

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY
CIVIL DIVISION

First Assistant County Attorney
Diana K. May

Amy R. Folsom, County Attorney

Assistant County Attorneys
M. Cole Emmons
Lori L. Seago
Kenneth R. Hodges
Lisa A. Kirkman
Steven A. Klaffky
Peter A. Lichtman

May 25, 2018

East Platte Subdivision (6425 E. Platte) Vacation and Replat
VR-17-014

Reviewed by: Cole Emmons, Senior Assistant County Attorney
Edi Anderson, Paralegal



1. This is a proposal by Thomas E. Richardson and Linda S. Richardson ("Applicant") for vacation and replat of a single parcel into 2 commercial lots on approximately 6.78 acres of land located at 6425 East Platte Avenue. The property is zoned I-2 (Limited Industrial) and the property is currently being leased by 2 commercial businesses. The request to replat the 6.78 acre property would allow the original lot to become 2 lots: Lot 1 encompassing 1.68 acres and Lot 2 encompassing 5.10 acres.

2. The Applicant has provided that the subdivision will be served by the Cherokee Metropolitan District ("District"). Applicant has not provided the required Water Supply Information Summary. Applicant's Subdivision Summary Form estimates water requirements for the subdivision at 230 gallons per day, which equates to 0.26 acre-feet/year; however, other information indicates Applicant may be considering a higher demand of 0.29 acre-feet annually. Based on Applicant's estimate, the Applicant will need to provide a supply from the District of 78 acre-feet (0.26 acre-feet x 300 years) to meet the County's 300 year water supply requirement; however, based on a higher demand of 0.29 acre-feet annually, Applicant will have to provide a supply of 87 acre-feet from the District to meet the County's 300 year water supply requirement.

3. The General Manager of the District provided letters committing to serve the commercial subdivision on August 30, 2017 and March 22, 2018. The letters noted that the District had previously committed, and was already serving, the commercial business on the property to be replatted as Lot 1, in the amount of 0.14 acre-feet per year. The March 22nd letter also committed to serve the 2nd commercial business on the property to be replatted as Lot 2, in the amount of 0.15 acre-feet per year. The General Manager noted that the District has "sufficient water rights available to continue to meet the previously identified need of 0.14 acre feet of potable water per year" and further,

200 S. CASCADE AVENUE
OFFICE: (719) 520-6485



COLORADO SPRINGS, CO 80903
FAX: (719) 520-6487

“the District has sufficient water rights available to meet the additional need of 0.15 acre feet of potable water per year.”

4. In a letter dated April 16, 2018, the State Engineer noted that the Water Supply Information Summary was not provided for its review of the East Platte Subdivision. Based on Applicant’s unofficial estimate, the State Engineer noted the “estimated water demand for the development is 230 gallons per day (0.26 acre-feet per year).” The Engineer noted the District’s letter committing to a total water supply of 0.29 acre-feet year for the commercial subdivision. The Engineer also noted that “[a]ccording to the latest water supply report on file with this office, it appears the District has sufficient water resources to supply the proposed subdivision an amount of 0.29 acre-feet per year.”

In addition, the State Engineer’s Office also provided an advisory to the Applicant related to any possible storm water collection and/or conveyance facilities that may be included in the project. The Engineer advised the Applicant that “. . . unless the storm water structure(s) can meet the requirements of a ‘storm water detention and infiltration facility’ . . . the structure may be subject to administration by this office. The applicant should review the *DWR’s Administrative Statement Regarding the Management of Storm Water Detention Facilities and Post-Wildland Fire Facilities in Colorado* . . . to ensure that the notice, construction and operation of the proposed structure meets statutory and administrative requirements.”

Finally, the State Engineer provided its finding that pursuant to “Section 30-28-136(1)(h)(II), C.R.S., it is the opinion of this office that so long as the demand of the proposed development does not exceed 0.29 acre-feet/year, the proposed water supply can be provided without causing injury to decreed water rights.”

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 the El Paso County Health Department.

6. Analysis and Recommendation. Based on Applicant’s unofficial estimate of a demand of 0.26 acre-feet per year to be served by Cherokee Metropolitan District, of which 0.14 acre-feet is already being supplied and the District’s commitment to supply Lot 2 at 0.15 acre-feet annually, based on the State Engineer’s confirmation that at a higher demand of 0.29 acre-feet annually the District has sufficient water to supply the development, which in turn is based on the District’s latest water supply report on file at the State Engineer’s Office, there appears to be a sufficient water supply available to meet the demands of this development; however, Applicant must resolve its demand calculation. 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 0.26 acre-feet per year but also based on the commitment by the District to serve the property at the higher demand of 0.29 acre-feet per year, but subject to the

requirements set forth below, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability.

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 District.

- B. Before hearing by the Planning Commission, Applicant shall provide to the Planning and Community Development Department and the County Attorney's Office, the required Water Supply Information Summary form that resolves its demand calculation. If not so received, the County Attorney's Office may recommend that the matter be postponed. Regardless, Applicant shall use no more than 0.29 acre-feet of water annually for the subdivision.

- C. It is Applicant's responsibility, and not the County's, to comply with the advisory by the State Engineer's Office regarding any storm water collection and/or conveyance facilities that may be included in the development to ensure that any such structures meet the requirements of a 'storm water detention and infiltration facility,' and that notice, construction, and operation of the proposed structure meets statutory and administrative requirements.

cc: Nina Ruiz, Project Manager, Planner II