STAFF REPORT DATE: January 2, 2019
PC HEARING DATE: January 15, 2019
TO:                Elbert County Planning Commission
FROM:              Julie Esterl, Baseline Corporation
                   Vince Harris, AICP, Baseline Corporation
APPROVED:          Christina Stanton, Director of Community & Development Services

RE: Fine Rezone and Minor Development – RZ-17-0045 & MD-17-0046
A rezone and minor residential development for the division of a 37.5 acre parcel into one 19.59 acre parcel and one 17.91 acre parcel at 31896 County Road 17-21, Elizabeth, CO 80107

APPLICANT:         Robert & Deborah Fine
                   31896 County Road 17/21
                   Elizabeth, CO 80107

REPRESENTATIVE:    Thomas Maroney
                   P.O. Box 902
                   Elizabeth, CO 80107

SUMMARY OF REQUEST
The applicants, Robert and Deborah Fine, with their representative, Thomas Maroney, have submitted an application requesting a rezone and minor residential development to allow the division of a 37.5 acre parcel into a 19.59 acre parcel and a 17.91 acre parcel. Robert and Deborah Fine own and live at the property located at 31896 County Road 17/21, approximately 2 miles south of Elizabeth.

The purpose of the application is to divide the existing parcel into two single-family residential parcels. One single family home currently exists on the proposed Lot 2. Proposed Lot 1 will be created for the construction of an additional single family home. The rezoning from A-Agriculture to AR-Agriculture Residential is required due to the resulting reduction in lot size below the 35 acre minimum requirement in the A-Agriculture zone district. The AR-Agriculture Residential zone district has a minimum lot area requirement of 10 acres. Both of the proposed lots will be larger than 10 acres which meets the code requirement.
PERTINENT DATA:

**Site Description:** The site is 37.5 acres located on County Road 17-21 approximately 2 miles southeast of the Town of Elizabeth.

**Topography:** The topography is slightly rolling with an elevation gain from west to east of approximately 75 feet.

**Floodplain:** There are no mapped floodplains in the project area.
**Existing Zoning and Land Use:** The project area is zoned A-Agriculture and one single family home exists on the site.

**Proposed Zoning and Land Use:** The proposed zoning is AR – Agriculture Residential (minimum lot size of 10 acres) that will allow for the division of the site into two lots, and the development of one additional single-family home.

**Surrounding Zoning / Land Use:**
North: Residential Agriculture Zoning / Single Family Residential
South: Residential Agriculture Zoning / Single Family Residential
East: Agriculture Zoning / Single Family Residential
West: Residential Agriculture Zoning / Single Family Residential

**Area Zoning Map**

**APPLICATION SUBMITTAL:** A pre-application was held on November 21, 2017. Formal submittal of the Rezone and Minor Development application was made on August 21, 2018.

**COMPLETENESS REVIEW:** The application was reviewed for completeness on September 7, 2018, and deemed incomplete. The applicant submitted the missing required submittal items, and the application was deemed complete on September 26, 2018.

**REFERRAL PROCESS:** The application was sent to internal and external referral agencies for review for a period of 14 days (21 days for the Town of Elizabeth). The referral period ended on October 17, 2018. During the referral period, it was noted that the required community meeting
had not been held. In lieu of a community meeting, the CDS Director allowed the mailing of informational letters to the surrounding property owners that would normally have been invited to a Community meeting. The letters, including a project narrative and plans, were sent to properties within 1,320 feet of the subject site on November 2, 2018 allowing for direct comments or concerns to be conveyed to staff. Staff received no citizen comments and the case was allowed to proceed forward.

Responding Referral Agencies:
- Colorado Division of Water Resources
- Elbert County Public Works
- Elizabeth Fire Protection District
- Intermountain Rural Electric Association
- Baseline Surveyor
- Town of Elizabeth

Referral Agencies that did not respond:
- Colorado Parks and Wildlife
- Elbert County Assessor
- Elbert County Building Department
- Elbert County Building Inspector
- Elbert County Clerk and Recorder
- Elbert County Department of Health and Human Services
- Elbert County Engineer
- Elbert County Manager
- Elbert County Office of Emergency Management
- Elbert County Sheriff
- Elbert County Treasurer
- Elbert Water and Sanitation District
- Kiowa Conservation District
- Elizabeth Consolidated School District #1

Referral Agency Comments:

Colorado Division of Water Resources (summary)
1. The Applicants have a pending application for water rights and an augmentation plan in Division 1 Water Court Case no. 2018CW3093 to adjudicate the water in the Upper Dawson, Lower Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the 38.8 acres of land subject to this application.
2. The pending augmentation plan in Case no. 2018CW3093 indicates that well permit 51388 will be operated pursuant to the terms and conditions of the augmentation plan. Therefore, the applicant must re-permit the well (permit no. 51388) pursuant to the plan for augmentation once approved in Case no. 2018CW3093.
3. Based upon the above and pursuant to Section 30-28-136(1)(h)(i), C.R.S., it is our [the Division of Water Resources] opinion that the proposed water supply is adequate and
can be provided without causing injury to decreed water rights, **provided the pending augmentation plan in Case no. 2018CW3093 is approved by the water court and the existing well on the property is re-permitted to operate in accordance with the plan for augmentation once decreed in Case no. 2018CW3093 prior to subdivision approval.**

**Elbert County Public Works**
1. No objections.

**Elizabeth Fire Protection District (summary)**
1. An approved driveway meeting county standards shall provide access to the new lot.
2. Both residents shall be clearly marked with approved address signs at the end of the driveway.
3. Developer shall provide fire protection by either a 30,000 gallon on-site water storage tank, covenants that mandate residential sprinkler systems, or cash in lieu of $1040 per new lot.
4. Plan review fee of $128.
5. An impact fee form needs to be filled out and signed before recordation of the final plat. Impact fees are paid to the County at the time of building permit and later transferred to the Fire District.

**Intermountain Rural Electric Association**
1. The Association has existing overhead electric facilities on the subject property. The Association will maintain these existing utility easements and facilities unless otherwise requested by the applicant to modify them under the Association’s current extension policies.
2. The Association has no objection to the rezoning and minor development plan.

**Baseline Surveyor**
1. Minor formatting revisions are required. See attached redlines

**Town of Elizabeth**
1. Elizabeth staff responded that they have no comments.

Referral comments were provided to the applicant on November 19, 2018. The applicant submitted the following documents on December 4, 2018:
- Water Supply Letter dated December 3, 2018
- Approved Water Augmentation Plan dated November 30, 2018
- Elizabeth Fire Impact Fee Form
- Revised Minor Development Plat

The application was deemed satisfactory for scheduling before the Planning Commission for review and recommendation.

**COMMUNITY & DEVELOPMENT SERVICES REVIEW:**
- The submittal of the approved Water Augmentation Plan and the re-permitted well satisfies the comments from the Division of Water Resources.
• The applicant has indicated that they will provide cash-in-lieu of fire protection to the Elizabeth Fire Protection District. The applicant also provided the signed Fire Impact Fee Form as requested from the Elizabeth Fire District. This satisfies the comments from Elizabeth Fire District.

• The submittal of the revised Plat Exhibit satisfies the comments from the Baseline Surveyor.

• CDS staff found the application to be in compliance with the Elbert County Zoning Regulations Part II, Section 4 – AR - Agriculture Residential and the Elbert County Subdivision Regulations, Section X – Minor Residential Developments. The only outstanding issues relate to fees to be paid prior to recording the plat which can be handled through conditions of approval.

HEARING DATES CONFIRMED: Once referral agency and CDS comments were satisfactorily addressed, the case was confirmed for hearings at the January 15, 2019, Planning Commission meeting and the February 13, 2019, Board of County Commissioners meeting.

PUBLIC NOTICE: Proper notice of the hearing was given per Elbert County regulations including publishing a notice in the Elbert County News (December 20, 2018), posting a sign on the property (December 21, 2018), and mailing a notice to property owners within 1,320 feet of the subject site (January 2, 2019).

REZONING EVALUATION:
The Planning Commission and Board of County Commissioners shall evaluate the rezoning application and consider the following criteria prior to making a motion to approve or deny the request.

Elbert County Zoning Regulations
Part I, Section 6.B – General Rezoning Approval Standards

1. Whether the proposed rezoning complies with the goals and policies of the Elbert County Master Plan.

   Staff comment: The proposed rezoning complies with the goals and policies of the Elbert County Comprehensive Plan.

2. Whether the proposed rezoning is compatible with surrounding land uses.

   Staff comment: The adjacent and surrounding land uses are agricultural and single family residential, which are compatible with the proposed single family residential use. Numerous other properties in the vicinity have similar lot sizes and uses.

3. Whether the proposed rezoning would adversely impact the provision of public services.

   Staff comment: The proposal will not adversely impact the provision of public services. Adequate access and utilities are included in the proposal.

4. Whether the proposed rezoning would adversely impact the environment.

   Staff comment: The property does not contain any land within the 100-year floodplain. Elbert County restricts development within floodplains to prevent damage to riparian habitat and to
reduce soil erosion. Specific site improvements with potential to impact the environment will be addressed at the time of the building permit review.

5. **Whether the proposed rezoning would create traffic congestion or burden the existing road system.**

Staff comment: A traffic study was not required with the rezone. Elbert County Public Works has reviewed the proposal and has no objections to the proposal.

6. **Whether the proposed rezoning will not otherwise be detrimental to the health, safety or welfare of the present or future inhabitants of Elbert County.**

Staff comment: The Elbert County Department of Health and Human Services was also given the opportunity to provide referral comments, and they did not respond with comments that the proposed application would be detrimental to the health, safety or welfare of Elbert County.

**REZONING FINDINGS & RECOMMENDATION**

Staff recommends that the Planning Commission find that:

1. The proposal is in general conformance with the Elbert County Comprehensive Plan; and
2. The proposal meets all the criteria for approval in the Elbert County Zoning Regulations; and
3. The Elbert County Subdivision Regulations are not applicable to the rezoning portion of the application; and
4. The proposal is compatible with existing and allowable land uses in the surrounding area; and
5. The proposal will not result in significant impact to the health, safety, and welfare of the residents and landowners of the surrounding area.

AND

Because this application has met the criteria set forth in the Elbert County Regulations and as we understand it that there are no objections from other governing bodies, the recommendation of Community & Development Services is that the Planning Commission recommend **APPROVAL of FINE REZONING RZ-17-0045** for the rezoning from A-Agriculture to AR-Agriculture Residential of a 37.5 acre property at 31896 County Road 17-21 **SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The applicant will be required to remove the Public Hearing sign(s) within seven (7) days of a decision by the Board of County Commissioners.

2. The rezone request shall not become effective until all fees are paid, conditions of approval are met, and the Rezone Exhibit is recorded.

3. Recordation of all appropriate documentation to occur within 180 days of Board of County Commissioners’ approval.
MINOR DEVELOPMENT EVALUATION:
The Planning Commission and Board of County Commissioners shall evaluate the minor development application and consider the following criteria prior to making a motion to approve or deny the request.

ELBERT COUNTY SUBDIVISION REGULATIONS
Section I.C. Acceptance of a Subdivision
The following criteria shall be considered by the Planning Commission and the Board of County Commissioners in the review of all preliminary plat, final plat and minor development applications.

1. Whether the application is in compliance with the requirements of these regulations, the Elbert County Zoning Regulations, and the intent and policies of the Elbert County Master Plan.

   Staff comment: The application is in compliance with the Elbert County Subdivision Regulations, Zoning Regulations, and Comprehensive Plan.

2. Whether the application is in compliance with all applicable statutory provisions.

   To the knowledge of CDS staff, the application is in compliance with all applicable statutory provisions.

3. Whether the application is in compliance with the Colorado Health Department and Colorado Department of Transportation regulations.

   Staff Comment: Elbert County Health and Human Services (HHS) is the local regulatory and enforcement body for Colorado health regulations. HHS has not responded with comments in objection to the minor development process. Colorado State transportation regulations do not apply to this project, as it does not rely on access from any state highway. For this reason the project was not referred to the Colorado Department of Transportation.

Section X.C. Required Submittal Information for Minor Residential Developments

Staff comment: The applicant has submitted all required information.

Section X.D. Criteria For Approving Or Denying Minor Residential Development

Community & Development Services (CDS) shall make written recommendations and findings of fact, as to any minor residential development. The Applicant may respond to such recommendations and findings.

Staff Comment: This staff report constitutes the Community & Development Services (CDS) written recommendations and proposed findings. CDS has communicated with the applicants regarding the application, and the applicant is aware that they may respond to CDS’s recommendations and findings at Planning Commission and Board of County Commissioners hearings.

The Planning Commission and Board of County Commissioners, at duly noticed public hearings, shall consider all evidence presented and applicable statutes, in their review of the application.
Staff comment: This staff report and associated packet contain available information pertaining to the case, including application documents, with staff recommendations. In addition, the Planning Commissioners have access to all Elbert County regulations through the Community & Development Services' office.

MINOR DEVELOPMENT FINDINGS & RECOMMENDATION
Staff recommends that the Planning Commission find that:

1. The proposal is in general conformance with the Elbert County Comprehensive Plan; and
2. The proposal meets the criteria for approval in the Elbert County Subdivision Regulations; and
3. The proposal is in general conformance with the standards of the Agriculture Residential zone district, should it be approved; and
4. The proposed land use is compatible with existing and allowable land uses in the surrounding area; and
5. The proposed land uses will not result in significant impact to the health, safety, and welfare of the residents and landowners of the surrounding area,

AND

Because this application appears to meet the criteria set forth in the Elbert County Regulations and as we understand it that there are no objections from other governing bodies, the recommendation of Community & Development Services is that the Planning Commission recommend approval of the FINE MINOR RESIDENTIAL DEVELOPMENT MD-17-0046 SUBJECT TO THE FOLLOWING CONDITIONS:

1. The applicant will be required to remove the Public Hearing sign within seven (7) days of a decision by the Board of County Commissioners; and
2. The minor residential development will not become effective until all fees are paid, conditions of approval are met, and the minor development documents are recorded; and
3. Recordation of all appropriate documentation to occur within 180 days of Board of County Commissioners' approval; and
4. The applicant shall comply with all requirements of the Elizabeth Fire Protection District including:
   a. An approved driveway meeting county standards shall provide access to the new lot.
   b. Both residents shall be clearly marked with approved address signs at the end of the driveway.
   c. Cash-in-lieu fees of $1040 shall be paid prior to the recordation of the plat.
   d. Plan review fee of $128 shall be paid prior to the recordation of the plat; and
5. Cash-in-lieu of open space dedication shall be paid to Elbert County prior to the recordation of the plat.
6. The minor residential development plat shall comply with the submittal requirements in the Subdivision Regulations and the applicant shall submit two copies on mylar for recordation at the Elbert County Clerk and Recorder.

Respectfully submitted to and on behalf of Elbert County,

Julie Esterl
Associate Planner
Baseline Corporation