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April 25, 2023

SF-22-9 Winsome Filing No. 3 Subdivision
Final Plat

Reviewed by: Lori L. Seago, Senior Assistant County Attorney

WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a proposal for approval of a Final Plat for Winsome Filing No. 3 subdivision by Winsome, LLC (“Applicant”) for a 38-lot subdivision on a 347.47-acre parcel of land (the “property”). The property is zoned RR-5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary (“WSIS”), the water demand for the subdivision is 22.80 annual acre-feet, comprised of 11.40 acre-feet/year for household use for 38 single-family dwellings, 9.50 acre-feet/year for irrigation of 9.5 acres, and 1.9 acre-feet/year for animal watering for 152 large animals. Based on this total demand, Applicant must be able to provide a supply of 6,840 acre-feet of water (22.80 acre-feet/year x 300 years) to meet the Count’s 300-year water supply requirement.

Proposed Water Supply

3. The Applicant has provided for the source of water to derive from individual on-lot wells producing from the not-nontributary Dawson aquifer as provided in the Determination of Water Rights No. 1692-BD and Replacement Plan No. 1692-RP, No. 4 issued by the Colorado Ground Water Commission (“Commission”). In the Determination and Replacement Plan, the Commission authorized

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the withdrawal of 37.8 acre-feet per year for 300 years from the Dawson aquifer, for up to 63 lots.¹ The Replacement Plan requires the use of septic return flows for replacement water through the installation and use of a septic system on each residential lot which has a well.

4. Applicant provided a *Water Resources Report for Winsome Filing No. 3* dated January 2023 (“*Report*”). The *Report* estimates the total water demand for the subdivision at 22.8 acre-feet/year, or 0.6 acre-feet/year/lot for 38 lots. The *Report* notes that Determination of Water Rights No. 1692-BD approved the withdrawal of 819 acre-feet of water per year from the Dawson aquifer over a period of 100 years for a 900.52-acre parcel of land, of which this subdivision is a part. Replacement Plan No. 1692-RP, No. 4 subsequently approved the withdrawal of 37.8 acre-feet per year from the Dawson aquifer over a period of 300 years from 63 wells located on 479.4 acres of the original 900.52 acres. 38 of those 63 wells are proposed for this subdivision.

State Engineer’s Office Opinion

5. In a letter dated March 2, 2022, the State Engineer stated that “...the total estimated water requirement is 22.8 acre-feet/year. The estimated water requirement of 0.6 acre-feet/year per residential lot assumes that 0.3 acre-foot [sic] per year is required for domestic indoor use, 0.25 acre-feet per year is required for irrigation of up to 4,000 square feet of lawn, garden and trees, and 0.05 acre-feet per year is required for watering of four large domestic animals.” The State Engineer noted that the proposed source of water supply is individual on-lot wells producing from the not-nontributary Dawson Aquifer and permitted pursuant to Determination of Water Right no. 1692-BD and the associated Replacement Plan No. 1692-RP, No. 4, which allow 63 wells, including the 38 proposed for this Subdivision, to withdraw 0.6 acre-feet/year of ground water each over 300 years.

Finally, the State Engineer provided their opinion “...that the proposed water supply is adequate and can be provided without causing injury to water rights.”

Recommended Findings

6. Quantity and Dependability. Applicant’s water demand for the Winsome Filing No. 3 Final Plat is 22.80 acre-feet per year for a total demand of 6,840 acre-feet for the subdivision for 300 years. Determination of Water Right No. 1692-BD and Replacement Plan 1692-RP, No. 4 allow 38 wells to withdraw 0.6 acre-feet per year for 300 years for the uses proposed in this subdivision.

Based on the water demand of 22.80 acre-feet/year for the Winsome Filing No. 3 Final Plat and the Determination of Water Rights and Replacement Plan permitting withdrawals in that among, the County Attorney’s Office recommends a finding of sufficient water quantity and dependability for this subdivision.

7. Quality. The water quality requirements of Section 8.4.7.B.10.g of the El Paso County Land Development Code must be satisfied. **El Paso County Public Health shall provide a recommendation as to the sufficiency of water quality.**

¹ 25 of the approved lots are within Winsome Filing No. 2, and the remaining 38 are in this Filing No. 3.

8. Basis. The County Attorney's Office reviewed the following documents in preparing this review: the Water Supply Information Summary submitted March 13, 2023, the Water Resources Report dated January 2023, the State Engineer's Office Opinion dated March 2, 2022, and Determination of Water Rights No. 1692-BD and Replacement Plan No. 1692-RP, No 4. The recommendations herein are based on the information contained in such documents and on compliance with the requirements set forth below. ***Should the information relied upon be found to be incorrect, or should the below requirements not be met, the County Attorney's Office reserves the right to amend or withdraw its recommendations.***

9. Reserved

REQUIREMENTS:

A. Applicant and its successors and assigns shall comply with all requirements of the Colorado Ground Water Commission Determination No. 1692-BD and Replacement Plan No. 1692-BD, No. 4, specifically, that water withdrawn from the aquifer by each of the proposed thirty-eight wells permitted shall not exceed 0.60 annual acre-feet based on a total combined annual withdrawal of 22.80 acre-feet. Depletions shall be replaced by individual on-lot non-evaporative septic systems.

B. The County requires that when there is an augmentation/replacement plan, Applicant create a homeowners' association ("HOA") for the purpose of enforcing covenants and assessing any necessary fees related to compliance with the water decrees and augmentation plans for the property.

C. Applicant shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision, their successors and assigns, and the HOA regarding all applicable requirements of the Colorado Ground Water Commission Determination No. 1692-BD and Replacement Plan No. 1692-BD, No. 4.

Covenants shall address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 6,840 acre-feet of Dawson aquifer water pursuant to Colorado Ground Water Commission Determination 1692-BD and Replacement Plan No. 1692-RP, No. 4 to satisfy El Paso County's 300-year water supply requirement for the 38 lots of the Winsome Filing No. 3 Subdivision. The Covenants shall further identify that 180 acre-feet (0.60 AF/year) of Dawson aquifer water is allocated to each lot. Said reservations shall not be separated from transfer of title to the property and shall be used exclusively for primary water supply.

2) Advise of responsibility for costs. The Covenants shall advise the HOA, lot owners, and their successors and assigns of their obligations regarding the costs of operating the plans for augmentation, which include pumping of the Dawson wells in a manner to replace depletions during pumping.

3) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use a non-evaporative septic system to ensure that return flows from such systems are made to the stream system to replace actual 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 in the subdivision 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. 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."

4) Address future lot conveyances. 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 Determination No. 1692-BD and Replacement Plan No. 1692-RP, No. 4 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."

5) Advise of monitoring requirements. The Covenants shall advise the HOA, 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 existing and future wells in the Dawson aquifers.

6) Require well permits. The Covenants shall Require that well permits be obtained pursuant to the requirements of Determination No. 1692-BD and Replacement Plan No. 1692-RP, No. 4 and C.R.S. § 37-90-137(4) and (10).

7) Address amendments to the covenants. 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 Winsome Filing No. 3 Subdivision pursuant to Determination No. 1692-BD and Replacement Plan No. 1692-RP, No. 4. 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 the Colorado Ground Water Commission 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 determination."

8) Address termination of the covenants. The Covenants shall address termination using the following or similar language:

"These Covenants shall not terminate unless the requirements of Determination No. 1692-BD and Replacement Plan No. 1692-RP, No. 4 are also terminated by the Colorado

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

D. Applicant and its successors and assigns shall reserve in any deeds of the Property Dawson aquifer water in the decreed amount of 180 acre-feet (0.60 acre-feet per year) per lot. 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.

E. Applicant and its successors and assigns shall convey by recorded warranty deed these reserved Dawson aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Dawson aquifer underlying the respective lots to satisfy El Paso County’s 300-year water supply requirement.

Any and all conveyance instruments shall also 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 water supply, and replacement during pumping, for each of the lots of the Winsome Filing No. 3 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.”

F. Applicant and its successors and assigns shall submit a Declaration of Covenants, Conditions, and Restrictions, form deeds, 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 Determination No. 1692-BD and Replacement Plan No. 1692-RP, No. 4 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, Determination No. 1692-BD and Replacement Plan No. 1692-RP, No. 4, 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. 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. Applicant 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.”

A. cc: Ryan Howser, Project Manager, Planner