is My Land") states simply:

And considering all this development activity (around Albuquerque) it is truly amazing that you can still buy property in Rio Rancho Estates at such low prices and such modest terms. Truly one of the best land offerings in the entire southwest (CX 32N).

## 2. A profitable investment for the future

189. From the very beginning Respondent's principal selling point has been making money. The record literally overflows with its representations, express or implied, that lots at its subdivisions are a fine investment for the future. More than almost any other evidence these representations give the case its flavor.

190. The oldest promotional brochure in the record is a 1961 pamphlet for Rio Rancho prospects entitled "How To Invest Profitably In Southwest Real Estate, with very little cash outlay" (CX 393). Its frank investment orientation is evident not only from the title but from the text of the front page, which refers to "*booming Albuquerque*" and promises to reveal (1) "why land values at Albuquerque have consistently risen by an average of more than 25 percent per year since 1941—*and are now expected to climb even faster!*" and (2) "How to use the least amount of money to *make the largest possible gains in land investment*" (CX 393A) (emphasis added). [155]

191. Inside, this brochure's investment orientation is confirmed in language reminiscent of old-time blue-sky promotions:

*The opportunity of a lifetime for a small investment to grow into a sizeable fortune in an area where land values are constantly doubling, redoubling and then redoubling again . . . often in just a few years* (emphasis in original). It is a demonstrable fact that land prices in general at Albuquerque have increased 20, 30, even 50 times or more in the past 20 years. Now with its greatest population boom only just starting—one does

<sup>143</sup> See also another reference in the same brochure to Respondent's "scale operation" which permits acquisition of property at "prices and terms which, to our knowledge, are below that of any comparable residential acreage in our area" (CX 30M).

not have to be an expert to predict that *land prices here should increase in the future as they have in the past . . . and more likely at an even greater pace* (CX 393E) (emphasis added).

After referring to price rises of 45–50 percent at two other developments with which Respondent was said to be associated, this brochure “confidently and conservatively” predicts:

You won't be able to touch a piece of property at Rio Rancho Estates for two to three times the current price within the next five years. As a matter of fact, in line with recently increasing values in the area, we have already posted price rises up to \$200 per homesite scheduled to take effect shortly (CX 393R).

192. And after explaining the “leverage” principle (“using the least amount of money to make the largest possible total profit”), Respondent's imagination finally soars off into the wild blue yonder:

As more and more average investors realize how the dynamic use of small monthly payments in suburban/city real estate *can grow into a substantial fortune* and at the same time assure themselves a choice Southwest retirement spot at prices that will look incredibly low a few years from now, the steady gradual uptrend which has been taking place here for [156] many years *could conceivably break out in a speculative fever that can trigger runaway land prices.*

With inflation on the march, with thousands of people a month now moving into the Albuquerque area, can any reasonable man doubt that price tags for homesites will advance greatly over the next three to five years? *And 10 to 15 years from now may reach astronomical figures . . . may easily be 10 to 20 times what they are today at Rio Rancho Estates* (CX 393W) (emphasis added).

It seems safe to say that these extracts from Respondent's earliest Rio Rancho brochure fairly evidence a representation that vacant land at Rio Rancho is a good investment.

193. Seven years later Respondent was still emphasizing the investment value of its Rio Rancho land. A standard dinner speaker's presentation dating from late 1968 makes this clear:

. . . [W]hether you prefer to live there (Albuquerque) or invest in its future, Albuquerque's growth offers you *an opportunity to make a great deal of money*, and that is what we are going to talk about here, this evening, *making a great deal of money*—because I am assuming *everybody likes to make money* (CX 38D-E) (emphasis added).

\* \* \* \* \*

*The word “investment”, incidentally, brings me to the main reason for being here this evening, because what we are presenting tonight, ladies and gentlemen, is a land investment program. . . . [T]his evening you have the opportunity of participating in a land investment program to help assure yourself of the advantages that you are now just dreaming about . . . an ideal way to assure children or grandchildren a valuable estate that could take care of their college education or provide their many needs* (CX 38 I-J) (emphasis added).

You see, ladies and gentlemen, *the entire program and what we make available to you keeps coming back to money*. Money and the uses of it. You don't have to be a financial genius or a sophisticated land investor to participate in this program. All you have to be is what most people are, a person with a sense of responsibility for himself and his loved ones (CX 38W) (emphasis added).

194. As we leave the 1960's and get into the 1970's, Respondent urges us to find a significant change in the tenor of its advertising and relates this to its own systematic efforts to eliminate improper promotional approaches. It calls our attention, for example, to testimony by one Simon, a suave trainer of AMREP's salesmen during the period 1972-74 (TR 16004), that he taught these salesmen *not* to use an investment theme and to limit any assurance of resale to "15, 20 years down the road" (TR 16005). All they ought to say, he thought, was "that based upon the past that this could be a possible potential in the long range" (TR 16005). We also take note that in 1970 an outside attorney, Solomon H. Friend, Esq. (one of Respondent's counsel here), took over as General Counsel and proceeded to organize Respondent's 5-man Legal Department, becoming Senior Vice President in 1973 (TR 7936). This Commission began the investigation which preceded issuance of this Complaint during December 1972 (TR 24491-93).

195. Careful consideration of the tenor of Respondent's promotional materials during the first half of the 1970's convinces us that with good legal advice and the hand of this Commission on its shoulder, Respondent has sophisticated some of its more blatant assurances of pie-in-the-sky by-and-by, particularly in its standard brochures. However, even the sometimes more sophisticated approaches which have characterized the 1970's have not abandoned the old "good investment" theme. The record makes this clear.

196. The 1972 version of "How To Live-Retire-Invest In The Sunny Southwest" announces an "opportunity" [158] to obtain land that has "a reasonable long-term potential" (CX 30E).<sup>144</sup> Mild though this may sound in comparison with the 1961 version's reference to making "a substantial fortune" and price increases of "astronomical figures" (CX 393W), it is nonetheless clear that in this 1972 brochure Respondent is still representing that its lots at Rio Rancho are a good investment.

197. More interesting is the 1972 version of Respondent's other principal Rio Rancho brochure: "This Is My Land". This booklet avoids any express reference to investment at Rio Rancho but one

<sup>144</sup> In the same document see also CX 30Q ("investment potential"); CX 30W ("no better long-term investment"); and CX 30G ("an opportunity to share in future-growth patterns").

