

Keen, Shelley

From: Keen, Shelley
Sent: Monday, March 05, 2018 2:57 PM
To: 'James Speck'
Cc: Thiel, Sandra
Subject: RE: Heatherlands
Attachments: App process 18 -- Non RAFN Muni.pdf

Jim,

Regarding the stub-in practice, see page 2 of the attachment.

As for Lot 3, Block 2, of Heatherlands, we will consider revising the draft amendment for 37-8831 if you provide evidence that the structure there is a duplex with two distinct dwelling units constructed as such prior to November 14, 2003 (the proof made date). From aerial imagery, the building on that lot does not appear to be designed for multiple families. Per Sandy's February 28, 2018, letter, we will still continue to look for a response by March 14, 2018.

Regarding the remaining townhouse lots that have not been split and do not have duplexes, the stub-in practice is not appropriate for them. The stub-in practice recognizes action as an indicator of intent. It affirms that the developer or owner has taken steps to develop the intended beneficial use. Where there is only one lot and one stub-in or home, there is not sufficient evidence of beneficial use for two homes. There is nothing more than the "townhouse lot" label to distinguish such lots from lots intended to have only one home or stub-in.

Regards,

Shelley

Shelley Keen
Water Rights Section Manager
Idaho Department of Water Resources
Shelley.Keen@idwr.idaho.gov
208-287-4947

From: James Speck [mailto:jim@speckandaanestad.com]
Sent: Monday, March 05, 2018 11:53 AM
To: Keen, Shelley <Shelley.Keen@idwr.idaho.gov>
Cc: Thiel, Sandra <Sandra.Thiel@idwr.idaho.gov>; Laura Gvozdaz (sunco1007@cox-internet.com) <sunco1007@cox-internet.com>; Charles G. Brockway (charles.g.brockway@brockwayeng.com) <charles.g.brockway@brockwayeng.com>
Subject: RE: Heatherlands

Shelley,

Thanks for the explanation and now it all makes sense!

I have discussed the application of the stub out rule in this case with Chuck Brockway. Neither of us has seen anything in writing that lays out the details of this "rule". Is there anything you can point us to?

Lot 3, Block 2 is one of the town house lots that has not been further subdivided. However, a duplex was built on that Lot prior to the proof due date for 37-8831. The owner occupies one unit and rents out the other. There should be two domestic uses for that Lot. Chuck believes that in other subdivisions which have included duplex lots IDWR has allowed

two domestic uses on each such designated lot even though the lot is not split. I don't see any legal distinction between that situation and this one. The designated TH lots allow for two domestic uses whether or not the lot is eventually subdivided into two TH sub-lots. Lot 3 falls squarely into that scenario and was timely developed so it does not require application of the stub out rule. The 37-8831 amendment should, at a minimum, be further revised to add the second domestic use for that Lot. In addition, we ask that the TH lots that have NOT been split into 2 TH sub-lots be treated the same as duplex lots in other subdivisions for the purposes of the stub out rule application to this subdivision and the 37-8831 amendment be revised accordingly.

Jim

From: Keen, Shelley [<mailto:Shelley.Keen@idwr.idaho.gov>]
Sent: Friday, March 2, 2018 4:12 PM
To: James Speck
Cc: Thiel, Sandra
Subject: RE: Heatherlands

Jim,

The annual diversion volume for domestic purposes for 37-8220 is calculated as follows:

- 0.6 AF for each of the 72 homes listed in condition no. 10. The irrigation on the lots for those homes is covered by the irrigation component of the right. $0.6 \times 72 = 43.2$ AF.
- 1.2 AF for each of the 44 homes listed in condition no. 8. Irrigation was not established on those lots during the development period, so IDWR will give only domestic credit based on the stub-out consideration. $1.2 \times 44 = 52.8$ AF.
- $43.2 + 52.8 = \mathbf{96.0\ AF}$

The annual diversion volume for domestic purposes for 37-8686 is calculated as follows:

- 0.6 AF for each of the 5 homes listed in condition no. 8. The irrigation on the lots for those homes is covered by the irrigation component of the right. $0.6 \times 5 = 3.0$ AF.
- 1.2 AF for each of the 8 homes listed in condition no. 9. Irrigation was not established on those lots during the development period, so IDWR will give only domestic credit based on the stub-out consideration. $1.2 \times 8 = 9.6$ AF.
- $3.0 + 9.6 = \mathbf{12.6\ AF}$

As for 37-8831, item 12 of the application for permit for 37-8831 states, "This application covers 14 additional **internal only** domestic uses resulting from the split of 14 lots into townhouse lots. Irrigation and the other domestic uses are covered under permit 37-08220." [Emphasis added.] As identified in our previous email exchange, IDWR can recognize domestic use for only 6 of the intended 14 townhouse lots. IDWR normally authorizes 0.6 AF per year per home for internal domestic use. Therefore, the annual diversion volume for domestic purposes for 37-8831 is calculated as 6 homes $\times$ 0.6 AF per home, for a total of **3.6 AF**.

For 37-8220 and 37-8686, the irrigation volumes are based on the standard field headgate volume of 3.5 AF per acre. For 37-8220, 38.5 acres $\times$ 3.5 AF per acre = 134.8 AF. For 37-8686, 2.5 acres $\times$ 3.5 AF per acre = 8.8 AF.

I have attached a revised draft amendment for 37-8686. The revised draft includes the an irrigation limit of 2.5 acres within a 4.1 acre area. The 2.5-acre limit was on the draft sent out in December of 2017, but it was inadvertently left off the February 2018 draft. The 2.5-acre limit is appropriate because condition no. 10 of Permit 37-8686 states, "The irrigation use occurring under this right shall not exceed $\frac{1}{2}$ acre within each platted subdivision lot upon which a home has been constructed." As described above, the irrigation on five lots is covered by the irrigation component of the right. 5 lots $\times$ 0.5 acres = 2.5 acres.

Regards,

Shelley

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From: James Speck [<mailto:jim@speckandaanestad.com>]
Sent: Thursday, March 01, 2018 5:35 PM
To: Thiel, Sandra <Sandra.Thiel@idwr.idaho.gov>; Charles G. Brockway (charles.g.brockway@brockwayeng.com)
<charles.g.brockway@brockwayeng.com>
Cc: Keen, Shelley <Shelley.Keen@idwr.idaho.gov>
Subject: RE: Heatherlands

Sandy,

How are the domestic volume amounts computed for 37-8220 & 37-8686? I can't make sense of them starting with the same 0.6AF/home allotted to the 6 homes under 37-8831. Thanks.

Jim

From: Thiel, Sandra [<mailto:Sandra.Thiel@idwr.idaho.gov>]
Sent: Wednesday, February 28, 2018 1:10 PM
To: James Speck; Charles G. Brockway (charles.g.brockway@brockwayeng.com)
Cc: Keen, Shelley
Subject: Heatherlands

Hello, The attached document has the amendments for permits 37-8220, 37-8686 and 37-8831. They was sent in the mail today.

Sandra Beer Thiel
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