

COLVIN HERITAGE FARMS MINOR SUBDIVISION
LETTER OF INTENT

Date: August 6, 2020

Please update last paragraph of the letter to reflect ROW reservation.

Owner/Applicant: Kevin Colvin and Michelle Colvin
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Site Information: LEGAL DESCRIPTION OF THE PROPERTY:

PARCEL A: THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO.

PARCEL B: THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, EXCEPT THE SOUTH 30 FEET FOR ROAD PURPOSES.

11545 and 11660 Green Acres Lane, Colorado Springs, CO 80908
Tax Schedule No. 5215000054
19.8 acres
Zoned RR-5

The Property is located on Green Acres Lane, a privately maintained road north of Burgess Road in the Black Forest, and approximately one mile east of Vollmer Road. The land to the west, north and south of the Property are unplatted parcels that are improved with homes and related facilities. To the east of the Property is the Black Squirrel Creek Subdivision, with platted lots of approximately 5 acres each.

Request:

The Owner/Applicant requests approval of a two-lot minor subdivision on the Property to be known as the Colvin Heritage Farms Minor Subdivision ("Subdivision"). The Subdivision will create two rural residential single family lots in the RR5 zone, with each lot exceeding 5 acres. Lot 1 will be approximately 10.1 acres in size and will contain the existing residence, barn and related structures. Lot 2 will be approximately 9.7 acres in size and is currently vacant, although a building foundation and electric and gas utilities have been installed on the lot to serve a future residence. A water well and individual septic system will serve each lot.

Justification:

The proposed Colvin Heritage Farms Minor Subdivision is in conformance with all El Paso County requirements for creation of a minor subdivision. The proposal is consistent with the RR5 zoning and is compatible with the surrounding neighborhood zoned RR5, which consists of large lots or parcels at least 5 acres in size. The Property contains an existing single family

residence with a barn and auxiliary structures that are located on the northern portion of the Property, which will be known as Lot 1. Lot 2 is on the southern portion of the Property. The proposed layout of the Subdivision will comply with the requirements of the RR5 zone with respect to land use (single-family residential), lot size, minimum building setbacks, water supply and wastewater disposal.

The Property was purchased by the Owner/Applicant from the former owner as two separate parcels in 2012 and 2013. Subsequently, the Owner/Applicant combined the two parcels under one tax schedule number. The Owner/Applicant's daughter and family currently live in the existing residence. The Owner/Applicant desired to build a second home on the Property and began the process of obtaining County administrative relief to have the existing residence declared a guest house so a second residence could be built on the Property. When the size of the existing residence became an issue for approval as a guest house under the County's land use regulations, the Owner/Applicant decided to subdivide the Property into two lots and obtain approval of a minor subdivision.

Access to the two residences on the Property will be by permitted driveways off of Green Acres Lane, a privately maintained road that serves the Property and other parcels located to the west and north of the Property. The use of the private road by the Owner/Applicant is documented by a recorded easement.

Criteria for Approval:

The Subdivision complies with all requirements for approval of a minor subdivision contained in Section 7.2.1 (C) and the plans and standards set forth in Chapter 8 of the County Land Development Code ("Code"). Section 7.2. 1 (c) states that a minor subdivision shall be required to conform to all preliminary plan and final plat requirements including the criteria for approval, except to the extent the requirements are modified by the Code or the Procedures Manual.

Preliminary Plan Approval Criteria

The Subdivision meets all criteria for approval under Section 7.2.1 (D) (2) of the Code for preliminary plan approval, as follows:

- The Subdivision is consistent with the purposes of the Code.
- The Subdivision is in conformance with the subdivision design standards.
- As shown in the water reports submitted as part of the application, a sufficient water supply has been acquired in terms of quantity, quality and dependability for the proposed minor subdivision, as determined in accordance with the standards set forth in the water supply standards (C.R.S. § 30-28-133 (6) (a)) and the requirements of Chapter 8 of the Code.
- The septic system for the existing residence and the septic system proposed for the new home meet all criteria of Chapter 8 of the Code and is in compliance with state and local laws and regulations, per C.R.S. § 30-28-133 (6) (b).

- Any soil or topographical conditions presenting hazards or requiring special precautions were identified in the accompanying geology and soils reports and to the extent identified, the Subdivision is compatible with such conditions. per C.R.S. § 30-28-133 (6) (c).
- Adequate drainage improvements complying with State law (C.R.S. § 30-28-133 (6)(C)(VIII)) and the requirements of the Code and the ECM are provided with the design of the Subdivision.
- As there are no public improvements proposed in connection with the Subdivision, no determination of the adequacy of the location and design of any public improvements is required.
- There is legal and physical access to both Lots proposed in the Subdivision on Green Acres Lane, a privately maintained road off of Burgess Road, a County road.
- The Subdivision has established an adequate level of compatibility by incorporating natural physical features in the design. As there will only be two lots platted on the 19.8-acre Property, there will be sufficient open spaces. The Subdivision's site planning techniques will foster the implementation of the County's plans. Physical design features of the Subdivision will remain consistent with the adjacent land uses and will remain rural residential. Any environmentally sensitive areas in the Subdivision have been identified and incorporated into the Subdivision design. The Subdivision will not negatively impact the levels of service of County services and facilities.
- Necessary services, including police and protection, recreation, utilities, open space and transportation system, are available to serve the Subdivision.
- The Subdivision meets other applicable sections of Chapters 6 and 8 of the Code.

Final Plat Approval Criteria:

The Subdivision meets all criteria for approval under Section 7.2.1 (D) (3) of the Code for final plat approval, as follows:

- The Subdivision is in conformance with the goals, objectives and policies contained in the County Master Plan, including the Policy Plan, and it is in compliance with the County's Water Master Plan. The Black Forest Preservation Plan (the "Plan") is the Small Area Plan under the County Master Plan that provides guidelines for land use in the Black Forest area, including the Property.

1. **The Subdivision is in conformance with the goals, objectives, and policies of the Master Plan and Policy Plan.**

An element of the Master Plan is the Policy Plan, which establishes goals and policies in connection with approval of new development in the County. The Colvin Heritage Farms Minor Subdivision proposal satisfies the following goals and policies from the Policy Plan:

Goal 6.1 a *Encourage patterns of growth and development which complement the regions' unique natural environments and which reinforce community character.*

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 minor subdivision is compatible with adjacent properties, all of which are at least 5 acres in size, and located within the Black Forest area, which is rural residential in character. The existing natural environment on the Property will be preserved following approval of this subdivision.

Goal 6.4 *Develop and maintain rural residential areas in a manner which protects their integrity, addresses the carrying capacity of the natural environment and provides for an adequate level of non-urban facilities and services.*

Policy 6.4.1 - *Protect and sustain established viable rural residential areas where possible.*

Policy 6.4.2 *Continue to define and limit the boundaries of rural residential areas primarily through the Small Area Planning process (refer to Section 1.0 Small Area Plans).*

Policy 6.4.3 *Allow rural residential development in those areas with sufficient "carrying capacity" including roadway capacity, water supply, septic suitability, educational facilities and organized structural fire protection.*

Policy 6.4.4 - *Encourage new rural residential subdivisions to be located within or contiguous with existing rural residential areas or to be incorporated as a buffer between higher density and undevelopable areas.*

The proposal will subdivide an existing 19.8 acre parcel into two lots, which will only increase the number of homes on the Property from one to two. There will be limited impact on the existing carrying capacity of the area by the addition of one lot upon approval of the minor subdivision. The lot sizes of the two lots exceed the minimum 5-acre size required under RR5 zoning, and will ensure the existing rural residential nature of the area is maintained. Water for the second lot has been adjudicated with the State, the well for the existing residence has been re-permitted, and a well permit for the new residence has been authorized.

2. The Subdivision meets goals and policies set forth in the Black Forest Preservation Plan.

The Property is within the planning area of the Plan, and more specifically, within "The Timbered Area" unit defined by the Plan. Uses in The Timbered Area are generally limited to low density residential or open space.

3. Residential - Goal 3.A - *Promote a residential environment which perpetuates the rural-residential character of the Black Forest Planning Area.*

Policy 3.1 – *Continue the promotion of residential subdivisions with an overall average minimum lot area of 5 acres in the Timbered Area and other designated portions of the Planning Area....*

8. Natural Environment – Goal 8.A – Protect the integrity of the natural systems in the Black Forest.

Policy 8.1 – Preserve and enhance the natural environment and wildlife of the planning area.

Policy 8.2 – Protect and maintain the area’s drainage courses in their natural condition by promoting designs and densities which are sensitive to natural drainage patterns.

The minor subdivision will preserve the rural-residential character of the Black Forest Planning Area. The lot sizes will be in excess of the minimum 5 acres required under the RR5 zoning, with Lot 1 being 10.1 acres and Lot 2 being 9.7 acres. The Property contains an existing residence and structures that have been on the Property for many years. Upon approval of the minor subdivision, the Owner/Applicant will build one residence on Lot 2, which is sited on the lot to be within the timbered area of the Property so that an existing meadow is preserved. As shown in the final drainage report submitted for this application, any drainage areas existing on the Property will not be impacted by the 2-lot minor subdivision or construction of the residence on Lot 2.

3. The Subdivision meets the goals and policies set forth in the El Paso County Water Master Plan.

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

Policy 1.1.1 – Adequate water is a critical factor in facilitating future growth and it is incumbent upon the County to coordinate land use planning with water demand, efficiency and conservation.

As part of this land use planning action, Owner/Applicant has demonstrated the quantity, dependability and quality of the water to be utilized in this development, demonstrating adequate water quality through testing, and adequacy and sufficiency of supply consistent with the County’s 300-year rule concerning water supplies. Use of shallow Dawson aquifer groundwater, as contemplated here, is typical of rural residential lots in Black Forest, and further consistent with the Water Master Plan as concerns rural residential lots where municipal or quasi-municipal water supplies are unavailable. See, WMP at pp. 25, 27 (the site is located in area 4a, there are “no water providers are available”); see also, WMP at p. 39 (“*Individual lot owners and non-Colorado Springs Utilities water providers rely heavily upon them to supply potable water. The Denver Basin aquifers provide a great source of water supply because they are protected from surface contamination and are drought-proof*”).

Goal 4.3 Collaborate with the State and other stakeholders to extend the economic life of the Denver Basin aquifers.

Policy 4.3.1 – Denver Basin groundwater should be preserved as much as practical through water conservation and efficiency, extending the economic useful life.

Policy 4.3.2 – Encourage the systematic monitoring and careful administration of the bedrock aquifers to avoid over-allocation of groundwater.

Owner/Applicant, consistent with the County’s 300-year rule, seeks a long-term sustainable use of the Dawson aquifer, consistent with local historical practices and vested property rights in the underlying Denver Basin aquifers. Such uses will prolong the economic life of not only the Dawson aquifer to be utilized in the Subdivision, but also deeper underlying Denver Basin aquifers available to the Owner/Applicant which are not to be utilized as part of the primary water source for this Subdivision.

Goal 5.5 Identify any water supply issues early on in the land development process.

Policy 5.5.1 – Discourage individual wells for new subdivisions with 2.5 acre or smaller average lot sizes, especially in the near-surface aquifers, when there is a reasonable opportunity to connect to an existing central system, alternatively, or construct a new central water supply system when the economies of scale to do so can be achieved.

Goal 5.6 Protect property rights.

The Subdivision proposed at this site concerns approximately 10-acre lots, considerably larger than those for which individual wells are to be discouraged under the WMP, and there currently is no opportunity in this location to connect to an existing system or construct a new central system. Approval of individual wells in this circumstance protects the vested property rights of Owner/Applicant.

Goal 6.0 Require adequate water availability for proposed development.

Policy 6.0.1 – Continue to require documentation of the adequacy or sufficiency of water, as appropriate, for proposed development.

As described above, and in the Water Resources Report and Water Quality Report, adequacy and sufficiency of water for the proposed development, for a period of at least 300-years, has been documented and demonstrated. See also WMP p. 111 (*“El Paso County understands that each landowner has property rights and, in many cases, those property rights include water rights. The County’s goal is not to infringe on those rights, but to assure sufficient water supplies are available to foster a sustainable place for people to live and work”*).

- The Subdivision is consistent with the design standards and regulations and meets all planning, engineering and surveying requirements of the County for maps, data, surveys, analyses, studies, reports, plans, designs, documents, and other supporting materials.
- As shown in the water reports submitted as part of the application, a sufficient water supply has been acquired in terms of quantity, quality and dependability for the proposed minor subdivision, as determined in accordance with the standards set forth in the water supply standards (C.R.S. § 30-28-133 (6) (a)) and the requirements of Chapter 8 of the Code.
- The septic system for the existing residence and the septic system proposed for the new home meet all criteria of Chapter 8 of the Code and is in compliance with state and local laws and regulations, per C.R.S. § 30-28-133 (6) (b).
- Any soil or topographical conditions presenting hazards or requiring special precautions were identified in the accompanying geology and soils reports and to the extent identified, the Subdivision is compatible with such conditions. per C.R.S. § 30-28-133 (6) (c).
- Adequate drainage improvements complying with State law (C.R.S. § 30-28-133 (6)(C)(VIII)) and the requirements of the Code and the ECM are provided with the design of the Subdivision.

- There is legal and physical access to both Lots proposed in the Subdivision on Green Acres Lane, a privately maintained road that comes off of Burgess Road.
- Necessary services, including police and protection, recreation, utilities, open space and transportation system, are available to serve the Subdivision.
- The final plans of the Subdivision show that the proposed methods for fire protection comply with Section 6 of the Code.
- Off-site impacts of this Subdivision are addressed below. No mitigation for off-site impacts are necessary under the applicable requirements of Chapter 8.
- To the Owner/Applicant's knowledge, no public facilities or infrastructure, or cash-in-lieu, for impacts reasonably related to the Subdivision, are required.
- The Subdivision meets other applicable sections of Chapters 6 and 8.
- The extraction of any known commercial mining deposit will not be impeded by the Subdivision as Applicant/Owner owns all mineral rights on the Property (C.R.S. § 34-1-301(1) et seq.)

Public Improvements and Right of Way Dedication.

There are no required public subdivision improvements required for the Subdivision. However, the Property has frontage along Burgess Road, which is listed in the County's major transportation plan as a future 100-foot wide minor arterial. The County has requested the Owner/Applicant to dedicate 20 feet of right of way adjacent to Burgess Road for future road expansion. The Owner/Applicant may be amenable to dedicating land, if applicable, as part of this minor subdivision approval process, for County right-of-way that complies with the "nexus" and "rough proportionality" tests adopted by the United States Supreme Court, as described in more detail below.

The Property is approximately 19.8 acres in size. Upon approval of the Subdivision, there will be two lots (and two homes) where before there was one parcel and one home. The Property's frontage along Burgess Road is 668 feet long, and the County is seeking a dedication of land totaling 13,360 square feet, or over one-third of an acre, as part of the approval of this 2-lot subdivision.

The United States Supreme Court addressed the constitutionality of local governments requiring land use applicants to dedicate land without compensation in return for approval of a land use application. Known as the "Nollan/Dolan" test, a local government must establish a nexus between the land sought to be dedicated and the development. In other words, the dedication of land to the government 1) must advance a purpose related to the development; and 2) the government must establish a rough proportionality between the burden on the land owner and the impact of the owner's development on the community. If the government cannot establish the nexus and rough proportionality between the land use application and the need for the dedicated land, the government must compensate the landowner for the private property it desires to obtain for a public purpose.

Section 8.5.4 (A)(5) of the Land Development Code, Dedication of Right of Way, provides:

Dedication Modified When Not Proportional to Impact. Dedication requirements may be modified where the BoCC determines the dedication is not roughly proportional to the impact caused by the division of land.

The Owner/Applicant submits that the impact of one additional residence arising from approval of this Subdivision is not proportional to the one-third of an acre of right of way dedication requested by the County. There is no nexus between this 2-lot subdivision and the need to widen Burgess Road. Given there is already an existing home on the Property, the impact of the minor subdivision to a future road (and the community) will be nominal, with one additional home added to the area. The requested 13,360 square feet of land dedication for the future widening of Burgess Road is not roughly proportional to the burden on the Owner/Applicant in giving up 1/3 of an acre for public right of way, nor is the dedication related to any purpose related to this minor subdivision. This is not a location where a separate turn lane for the 2-lot subdivision is needed, or there will be significant traffic coming from the additional residence constructed as a result of approval of this Subdivision. Accordingly, the Owner/Applicant submits that no land dedication is required for approval of this Subdivision as the County's land dedication request does not meet the Nollan/Dolan test.