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April 21, 2022

SF-22-6 Citizen on Constitution
Final Plat

Reviewed by: Lori L. Seago, Senior Assistant County Attorney
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WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a final plat proposal by Feathergrass Investments, LLC and Garrett Companies ("Applicant") for a subdivision of 1 lot for 226 multi-family units and 2 tracts for drainage and open space (the "property"). There is a concurrent zoning application to rezone the property to RM-30 CAD-O (Residential Multi-Dwelling – Commercial Airport Overlay District).

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary ("WSIS"), the water demand is 45.2 acre-feet/per year, which reflects 0.20 acre-feet/unit for in-house use, plus 5.4 acre-feet for irrigation, for a total subdivision water demand of 50.6 acre-feet/year. Based on the total demand, Applicant must provide a supply of 15,180 acre-feet of water (50.6 acre-feet per year x 300 years) to meet the County's 300-year water supply requirement.

Proposed Water Supply

3. The Applicant has provided for the source of water to derive from the Cherokee Metropolitan District ("District", "Cherokee" or "CMD"), as detailed in the *Final Water Resources Report for The Citizen on Constitution* dated January 25, 2022 ("*Report*"). The *Report* indicates that "[w]ith 4,411.5 AFY of exportable supply and 4,238.9 AFY of commitments, CMD has a water balance of 176.6 AFY before the subject development. After commitment of 50.6 AFY to this development, the District will have 126.0 AFY remaining for additional commitments."

4. The District's General Manager provided a letter of commitment for the Citizen on Constitution development dated November 29, 2021, in which the District committed to providing water service to the apartment development in the amount of 45.2 acre-feet/year, plus irrigation in the amount of 5.4 acre-feet/year, for an annual water requirement of 50.6 acre-feet/year.

The District's commitment is only a conditional commitment as noted in their letter, which stated: "[t]o confirm this commitment you must provide the District with a copy of the final plat approval from El Paso County Development Services within 12 months of the date of this letter. Otherwise, the District may use this allocation for other developments requesting a water commitment."

State Engineer's Office Opinion

5. In a letter dated February 24, 2022, the State Engineer reviewed the proposal to subdivide the 12.26 +/- acre parcel into a multi-family development consisting of 226 apartment units, plus irrigated green space. The State Engineer stated that the water demand for the proposed development is 50.6 acre-feet and is to be served by Cherokee Metropolitan District. A letter of commitment dated November 29, 2021 from Cherokee was provided with the materials and indicated 50.6 acre-feet are committed to the proposed subdivision. The State Engineer stated that "[a]ccording to this office's records, it appears that Cherokee has adequate water resources to serve 50.6 acre-feet/year for the proposed development." Finally, "[p]ursuant to Section 30-28-136(1)(h)(II), C.R.S., it is the opinion of this office that the proposed water supply can be provided without causing injury to decreed water rights, and the supply is expected to be adequate."

Recommended Findings

6. Quantity and Dependability. Applicant's water demand for the Citizen at Constitution development is 50.6 acre-feet per year to be supplied by the Cherokee Metropolitan District.

Therefore, based upon the finding of sufficiency and no injury to existing water rights by the State Engineer, a water demand of 50.6 acre-feet/year and a commitment from the District in the amount of 50.6 acre-feet/year for a period of 300 years, but given the conditional nature of the commitment to serve by the District, and subject to the conditions set below, the County Attorney's Office recommends a finding of conditional sufficiency as to water quantity and dependability for the Citizen at Constitution development.

7. Quality. The water quality requirements of Section 8.4.7.B.10 of the Code must be satisfied. Section 8.4.7.B.10.g. of the 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.

8. Basis. The County Attorney's Office reviewed the following documents in preparing this review: the Water Supply Information Summary provided April 11, 2022, the *Final Water Resources Report* dated January 25, 2022, the Cherokee Metropolitan District letter dated November 29, 2021, and the State Engineer Office's Opinion dated February 24, 2022. 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.***

REQUIREMENTS:

- A. Applicant and all future owners of lots within this filing shall be advised of, and comply with, the conditions, rules, regulations, limitations, and specifications set by the District.
- B. Prior to recording the final plat, Applicant shall upload to EDARP a corrected letter of commitment from Cherokee Metro District that states in the body that the commitment is for "Citizen on Constitution" rather than "Caliber on Constitution."
- C. Applicant must obtain final plat approval and provide evidence thereof to the District within 12 months of the District's commitment letter dated November 29, 2021 (approval must be provided by November 29, 2022) to retain the District's water commitment. **If Applicant fails to do so, this recommended finding of conditional sufficiency will be deemed moot and no longer valid.**

cc. Kari Parsons, Senior Planner