

EL PASO COUNTY



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SF-20-10 Prairie Ridge subdivision
Final Plat (reconsideration)

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FINDINGS AND CONCLUSIONS:

1. This is a proposal by Sonship Properties, LLC ("Applicant") for a 7-lot subdivision on a parcel of approximately 40 +/- acres (the "Property").¹ The Property is zoned RR-5 (Rural Residential). The proposal was previously approved by the Board of County Commissioners on April 24, 2008. The final plat was never recorded and has since expired. The Applicant is requesting reconsideration of the previously approved final plat.

2. The Applicant has provided for the source of water to derive from individual on-lot wells, from the Dawson aquifer as provided in the decree and plan for augmentation in Colorado District Court Water Division Consolidated Case Nos. 06CW100 (Div. 1) and 06CW20 (Div. 2) ("Decree" or "Augmentation Plan"). The Decree and Augmentation Plan were approved and issued to Kenneth I. Rushing and Carol A. Rushing Revocable Trust Under Instrument Dated March 13, 1998 ("Rushing") on April 16, 2007. On April 7, 2015, Rushing deeded the water rights to Deborah D. Robertson Living Trust dated August 7, 2007 ("Robertson"), via a Bargain and Sale Deed. On October 4, 2018, Robertson deeded the water rights to Sonship Properties, LLC, a Colorado Limited Liability Company.

The Applicant submitted a Water Supply Information Summary ("WSIS") which identified the following water demand: 2.1 acre-feet/year for household use for all 7 lots and up to 4.9 acre-feet/year total for uses that may include commercial use, irrigation, stock water, and other uses for a total of 7.0 acre-feet/year for the subdivision or 1.0 acre-feet/year/lot. Based on this total demand, Applicant must be able to provide a supply of 2,100 acre-feet of water (7.0 acre-feet per year x 300 years) to meet the County's 300 year water supply requirement.

¹ Acreage for the subdivision has been referred to in some documents as 39.769 acres and in some documents as 40.67 acres.

3. In a letter dated August 6, 2007, and later affirmed in a letter dated May 27, 2020, the State Engineer reviewed the submittal to subdivide the 40 +/- acre parcel into a 7-lot subdivision. The State Engineer's May 27th letter stated that the office "previously commented on this subdivision in a letter dated August 2007, attached. The comments from the August 6, 2007 letter are still valid." In the State Engineer's August 6, 2007 letter, it was noted that some of the water uses in the subdivision were not defined in the WSIS, but that according to the Decree, "inhouse use will require 0.3 acre-feet of water annually, landscape irrigation will require 0.04 acre-feet of water annually per 1,000 square feet of lawn and garden, livestock watering will require 0.011 acre-feet of water annually per large domestic animal, hot tubs will require 0.004 acre-feet of water annually and swimming pools will require 0.025 acre-feet of water annually." Further, the State Engineer stated that well permit applications must clearly specify water uses on each lot and that the use must not exceed 1.0 acre-foot/lot/year. The State Engineer identified that the "proposed source of water is individual wells producing from the non-tributary Dawson aquifer that will operate pursuant to the decree and plan for augmentation in Division 1 Water Court case no. 2006CW100. The allowed average annual amount of withdrawal decreed in case no. 2006CW100 from the Dawson aquifer is 36.6 acre-feet of which 21 acre-feet is included in the augmentation plan. The plan for augmentation decreed in case no. 2006CW100 allows for an average annual diversion of 7 acre-feet for a maximum of 300 years." Finally, the State Engineer opined that "pursuant to Section 30-28-136(1)(h)(I), 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."

4. Decree and Augmentation Plan, Colorado Water Division 1 Consolidated Case No. 06CW100 (Div. 1) and 06CW20 (Div. 2) ("Decree"/"Augmentation Plan"). The Decree/Augmentation Plan adjudicated the following water supply available underlying the Property:

Aquifer	Acreage	Specific Yield	Saturated Thickness (feet)	Total Storage (AF)	Ave. Annual Diversion (AF)
Dawson	39.77	.20	460	3659	36.6 ²
Denver	39.77	.17	500	3380	33.8
Arapahoe	39.77	.17	260	1758	17.6
Laramie-Fox Hills	39.77	.15	210	1,253	12.5

As described in the Decree/Augmentation Plan, the Applicant will withdraw water from the Dawson aquifer for the Prairie Ridge subdivision from 7 wells and that water rights may be used for "commercial, indoor residential, stock water, irrigation and other landscape uses such as fountains and decorative ponds swimming pools and hot tubs, fire fighting, dust suppression and augmentation purposes."

² The acre-feet amount represents a 300-year aquifer life in compliance with El Paso County requirements.

Replacement of depletions during pumping period. Replacement of depletions during the pumping period will occur pursuant to septic system return flows. The Augmentation Plan identifies that the septic system return flows from 7 single-family dwellings “will equal 1.89 acre feet annually, which exceeds the maximum amount of annual depletions which will occur at any time during the modeled 300 year pumping period.”

Replacement of post-pumping depletions. The Augmentation Plan requires that 1,910 acre-feet of the 3,380 acre-feet of Denver aquifer water owned by the Applicant be reserved to use for replacement of post-pumping depletions. The Augmentation Plan notes that “this reservation is adequate to replace post-pumping depletions because some depletions occur and are replaced during the 300 year pumping period.”

The *Water Resources and Water Quality Report For Prairie Ridge Subdivision* dated October 6, 2020, submitted by Chris Cummins (the “*Report*”) sums up the water supply for the subdivision as follows: “As particularly described in the attached Decree in Case No. 06CW100, a 300-year water supply is demonstrated in the Dawson aquifer, with all depletions augmented in time, place and amount through septic return flows during pumping, and through dedication of nontributary groundwater in the Denver aquifer for replacement of post-pumping depletions. The available supplies will meet both legal and physical needs on a 300-year basis.”

5. Analysis. Applicant’s water demand for the Prairie Ridge subdivision is 7.0 acre-feet per year from the Dawson aquifer for total demand of 2,100 acre-feet for the subdivision for 300 years. Colorado District Court Water Division Consolidated Case Nos. 06CW100 (Div. 1) and 06CW20 (Div. 2) adjudicated a total of 3,659 of Dawson aquifer water supply and the Augmentation Plan authorizes withdrawal of 2,100 acre-feet of water (7.0 acre-feet/year) for a period of 300 years. Based on the demand of 7.0 acre-feet/year for the 7-lot subdivision and the Decree/Augmentation Plan permitting withdrawals in the amount of 7.0 acre-feet year (1.0 acre-feet/year for each Dawson aquifer well), there appears to be a sufficient water supply to meet the water demands of the Prairie Ridge subdivision.

6. The water quality requirements of Section 8.4.7.B.10.g., of the Land Development Code must be satisfied.

7. Therefore, based upon the Water Supply Information Summary, a finding of sufficiency and no injury by the State Engineer, the Colorado District Court Water Division Consolidated Case Nos. 06CW100 (Div. 1) and 06CW20 (Div. 2) and based on the requirements below, the County Attorney’s Office recommends a finding that the proposed water supply is sufficient in terms of quantity and dependability. El Paso County Public Health shall provide a recommendation as to water quality.

REQUIREMENTS:

A. Applicant and its successors and assigns shall comply with all requirements of Colorado District Court Water Division Consolidated Case Nos. 06CW100 (Div. 1) and 06CW20

(Div. 2), specifically, that water use shall not exceed 1.0 acre-feet/lot/year for each of the 7 lots of the subdivision and that all stream depletions will be replaced with non-evaporative septic system return flows for a period of 300 years, pursuant to the Court's augmentation plan.

B. The County requires that when there is a plan for augmentation Applicant shall create a homeowners' association ("HOA"). Applicant shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of Colorado District Court Water Division Consolidated Case Nos. 06CW100 (Div. 1) and 06CW20 (Div. 2) as well as their obligations to comply with the plan for augmentation, including, but not limited to, ensuring that return flows by the use of non-evaporative septic systems are made to the stream systems, and that such return flows shall only be used to replace depletions and shall not be separately sold, traded, or assigned in whole or in part for any other purpose. The Covenants more specifically shall require that each lot served by a Dawson aquifer well have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the wells. In addition, the Covenants shall advise future lot owners of this subdivision and their successors and assigns of their obligations regarding costs of operating the plan for augmentation, which will include pumping of the Dawson wells in a manner to replace depletions during pumping and the cost of drilling Denver aquifer wells in the future to replace post-pumping depletions. Such Covenants shall also address responsibility for any metering and data collecting that may be required regarding water withdrawals from wells pursuant to the plan for augmentation, and shall protect the viability of the water supply by placing limitations in the Covenants as to amendments and termination as applied to said water supply.

The covenants shall address the following:

- 1) Identify the water rights associated with the property. The Covenants shall reserve 2,100 acre-feet of not-nontributary Dawson aquifer water pursuant to Colorado District Court Water Division Consolidated Case Nos. 06CW100 (Div. 1) and 06CW20 (Div. 2) to satisfy El Paso County's 300-year water supply requirement for the 7 lots of the Prairie Ridge subdivision.
- 2) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use non-evaporative septic systems to ensure that return flows from such systems are made to the stream system to replace actual depletions during pumping, shall reserve said return flows to replace depletions during pumping, and shall state that said return flows shall not be separately sold, traded, assigned, or used for any other purpose. The Covenants more specifically shall require that each lot served by a Dawson aquifer well have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the well. The Covenants shall also include the following or similar language to ensure that such return flows shall only be used for replacement purposes: "Return flows shall only be used for replacement purposes, shall

not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose.”

3) The following or similar language shall be included in the Covenants to address future conveyances of the lots subsequent to the initial conveyance made by Applicant/Declarant: “The water rights referenced herein shall be explicitly conveyed; however, if a successor lot owner fails to so explicitly convey the water rights, such water rights shall be intended to be conveyed pursuant to the appurtenance clause in any deed conveying said lot, whether or not the plan for augmentation in Colorado District Court Water Division Consolidated Case Nos. 06CW100 (Div. 1) and 06CW20 (Div. 2) and the water rights therein are specifically referenced in such deed. The water rights so conveyed shall be appurtenant to the lot with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title.”

4) The Covenants shall advise future lot owners of this subdivision and their successors and assigns of their responsibility for any metering and data collecting that may be required regarding water withdrawals from the existing or future wells in the Dawson aquifer and future wells which may be constructed in the Denver aquifer.

5) The Covenants shall address amendments using the following or similar language:

“Notwithstanding any provisions herein to the contrary, no changes, amendments, alterations, or deletions to these Covenants may be made which would alter, impair, or in any manner compromise the water supply for the Prairie Ridge subdivision pursuant to the plan for augmentation in Colorado District Court Water Division Consolidated Case Nos. 06CW100 (Div. 1) and 06CW20 (Div. 2). Further, written approval of any such proposed amendments must first be obtained from the El Paso County Planning and Community Development Department, and as may be appropriate, by the Board of County Commissioners, after review by the County Attorney’s Office. Any amendments must be pursuant to a Decree from the Water Court approving such amendment, with prior notice to the El Paso County Planning and Community Development Department for an opportunity for the County to participate in any such adjudication.”

6) The Covenants shall address termination using the following or similar language:

“These Covenants shall not terminate unless the requirements of the plan for augmentation in Colorado District Court Water Division Consolidated Case Nos. 06CW100 (Div. 1) and 06CW20 (Div. 2) are also terminated by order of the Water

Court, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

C. Applicant and its successors and assigns shall reserve in the Covenants and in any deeds of the Property the decreed amount of at least 7.0 acre-feet annually for the subdivision for a period of 300 years for a total of 2,100 acre-feet for the 7-lot subdivision for 300 years. Said reservation shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for primary and replacement supply. Applicant shall convey by recorded warranty deed these reserved Dawson aquifer water rights to the individual lot owners. Applicant shall provide copies of said Covenants or other such reservation and conveyance instruments that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the subdivision plat.

Any and all conveyance instruments shall recite as follows:

For the water rights and return flows conveyed for the primary supply (Dawson aquifer):
“These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year supply, and replacement during pumping, for each of the 7 lots of the Prairie Ridge subdivision. The water rights so conveyed, and the return flows therefrom shall be appurtenant to each of the respective lots with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title.”

D. Applicant and its successors and assigns shall reserve in the Covenants and in any deeds of the Property a total of 1,910 acre-feet of water in the Denver aquifer for use in the augmentation plan to replace post-pumping depletions. Pursuant to the Decree/Augmentation Plan, Applicant shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for augmentation supply. Applicant shall convey by recorded warranty deed these reserved Denver aquifer water rights to the HOA or to the individual lot owners (with appropriate deed restrictions) for use in the augmentation plan. Applicant shall provide copies of such reservation and conveyance instruments that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the subdivision plat.

E. Applicant and its successors and assigns at the time of lot sales, shall convey by warranty deed to individual lot owners sufficient water rights in the Dawson aquifer pursuant to Colorado District Court Water Division Consolidated Case Nos. 06CW100 (Div. 1) and 06CW20 (Div. 2) underlying the respective lots to satisfy El Paso County's 300 year water supply requirement. Dawson aquifer requirements are 300 acre-feet (1.0 acre-feet/year x 300 years). Said conveyance instruments shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for the primary supply and replacement during

pumping for the respective lots. Applicant shall provide form deeds for such conveyances that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the subdivision plat.

F. Applicant and its successors and assigns shall submit a Declaration of Covenants, Conditions and Restrictions and any plat notes required herein to the Planning and Community Development Department and the County Attorney's Office for review, and the same shall be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat. Said Declaration shall cross-reference Colorado District Court Water Division Consolidated Case Nos. 06CW100 (Div. 1) and 06CW20 (Div. 2) and shall identify the obligations of the individual lot owners thereunder.

G. Applicant and its successors and assigns shall record all applicable documents, including, but not limited to, the decree in Colorado District Court Water Division Consolidated Case Nos. 06CW100 (Div. 1) and 06CW20 (Div. 2), agreements, assignments, and warranty deeds regarding the water rights and Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

H. As required by the State Engineer's Office, proposed water uses for each lot must be clearly specified in the well permit applications.

I. The following plat note shall be added that addresses the State Engineer's admonition to advise landowners of potential limited water supplies in the Denver Basin:

"Water in the Denver Basin aquifers is allocated based on a 100-year aquifer life; however, for El Paso County planning purposes, water in the Denver Basin aquifers is evaluated based on a 300-year aquifer life. Applicants and all future owners in the subdivision should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer may be less than either the 100 years or 300 years used for allocation indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers. Alternative renewable water resources should be acquired and incorporated in a permanent water supply plan that provides future generations with a water supply."

cc: Ryan Howser, Planner II