

Steve Schleiker
06/07/2024 10:36:30 AM
Doc \$0.00 6
Rec \$38.00 Pages

El Paso County, CO



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**DECLARATION OF PROTECTIVE COVENANTS
(Murr Subdivision)**

Sharon A. Murr and Erik M. Murr (collectively, “Declarant”) are the owners of certain real property legally described as follows:

The Southeast quarter of the Southwest quarter of Section 33, Township 13 South, Range 64 West, of the 6th P.M., County of El Paso, State of Colorado, together with the west 66 feet of the Northeast quarter of the Southwest quarter and Except the East 68.4 feet of the Southerly 373.8 feet, thereof.
(the “Property”).

The Property is being subdivided into four (4) lots (each, a “Lot” and collectively, the “Lots”) and will be known as the Murr Subdivision.

This Declaration is executed and recorded (a) in furtherance of a common and general plan for the Property, to include all Lot owners’ compliance with the Determination and Replacement Plan (defined below); (b) to protect and enhance the quality, value, desirability and attractiveness of the Property; (c) to provide for covenant enforcement within the Property; and (d) to define duties, powers and rights of Declarant and the owners of Lots within the Property.

Declarant hereby declares that all the Property shall be used, improved, occupied, owned, resided upon and conveyed subject to the covenants set forth herein for the purpose of enhancing and protecting the Property. The covenants set forth herein shall run with the Property and be binding on and inure to the benefit of all persons or entities having any right, title or interest in the Property, and said persons or entities shall hereby also be bound by the dedications, restrictions, easements and notes on the Murr Subdivision Final Plat, to be recorded in the records of the Clerk and Recorder of El Paso County, Colorado, as well as the regulations and ordinances of the County of El Paso, Colorado.

A. WATER COVENANTS

These Covenants are to advise and obligate all current and future owners of Lots 1 – 4, their successors and assigns, of all applicable requirements affecting Lots 1 - 4 arising from Determination of Water Right No. 4366-BD (“Determination”) and Replacement Plan No. 4366-RP (“Replacement Plan”) applicable to the Property. Denver aquifer withdrawals available for the Property are to be used for domestic uses, irrigation of lawns, gardens, and greenhouses; domestic animal and stock watering; commercial; firefighting; piscatorial; and replacement, either directly or after storage.

Proposed Lots 1 and 2 are to be serviced by individual on-lot wells, not yet permitted or constructed, operating pursuant to the Determination and Replacement Plan noted above. These wells may draw a maximum of 0.50 acre-feet per year.

Proposed Lot 3 is located above the not-nontributary actual replacement portion of the Property, and any wells constructed on this Lot must also comply with the Determination and Replacement Plan. Lot 3’s Well Permit No. 87436-F allows the withdrawal of 0.38 acre-feet per year, up to a maximum of 114 acre-feet.

Proposed Lot 4 has been issued Well Permit No. 87143-F and the well has been constructed. The well is currently permitted to withdraw 0.38 acre-feet/year from the Denver aquifer. If the Applicant or any future owner of Lot 4 intends to withdraw the 0.50 acre-feet/year allowed from the Determination, a new permit must be applied for and granted. All references herein to Lot 4 being allowed to withdraw 0.50 acre-feet/year are based upon the issuance of a new well permit allowing the increased withdrawal rate.

1. Water Rights Reserved: These Covenants expressly reserve 564 acre-feet of non-tributary Denver aquifer water pursuant to the Determination so as to satisfy El Paso County's 300-year water supply requirement for Lots 1 - 4 in the Murr Subdivision and further identify the fact that 150 acre-feet (0.50 acre-feet/year) of Denver aquifer water is allocated to and reserved for each of Lots 1, 2 and 4, and 114 acre-feet (0.38 acre-feet/year) is allocated to and reserved for Lot 3.

2. Successors and Assigns: The Water Rights shall run with each of Lots 1, 2, 3, and 4 of the Murr Subdivision, and must be transferred to all successors and assigns of each grantee, may not be separated from transfer of title of each Lot on the Property, and may not be separately sold, traded, bartered, liened, or encumbered. The Water Rights shall be considered an appurtenance to said Lots and shall be conveyed as such with all future deeds to said Lots. No separate deed is required to effect a conveyance of the water rights.

Upon any transfer of title, the water rights referenced herein shall be explicitly conveyed; however, if a Lot owner fails to explicitly convey the water rights in any deed conveying title, such water rights shall be intended to be conveyed to the new owner pursuant to the appurtenance clause in any deed conveying said Lot, whether or not the Determination 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 being conveyed, shall not be separated from the transfer of title to the Lot, 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.

3. No warranty: Because the amount of water still available will diminish over time, Declarant is not required to warrant the amount of water in any aquifer but shall warrant title against all persons or entities claiming title under them (i.e., a special warranty deed which does not warrant title to the amount of water that will be used).

4. Water Replacement Plan Controls: Declarant and all subsequent owners of the lots within the Property shall be subject to and shall carry out all provisions of the Determination and the Replacement Plan.

5. Replacement Plan– Septic System Required: All owners for Lot 3 must use a non-evaporative septic system to ensure that return flows from such system are made to the stream system to replace actual depletions during pumping and said return flows shall not be separately sold, traded, assigned, or used for any other purpose. Before any irrigation or animal watering is allowed from the well on Lot 3, Lot 3 must have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system. Lot 3 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.

6. Owner Responsibilities: Each Lot owner or its successors in interest and assigns are fully responsible for the operation, monitoring, and accounting required by the Determination and Replacement Plan for the well on their Lot. In the event the Lot is sold, evidence of the sale and notification to the new owner of their responsibility under the Determination and Replacement Plan shall accompany that year's accounting along with metering, data collecting, and reporting that may be required regarding water withdrawals from existing and future wells in the Denver aquifer. Each Lot owner and their successors and assigns must meet their obligations regarding the costs of operating the water plan for replacement purposes, which includes the installation and/or maintenance of totalizing flow meters.

7. Effects of Failure to Comply: Failure to comply with all terms of the Determination and Replacement Plan may result in an order of the Division Engineer to curtail or eliminate pumping of the Denver aquifer well of any non-complying Lot owner.

8. Covenants Run with the Lots and Land: All the foregoing terms and conditions constitute covenants running with the Lots and shall be binding upon the owners of the Lots, their heirs and successors, and all subsequent owners of the Lots.

9. Permitted Amendments: Notwithstanding any provisions herein to the contrary, no changes, amendments, alterations, or deletions to these Water Covenants may be made which would alter, impair, or in any manner compromise the water supply for the Murr Subdivision pursuant to Determination of Water Right No. 4366-BD and Replacement Plan No. 4366-BD. 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.

10. Termination of Covenants Regarding Water Rights: These Covenants shall not terminate unless the requirements of Determination of Water Right No. 4366-BD and Replacement Plan No. 4366-BD 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.

B. WASTEWATER COVENANTS

1. Wastewater: Sewage treatment is the responsibility of each individual property owner. An individual on-site sewage disposal system has been established for the existing residence (Lot 4), and, if other methods of sewage disposal are proposed, the system must comply with State and local laws and regulations, [C.R.S. §30-28- 133(6)(b)] and the requirements of Chapter 8 of El Paso County Land Development Code. Waste water is intended to be treated via individual on-site septic systems designed, constructed and operated under State and County Health Department rules and regulations and in accordance with the Water Decree. When Lots 1-3 develop they will have an (individual) on-site, septic system with leach field. This is in line with the water master plan for the area. A listing of some of the policies of the Water Master Plan that are supported by the proposed development follow: Policy 4.1.3 – Support enhanced monitoring of sources of surface and tributary groundwater in the County. The referenced decree requires use of metering for the wells to insure

compliance with the terms of the permit; Policy 6.2.1.2 – Encourage re-use of treated wastewater for irrigation and other acceptable uses when feasible. Both the existing residence and the three, new single-family residential lots will utilize onsite wastewater treatment systems which will provide “Return Flows” the environment as a condition of the groundwater findings and order and the well permit.

C. GENERAL COVENANTS

1. Animals. Except for horses and large livestock, which restrictions are set forth in Section B (2) below, a reasonable number of small livestock and poultry may be raised, bred or kept upon a Lot, provided that the livestock is adequately fenced and does not materially damage the existing vegetation on a Lot. An aggregate number of not more than four cats or dogs may be kept on a Lot. No animal of any kind shall be permitted which makes an unreasonable amount of noise or odor or is otherwise a nuisance. No animals may be kept, bred or maintained on a Lot for any commercial purpose. Kennels for the commercial raising, breeding and/or boarding of animals are prohibited on the Property. All animals must be kept on a Lot in compliance with all El Paso County regulations and ordinances. The owner of a Lot upon which an animal is kept is responsible for payment of any and all damage caused to the property of others. Owners are responsible for cleaning up after their animals on any portion of the Property. All animals kept or present on a Lot may not be allowed to run loose off the Lot. No dangerous dogs or other animals are allowed to be kept or be present on any Lot.

2. Horses and Large Livestock. No more than an aggregate of four (4) horses, cattle, llamas, alpacas, sheep, goats or similar livestock may be kept on a Lot. Horses and other livestock must be kept within an enclosure (corral, stable or barn) at all times when not being used and shall be supplementally fed. Grazing of horses or other livestock outside a corral, stable or barn must be limited to ensure that the natural vegetation on a Lot is not overgrazed. Corrals must have three (3) or more rails or be constructed of sturdy fencing to ensure retention of livestock. All stables and corrals shall be maintained in a sanitary condition.

3. Use of Off Road Motorized Vehicles. Off road motorized vehicles, including but not limited to, dirt bikes, off-road motorcycles, quads and ATVs, may not be operated on the shared driveway for recreational purposes. An owner may use such motorized vehicles on the owner’s Lot, provided the use occurs only during daylight hours and does not create a nuisance such as excessive noise or dust.

4. Construction Type. All construction shall be new. No mobile home, pre-cut, manufactured or modular home may be placed on a Lot. No building previously used at another location, nor any building or Improvement originally constructed as a mobile dwelling may be moved onto a Lot, except for temporary construction storage purposes (and not for a temporary residence) for a period not to exceed 12 months.

5. Tree Planting. For the first four (4) years after a Lot is sold to an owner other than Declarant, a Lot owner must plant at least two (2) native evergreen trees annually and provide sufficient water for survival. Lot owners are encouraged to contact the Colorado State Forest Service for information on the purchase and proper care of the trees.

6. Diseased Trees. Each Lot owner is responsible for immediately removing any diseased trees which might contaminate or spread to adjacent trees and lots, and to meet any other Colorado State Forest Service recommendations or requirements pertaining to thinning of trees, or removal or treatment of pine beetle infested trees.

7. Weeds and Insects. All Lots must be kept free of noxious weeds, diseased vegetation and harmful insects.

8. Marijuana Cultivation and Use. No owner or occupant of a Lot may utilize any portion of a Lot, including the home or any other building or structure on the Lot, for the purpose of cultivation or production of marijuana, including medical marijuana, for other than their own personal use as allowed by applicable laws and ordinances. If an owner or occupant grows or produces marijuana for personal use only, the noise and odor arising from such operation must not emanate from the Lot and must be in full compliance with state and local laws and ordinances. No owner or occupant may use any portion of a Lot for the distribution or sale of marijuana.

9. Driveway Note: Individual lot purchasers are responsible for constructing driveways, including necessary drainage culverts from the private road per Land Development Code Section 6.3.3.C.2 and 6.3.3.C.3. No driveway shall be established unless an access permit has been granted by El Paso County Planning and Community Development Department. Maintenance responsibilities for the shared access on Tract B and the 24' Public Utility, Drainage, Access and Egress Easement shall be as set forth in the Private Driveway and Maintenance Agreement recorded at Reception No. 224043210 of the public records of El Paso County, Colorado

10. Persons Entitled to Enforce Declaration; Attorney Fees. Declarant or any owner (acting on such owner's own behalf), shall have the right but not the obligation to enforce any or all of the provisions, covenants, conditions and restrictions contained in this Declaration. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of this Declaration, and all other rights and remedies provided in this Declaration or available at law or in equity. In any action or proceeding to enforce any provision of this Declaration, the party who prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney fees, costs and expert witness fees.

11. Violations of Law. Any violation of any federal, state or county law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

12. Governing Law. This Declaration shall be interpreted and governed in accordance with the laws of the State of Colorado. Exclusive venue for any legal proceeding shall be in El Paso County, Colorado.

13. Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision.

14. Notices. Except as may be otherwise provided in this Declaration, any notice must be in writing and may be served either personally, or by nationally recognized overnight delivery service or by U.S. certified mail. If served by certified mail or overnight delivery upon an Owner, notice shall be sent

