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January 10, 2019

El Paso County Planning  
Mr. Len Kendall  
Planner 1  
2880 International Circle  
Colorado Springs, CO 80910

*Re: BOA-18-008*  
*Response to Letter of November 28, 2018 re 13980 Black Forest Road and 6770 Jicarilla Drive*

Dear Mr. Kendall, County Commissioners and Board of Adjustment Members,

I am responding to your letter of November 28, 2018, on behalf of Goebel Construction Company. We will respond to each point raised therein in the order in your letter.

Current Planning

The Legal Description has been corrected and is submitted herewith.

The Application has been revised to 1) reflect the number of acres in the appropriate box on the form and 2) reflect the fact that the description of the request is for a Board of Adjustment Hearing for parcel sizes of 2.5 acres where 5 acres is required.

To address further comments, the Applicant notes that right of way dedication in the future will reduce each of the two remaining lots by 6,355 square feet of land area or .14 acre. The final lot sizes will be 2.36 acres. The Austin lot to the north will likewise be reduced to 3.52 acres after the ROW road expansion, and the lots on the east side of Black Forest Road will be reduced in size to 4.64 acres and 9.28 acres. The Nichols parcel to the South drops in size to 4.20 acres. This is all shown on the attached revised site drawing.

Engineering Department

The Letter of Intent has been corrected to address the points raised along with the Site Plan.

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Further, the Letter of Intent now notes that the access from Lot 7 onto Black Forest Road can remain until either the County Engineer deems it unsafe or once Black Forest Road is widened to its planned classification of Minor Arterial, per the El Paso County 2040 MTCP. When the current driveway access is closed, the parcel will have access off of Jicarilla Drive via a new easement across the adjoining lot as shown on the Site Plan.

The Letter of Intent also acknowledges that the access to Black Forest Road may be terminated at any time per the driveway permit that specifically states that access is not allowed via a planned arterial roadway and that the “County, notwithstanding the issuance of any permit or construction of any driveway, reserves the right to make any changes, additions, repairs or relocation of any part of a driveway within the dedicated right-of-way at any time, including but not limited to, in connection with the relocation, reconstruction, widening and maintaining of the road or right-of-way, without compensating the owner of the driveway for the damages to or destruction of the driveway and that the County may “suspend or revoke any Driveway Permit, in writing, issued under the provisions of these Standards whenever the Driveway permit is issued in error or on the basis of incorrect information supplied by the applicant or whenever the Driveway Permit may have been issued in violation of any provisions of [County] Standards.”

An access easement across Lot 6 to Jicarilla Drive will be in place to ensure continued access to an alternate point of public access.

Mountain View Electric Association  
No response is needed to this Section.

Black Forest Land Use Committee  
The Applicant respects the position taken by the Black Forest Land Use Committee (“Committee”) and for pointing out an error in the initial application where the Applicant stated that the surrounding properties were 2.5 acre properties. That error was based upon use of an older tax assessors map that showed smaller lots surrounding this one. That error was corrected in the new letter of intent filed herewith.

In response to the Committee’s comments, the Applicant initially points out that the Black Forest Preservation Plan (“Plan”) is not by its wording controlling so as to mandate any minimum 5 acre lot size. Section 3.1 of the Plan states its policy is to “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.” Its focus is on the “promotion” of 5 acre lot sizes, not the requirement of 5 acre lots. The word promotion is permissive in nature and not mandatory and thus the 5 acre average lot size is a goal and not a mandate.

Further, the Land Use Scenario section also states that it is meant to complement and further “describe the goals, policies and proposed actions adopted for the Black Forest Planning Area” which language also provides flexibility in planning decisions by focusing on lot size goals and not mandating absolutes.

Finally, the Plan also states that densities “should” be strictly held to an overall average of one dwelling unit per 5 acres. The word “should” is permissive in nature which allows the Board discretion in this decision. The words “must” or “shall” are mandatory and do not allow any discretion. Because the Plan uses permissive wording throughout and not mandatory wording, no strict adherence to 5 acres of size for this parcel of land is required by the Plan.

In fact, the Plan specifically acknowledges and permits smaller lots by stating that the “minimum lot size for five-acre overall density areas should be at least 2.5 acres in most instances . . . .” Thus, the Plan recognizes that smaller lots of the same size as these proposed lots are acceptable under the Plan. Also, by using the word “should”, this section of the Plan once again recognizes the need for, and expressly allows, discretion in the approval process to allow this size of lots after the right of way road expansion. The same is true with the phrase “in most instances”, which again provides discretion in the final lot sizes to address unique situations such as the loss of area due to the Black Forest Road ROW road expansion.

Furthermore, the Plan in Chapter II, Land Use, also indicates that as of 1985, a full 36% of the land area under the Plan was comprised of lots that were smaller than 5 acres in size. That means that the lots that are the subject of this Application are by no means at all unusual in size as nearly one in four lots in the planning area are already under 5 acres in size. Therefore, approval of these lots will not be setting any new precedent that can be viewed as harmful as they are in fact consistent with the Plan.

Nor will these lots be out of character for the area. The Committee did not point out that there are in fact already quite a number of lots in close proximity to the subject property that are similar in size and in many cases quite a bit smaller. The Applicant attached an exhibit identifying the lots, their size and their proximity to the subject property. That shows that within just 1,000 feet of this site there are 3 lots ranging in size from 1.76 to 2.88 acres. Within just 1,500 feet of this site (about a quarter mile) there are 9 lots ranging in size from a small 32,234 s.f. to 2.88 acres. Within 2,500 feet of the site there are 19 lots ranging in size from a tiny 10,000 sf to 2.88 acres. All told, within a mile there are at least 34 other lots that are under 5 acres in size, excluding the Brentwood county club and cabin site lots.

If the Brentwood county club and cabin site lots are included the number of lots that are under 5 acres in size within a half mile of the subject property jumps significantly. The Applicant acknowledges that the Brentwood lots are from a filing made in 1929 and are not at all

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representative of current thinking on lot sizes nor the Plan. However, they are located very close to the subject property and so are in fact an important consideration due to the proximity of those very small lots to the property in this request as it shows these two resulting lots, even after the Black Forest ROW road expansion, are consistent with or larger than a significant number of lots within a small radius.

Also, the fact that the subject property is located on Black Forest Road favors approval as the new properties will be abutting a main traffic corridor on one side and so will have less impact on the properties located on the other side of Black Forest Road than would be the case if this properties were adjoining. These lots will have 2.36 acres of useable space after the right of way is deducted from them. That is still very close to the 2.5 acre objective sought in the Plan. And, all other lots on both sides of Black Forest Road will have their size reduced through no fault of those owners once the right of way is increased to its full width. The right of way reduction from the road expansion should not be held against the Applicant.

Omitted Letter Recipients

The Applicant has changed and resent the letters to the co-owners of 13970 Wyandott Drive and 6775 Jicarilla Drive addressed as follows:

Mr. Patrick S. Nichols  
Ms. Autumn Nichols  
6775 Jicarilla Drive  
Colorado Springs, CO 80908

Mr. Patrick E. Hoeffel  
Ms. Sue Ellen Hoeffel  
13970 Wyandott Drive  
Colorado Springs, CO 80908

The Applicant has sent letters to the other adjoining owners of 13840 and 14050 Wyandott Drive addressed as below. These were initially omitted.

Mr. Leonard B. Roberts  
Ms. Theresa K. Roberts  
13840 Wyandott Drive  
Colorado Springs, CO 80908

Mr. Jeffrey G. Phares  
Ms. Lorretta R. Phares  
14050 Wyandott Drive  
Colorado Springs, CO 80908

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Copies of the letters are submitted herewith.

Proof of Mailing Formatting


The revised letters and the letters to the previously omitted adjoining owners, along with the certified mailing receipts, are now all included in one file.

Agencies who have not yet Commented on the Application

No response is needed to this section. If any response is required in the future it will be provided as soon as possible.

We believe that this letter fully responds to each comment in the above referenced letter. Please let me, or the Applicant, know how else we can help. Thank you.

With best regards,



Mark D. Francis

Enclosures: See Package submitted with the Revised Letter of Intent