



North Ada County Foothills Association

One voice. One goal. One plan.

NACFA Update—July 23 Eagle P&Z M3 Workshop; Eagle Council Hearing on Foothills Plan; NACFA attorney consultation

July 30, 2007

Hi All,

Per the title above, here is the latest:

July 23 Eagle P&Z Commission M3 Workshop: A detailed summary of this workshop is attached. The bottom line from a broad, process-oriented perspective is:

- The issue of “cart before the horse” was not addressed. As before, the Commission is proceeding to consider the M3 Development Agreement (i.e., contract with the City, granting them entitlements to density (up to 20/acre) and units (5640 minimum to 8150 maximum)) without regard to the broader, foothills-wide planning effort and without addressing conflicts between the M3 project and the City’s draft foothills plan. It seems clear that any consideration of this issue will have to wait for the City Council, if it is addressed at all. As I have said, this is one of the areas where we need legal review and advice. If, for some legal (threat of lawsuit) reason, the City is being forced to consider and act on the M3 project outside of and in conflict with the overall Foothills Plan, then the Foothills Plan process is close to, if not completely, meaningless. This situation is even worse if the City has *elected* to proceed in this fashion, without being legally required to do so. The conflict between the P&Z Commission’s separate recommendations on the two parts of M3’s proposed Comprehensive Plan Amendment (i.e., recommended approval of CPA *text* in April; recommended denial of CPA *map* in June) also was not addressed. M3 is proceeding along asserting that the text approval recommendation counts (and their Development Agreement is consistent with that CPA text). No one is talking about the map denial recommendation (not the Commission, not the City Attorney, not M3); everyone seems to be pretending that recommendation didn’t happen, or is meaningless. Again, silence and lack of explanation is disturbing.
- We continue to have significant problems with both the specifics (some parts) and lack of specifics (other parts) in the M3 DA (as noted in the attached summary and our prior analysis). Presumably, a new version of the DA will be drafted based on the results of the July 23rd workshop. It is doubtful that many of our concerns will be addressed. (Remember that

according to M3, since we are not attorneys our observations and concerns must de facto be wrong or irrelevant.)

- The P&Z Commission is scheduled to deliberate and make a recommendation on the M3 DA on August 27. It seems more likely than not at this point that the City Attorney will opine that whatever changes are made to the document are “not major” and that public review of/testimony on the new version will not be required or accepted. We will follow up on this if the situation changes.

Eagle City Council Hearing on Foothills Plan, etc: At the July 23rd P&Z Commission workshop, mention was made that the a City Council hearing on the draft Foothills Plan was scheduled for September 18th. We will be confirming this in the near future. Given the way things are proceeding, this seems possible considering:

- It is likely that the P&Z Commission will make a recommendation on the M3 DA at their scheduled August 27 meeting. Assuming this occurs, the pressure will be on for the Council to set a hearing for the full M3 package; and
- The Council has publicly stated, on more than one occasion, that it will not consider any specific development proposal until the full Foothills Comp Plan is done.

Thus, if the City continues on the course of “processing” the M3 package in “a timely fashion”, it will have no choice but to consider the draft Foothills plan, regardless of what condition it is in. As we have reported (review the history on our website), the condition of the Plan, while in many respects a good start, is incomplete at best; it was incomplete before it was reviewed by the P&Z Commission in June and even more incomplete after the P&Z Commission recommended stripping out all references to development density/intensity. As far as we know, there is no program on-going to complete a new draft, revisiting density/intensity or providing the kinds of traffic, public services, and fiscal analysis we believe is necessary.

We will report further on this as we learn more. As of now, however, it seems that we may be heading for a City Council hearing at which they will consider [1] an incomplete/ill-defined Foothills Plan, and [2] the M3 package (which, if approved, would violate/void many of the community-driven objectives on which the positive directions of draft Foothills plan are based). The Suncor application may also be included in this mix of dueling proposals for all or parts of the foothills. Needless to say, this would not be pretty picture.

NACFA Attorney Consultation: Several members of the Steering Committee met this past week with the partners at Kormanik, Hallam & Sneed (KHS). This firm was our top candidate via the research and hard work of Allison G. We appear to have a good fit, and KHS will be submitting a cost estimate broken down into the four of five key questions/issues we believe we need to pursue. This cost estimate will allow us to do a reality check...we have around \$3,000 in our account right at this moment. It is unlikely that amount will take us very far, but the contributions are still coming in. Thank you to those who have already responded. I will keep you posted.

Best regards,

JP

M3EAGLE P & Z DEVELOPMENT AGREEMENT WORKSHOP

(Prepared 7/29/07 by C.J. Thompson, NACFA; with review & input from K. Pennisi, NACFA)

General Notes:

Public hearing closed 7/9/07; no opportunity for additional testimony to P & Z.

Next M3 DA P & Z hearing (Commission deliberation, likely recommendation): **8/27/07**

N.B: Reference at DA workshop to Council hearing on draft foothills comp plan amendment as calendared for **9/18/07**.

See <http://www.cityofeagle.org/vertical/Sites/%7B78557FDD-14BE-414E-8624-C15ED40E9C6A%7D/uploads/%7B7D8CC987-2686-4740-9A6A-86C71350A4B5%7D.PDF> for comp plan draft reflecting P & Z-recommendations. Nearly 6 MB; requires color printing to distinguish P & Z recommendations (red) from first revisions (blue) to original (black).

Present at Workshop (partial list):

Eagle P & Z: Pierce (Chair), Aspitarte, Zastrow, Felix, McCarrel

M3: Bill Brownlee (principal), JoAnn Butler (Spink, Butler), Ed Squires (consulting geohydrologist, Hydrologic), Gary Funkhauser (transportation consultant)

Eagle City Attorney: Susan Buxton

Eagle Planner: Nichoel Baird-Spencer

NACFA: Minkiewicz, Pennisi, Petrovsky, Thompson. Also attending and opposed: Lynne Sedlacek, former two-term Eagle Council member.

Summary/Highlights:

- 1.** P & Z has rec'd only a draft dated early April (4/3 or 4/4/07); Sedlacek comments are on draft of 4/13; NACFA comments are on draft of 4/18/07. Buxton and Butler both referred to several jointly-agreed on amendments to the P & Z draft; advised a red-/black-line version is circulating. Unclear whether latter is 4/18/07 version (which included very significant changes to entitlements) or post-dates it. There was much confusion, shuffling of papers and "deer in the headlights" stares when Butler, who proceeded without explanation, referred to a section that P&Z apparently didn't have.
- 2.** Buxton reminded Commission that DA has force of a contract (more enforceable than ordinance) and runs with the land. Strongly recommended that Commission pay special attention to exhibits, particularly F1-5 (overall plan concept with breakdown of each sub area), and details therein.
- 3.** Butler (as at 7/9/07 hearing) referred to Commission's 4/9/07 recommendation to approve M3 text amendment and asserted that DA simply is implementation thereof. Ignored P & Z recommendation to deny M3 map amendment at 6/25/07 hearing and made no reference to P & Z recommendation, also at 6/25/07 hearing, to strip all discussion of density from foothills comp plan amendment draft.
- 4.** Pierce requested a more detailed phasing that included school requirements, water, roads, etc. Buxton advised that a more **detailed phasing plan map/exhibit** will be developed showing what would be built where and when. Aspitarte later insisted on **very** detailed phasing plan ("Kill two trees if you have to..."); concern is to get clear picture of all interim impacts, with particular emphasis on water and roads. Aspitarte further stated that, once detailed phasing chronology complete, constraints (e.g., water) should be added.

5. Buxton advised that Exhibit D (**PUD Standards**) is voluminous and will be eliminated; asserted that current Eagle (“flatlands”) PUD (Planned Unit Development) ordinance will serve as standards basis. Butler spun that M3 will “go beyond” existing PUD ordinance and that it’s “more appropriate” that standards be submitted *after* DA adopted and with the first planning area plan. Buxton suggested that, although she advises against it due to proliferation of many specific ordinances, Commission could direct standards specific to each development to be included with every development DA, including M3 (the Ada County method). Buxton recommended to Commission that they use existing PUD but consider recommending that specific standards and conditions be added to the DA to address the unique foothills features. Under the PUD process, the standards and conditions can vary from Eagle ordinances and if approved in the DA would take precedent over those ordinances. However, Eagle P & Z has repeatedly assured public in different venues over many months that a specific foothills PUD ordinance would be developed and adopted to govern development here, since “flatlands” PUD is a bad fit. (Example: current PUD ordinance suggests wrought iron as acceptable open fencing.)

Different requirements for open space are another illustration of other serious problems with application of current PUD ordinance, lack of foothills PUD ordinance or similar foothills standards. Current (flatlands) PUD ordinance stipulates 18%; comp plan foothills draft specifies 40% (suggested in large contiguous blocks); M3 DA proposes 25% “community” not contiguous, developed parks, golf courses, etc. (perhaps less if BLM land swap successful). Problem repeats in habitat...comp plan draft requires EA (Eagle (not NEPA) version, undefined) and mitigation considering entire acreage; flatlands PUD ordinance silent; M3 DA limits mitigation to three big game areas...maybe a few hundred acres...and defines (inadequate habitat study) of June 2006 as the EA.

Changes in process for foothills development would also be left unaddressed, e.g., open space under current PUD is province of Design Review Board. Intent is to have DRB only involved in “developed” open space portion for foothills projects; “natural” open space would fall to biologist/wildlife reviewers. Presuming foothills PUD ordinance is eventually written and adopted, *would not apply* to M3 Eagle (at any time in 30 year term) under current DA, which exempts them from future changes in ordinances.

Impact: Adoption of current DA without a Foothills PUD (separate specific ordinance, promised for months but not in progress) will entitle M3 to 5640-8150 units without City-defined standards related to critical foothills issues.

Much discussion of various aspects of issue, including strong assertion by Pierce of special foothills considerations (not addressed in current PUD ordinance) and reminder of P & Z promise to public that foothills PUD would be developed and would apply. Unclear what direction was given to City Attorney/staff. Believe that intent is to expand Exhibit P to address (only) some foothills specifics (at least grading, flood plains), use flatlands PUD and eliminate Exhibit D. NEED CLARIFICATION.

6. Butler stated that Exhibit E (“Conditions of Approval”) is “a place holder” left blank intentionally to collect conditions which “emerge during the process.”

7. Squires discussed “One Year Progress Report” (**hydrology** study) dtd 5/4/07. Aspitarte extremely concerned about drawdown, discussed Figure 9 (“I picked the kind scenario”) which hypothesizes 4 ft drop in surrounding wells. Figure 10 shows more extreme impacts. Squires replied that 4’ not significant and that, in his technical judgment, both Figures are worst case and will not happen. Further stated that M3 insisted he show modeling results “warts and all.”

Felix (whose well has gone dry that day) expressed great concern about impacts on existing downstream wells. Buxton asserted that ID water law is clear (!) “first in time, first in right” and that newer water right holder would be obliged to mitigate. Felix observed that he believes most on individual wells (as is he) will not have documentation to support impacts to stand up with IDWR/in court. (Note: In neighborhood mtg July 2006 Squires said essentially what Felix asserts. Squires then said that only closed (?) wells with regular, precise monitoring (est. \$5000-8000 per average well) would be sufficient

to document impacts.) Aspirtarte expressed concern about City liability, since DA calls for City to assume ownership of developer-built system. Aspirtarte expressed further concern that sufficient monitoring will not be in place to see early evidence of potential impacts. Squires assured him that IDWR is now requiring monitoring and that M3 intends sufficient monitoring plan anyway.

Buxton stated she disagrees with language in the DA about turning their municipal system over to the city due to possible mitigation costs that would then be borne by the City.

Squires discussed 42.5 cfs (27 million gallons per day) application to IDWR (November 2006), pegged to peak flow. Squires stated that, based on conversation with IDWR and at Squires' urging, IDWR will accept modification to application at less than peak flow. Squires stated that M3 application will likely be revised to 30 cfs; did not address when IDWR application would be so modified.

8. Master public parks plan is incomplete. It states: "The parks and trails shown on exhibit L will be either (i) owned by the Owner's Association." End of sentence...no "2"/"or." Brownlee mentioned a #2 which is public ownership, but said it wasn't defined. The DA states: "Developer will submit to the City a more detailed Master Parks, Trails and Open space plan on or before submittal of the first planning unit ..." Problem: master plan should be available PRIOR to approval of the DA especially considering the taxpayers of Eagle will kick in for whatever area is deemed "public".

9. Brownlee stated, in discussion of BLM land swap, that M3 appraiser has advised that 815 acres of BLM land adjacent to SH 16 are worth 925 acres interior. (LTTV exec director Breuer had previously guessed it would be at least 3/1 swap, with SH 16 BLM land much more valuable...highway frontage, access, etc.) Brownlee stressed that BLM has not reviewed appraisal. All agreed that M3 will make up difference in land (not cash), should swap come to fruition. Brownlee stated that M3 would probably donate added land from Southern area (across from Little Gulch), reducing density near WC Rd and increasing density in BLM/SH 16 acreage. DA requires City support transfer; Buxton appeared to agree. City planning staff does not support; NACFA adamantly opposes swap as defined by M3 (i.e., the swap is an attempt by M3 to be compensated, behind the scenes, for the 800 acre open space "donation" they publicly trumpeted last year). Brownlee appears to believe that M3's original strategy of "end-running the BLM RMP process by amending current RMP during 2008 is dead; advised the swap will be considered as part of full RMP update...2008 or 2009 (previously slated for 2006 but deferred due to lack of BLM funding).

The DA assertion that the City will "reasonably cooperate as necessary to accommodate this transaction" bothered Pierce. Spent some time discussing this and the type of reimbursement Eagle would like to see should a second appraisal show a higher BLM land value. Buxton wants P&Z to provide input to clarify this section.

Zastrow questioned whether Eagle has the financial resources to takeover and maintain this BLM ground.

10. Butler asserted that knowing the transportation system is not necessary at this point since "this is just conceptual" and that roads can be determined after DA adopted and with first planning area plat. Serious problem, since DA entitles units and density and NACFA contends that traffic impacts are density-determining and should be added to the Eagle constraints list (with slopes, floodplains, habitat), particularly in light of multi-million dollar impacts to SH system and complete lack of funding.

Aspirtarte asked where WC will be realigned. Brownlee, as at 7/9 hearing, stated that M3 now recommending north/south traffic dogleg through Connolly/Kastera land and be routed directly to SH 55 at new Brookside interchange. Aspirtarte strongly asserted WC be cul-de-sac; Brownlee agreed. Baird-Spencer objected, stating 7 mile east/west run between Linder and SH 55 w/out north/south access is terrible planning. (Note: B-S position, while valid, is blind to point that only two viable north/south access points to BL Road exist, either of which would cut perhaps 1-1.5 miles from 7-mile

run.) Zastrow insisted that language be added to assure roads are built before houses. Buxton appears to believe current DA (section 2.1) is adequate but suggested could add text in body and subarea descriptions and/or add as condition of approval (Exhibit E).

Funkhauser (M3's road consultant) claims that COMPASS has stated that a 25% capture rate is possible if the development is done right. Zastrow requested thresholds for roads as development moves from phase to phase. Buxton suggested fleshing out the conceptual plan and 2.1.e in the DA might solve problem.

DISAGREE with Buxton that current language adequate/that minor tweaking will resolve issues.

11. Brownlee advised that, due to public testimony and at urging of staff, M3 now willing to consider building an elementary school with project (v. donating sites) in exchange for MSD paying for some lands later in the project. M3 has meeting 7/24/07 with MSD to present proposal for "smart school" (tech state of the art), perhaps partnering with company such as Micron. Proposal is intended to address outcry about higher taxes, declining school bonds passage rates, lag in funding compared to requirement and resultant overcrowding in Eagle schools. Aspitate wants immediate feedback about result of meeting. (Note: Per conversation with A. Ritter (MSD trustee for Eagle, Star) 7/24/07, Ritter will be at meeting as will MSD financial type; latter will explain to M3 that ID schools funding law/process will not allow them "payback" late in the development term. Ritter confirms that elementary school capacity is adequate; requirement is for middle-/high school. Ritter will include NACFA on distro of her written summary/notes of meeting.)

CONCLUSION: Believe that another DA draft, incorporating above, will be produced before 8/27/07 hearing. Need to determine when, and obtain copy; evaluate again with above and June 11 2007 NACFA comment letter. Also need to obtain copy of Baird-Spencer transcription of workshop.