

LETTER OF INTENT

November 17, 2020

RE: EAGLE RISING PRELIMINARY PLAN SP-12-006 REINSTATEMENT APPLICATION

PARCEL NUMBERS:

52290 00 025
52290 00 029
52290 00 030
52290 00 031

LAND OWNER:

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DEVELOPER:

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CONSULTANTS / AUTHORIZED REPRESENTATIVES

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DEVELOPMENT REQUEST

The applicant is requesting reinstatement of the Eagle Rising Preliminary Plan SP-12-006 for 2 years in order to allow for the Filing No. 1 Final Plat application to move forward in the review process while resolving the water dispute detailed in the attached Duncan Bremer letter.

The applicant is also requesting: 1) Approval of private interior roadways to be owned and maintained by the Home Owners Association. 2) Deferring finding of sufficiency of water from the Preliminary Plan stage until the Final Plat stage as detailed in the attached Duncan Bremer letter.

SITE INFORMATION

The proposed Eagle Rising subdivision is located within a portion of the E1/2 of Section 29, T12S, R65W of the 6th PM. More specifically, the property is located south of the Park Forest Estates subdivision,

north and west of the Highland Park subdivision and east of the Eagle Wing subdivision. Vehicular access to the site is provided from the north by Kurie Road, a 60' ROW gravel County Rural Residential roadway and from the west by Eagle Wing Drive, a 60' ROW asphalt surfaced County Rural Residential roadway. The proposed 70.97 acre subdivision is an in-fill subdivision and is currently zoned RR-2.5 (2.5 ac min.).

Districts serving the property include; Academy School District No. 20, Pikes Peak Library District, Black Forest Fire Protection District, Park Forest Water District (subject to issues outline in the attached Bremer letter), El Paso County Conservation District, Mountain View Electric Association and Black Hills Energy (natural gas).

PREVIOUS PRELIMINARY PLAN APPROVAL

The previously approved Eagle Rising Preliminary Plan allowed for the development of 17 single family residential lots at a minimum lot size of 2.5 acres each and the inclusion of 12.37 acres of open space. The average lot size is proposed to be 3.2 acres and the gross density is proposed to be 1 lot per 4.16 acres. No changes to the previously approved Preliminary Plan are included within this reinstatement application.

HISTORY OF DEVELOPMENT APPLICATIONS

September 24, 2013 by Resolution 13-407, the BOCC approved the Eagle Rising Preliminary Plan (SP-12-006) including Notation No. 2 which stated "Approval of the preliminary plan will expire after two (2) years unless a final plat has been approved and recorded or a time extension has been granted." The

Approval of the Preliminary Plan was conditioned on the inclusion of the property in the Park Forest Water District. The Inclusion Agreement required the applicant to construct the on-site water distribution system and related drainage and road improvements and to deed them and its water rights to the District. Consistent with the approved Preliminary Plan, the applicant constructed the improvements and has deeded them and the water rights to the District.

On April 9, 2015, the District obtained a Final Judgment including of the applicant's property into the District.

In August of 2015, the developer submitted an application (paying County review fees) for the Eagle Rising Filing No. 1 Final Plat (SF1517).

During the Final Plat review period, an adjoining property owner illegally started construction of a detached garage detrimental to the north access to this subdivision. The neighbor applied for and was granted a variance by the Board of Adjustment. The applicant, believing that his property/subdivision had been damaged by the construction of the non-conforming garage, initiated litigation to overturn the Board of Adjustment decision. The litigation took its course and a settlement was eventually agreed in July 2018.

Meanwhile, the applicant and P&CD continued to work on the Final Plat application, and P&CD shifted from paper applications to the EDARP electronic system.

In September, 2018, the applicant made a resubmission of the Final Plat application and was surprised to find out that P&CD had closed the prior paper application file. P&CD opened the Final Plat application in EDARP and paid a 2nd application review fee.

During the application's review, the Park Forest Water District rescinded their "will serve" letter effectively halting the Final Plat application's review. The developer is currently in litigation with the District (see attached Duncan Bremer water status letter) to resolve the dispute.

PREVIOUS JUSTIFICATION FOR REQUEST

Contained within Resolution No. 13-407, Approval Preliminary Plan Request for Eagle Rising (SP-12-006), are sixteen (16) BOCC "Findings" or "Justifications" supporting the approval of the original Preliminary Plan (see attached Resolution). Summarized, these "Findings" include:

1. That proper posting, publication and public notice were provided...
2. That the hearings before the Planning Commission and the Board of County Commissioners were extensive and complete...
3. That the proposed subdivision is in general conformance with the goals, objectives and policies of the Master Plan.
4. That the subdivision is consistent with the purposes of the El Paso County Land Development Code.
5. That the subdivision is in conformance with the subdivision design standards and approved Sketch Plan.
6. That a sufficient water supply has been acquired in terms of quantity, quality, and dependability...
7. That a public sewage disposal system has been established and, if other methods of sewage disposal are proposed, the system complies with State and Local laws...
8. That areas of the proposed subdivision, which may involve soil or topographical conditions presenting hazards or requiring special precautions, have been identified and the proposed subdivision is compatible with such conditions...
9. That adequate drainage improvements complying with State law...and the requirements of the LDC and the ECM are provided by the design.
10. That the proposed subdivision has established an adequate level of compatibility by (1) incorporating natural physical features in the design and providing sufficient open spaces considering the type and intensity of the subdivision: (2) incorporating site planning techniques to foster the implementation of the County's plans, and encouraging a land use pattern to support a balance transportation system...: (3) incorporating physical design features in the subdivision to provide a transition between the subdivision and adjacent land owners: (4) incorporating identified environmentally sensitive areas...into the design: and (5) incorporating public facilities or infrastructure, or provisions therefor, reasonably related to the proposed subdivision...
11. That necessary services, including police and fire protection, recreation, utilities, open space and transportation system, are or will be available to serve the proposed subdivision.
12. That the subdivision provides evidence to show that the proposed methods for fire protection comply with Chapter 6 of the Land Development Code.
13. That the proposed subdivision meets other applicable sections of Chapters 6 and 8 of the Land Development Code.
14. That all data, surveys, analyses, studies, plans, and designs as are required by the State of Colorado and El Paso County have been submitted, reviewed, and found to meet all sound planning and engineering requirements...
15. That the proposed subdivision of land conforms to the El Paso County Zoning Resolutions.
16. That for the above-stated and other reasons, the proposed subdivision is in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

As the applicant is proposing no changes to the originally approved Preliminary Plan and because there has been no substantive physical changes within the property or surrounding neighborhood, with the partial exception of "Findings" 6, 7, 9, and 14 (discussed below), the original BOCC "Findings" or "Justifications" remain as valid today as they were when originally approved and support and/or justify the requested reinstatement.

"Finding" No. 6 addresses water sufficiency in terms of quantity, quality, and dependability. The water quantity, quality and dependability were determined sufficient as to the original Preliminary Plan application. Because of the Water District's recension of the "will serve" letter, the original Preliminary Plan's finding of sufficiency is in question. The attached Duncan Bremer letter details the applicant's

request to defer determination of water sufficiency to the Final Plat stage rather than at the Preliminary Plan stage.

“Findings” 7, 9 and 14 all address compliance with current engineering standards, codes and criteria. Both the applicant and P&CD staff agree that engineering standards, codes and criteria have changed over the years and agree that, should the BOCC grant the requested reinstatement, the following engineering plans and reports will be updated to meet current standards, codes and criteria as a condition of approval of the Preliminary Plan (which update may be concurrent with the processing of the first Final Plat) (1) Onsite Wastewater Treatment Report, (2) Grading & Erosion Control Plan and (3) Preliminary Drainage Report.

The applicant agrees that all CONDITIONS OF APPROVAL and NOTATIONS contained within the BOCC’s original Preliminary Plan approval resolution shall remain in effect.

CURRENT CRITERIA FOR PRELIMINARY PLAN APPROVAL – LDC SEC 7.2.1(D)(2)(e)

The proposed subdivision is in general conformance with the goals, objectives, and policies of the Master Plan; The Master Plan for the County includes the County Policy Plan, relevant small area plans, the County Water Master Plan, and the 2040 Major Transportation Corridor Plan.

County Policy Plan;

Policy 6.1.3: Encourage new development which is contiguous and compatible with previously developed areas in terms of factors such as density, land use and access. The proposed subdivision is an infill development. The proposed single family residential land uses (2.5 ac min lot size) at a gross density of 1 lot per 4.16 ac is compatible with previously developed subdivisions to the north, south, east and west. Vehicular access into the proposed subdivision will be via existing rural residential County roadways.

Policy 6.1.11: Plan and implement land development so that it will be functionally and aesthetically integrated within the context of adjoining properties and uses. The proposed 17 lot single family residential subdivision is planned to be a continuation of the Park Forest subdivision to the north and the Eagle Wing subdivision to the west with similar compatible land uses and densities.

Small Area Master Plan (Black Forest Preservation Plan); The proposed subdivision is located within the Black Forest Preservation Plan’s Southern Transitional Area Planning Unit. Development within this Planning Unit north of the proposed Briargate Blvd arterial encourages single family residential development with lot sizes and densities that would provide a buffer between the urban scale development south of Briargate Blvd to rural scale residential development (1 lot per 5.0 ac gr density) within the Timbered Area Planning Unit north of the proposed subdivision. The Eagle View subdivision, currently zoned RR2.5, proposes a minimum lot size of 2.5 acres with a gross density of 1 lot per 4.16 acres, well within the transitional limitations required with the Southern Transitional Area Planning Unit.

Water Master Plan;

Goal 1.1: Ensure an adequate water supply in terms of quantity, dependability and quality for existing and future development.

Goal 6.0: Require adequate water availability for proposed development.

See attached Duncan Bremer letter for a detailed discussion as to current water status, water history and request for deferred consideration of water sufficiency.

2040 Major Transportation Corridor Plan; The 2040 Major Transportation Corridor Plan indicates the future extension of Briargate Blvd (principle arterial) along the southerly boundary of the proposed subdivision. Provisions for the future right-of-way dedication necessary to facilitate this planned principle arterial have been incorporated into the subdivision's design documents.

The subdivision is in conformance with the subdivision design standards and any approved sketch plan; With the exception of a single approved EMC deviation regarding the maximum length of a cul-de-sac, the subdivision is consistent with subdivision design standards included within the EMC and the LDC.

A sufficient water supply has been acquired in terms of quantity, quality, and dependability for the type of subdivision proposed, as determined in accordance with the standards set forth in the water supply standards (CRS 30-28-133(6)(a) and the requirements of Chapter 8 of the Code; See attached Duncan Bremer letter requesting deferment of consideration of water sufficiency until the Final Plat stage.

A public sewage disposal system has been established and, if other methods of sewage disposal are proposed, the system complies with state and local laws and regulations. The subdivision will utilize individual on-site septic systems. The subdivision's ability to safely facilitate on-site waste water treatment, in compliance with state and local laws, has been evaluated by Entech Engineering in their On-site Waste Water Treatment report and incorporated into the subdivision's design documents.

All areas of the proposed subdivision, which may involve soil or topographical conditions presenting hazards or requiring special precautions, have been identified and the proposed subdivision is compatible with such conditions; The soil and topographic conditions presenting hazards and recommendations identified in Entech Engineering's Soils, Geology and Geologic Hazards Report have been incorporated into the subdivision's design documents meeting this standard.

Adequate drainage improvements complying with State law and the requirements of this Code and the ECM are provided by the design; The drainage improvements identified in the M&S Civil Engineering's Preliminary Drainage Report and Grading and Erosion Control statement have been incorporated into the subdivision's design documents and meet or exceed State and local drainage requirements.

Legal and physical access is or will be provided to all parcels by public rights-of-way or recorded easement, acceptable to the County in compliance with this Code and the ECM; Legal and physical vehicular access to the subdivision has been provided on the north by Kurie Rd and from the west by Eagle Wing Dr., both roadways are owned and maintained by El Paso County. Vehicular access to the subdivision lots will be provided by continuations of Kurie Rd and Eagle Wing Dr.

The proposed subdivision has established and adequate level of compatibility by;

- 1. Incorporating natural physical features into the design and providing sufficient open spaces considering the type and intensity of the subdivision;* As depicted in the ERO Resources' Natural Features Report, the site is bisected north to south by a major drainageway and two existing pond structures. These features have been retained in their natural form, placed into open space tracts or no-build drainage easements and incorporated into the subdivision's design documents.
- 2. Incorporating site planning techniques to foster the implementation of the County's plans, and encourage a land use pattern to support a balanced transportation system, including auto, bike and pedestrian traffic, public or mass transit if appropriate, and the cost effective delivery of other services consistent with adopted plans, policies and regulations of the County;* Appropriate provisions have been made in this regard given the context of the site and surrounding areas. The LSC Transportation Impact Report's recommendations have been incorporated into the subdivision design documents.
- 3. Incorporating physical design features in the subdivision to provide a transition between the subdivision and adjacent land uses;* The proposed subdivision is an infill subdivision and the proposed land use (2.5 ac min. single family residential) and gross density of 1 lot per 4.16 acres is consistent with adjoining subdivisions to the north, south, east and west.

4. *Incorporating identified environmentally sensitive areas, including but not limited to, wetlands and wildlife corridors, into the design;* The Natural Features Report prepared by ERO Resources indicates environmentally sensitive areas following the north/south drainageway and ponds. These sensitive areas are protected by inclusion into open space and/or no-build drainage easements and incorporated into the subdivision's design documents.
5. *Incorporating public facilities or infrastructure, or provisions therefore, reasonably related to the proposed subdivision so the proposed subdivision will not negatively impact the levels of County services and facilities;* The Traffic Report prepared by LSC Transportation Consultants demonstrates that the proposed access points will function within acceptable traffic engineering parameters. The reports relating to water supply, wastewater treatment, and drainage demonstrate that there will be no negative impact on the levels of service of County services and facilities.

Necessary services, including police and protection, recreation, utilities, open space and transportation system, are or will be available to serve the proposed subdivision; Police services will be provided by the El Paso County Sheriff's Department and fire protection by the Black Forest Fire Protection District which has previously provided a letter of commitment. The subdivision is located in the service areas of Mountain View Electric Association and Black Hills Energy (natural gas) both of which have previously provided letters of commitment.

The subdivision provides evidence to show that the proposed methods of fire protection comply with Chapter 6 of this Code; and. A Wildfire Hazards Identification and Mitigation Plan was previously prepared for the subdivision addressing the criteria in Chapter 6. Recommendations within this Plan have been incorporated into the subdivision's design documents.

The proposed subdivision meets other applicable sections of Chapter 6 and 8 of this Code. To the best of applicant knowledge, all applicable sections of Chapter 6 and 8 of the LDC have been met.

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To: Board of County Commissioners of El Paso County

Through EDARP

Re: Application for Reconsideration of Preliminary Plan for Eagle Rising – Determination of Water Sufficiency

Thursday, August 6, 2020

Dear Commissioners:

The applicant requests that the Board defer determination of sufficiency of water for the subdivision until the Final Plat stage rather than at the Preliminary Plan stage.

History.

In 2000 and 2010 respectively (by Water Court Case No. 00CW84 and Case No. 10CW24), the Applicant adjudicated its groundwater rights and obtained approval of its augmentation plan to serve up to 18 single-family lots.

September 19, 2013, the Applicant and the Park Forest Water District entered into an Inclusion Agreement by which the Applicant agreed to convey its adjudicated water rights to the District and the District agreed to serve the Applicant's land and development of 17 lots.

September 24, 2013 by Resolution 13-407, the BOCC approved the Preliminary Plan and made a finding of sufficiency of water supply in terms of quantity, quality and dependability for 17 lots.

By Order dated April 9, 2015, the Water Court Approved the District's application for amendment to the applicable augmentation plans concerning the inclusion of the subject property into the District and the District's service to the 17 lots in the Preliminary Plan.

The District issued a "will serve" letter to the County for up to 17 lots on the Applicant's property.

Since then, the District has sought to rescind the Inclusion Agreement and is in litigation with the applicant which seeks to enforce the Inclusion Agreement. It is uncertain when this litigation will be settled or otherwise finalized.

In sum, at least three Water Court decisions have determined that there is sufficient water for the proposed Preliminary Plan. In addition, the BOCC in its prior approval of the Preliminary Plan made a finding of sufficiency of quantity and dependability of water. The only question remaining is whether the water will be supplied by the District or whether, if the Inclusion Agreement is rescinded, the water will be supplied by individual wells on each (minimum 2.5 acre) Lot.

Under these circumstances, it seems prudent for the County to defer consideration of sufficiency of the water for the subdivision until the Final Plat comes before the BOCC.

Very Truly Yours,

Duncan S Bremer, P.C.