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March 28, 2019

El Paso County Board of Commissioners  
Board of Adjustment  
c/o El Paso County Planning Department  
2880 International Circle  
Colorado Springs, CO 80910

*Re: BOA 188*  
*Amended Letter of Intent for Board of Adjustment Application concerning 13980 Black Forest Road*

Dear County Commissioners and Board of Adjustment Members,

I represent the Applicant named below and am submitting this amended request on the applicant's behalf. This letter is divided into the sections required for a letter of intent pursuant to Chapter IV, Section 36, of the El Paso County Land Development Code. The Applicant respectfully requests that you review the Type D application submitted herewith and approve the action requested herein. Further, the points raised in the initial response from Mr. Kendall have been incorporated herein and stated separately in the letter to Mr. Kendall which was submitted herewith.

The Owner/Applicant: Goebel Construction, Inc., c/o Marvin Goebel  
6840 Brentwood Drive, Colorado Springs, CO 80908  
719-650-8586

The Consultant/Attorney: Mark D. Francis, Esq.  
1880 Office Club Pointe, Suite 1000  
Colorado Springs, CO 80919  
719-265-6900

Project Manager: Len Kendall, Planner 1, El Paso County Planning

The Site Location: 13980 Black Forest Road and 6770 Jicarilla Drive

The Size: 5 acres at present (4.70 acres after deducting for the future ROW expansion of Black Forest Road)

The Zoning: RR-5

The Request and Justification:

This is a request to reinstate an interior lot line that was vacated in 1991 so as to reestablish the original platting of the now 5 acre property into the two separate roughly 2.5 acre parcels that were originally approved for the neighborhood, 2.35 acres after the ROW taking.

The Applicant owns Lot 7, Block 1, Apache Woods Subdivision, as revised by book 5883-813. The Applicant is requesting that the interior lot line that was vacated by the planning commission on September 18, 1991, to create the current five acre Lot 7 now be reinstated in its original location (as shown on the attached drawings from Rocky Mountain Land Services dated December 19, 2018) so that the property will be returned to its original configuration and so that the properties will be once again legally described as Lot 6, Block 1, Apache Woods Subdivision, and Lot 7, Block 1, Apache Woods Subdivision.

This property is located on the corner of Black Forest Road and Jicarilla Drive. As noted above, the interior lot line between Lots 6 and 7 was vacated and the two lots were combined into Lot 7, Block 1, Apache Woods Subdivision, through an Administrative Vacation of Interior Lot Lines that was approved by the El Paso County Planning Department on September 18, 1991. The Recording information for the approval was recorded in the El Paso County real property records on September 19, 1991, at Book 5883, Page 813.

On June 6, 2018, the Applicant secured a permit from the El Paso County Planning Department for driveway access from Lot 7 onto Black Forest Road (Permit Number 28048) if, and only so long as, such access is allowed. Lot 7 has been assigned the address of 13980 Black Forest Road.

Black Forest Road is designated as a Minor Arterial Road per the El Paso County 2040 MTCP. Permit 28048 included a statement that the permit was not good for access to planned arterial roadways. Additionally, El Paso County's Engineering Criteria Manual, Section 2.3.2 (Design Standards by Functional Classification) in Table 2-4 also states that access is not permitted on roads classified as Rural Minor Arterial Roads. As such, the access onto Black Forest Road can remain only so long it is as allowed by the governing body. The Applicant has also created an alternate means of access off of Jicarilla Drive so that if this application is approved, access to both parcels will continue

in perpetuity. Lot 6 fronts Jicarilla Drive and will continue to have an address of 6770 Jicarilla Drive. Therefore, both properties will continue to have direct access to public roads.

The two lots will be reduced in size due to a right-of-way dedication at the time of final plat. This will reduce each of the two remaining lots by 6,355 square feet of land area. The final lot sizes will therefore be 2.35 acres. The Austins' 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 respectively. The Nichols' parcel to the South also drops in size to 4.20 acres. This is all shown on the attached revised site drawing. This means that even though the lots will drop in size to 2.35 acres, the surrounding lots will be equally affected and their sizes reduced as well.

The Applicant notes that the Black Forest Land Use Committee ("Committee") has already objected to the application because of what is believed to be resulting land areas that are too small for the Timbered Area in which the lots are located. The Applicant respects that position.

In response to the Committee's comments to the initial Letter of Intent, the Applicant 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 of the Plan 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 approximately 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 being 2.35 acres 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 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. There are in fact already quite a number of lots in very 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. (.74 acre lot) to 2.88 acres. Within 2,500 feet of the site there are 19 lots ranging in size from a tiny 10,000 s.f. (.23 acre lot) 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 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. These lots will have 2.35 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 either, 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.

The Applicant believes that the approval of this request will not be detrimental to the adjoining properties or the neighborhood in general. While the reestablishment of the original lot configuration will minimally increase development density over the current configuration, if approved, the two lot configuration will result in density that is exactly equal to the initial platted configuration. And, there will be no appreciable increase in traffic as the Applicant is seeking approval for a single family residence which will generate minimal daily vehicle trips and so the trip count from the reestablished lots will be no more than was originally envisioned when the plat was initially approved. Therefore, the reestablishment of the original platting will not have any meaningful detrimental effect on the adjoining properties.

#### Existing and Proposed Facilities, Structures, Roads:

This is currently a vacant lot with no existing facilities or structures. If this request is approved, two new residential units are proposed to be constructed on the properties and the density will be nearly identical to the initially platted properties, with 1 unit on each 2.35 acre parcel. The proposed structures, single-family homes, will be consistent with the surrounding properties. The roads accessing the properties are public roads that already exist. The reestablished Lot 7 will have access from Black Forest Road if, and only so long as, such access is allowed, and the reestablished Lot 6 will have access from the existing Jicarilla Drive. Lot 7 will also have access from the existing Jicarilla Drive.

#### Water and Sewer:

Well water is available to both lots and both lots will have septic systems installed in accordance with all applicable regulations.

#### Waiver Requests:

The Applicant is not making any requests for waivers unless one is required to secure the approval in light of the application of the Black Forest Preservation Plan to this property and unless one is required for initial access onto Black Forest Road.

County Commissioners  
March 28, 2019  
Page 6

The Applicant respectfully requests that the Board of Adjustment approve the request as stated in this application so as to reestablish the original platted lots legally described as Lot 6, Block 1, Apache Woods Subdivision, and Lot 7, Block 1, Apache Woods Subdivision.

Please let me or the Applicant know how else we can help. Thank you.

With best regards,

/s/

Mark D. Francis

Enclosures (previously provided): Type D Application, Revised Legal Description, Site Plan Drawing of Existing and Proposed Lots, Vicinity Map, List of Adjoining Owners, Map of Adjoining Owners (Site Plan), Exhibit of Similar or Smaller Lots