

MS-02-014

522.04

**FINAL PLAT
GILBERT ADDITION**

A request by Joel Gilbert and Calvin Lindt for approval of a Minor Subdivision/ Final Plat for Gilbert Addition, proposed for two residential lots. The property is zoned RR-3 (Rural Residential) District and is located in the central Black Forest area, within the *Black Forest Preservation Plan*. The property is generally located west of Vollmer Road, approximately 500 feet south of Kirk Drive. Assessor's Tax Schedule #52040-01-031.

PREPARED BY

Barry Holmes
6/25/04

APPLICABLE RESOLUTIONS

Approval Page 1
Disapproval Page 2

PLANNING DIVISION RECOMMENDATION: The Planning Division recommends **approval**, with the following conditions and notations:

CONDITIONS

1. Prior to scheduling this item for hearing by the Board of County Commissioners, the plat will be modified/corrected as follows:
 - A. The access easement shall be corrected to be 30 feet wide for its entire length.
 - B. Indicate the dedication for Vollmer Road at the east end of the flag stem pursuant to Engineering Division recommendations.
 - C. Pursuant to Engineering Division recommendations, indicate on the plat that access will be limited to the existing single access point which is shared with the adjacent owner.
 - D. Add the following notes:
 - 1) All property owners are responsible for maintaining proper storm water drainage in and through their property.

- 2) Developer shall comply with federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements, if any, of applicable agencies including, but not limited to, the Colorado Department of Wildlife, Colorado Department of Transportation, U.S. Army Corp. of Engineers, the U.S. Fish & Wildlife Service and/or Colorado Department of Wildlife regarding the Endangered Species Act, particularly as it relates to the Preble's Meadow Jumping Mouse as a listed threatened species.
 - 3) The addresses exhibited on this plat are for informational purposes only. They are not the legal description and are subject to change.
2. Prior to recording the plat
- a. Colorado statute requires that at the time of the approval of platting, the subdivider provides the certification of the County Treasurer's Office that all ad valorem taxes applicable to such subdivided land, for years prior to that year in which approval is granted, have been paid. Therefore, this plat is approved by the Board of County Commissioners on the condition that the subdivider or developer must provide to the Planning Division, at the time of recording the plat, a certification from the County Treasurer's Office that all prior years' taxes have been paid in full.
 - b. The subdivider or developer must pay, for each parcel of property, the fee for tax certification in effect at the time of recording the plat.
 - c. All Conditions of Compliance stipulated by the County Attorney's Office shall be adhered to at the appropriate time.
 - d. All Deed of Trust holders shall ratify the plat.
 - e. All school, park, bridge and drainage fees shall be paid.
3. Applicable conditions of the County Attorney's Office shall be adhered to at the appropriate time.

NOTATION

1. Final Plats not forwarded to the Board of County Commissioners for consideration within one year of Planning Commission action shall be deemed withdrawn and shall have to be resubmitted in their entirety.

A finding of water sufficiency is anticipated.

PUBLIC NOTIFICATION: Staff notified adjoining property owners of applicant's intent prior to July 7, 2004. Responses will be reported at the public hearing.

PUBLIC NOTICE: The property was posted by July 7, 2004.

PROJECT DESCRIPTION: The request is to divide an existing 10.9 acre platted lot into two lots. The existing lot is accessed by a flag stem, which would remain as the access for the new lots.

ADJOINING LAND USE AND ZONING:

North	Large Lot (5 acre) Single-Family	RR-3 (Rural Residential) District
South	Large Lot (5 acre) Single-Family	RR-3 (Rural Residential) District
East	Ten-Acre Single-Family	RR-3 (Rural Residential) District,
West	Large Lot (5 acre) Single-Family	RR-3 (Rural Residential) District

BACKGROUND: Currently platted as Lot 3, Inman Acres, approved January 12, 1978.

AGENCY COMMENTS:

OFFICE OF THE STATE ENGINEER - See attached letter dated, May 12, 2004.

COUNTY ATTORNEY'S OFFICE submitted the following Findings and Conclusions:

- 1) This is a proposal by Joel Gilbert and Calvin Lindt to subdivide Lot 3 - Inman Acres, into two lots approximately 5+ acres each. The parcel is currently zoned RR-3. The property is located in the Northwest quarter of the Northeast quarter of Section 4, Township 12 South, Range 65 West of the 6th P.M., El Paso County, Colorado.
- 2) The Applicant provided for the annual source of water to be from both an existing well, Well Permit No. 222710, and a new well withdrawing from the Dawson Aquifer. The Applicant estimated its annual water requirements to serve household use at .54 acre-feet, irrigation of lawn and gardens at 1.02 acre-feet, and watering of large domesticated animals at 0.04 acre-feet, resulting in a total of 1.6 acre-feet or 0.80 acre-feet per lot. To meet the County's 300 year water supply rule, applicant must be able to provide 480 acre-feet (1.6 ac./ft./yr. x 300 yrs.) of water.

- 3) In a letter dated May 12, 2004, the State Engineer indicates that a Court Decree was issued to the Applicant in Case No. 2003 CW 95, which contains a plan of augmentation for the Dawson Aquifer. The Engineer states that individual on-lot septic tanks/leach fields are proposed. The Engineer indicates that the Applicant has applied for Well Permit No. 222710 to be re-permitted in accordance with the Court Decree. The State Engineer's records indicate that there is 10.4 acre-feet of water supply in the Dawson Aquifer, 7.4 acre-feet of water supply in the Denver Aquifer, 4.8 acre-feet of water supply in the Arapahoe Aquifer and 3.0 acre-feet of water supply in the Laramie-Fox Hills Aquifer underlying the 10.9 acre parcel, and is based on a 300 year water supply. Pursuant to C.R.S. §30-28-136(1)(h)(l), the Engineer is of the opinion that the proposed water supply will be adequate and can be provided without causing injury to decreed water rights.
- 4) Section 49.5E(2) of the Land Development Code allows for the presumption of acceptable water quality for minor subdivision projects such as this.
- 5) Decreed Plan for Amended Application for Water Rights/Augmentation Plan, Case Nos. 03 CW 95 (Water Division No. 1) and 03 CW 16 (Water Division No. 2):

- a. Analysis:

In the decree in Case Nos. 03 CW 95 (Water Division No. 1) and 03 CW 16 (Water Division No. 2), the Court decreed a total of 1,036 acres or 10.4 acre-feet from the Dawson Aquifer, 741 acres or 7.4 acre-feet from the Denver Aquifer, 482 acres or 4.8 acre-feet from the Arapahoe Aquifer, and 302 acres or 3.0 acre-feet from the Laramie-Fox Hills Aquifer. The Court ruled that no vested water right or decreed conditional water right will be injured or injuriously affected by operation of the plan for augmentation as decreed. The Decree requires Applicant to reserve 443 acre-feet of the 741 acre-feet from the Denver Aquifer for replacing post-pumping depletions. Given the availability of 2,561 acre-feet of Dawson, Denver, Arapahoe and Laramie-Fox Hills Aquifers, minus the 443 acre feet reserved from the Denver = 2,118 acre-feet, this amount should be a sufficient supply to meet the demand of 480 acre-feet (1.6 acre-feet x 300 years) for this subdivision.

- b. Replacement During Pumping.

Applicant does not have the physical ability to replace these depletions to the South Platte and Arkansas River, but shall instead replace all stream depletions to Kiowa Creek. In the decree, Applicant dedicated any and all septic and landscape irrigation return flows to the plan for augmentation. Based on annual pumping of 1.6 acre-feet, the combined annual maximum stream depletions during pumping will be 0.313 acre-feet or 19.55% of pumping in the 300th year. The decree states that replacement from septic return flows will be 0.486 acre-feet annually; therefore, pumping return flows from septic systems alone will always equal or exceed stream depletions in the same year. The decree states that return

flows will equal 90% of diversions. Applicant shall not consume more than 98% of the water diverted from the nontributary Arapahoe, Denver, and Laramie-Fox Hills aquifers.

c. Post-Pumping Depletions.

The plan for augmentation assumes maximum pumping for 300 years.

Arkansas River System: The decree indicates that assuming average annual pumping of 1.6 acre-feet for 300 years, combined post-pumping depletions to tributaries of both the South Platte River and Arkansas River will reach a maximum of 19.55% of pumping at the time pumping is projected to cease in the 300th year. The decree requires reservation and conveyance of 443 acre-feet of Applicant's Denver Aquifer water for this purpose. The Court states that "this amount takes into account that no water needs to be reserved to replace 46 acre-feet of replacements which will occur during the pumping period, and further takes into account the 98 percent limitation on consumption of water pumped from the nontributary Denver Aquifer."

d. Home Owners' Association and Transfer of Water Rights.

The Applicant shall create a property owners association for the Gilbert Addition, Home Owners' Association ("HOA") which all purchasers of lots shall be required to join. Applicant shall create restrictive covenants upon and running with the property which obligates the individual purchasers to carry out the requirements of this Decree including the possible construction of a Denver aquifer well for the replacement of post-pumping depletions. Applicant shall convey to the HOA its interests, rights, and responsibilities in the plan for augmentation, and Applicant shall convey 443 acre-feet of the 741 acre-feet in the Denver Aquifer waters decreed in Case Nos. 03 CW 95 (Water Division No. 1) and 03 CW 16 (Div. 2) to the HOA for use in this plan for augmentation. In addition, Applicants shall convey the right to pump 0.8 acre-foot annually of water from the Dawson Aquifer wells to the purchaser of individual lots by a warranty deed. The HOA will meter and collect data regarding well withdrawals, and will be responsible for replacing pumping and post-pumping depletions. The decreed uses are for indoor residential and commercial uses, home gardens and landscaping (irrigation and decorative ponds and fountains), stock water and augmentation uses.

- 6) Therefore, at this time, based upon the finding of no injury and sufficiency by the State Engineer, the decreed water rights in Water Court Case Nos. 03 CW 95 (Water Division No. 1) and 03 CW 16 (Div. 2) and, on the requirements listed below, the County Attorney's Office would recommend a finding that the proposed water supply is sufficient in terms of quantity and dependability. There is a presumption of sufficient water quality.

REQUIREMENTS:

- A. Applicants, their successors and assigns, shall advise the HOA and all future owners of these lots of all applicable requirements of the decrees entered in Case Nos. 03 CW 95 (Water Division No. 1) and 03 CW 16 (Div. 2), as well as their obligations to comply with the decrees, including, but not limited to, costs of operating the plan for augmentation which will include construction and pumping of the Denver Aquifer well to replace post-pumping depletions, and responsibility for metering and collecting data regarding water withdrawals from wells. There shall be a plat note added to this effect.
- B. Applicant shall assign or convey to the HOA Applicant's interests, rights, and obligations in the plan for augmentation, and create restrictive covenants upon and running with the property which shall obligate individual lot owners and the HOA to carry out the requirements of the plan for augmentation. This assignment or conveyance requirement shall be noted on the plat. Such assignment or conveyance shall be accomplished by an appropriate agreement and assignment or conveyance instrument that shall be reviewed and approved by both the Planning Department and the County Attorney's Office prior to final plat approval by the Board of County Commissioners.
- C. Applicant shall reserve in any deeds of the property 443 acre-feet out of the 741 acre-feet of water in the Denver Aquifer water as decreed in Case Nos. 03 CW 95 (Water Division No. 1) and 03 CW 16 (Div. 2) for use in this augmentation plan. Applicant shall convey by recorded warranty deed these reserved Denver Aquifer water rights to the HOA for use in the augmentation plan. A plat note shall be added to this effect. Applicant shall provide copies of such reservation and conveyance instruments that shall be reviewed and approved by both the Planning Department and the County Attorney's Office prior to final plat approval by the Board of County Commissioners.
- D. Applicant, its successors and assigns, at the time of lot sales, shall convey by warranty deed to individual lot owners sufficient water rights in the Dawson Aquifer underlying each lot to satisfy El Paso County's 300 year water supply requirement: (Dawson) 240 acre-feet (0.8 ac. ft./lot x 300 yrs.). These conveyance requirements shall be added as a plat note. It is anticipated that these conveyances will satisfy the State Engineer's evidentiary requirement that an applicant for an individual on-lot well has acquired the right to the portion of water being requested on the application.
- E. Applicant shall submit Declaration of Covenants, Conditions, and Restrictions as well as Bylaws and Articles of Incorporation of the HOA to the Planning Department and the County Attorney's Office for review, and the same shall be approved by the Planning Department and the County Attorney's Office prior to final plat approval by the Board of County Commissioners. Said Declaration shall cross-reference the decreed plan for augmentation, the related water rights decrees, and shall recite the obligations of the individual lot owners and the HOA under each of these documents. Applicant shall provide a copy of the Certificate

of Incorporation of the HOA by the Secretary of State to the Planning Department and the County Attorney's Office.

- F. Applicant, its successors and assigns, shall record all applicable documents including, but not limited to, the decreed plan for augmentation in Case Nos. 03 CW 95 (Water Division No. 1) and 03 CW 16 (Div. 2), agreements, assignments, and warranty deeds regarding the water rights, Declaration of Covenants, By-laws, and Articles of Incorporation in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.
- G. The following plat note shall be added that addresses the State Engineer's admonition to advise landowners of potential limited water supplies in the Denver Basin:

"Water in the Denver Basin Aquifers is allocated based on a 100 year aquifer life; however, for El Paso County planning purposes, water in the Denver Basin Aquifers is evaluated based on a 300 year aquifer life. Applicants, the Home Owners Association, and all future owners in the subdivision should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer may be less than either the 100 years or 300 years indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers. Alternative renewable water resources should be acquired and incorporated in a permanent water supply plan that provides future generations with a water supply."

- H. Applicant shall provide copies of the well permit which replaces Well Permit No. 222710 to both the Planning Department and the County Attorney's Office prior to recording the plat.
- I. The water rights are owned and decreed in the name of the Joel R. Gilbert Living Trust. Appropriate conveyances of the water rights from the Trust to the Applicant and/or the HOA and the individual lot owners will be required, Applicant shall provide proof of such conveyance(s) to the County Attorney's Office prior to recording the plat.

DEVELOPMENT SERVICES DEPARTMENT - ENGINEERING DIVISION

The following are DOT comments pertaining to the above referenced submittal:

This department has no objections to the above referenced applications provided that:

- 1) DOT will require the appropriate right-of-way dedication and reservation for Vollmer Road with the platting of the proposed site. The total required right-of-way needed is 60 feet west of the section line to meet the arterial classification and provide for future improvements to the roadway.

- 2) Vehicular access to the subject properties shall be limited to the existing single access point. The applicant shall comply with the access recommendations of the Major Thoroughfare Task Force.

STAFF NOTE: These comments have been fashioned into conditions.

MAJOR THOROUGHFARE TASK FORCE

Mr. Schueler reported that this item was approved at the January MTTF meeting with a recommendation for no additional access to Vollmer. Applicant. has been attempting to find a solution by working with adjacent property owner, with no success. At the February Technical Committee meeting, staff and the applicant were able to work out a solution whereby this subdivision can make use of County right-of-way to allow both driveways to merge prior to their intersection with Vollmer.

Mr. Novak reported that he had been present for the Technical Committee presentation. He moved that one access point onto Vollmer Road be maintained, Mr. Poling seconded, and the motion was approved unanimously.

MOUNTAIN VIEW ELECTRIC ASSOCIATION - MVEA has no objection to the Final Plat.
Thank you for the easements provided on the plat.

EMERGENCY 911

Gilbert Addition: This private access drive that will serve the proposed two lots is in excess of 500'. The drive may require a private street name. Acceptable designators for private streets are Heights, Point, View or Grove. Please contact Dan Gross, E-911 Authority, 785-1968 for approval of a private street name.

BLACK FOREST FIRE DEPARTMENT

The District adopted the 1997 Urban Wildland Interface Fire Code as amended and this will be the base of further discussion regarding code requirements. With this being considered the District welcomes this new area and looks forward to this project. Should you have concerns please contact Thomas Eastburn at 495-4300

EL PASO COUNTY PARKS - Park staff recommends fees in lieu of land for regional park purposes in the amount of \$613.80.

Agencies having no comments or no concerns at this time:
El Paso County Soil Conservation District
Academy School District # 20

Other agencies notified, their comments will be provided at the meeting if available:
State Forest Service
El Paso County Department of Health And Environment
El Paso County Environmental Services

PLANNING DIVISION COMMENTS

This is a minor subdivision request. No major concerns were identified in the review of this project. Water issues have delayed this project from proceeding to hearings, however these appear to have been resolved and an approval recommendation is anticipated from the County Attorney's Office, prior to the Planning Commission hearing. If no recommendation is received, or if it is a negative recommendation, staff will recommend this item be continued.

ENCLOSURES

Vicinity Map
Letter of Intent
Reduced Plat
State Engineer's Office Letter

El Paso County Parcel Information

Parcel Number: 5204001031

Parcel Address: 14410 VOLLMER RD

Parcel Owner: GILBERT JOEL R LIVING TRUST

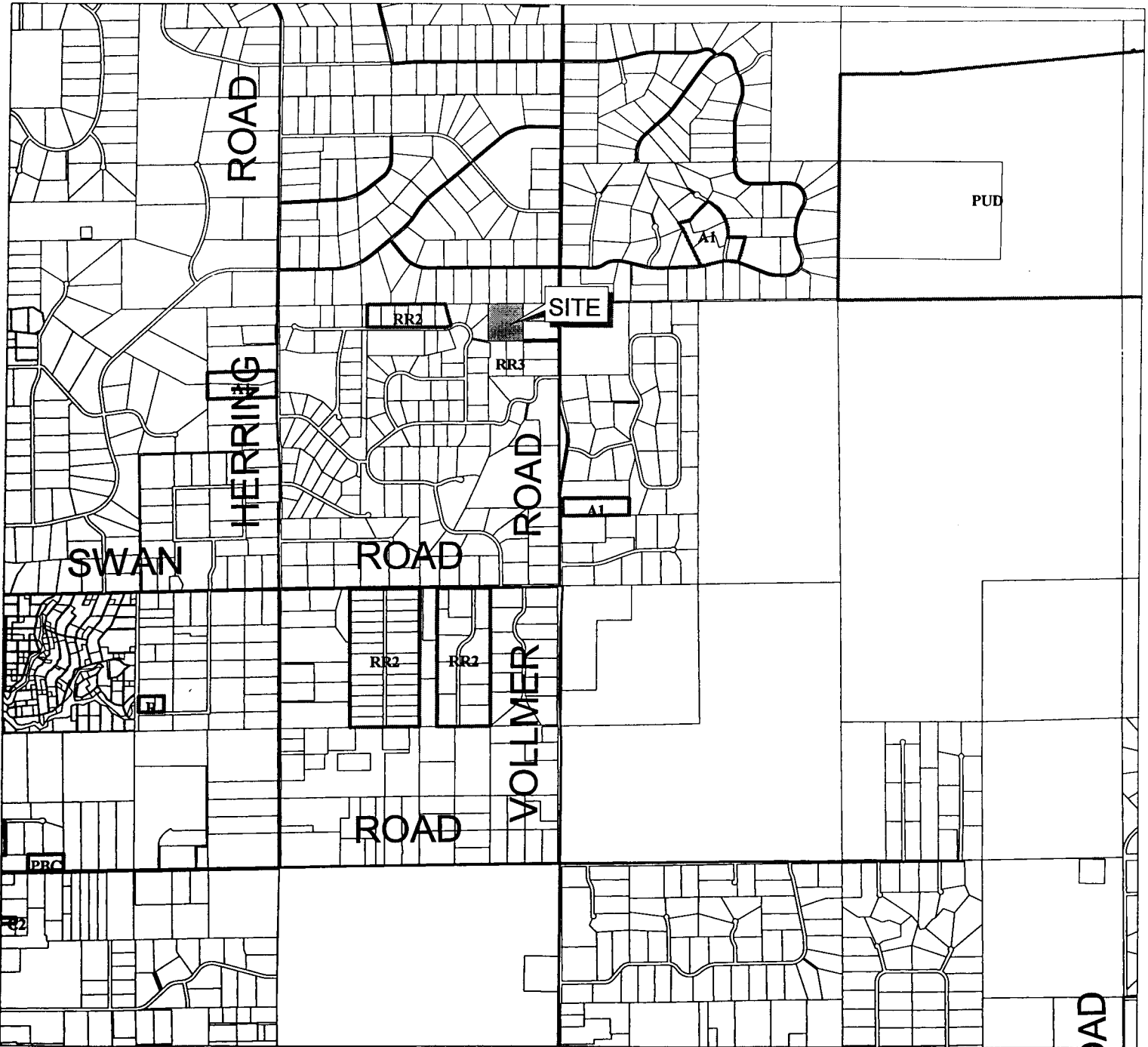
Parcel Owner 2: GILBERT JOEL R TRUSTEE

File Name: PRE-02-287

Zone Map No.: 522.04

Owner Mailing Address: 751 MARINE ST, BOULDER, CO 80302

Sec. 4
T12S
R65W



Please report any discrepancies to:
El Paso County GIS/Mapping
325 S. Cascade
Colorado Springs, CO 80903
(719)520-6523

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August 30, 2002



CHAPTER V- SECTION 56

LETTER OF INTENT

22 November 2002

Owner:

Joel Gilbert
751 Marine St.
Boulder, CO. 80302
303-442-3738

Consultant:

Calvin P. Lindt
6770 Jicarilla Dr.
Colo. Springs., CO 80908
719- 495- 1757 719 332-2936

Site Location:

10.91 Acres
14410 Vollmer Rd.
Inman Acres Lot 3 El Paso County
Township 12, Range 65w, Section 4

Request: to divide an existing 10.91 acre lot into two separate (5.26 acres and 5.62 acres) lots

Purpose: to build two single family dwellings on each new lot. The area to be divided is currently surrounded by similar size lots (approximate 5 acre lots)

Existing and proposed facilities:

Two single family dwellings
Two driveways
One easement

Waiver requests: Access to both lots off one ingress, egress and utility easement (see attached)

STATE OF COLORADO

OFFICE OF THE STATE ENGINEER

Division of Water Resources
Department of Natural Resources

1313 Sherman Street, Room 818
Denver, Colorado 80203
Phone (303) 866-3581
FAX (303) 866-3589

www.water.state.co.us

RECEIVED

JUN 04 2004



May 12, 2004

PLANNING DEPARTMENT

Bill Owens
Governor
Russell George
Executive Director
Hal D. Simpson, P.E.
State Engineer

Barry Holmes
El Paso County Planning Dept.
27 East Vermijo Ave.
Colorado Spring, CO 80903

Re: Gilbert Addition, MS-02-014
Sec. 4, T12S, R65W, 6th P.M.
Water Division 1, Water District 1

Dear Mr. Holmes:

We have reviewed the additional information submitted for the above referenced proposal to subdivide approximately 10.9 acres into 2 residential lots of 5.28 acres and 5.62 acres. The proposed source of water is individual on lot wells constructed into the not nontributary Dawson aquifer. One of the proposed lots will be served by an existing well, currently permit no. 222710. The applicant has filed a well permit application to repermitt the existing well in accordance with Division 1 Water Court case no. 2003CW95.

The applicant has obtained a decree in Division 1 Water Court case no. 2003CW95 to adjudicate the water in the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers underlying 10.9-acre parcel. This water court decree also contains a plan of augmentation for the Dawson aquifer, which was based on a 300-year water supply. According to case no. 2003CW95 the following amounts of water were determined to be available underlying the 10.9-acre parcel.

Aquifer	Annual amount available (based on 100 yr. aquifer life)
Dawson	10.4 acre-feet
Denver	7.4 acre-feet
Arapahoe	4.8 acre-feet
Laramie-Fox Hills	3.0 acre-feet

The water supply information summary states that each lot will require 0.8 acre-feet of water annually for inhouse use (0.27 acre-feet), the irrigation of 10,000 square feet of home gardens and lawns (0.51 acre-feet according to water supply and 0.46 acre-feet according to court decree) and the watering of 2 large domestic animals (0.02 acre-feet). Sewage treatment will be by a non-evaporative septic system. These amounts are consistent with the augmentation plan approved in Division 1 Water case no. 2003CW95.

Applicants for on lot well permits, submitted by an entity other than the decree holder, must include evidence that the applicant has acquired the right to the portion of water being requested on the application.

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to KRIS 6/17/04

Based upon the above and pursuant to Section 30-28-136(1)(h)(I), C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights.

Water in the Denver Basin aquifers is allocated based on a 100-year aquifer life under the provisions of C.R.S. 37-90-137(4)(b)(I). For planning purposes the county should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer may be less than the 100 years indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers. Alternative renewable water resources should be acquired and incorporated in a permanent water supply plan that provides future generations with a water supply.

If you have any questions in this matter, please contact Joanna Williams of this office.

Sincerely,



William H. Fronczak, Esq., P.E.
Chief of Water Supply

WHF/JMW

CC: Jim Hall, Division 1 Office
Water Supply Branch
Subdivision File