



## Council Communication File Number: Res 2024-037

**Agenda Date:** 5/6/2024

**Version:** 1

**Status:** Public Hearing

**In Control:** City Council

**File Type:** Resolution

A RESOLUTION APPROVING A PERMIT FOR A MAJOR EXTENSION OF AN EXISTING DOMESTIC WATER SYSTEM SPECIFICALLY FOR THE INSTALLATION OF A WATER LINE APPROXIMATELY 1.5 MILES LONG GENERALLY LOCATED WITHIN E-470 AND EAST 96TH AVENUE RIGHT-OF-WAY

### **Summary and Background Information:**

House Bill 74-1041, approved in 1974, allows local governments to identify, designate, and regulate activities of state interest through a local permitting process. These are commonly referred to as “1041 powers” and the process is often referred to as a “1041 Permit”. Any mention of a 1041 Permit for this project is referring to the process outlined in Chapter 22 of the Municipal Code. Major extensions of existing domestic water systems are designated as a matter of state interest and require a permit per Chapter 22 of the Municipal Code. This is not a request for a Conditional Use Permit.

The intent of the proposed water line is to transport potable water from Denver International Airport (DIA) to the Aurora Pump Station located at 19900 E 96th Avenue. From the Aurora Pump Station, the water will continue through existing lines to service a large entity known as WISE (Water, Infrastructure and Supply Efficiency). WISE is a regional partnership between City of Denver, City of Aurora, and South Metro Water Supply Authority. Excess water that the City of Denver and City of Aurora do not use can be sold and distributed to South Metro as part of this regional partnership.

The new water line is approximately six miles in its entirety from the Aurora Pump Station to DIA but only approximately one and a half miles of the water line runs within Commerce City limits. The one and a half mile stretch within Commerce City is situated between the Aurora Pump Station and the intersection of East 96th Avenue and Picadilly Road. These one and a half miles stretch of the water line is the only portion of the line being considered as part of this permit. The surrounding area of the water line within Commerce City is vacant land currently. However, there may be opportunity in the future for new residential development in this area to utilize the water line route for new utility lines.

The site currently meets, or will be able to meet once developed, all the relevant City standards and Municipal Code requirements for the proposed water line. A full analysis of the approval criteria can be found within the Zone Change Report. Relevant approval criteria are as follows (Municipal Code Section 22-30(b) and Section

22-66)

**Municipal Code Section 22-30(b) - Standards for Approval of a Permit**

**Application:**

- (1) The applicant has obtained or will obtain all property rights, permits and approvals necessary for the project, including surface, mineral and water rights. The city council may, in its discretion, defer making a final decision on an application until all necessary property rights, permits and approvals for the project are obtained.
- (2) The applicant has the necessary expertise and financial capability to develop and operate the project consistent with all requirements and conditions.
- (3) Adequate water supplies are available for the project if applicable.
- (4) The project will not cause unreasonable loss of significant agricultural lands as identified in the Comprehensive Plan or on or near the site.
- (5) The project will not significantly degrade or pose a significant hazard to any aspect of the environment, including environmental resources and open space areas as identified in the Comprehensive Plan, and other features or elements that are deemed to be significant components of the natural environment worthy of preservation. For purposes of this section, the following aspects of the environment shall be considered:
  - a. The project will not significantly deteriorate air quality.
  - b. The project will not significantly degrade visual quality.
  - c. The project will not significantly degrade surface water quality. In determining impacts to surface water quality, the city council shall consider the following:
    1. Changes to existing water quality, including patterns of water circulation, temperature, conditions of the substrate, extent and persistence of suspended particulates and clarity, odor, color or taste of water;
    2. Increases in point and nonpoint source pollution loads;
    3. Increase in erosion;
    4. Increases in sediment loading to water bodies;
    5. Changes in stream channel or shoreline stability;
    6. Changes in stormwater runoff flows;
    7. Changes in trophic status or in eutrophication rates in lakes and reservoirs;
    8. Changes in the capacity or functioning of streams, lakes or reservoirs;
    9. Changes in dilution rates of mine waste, agricultural runoff and other unregulated sources of pollutants.
  - d. The project will not significantly degrade groundwater quality.
  - e. The project will not significantly degrade the quality of wetlands and riparian areas.
  - f. The project will not significantly degrade the quality of terrestrial and aquatic animal life. In determining impacts to terrestrial and aquatic animal life, the city council shall consider the following:
    1. Changes to habitat and critical habitat, including calving grounds, mating grounds, nesting grounds, summer or winter range, migration routes or any

other habitat features necessary for the protection and propagation of any terrestrial animals;

2. Changes to habitat and critical habitat, including stream bed and banks, spawning grounds, riffle and side pool areas, flushing flows, nutrient accumulation and cycling, water temperature, depth and circulation, stratification and any other conditions necessary for the protection and propagation of aquatic species; and

3. Changes to the aquatic and terrestrial food webs.

g. The project will not significantly degrade soils and geologic conditions. In determining impacts on soils and geologic conditions, the city council shall consider the following:

1. Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential and flood hazard areas;

2. Changes to stream sedimentation, geomorphology and channel stability;

3. Changes to lake and reservoir bank stability and sedimentation, and safety of existing reservoirs.

(6) The project will not have a significant adverse effect on the quality or quantity of recreational opportunities and experience.

(7) The project will not cause unreasonable loss or impairment of significant cultural resources, including but not necessarily limited to historic resources or sites and archaeological artifacts or sites.

(8) The project or its associated transmission, collector or distribution system will not create blight or cause other nuisance factors such as excessive noise or obnoxious odors.

(9) The project will not be subject to significant risk from floods, fires, earthquakes or other disasters or natural hazards.

(10) The project or its associated transmission, collector or distribution system will not create an undue financial burden on existing or future residents of the city.

(11) The project will not have a significant adverse effect on the capability of local government to provide services or exceed the capacity of service delivery systems.

(12) The planning, design and operation of the project will reflect appropriate principles of resource conservation, energy efficiency and recycling or reuse.

(13) Construction of the project will be in compliance with all city standards and regulations governing noise, dust and traffic delays.

(14) As to those applications for which the manager has required information on the environmental impacts and costs of alternatives under subsection 22-24(c)(9) above, the project represents the least damaging alternative of reasonable cost among the alternatives analyzed.

(15) The project is in accordance with the Comprehensive Plan, zoning and any other applicable land use designations and requirements and any applicable intergovernmental agreement affecting land use and development.

(16) The project represents the complete, reasonably foreseeable development for the subject property as required above, except that the city council may approve development constituting less than the complete project, provided that the applicant clearly demonstrates that a lesser development constitutes a discrete phase of the complete project as supported by the applicable master planning document required herein, which can be logically and adequately reviewed as a separate project under the applicable criteria of these regulations.

**Municipal Code Sec. 22-66 - Additional permit-approval criteria applicable to major new domestic water treatment systems and major extensions of such systems:**

(1) The project shall be reasonably necessary to meet projected community development and population demands in the areas to be served by the project, or to comply with regulatory or technological requirements. The determination of whether the project is reasonably necessary may include, but is not limited to, the following considerations:

- a. Relationship to reasonable growth projections and local land use plans.
- b. Relationship to other water providers' service areas.
- c. Whether the project is not in compliance with regulatory or technological requirements or will not be in compliance in the near future.

(2) To the extent feasible, water treatment facilities shall be consolidated with existing facilities within the area. The determination of whether consolidation is feasible shall include, but is not limited to, the following considerations:

- a. Whether there is an opportunity for consolidation.
- b. The environmental, financial and social feasibility of consolidation.

(3) New domestic water treatment systems shall be constructed in areas that will result in the proper use of existing treatment plants and the orderly development of domestic water and sewage treatment systems of adjacent communities. The determination shall include, but is not limited to, the following considerations:

- a. Relationship to reasonable growth projections and local land use plans.
- b. Proximity to other water and wastewater providers' service areas.

(4) The project shall be permitted in those areas in which the anticipated growth and development that may occur as a result of such extension can be accommodated within the financial and environmental capacity of the area to sustain such growth and development. The determination shall include but is not limited to the following considerations:

- a. Relationship of the project to approved land use plans for the area.
- b. The environmental, financial and social impacts related to such development.

**Staff Responsible (Department Head):** Jared Gerber, Community Development  
**Staff Presenting:** Dalton Guerra, City Planner

**Financial Impact:** N/A  
**Funding Source:** N/A

**Planning Commission Recommendation:** On March 5, 2024, this case was presented to the Planning Commission. The Planning Commission held a public hearing, took testimony, and voted (5 to 0) to forward the permit request to City Council with a recommendation for approval with five conditions:

1. Alterations to the route of this water line outside of the approved easements and City right-of-way (ROW), or any modification requiring raising the water line or its components above-grade (except as currently proposed) will require an amendment to this permit.
2. The water line shall transport potable water only.
3. The Owner shall repair any open space, trail, road, and any appurtenances and infrastructure within right-of-way and easement areas that may be damaged during construction or maintenance.
4. The Owner shall notify the Commerce City Public Works Department if and when any permanent discontinuation of the use of this water line for water transmission takes place. The Owner shall be responsible for providing a comprehensive water line decommissioning plan for approval by the Commerce City Public Works Department inclusive of all provisions for the abandonment of the water line. The Owner shall then be responsible for implementing and completing such plan.
5. The Owner shall be responsible for the relocation and all costs related to and associated with the relocation of the water line as a result of the future expansion of East 96th Avenue. The associated costs for the relocation by the Owner may include, but are not limited to construction, vertical and horizontal adjustments, adjusting valve boxes, and adjusting vaults.

**Action Alternatives:**

Approve the application, with conditions, in accordance with the PC recommendation;  
Approve the application; or  
Deny the application