

# EL PASO COUNTY



## OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

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November 30, 2020

Mayberry, Colorado Springs Filing No. 1 (f/k/a Ellicott Town Center Final Plat Extension  
Review a/k/a Ellicott Town Center Filing No. 1)  
Final Plat – SF-18-25

Reviewed by: Lori L. Seago, Senior Assistant County Attorney  
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1. This is a proposal by Colorado Springs Mayberry, LLC (“Applicant”) to subdivide 228.01 acres of land into 98 residential lots, plus streets, parks, open space, and several tracts for future development (the “Property”). This proposal consists of a resubmittal of technical items for Mayberry, Colorado Springs, Filing No. 1, which was previously approved by the Board of County Commissioners as Ellicott Town Center Filing No. 1 on April 12, 2007 at Resolution No. 07-132. The property is zoned PUD (Planned Unit Development).

2. The Applicant has provided for the source of water to derive from the Ellicott Utilities Company, LLC (the “Company”). The Water Supply Information Summary sets forth a proposed water demand of 37.78 acre-feet per year for the subdivision, including 98 lots at 25.48 acre-feet (0.26/acre-feet per lot), plus irrigation of 5 acres of the subdivision at 12.3 acre-feet. Based on the proposed water demand, the Applicant will need to provide a supply from the Company of 11,334 acre-feet (37.78 acre-feet x 300 years) to meet the County’s 300-year water supply requirement.

3. The Company provided a letter of commitment dated June 28, 2018. The letter stated that the Company “commits to provide a water supply of 37.78 af/yr to Ellicott Town Center Filing No. 1, utilizing the following water sources that are owned and controlled by the Company: Ellicott Town Center Denver Basin Wells – LFH rights (Determination of Water Right No. 598-BD). Ellicott Utilities Company, LLC commits to providing the water supply from the sources listed above to meet the El Paso County 300-year water supply requirement for this subdivision.” The commitment letter requires

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execution of a water and sewer service agreement in accordance with the Company Rules and Regulations as a condition of the provision of water service.

4. In a letter dated March 13, 2020, the State Engineer reviewed the Company's letter dated June 28, 2018 and the *Ellicott Town Center – Filing No. 1 & No. 2 Water Resources Report and Wastewater Treatment Report* dated August 24, 2018 and as revised on March 27, 2019. The State Engineer noted the Applicant's estimated water demand of 37.78 acre-feet per year for the 98-lot residential subdivision. The State Engineer stated that the Company was planning to utilize water rights from the "Laramie-Fox Hills aquifer as allocated in Determination of Water Right no. 598-BD. Determination of Water Right 598-BD allows for an average diversion of 161 acre-feet annually for a maximum of 300 years. The 161 acre-feet/year "would be reduced to one-third of that amount, or 53.7 acre-feet/year. As a result, the water may be withdrawn in that annual amount for a maximum of 300 years." The *Water Resources Report* indicated the Company is also committing to supply 2.78 acre-feet/year of water to Ellicott Town Center Filing No. 2. Therefore, based on the total water supply of 40.56 acre-feet/year required for Filings 1 and 2, there is an adequate amount of available water for the Mayberry, Colorado Springs Filing No. 1 subdivision.

The Engineer stated that "pursuant to Section 30-28-136(1)(h)(I) and Section 30-28-136(1)(h)(II), C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights. Our opinion that the water supply is adequate is based on our determination that the amount of water required annually to serve the subdivision is currently physically available, based on current estimated aquifer conditions."

5. Section 8.4.7(B)(10)(g), of the El Paso County Land Development Code allows for the presumption of acceptable water quality for projects such as this where water is supplied by an existing Community Water Supply operating in conformance with Colorado Primary Drinking Water Regulations unless there is evidence to the contrary that may be provided by El Paso County Public Health.

6. Analysis and Recommendation. Based on the Applicant's estimated water demand of 37.78 acre-feet per year and the Company's commitment to supply 37.78 acre-feet of water per year and based on the *Water Resources Report* detailing Determination of Water Right No. 598-BD, there appears to be a sufficient water supply available to meet the demands of the subdivision. The Company does require Applicant to enter into a water and sewer service agreement as a condition of the provision of water service. Therefore, based upon the finding of sufficiency and no injury to existing water rights by the State Engineer's Office, based on Applicant's stated demand of 37.78 acre-feet per year and the conditional commitment to serve by the Company, the County Attorney's Office recommends a finding that the proposed water supply is **conditionally sufficient** in terms of quantity and dependability. El Paso County Public Health may wish to confirm that the Company is in compliance with the water quality regulations.

**CONDITION OF COMPLIANCE:**

- A. Applicant and all future owners of lots within this filing shall be advised of, and comply with, the conditions, rules, regulations, and specifications set by the Company.
  
- B. Applicant must comply with the Company's requirement that Applicant and the Company enter into a "water and sewer service agreement" which will address the conditions upon which the Company will provide water sewer service to the Development, including the commitment of the Developer to construct local water and sewer facilities to serve the Development, and the provision by the Developer to the Company of the necessary rights of water for the water and sewer improvements." Applicant must provide a fully executed service agreement to the County prior to recording the final plat, at which time the finding of conditional sufficiency shall convert to a finding of full sufficiency without further action by the County.

cc: Nina Ruiz, Planning Manager