



# North Ada County Foothills Association

One voice. One goal. One plan.

## **NACFA Update—July 9 Eagle P&Z Hearing, Kastera, Connolly Bragail**

Hi All,

This update provides the following:

- Debrief on the July 9<sup>th</sup> Eagle P&Z Commission hearing on M3's Development Agreement, and outline of what comes next (Note: There is nothing new related to the City's overall foothills plan. We do know that at least one meeting between the City and the County has occurred, related to the potential of a joint plan or resolving City/County differences. We also know that the City has retained a facilitator to conduct a collaborative process to address the issues embodied in the public outcry voiced at the June P&Z Commission hearing)
- Summary of Kastera's latest...well, I don't really know what to call it...? Suffice to say that their reputation for belligerence and bad faith remains untarnished...
- Results of July 12 County P&Z Hearing on Connolly's Bragail proposal.

### **Eagle P&Z Commission special hearing on M3 Development Agreement**

After a brief period of relief stemming from the P&Z Commission hearing and recommendations on June 25<sup>th</sup> (see our June 28<sup>th</sup> Update...on the website), apprehension and the surreal returned on July 9<sup>th</sup>. As noted previously, this hearing was exclusively to consider M3's proposed development agreement (DA), on which we commented extensively in our June 11<sup>th</sup> letter to the city (also on the website). Given that the P&Z Commission has recommended denial of M3's comprehensive plan map amendment on June 25<sup>th</sup>, we were of the opinion that proceeding forward to consider the DA was senseless, given that the DA specifies a project that the Commission had just rejected. Alas, that was not the case.

Here are my observations on what happened at the hearing and what comes next...

- **Prior to public testimony:**
  - No explanation of why the DA was being heard/considered at all in light of the Commission's June 25<sup>th</sup> recommendations; no insight on how this hearing "fits" into the big picture.
  - A general presentation of the DA by M3's attorney—focused mostly on what a good deal it is for the City.
  - Commentary by M3's economist on how the project would pay for itself.
  - No presentation by City Staff (i.e. City Attorney) of any critical analysis or details of what the DA means to the City (i.e. leaving all of M3's glib assertions unchallenged and essentially saying that nothing in our analysis or commentary carried any significance). The City

Attorney's entire presentation consisted of (paraphrasing) "I know there is a lot of legalese in this, so I will answer any questions you (the Commissioners) have".

- No critical/peer-review analysis of M3's economic/fiscal reporting.
- **Public testimony** (several people testified, including our planned NACFA group):
  - Most testimony centered on aspects of the DA that should not be acceptable to the City (if you want details, see our letter to the City—referenced above).
  - I began the NACFA sequence with general questions on [1] why this hearing was even happening (i.e. was the Commission's June 25<sup>th</sup> recommendation to deny M3's map amendment meaningless? Did the Commission's April recommendation for approval of M3's text amendment (which we were assured carried no weight) in fact legitimize moving forward with the M3 package regardless of what was happening on the overall Foothills Plan and regardless of the recommendation for map denial?), and [2] why there was no Staff report on or critical review of the DA, and when we would get response to all the questions and concerns we had expressed.
- **After Public testimony** (i.e. public hearing closed):
  - Rebuttal by M3's attorney and by Bill Brownlee...
  - ...Boldly asserting that, yes, the Commission's April recommendation for approval of M3's Comp Plan Text amendment was the significant item and that the DA is consistent with that amendment (i.e. M3 has elected to completely ignore anything that happened on June 25<sup>th</sup>, and keep pushing their project, however inconsistent it might be with where the community plan was headed).
  - ...Saying essentially that ALL of the public testimony was either wrong or irrelevant...since none of us are attorneys, how could we possibly comment with any competence on this masterpiece of Development Agreeing...☺...and expressing outrage that we would unfairly criticize the City Attorney like we did...
  - Response by the City Attorney that [1] it is not her job to respond to our comments and questions (in the guise of: it is not the City Attorney's job to do legal analysis for the general public), and [2] yes, she has a red-lined, marked-up version of the DA (but obviously did not find this fact relevant to this hearing or believe it necessary to let the Commission in on what revisions she might have been considering...after all it is a highly legal document and, since they are not attorneys, they probably needn't be bothered...).
  - Direction by the Commission to the City Attorney to respond to the issues raised on the DA at this hearing and scheduling of a Commission workshop for July 23<sup>rd</sup> to discuss questions and revisions.
  - Still no mention at all by the Commission or the City Attorney about how all these pieces fit together (i.e. the April M3 text approval recommendation, the June 25<sup>th</sup> M3 map denial recommendation, the June 25<sup>th</sup> recommendation on the overall foothill plan).
- **The Aftermath & What Comes Next:**
  - We have no idea what to expect at the July 23<sup>rd</sup> workshop. We will go and listen (there will be no public testimony at the workshop; only if substantial changes are proposed to the DA will there be any further public testimony opportunities prior to Commission deliberation and action).
  - It is possible that the Commission has gotten itself into a pickle. It may be that their April recommendation for approval of the M3 Comp Plan text amendment is coming back to haunt them. As those of you who read these tomes regularly will recall, we reacted very strongly to that April approval, seeing it as a breaking of faith by the City...ignoring the Council's

promise that no specific development approvals would be made until the full foothills plan was done (that promise was why we were not paying much attention to the M3-specific hearings at the time). Now, via the July hearings on the Draft foothills plan, Commission has learned of the major public issues and sentiment about foothills development; and where M3 is concerned, they essentially “reversed” themselves by recommending denial of the second part of M3’s comp plan application, the map. Thus, we have conflicting recommendations on two inter-related parts of M3’s package...the Comp Plan text and the map.

- This is another case where silence is very disturbing (i.e. the Commission’s and the City Attorney’s silence on July 9<sup>th</sup> related to this question). The P&Z Commission may be in a bind, forced to proceed with considering the DA...and the Council will end up having to clear things up. Since no one at the City is offering any guidance or perspective on this, we can only speculate...
- So, what are the possibilities? Given the way things are proceeding, it seems unlikely that the Commission will (or is able to?) do what actually should be done: defer any further consideration of the M3 DA until the foothills plan is complete and the conflict between the M3 text and map recommendations is resolved or explained. So, assuming this deferral does not happen, at the conclusion of the July 23<sup>rd</sup> workshop, one of the following actions could occur. P&Z could:
  - Judge that all questions are answered and issues addressed, perhaps recommend changes to the DA that are not considered “major” (by the attorneys), deliberate, and make a recommendation;
  - Still have questions/issues remaining which would need to be addressed in future workshop/hearing; deliberation/recommendation would be deferred until these questions/concerns were addressed;
  - Require changes to the DA which *are* considered (by the attorneys) major before coming to a recommendation. A revised DA would be produced reflecting those changes. Hearing would be re-noticed for further P & Z consideration and public testimony would be accepted on the revised DA.
- What is our response? Well, obviously and unequivocally, we see ANY further time or effort spent of the M3 DA at this point to be completely contrary to an open, public planning process for the foothills overall. At the bottom line, this agreement would commit the City to a project that ignores in major ways the directions in which the overall foothills plan has been heading. With that said, if by some twist of logic or law the Commission ends up recommending approval of the DA, we will have little choice other than mounting a no-holds-barred response at the subsequent City Council hearing(s). There will be little, if any, basis for us to believe that the City is following a reasonable, good-faith, public process leading to a community-based plan for the foothills and major pressure on the City Council will be our only recourse.

## **Kastera**

Many folks attended Kastera’s latest neighborhood meeting on July 11, featuring a new face added to their stellar staff...one apparently well-schooled in the patented Kastera method of making everyone as mad as possible. I was unable to attend the festivities, so the info here is thanks to Mike Ferrera and others who did attend. (Note--New Rule: At all future Kastera meetings, someone will be assigned to videotape the event so we all can enjoy it even if we could not get there in person...)

This time, Kastera is focused only on their land within Eagle’s AOI (roughly 120 acres) and proposes to develop 5+ acre lots (i.e. 21 lots). Unfortunately for them their land had not moved since they last looked at it and they still have no reasonable access. In this particular case, they propose to

go through the Triple Ridge neighborhood (having temporarily gone quiet on trying to punch out onto Willow Creek Road). They propose no other access (i.e. not even an emergency exit) and freely admit that the Triple Ridge access would likely be extended in future to serve additional development on their lands further north. Water supply would be from wells...every opportunity to frustrate future public access would be pursued...etc. etc. etc.

Despite the light-hearted tone of the above, this proposal cannot be taken lightly given that it is consistent with current zoning and they indicate they will submitting their proposal to the County (i.e. no longer trying to annex to Eagle—whom they sued related to water supply issues). So far however, they have not submitted anything to the County. At this point in time, the best defense seems to be inadequate and inappropriate access, and perhaps the lack of water supply—I take it that they have yet to demonstrate viability of wells...more will be reported as/if this moves forward.

### **Connolly Bragail Proposal**

For those following this now aged proposal (originally submitted to Ada County in late 2005, with hearings deferred several times at the Connolly's request), the County forced the item to hearing before the County P&Z Commission this past week. The Connolly's requested another 90 day deferral (we testified in support of the deferral—not because we have changed our mind about Bragail, but because we understand why the Connolly's have wanted to keep the application alive while they worked on a concept for their whole ranch). However, the Commission denied the request for deferral and voted unanimously to recommend denial of the project proposal. The Connolly's may still pursue a deferral of final decision on Bragail before the County Commission; and we may soon see the substance of their proposal for the whole 3000 acres.

Ok, that's it for now...best regards,

JP