



Permit Report

Case #CUP23-0002

Planning Commission Date: March 5, 2024

City Council Date: April 1, 2024

GENERAL INFORMATION

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| PROJECT NAME | WISE Water Line |
| LOCATION | 19900 E 96th Ave, E-470 Right-of-Way, E 96 th Ave Right-of-Way |
| WATERLINE LENGTH | 8,154.09 feet (1.5 miles) |
| CURRENT ZONING | Public, Right-of-Way |
| APPLICANT | Tetra Tech on behalf of Denver Water |
| WATER LINE OWNER | Denver Water |
| CASE PLANNER | Dalton Guerra |

REQUEST

The request is for a permit to allow for the installation of 1.5 miles of an underground waterline within E-470 and East 96th Avenue rights-of-way.

MATTER OF STATE INTEREST

Per the Commerce City Municipal Code, permits are required for projects within the City that have been designated as a matter of state interest. These permits consider the impact to surrounding areas including but not limited to noise, traffic, and the environment. These permits do not authorize the immediate construction or installation of major new systems. The applicant must obtain all necessary permits and approvals prior to construction. The designation, process, and approval criteria for such permits are outlined in Chapter 22 of the Municipal Code.

BACKGROUND AND CASE HISTORY

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. Therefore, this request is being processed subject to Chapter 22 of the Municipal Code. The process for review and approval of this permit is a recommendation from the Planning Commission and approval by City Council as a resolution. The approval criteria are detailed in Section 22-30(b) and Section 22-65 of the Municipal Code.

The applicant refers to this permit type in their submittal documents as a “1041 Permit”. This is a reference to House Bill 74-1041 that was approved in 1974 that 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 and the word “permit” within this staff report.

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. This one and a half mile 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. See Exhibit A for an illustration of the water line location.

COMPREHENSIVE PLAN CONSISTENCY

This case is supported by the Public Facilities and Infrastructure Goal (Goal PF 1.4) in the Comprehensive Plan, which strives to coordinate with other districts for new and expanding infrastructure. The proposed water line is owned and operated by City of Denver but will service other districts as part of a regional partnership. South Adams County Water Sanitation District has also been involved with this project to coordinate future growth in their service area.

PROJECT ANALYSIS

Site Overview

The areas surrounding the location of the water line include Adams County land (north of E 96th Ave), future residential (south of E 96th Ave), E-470 toll road, and future residential (Legato, west of E-470). The installation of the water line is below grade within right-of-way and will not restrict the surrounding properties’ ability to develop. There may be an opportunity for future development in this area to utilize the route of this water line for utilities.

Road Network Impacts

According to Public Works and Engineering, the installation of the water line along E 96th Ave will not have a negative impact on the right-of-way. All necessary permits must still be obtained from the Commerce City Public Works Department. When East 96th Avenue is expanded in the future, Denver Water will be responsible for relocating the water line and will bear all associated costs of the relocation. The E-470 Highway Authority had no objection to the proposed water line route but will require separate permits and approvals for the section within their right-of-way.

Overall Analysis

The Development Review Team has determined that the proposed water line meets the relevant City standards and the approval criteria as outline in Chapter 22 of the Municipal Code. The proposed water line will have minimal impact on the surrounding area. The water line will serve the Denver area at large and the water line route could potentially benefit future development within Commerce City.

The proposed water line has been reviewed by the Development Review Team including Planning, Public Works, South Adams County Water and Sanitation District, Brighton Fire, Denver International Airport, and E-470 Highway Authority. There were no comments in opposition to the water line.

PROPOSED CONDITIONS

The following five conditions are being proposed to ensure that the installation, maintenance, and future adjustments of the water line are addressed adequately. Any reference to “the Owner” within these conditions is referring to Denver Water (the owner and operator of the water line).

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.
 - *This condition is proposed to ensure that any alterations to the route of the water line is reviewed as an amendment to this permit. This relates to Approval Criteria 1 from Section 22-30 of the Municipal Code.*

2. The water line shall transport potable water only.
 - *This condition is proposed to ensure that there is no other type of material transported through this line except for potable water. This relates to Approval Criteria 8 from Section 22-30 of the Municipal Code.*

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.
 - *This condition is proposed to ensure that any damage to open space or infrastructure as a result of the installation of the water line is repaired by Denver Water. This relates to Approval Criteria 6 from Section 22-30 of the Municipal Code.*

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.
 - *This condition is proposed to ensure that Public Works will receive proper notification and a sufficient plan from Denver Water if the water line is decommissioned in the future. This relates to Approval Criteria 1 from Section 22-30 of the Municipal Code.*

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.
 - *This condition is proposed to ensure that Denver Water is responsible for the relocation of the water line when East 96th Avenue is expanded in the future. This relates to Approval Criteria 11 from Section 22-30 of the Municipal Code.*

PERMIT APPROVAL CRITERIA

A decision for this case must be based on the following criteria from Section 22-30(b) and Section 22-66 of the Municipal Code. An application may be approved if:

Section 22-30 – 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.**

The applicant has indicated that they will be pursuing all necessary permits and approvals with Commerce City as well as other entities that have interest in the proposed water line. *Therefore, it can be found that this application **meets Criteria (1).***

- 2. The applicant has the necessary expertise and financial capability to develop and operate the project consistent with all requirements and conditions.**

City of Denver, City of Aurora, WISE, and other interested parties have an established regional partnership and have gone through this process with existing water lines in other areas of the state. *Therefore, it can be found that this application **meets Criteria (2).***

- 3. Adequate water supplies are available for the project if applicable.**

City of Denver and City of Aurora have indicated that there is an excess supply of water and that is the purpose of the regional partnership to allow other entities to purchase the water. *Therefore, it can be found that this application **meets Criteria (3).***

- 4. The project will not cause unreasonable loss of significant agricultural lands as identified in the Comprehensive Plan or on or near the site.**

The proposed water line is within right-of-way and will not cause any loss of agricultural lands. *Therefore, it can be found that this application **meets Criteria (4).***

- 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:
 - i. 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;
 - ii. Increases in point and nonpoint source pollution loads;
 - iii. Increase in erosion;
 - iv. Increases in sediment loading to water bodies;
 - v. Changes in stream channel or shoreline stability;
 - vi. Changes in stormwater runoff flows;
 - vii. Changes in trophic status or in eutrophication rates in lakes and reservoirs;
 - viii. Changes in the capacity or functioning of streams, lakes or reservoirs;
 - ix. 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:
 - i. 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;
 - ii. 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
 - iii. 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:
 - i. Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential and flood hazard areas;
 - ii. Changes to stream sedimentation, geomorphology and channel stability;
 - iii. Changes to lake and reservoir bank stability and sedimentation, and safety of existing reservoirs;

The applicant provided a thorough environmental report which was reviewed by applicable referral agencies. *Therefore, it can be found that this application meets Criteria (5).*

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

Future trails, parks, open space, and recreation opportunities will not be impacted as the proposed water line is within right-of-way. *Therefore, it can be found that this application meets Criteria (6).*

- 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.**

The right-of-way within Commerce City limits does not contain significant cultural resources. *Therefore, it can be found that this application meets Criteria (7).*

- 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.**

The initial installation of the water line may create noise and dust but the surrounding land is vacant. Once installed the underground water line is not expected to create a nuisance to the surrounding area. *Therefore, it can be found that this application meets Criteria (8).*

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

The applicant conducted a number of studies that included a drainage report and soil testing. It was not found that this project will be subject to significant risk from natural hazards. *Therefore, it can be found that this application meets Criteria (9).*

- 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.**

The proposed water line route can potentially serve future residents of Commerce City by providing an established route for utility lines to new development in the area. *Therefore, it can be found that this application meets Criteria (v).*

- 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.**

The water line will be installed below grade within existing right-of-way and will have no impact on the ability to provide services once installed. *Therefore, it can be found that this application meets Criteria (11).*

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

The water being transported through this line is excess water from City of Denver and City of Aurora to be sold and distributed to other communities in need. *Therefore, it can be found that this application meets Criteria (12).*

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

The applicant will obtain all necessary permits from the Public Works Department including grading and right-of-way permits. These permits will further regulate the mitigation of noise, dust, and traffic. *Therefore, it can be found that this application meets Criteria (13).*

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.

Not applicable.

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.

The proposed water line is within existing right-of-way and is in accordance with goals and policies of the Comprehensive Plan. *Therefore, it can be found that this application meets Criteria (15).*

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.

The proposed water line within Commerce City limits is one section of the 6-mile line that extends to Denver International Airport. For the purpose of this permit, the 1.5 mile stretch within Commerce City is the complete project. *Therefore, it can be found that this application meets Criteria (16).*

Section 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.**

The water being transported through this line is excess water from City of Denver and City of Aurora to be sold and distributed to other communities in need. The water line route can also potentially benefit future residential development in Commerce City. *Therefore, it can be found that this application **meets Criteria (1)**.*

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.**

The water line connects to an existing pump station located at 19900 E 96th Ave and extends to other existing systems that will serve communities within the South Metro Water Supply Authority. *Therefore, it can be found that this application **meets Criteria (2)**.*

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.**

The water line connects to an existing pump station located at 19900 E 96th Ave and extends to other existing systems that will serve communities within the South Metro Water Supply Authority. *Therefore, it can be found that this application **meets Criteria (3)**.*

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.**

The surrounding area is currently vacant but future growth and development will have the potential opportunity to utilize this water line for potable water. *Therefore, it can be found that this application **meets Criteria (4)**.*

CONSIDERATIONS FOR DISCUSSION

1. The permit is consistent with the Comprehensive Plan goals and objectives.

2. The permit is for a one and a half section of a six-mile-long water line.
3. The water line will serve the Denver community at large.
4. There is potential for future development in Commerce City to utilize this water line route.
5. Due to the location of the water line within existing right-of-way there are no negative impacts anticipated.

POTENTIAL MOTIONS

1. Approval with conditions

- a. Planning Commission

- i. I move that the Planning Commission enter a finding that the requested **permit** for the property located **at 19900 East 96th Avenue and within E-470 and East 96th Avenue right-of-way**, contained in case **CUP23-0002**, meets the criteria of the Municipal Code with conditions, and based upon such finding, recommend that the City Council approve the permit with the following 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.

- b. City Council

- i. I move that the City Council enter a finding that the requested **permit** for the property located **at 19900 East 96th Avenue and within E-470 and East 96th Avenue right-of-way**, contained in case **CUP23-0002**, meets the criteria of the Municipal Code with conditions, and based upon such finding, approve the permit with the following 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.

2. Approval

a. Planning Commission

- i. I move that the Planning Commission enter a finding that the requested **permit** for the property located **at 19900 East 96th Avenue and within E-470 and East 96th Avenue right-of-way**, contained in case **CUP23-0002**, meets the criteria of the Municipal Code and based upon such finding, recommend that the City Council approve the permit.

b. City Council

- i. I move that the City Council enter a finding that the requested **permit** for the property located **at 19900 East 96th Avenue and within E-470 and East 96th Avenue right-of-way**, contained in case **CUP23-0002**, meets the criteria of the Municipal Code and based upon such finding, approve the permit.

3. Denial

a. Planning Commission

- i. I move that the Planning Commission enter a finding that the requested **permit** for the property located **at 19900 East 96th Avenue and within E-470 and East 96th Avenue right-of-way**, contained in case **CUP23-0002**, fails to meet the following criteria of the Municipal Code and based upon such finding, recommend that the City Council deny the permit.

1. [List criteria not met]

b. City Council

- i. I move that the City Council enter a finding that the requested **permit** for the property located **at 19900 East 96th Avenue and within E-470 and East 96th Avenue right-of-way**, contained in case **CUP23-0002**, fails to meet the following criteria of the Municipal Code and based upon such finding, deny the permit.

1. [List criteria not met]

4. Continuance

a. Planning Commission

i. I move that the Planning Commission continue the public hearing of the requested **permit** for the property located **at 1990 East 96th Avenue and within E-470 and East 96th Avenue right-of-way**, contained in case **CUP23-0002**, to:

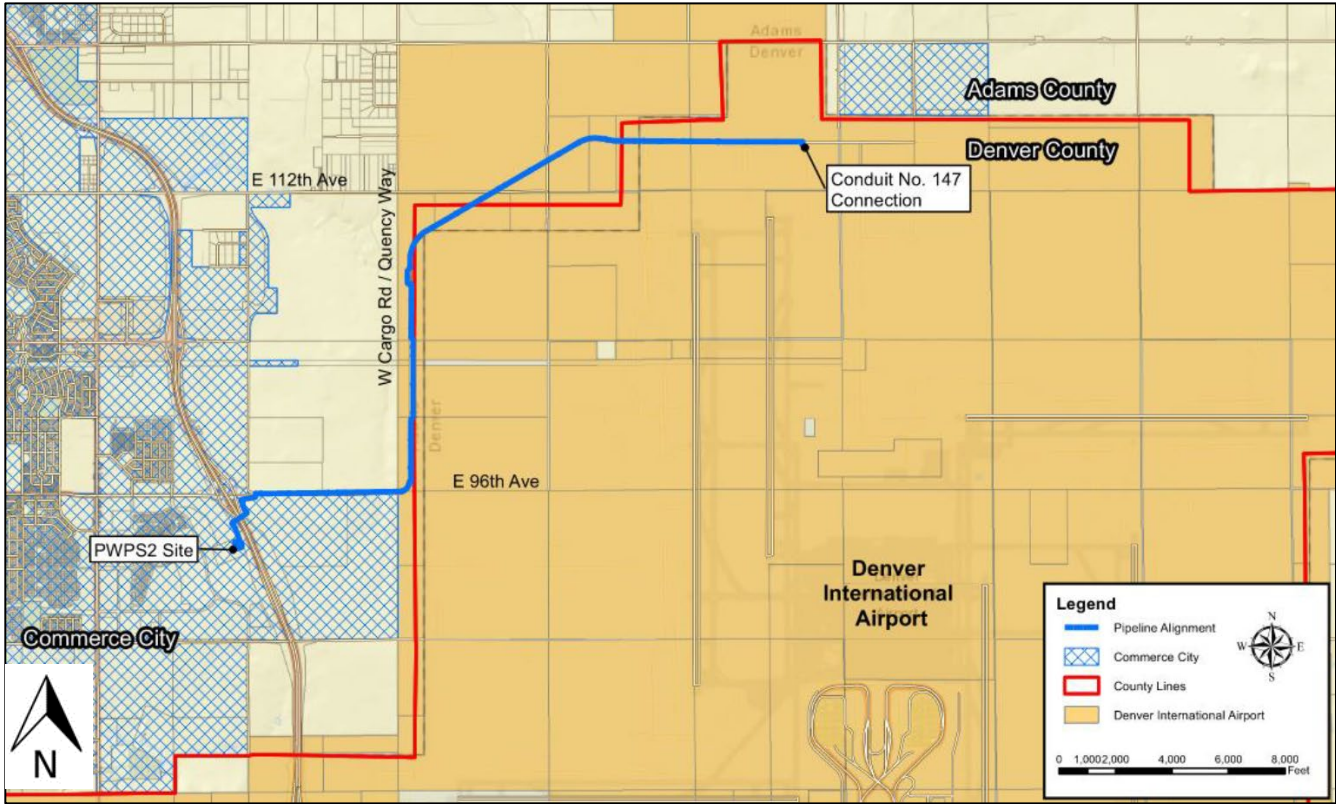
1. The next regularly scheduled Planning Commission hearing; or
2. A date certain.

b. City Council

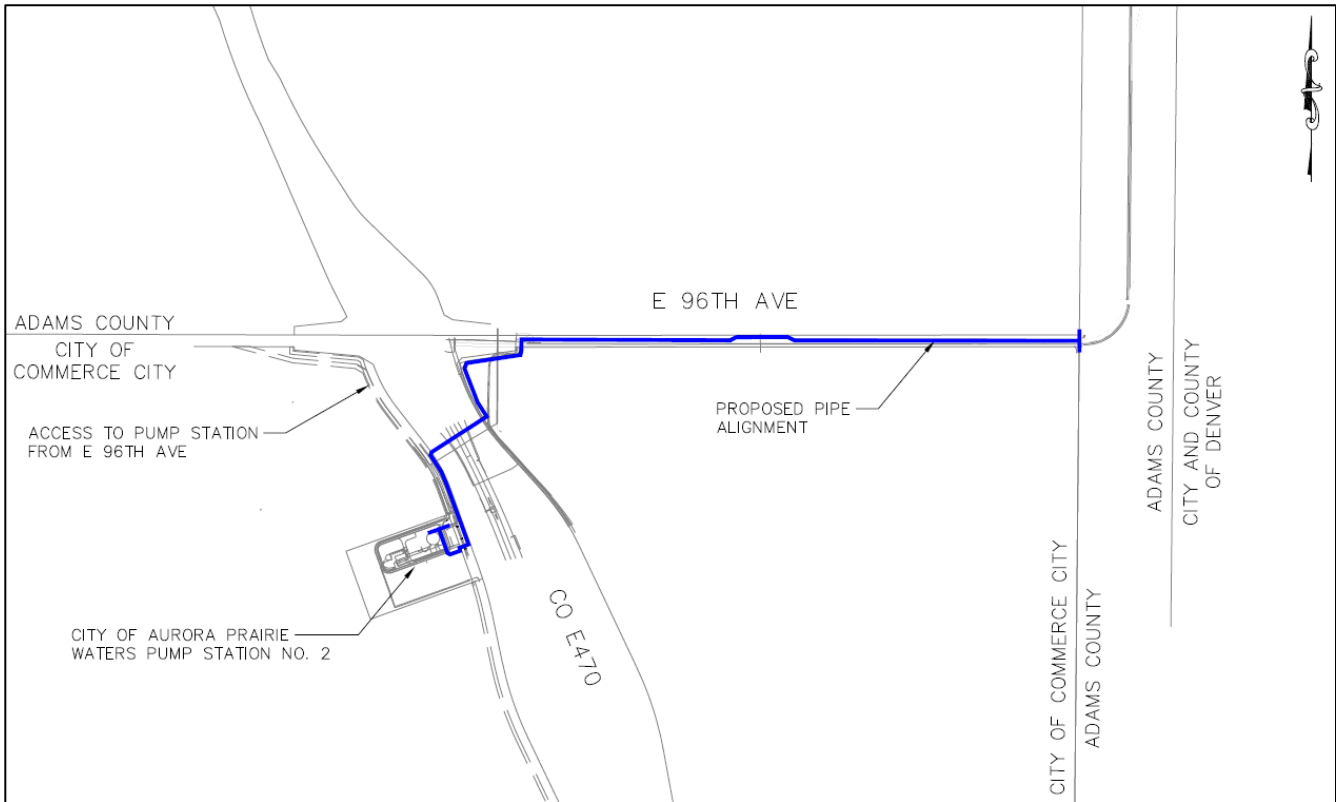
i. I move that the City Council continue the public hearing of the requested **permit** for the property located **at 1990 East 96th Avenue and within E-470 and East 96th Avenue right-of-way**, contained in case **CUP23-0002**, to:

1. The next regularly scheduled City Council hearing; or
2. A date certain.

Overall Water Line Route



Commerce City Alignment



Aerial Map

