

PUD12-00003 / MLM VENTURES, LLC.

Location: 6017 W. Ophonga Street

CONDITIONAL USE PERMIT FOR A 47-UNIT PLANNED RESIDENTIAL DEVELOPMENT ON 1.61 ACRES LOCATED IN A C-2D ZONE.

Sue Cummings (Staff) – If there's no opposition I'd like to just address the public comment letter and the memo that's before you.

Commissioner Stevens – We have Mr. Boyle signed up and I believe he is the author of that letter. Does anyone have an objection to not having a full staff report?

Sue Cummings – Clint Boyle is the applicant.

Commissioner Stevens – Looks like there is no opposition to this item. How about we start with the staff report and abbreviate it.

Sue Cummings – Staff finds the request meets criteria for a conditional use approval. It is compatible with the surrounding uses which include two other apartment complexes and commercial uses to the north and west. It will not place an undue burden on transportation or other public facilities. While the project will generate approximately 313 vehicle trips per day, many other allowed uses would generate more traffic than the proposed use. The project is also supported by the Comprehensive Plan particularly in regard to location. It is close to public transportation and a major employment area, St. Alphonsus Hospital.

The applicant will require Design Review approval for this project which will address concerns with some of the elevations and minor changes in the layout will ensure compliance with the setbacks. The parking canopies will be placed at the center of the parking area to allow fire truck access to roof tops.

The recommended conditions of approval require the applicant to tile the Eggars Irrigation Lateral on the south side of the site prior to obtaining building permits. Since the staff report was written, the applicant has indicated the buildings will be constructed in phases and will start on the north side of the property, furthest from the lateral. Staff supports an amendment of Condition # 8, as a letter from Nampa Meridian Irrigation confirms there is an agreement in place that includes a provision with regard to the project and they support issuance of building permits. The lateral work will not be able to begin until the end of this year's growing season.

Staff has received two public comments about this application. One was a phone call from a neighboring property owner regarding traffic on Ophonga and the noise from the tire store, specifically the noise from the pneumatic tools affecting the residential uses. The other comment was from Les Schwab regarding traffic cutting through their parking lot. I believe the developer has met with the owner of Les Schwab. I'm not privy to that conversation so I'll let him address that. In conclusion, staff supports the request with the amended Condition # 8 and recommends approval.

Commissioner Stevens – I'm looking at Condition # 8. Can you tell me exactly what we're doing with that condition? I read the letter from Nampa Meridian Irrigation and my recollection

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was that they said they couldn't promise, but they'd be able to do labor.

Sue Cummings – They can't promise they'll do labor, but they don't have any objection to the City issuing building permits prior to the lateral being tiled.

Commissioner Stevens – How is Condition # 8?

Sue Cummings – Right now Condition 8 reads; the applicant shall provide written approval from the irrigation district stating that the Egger's Lateral has been tiled and the irrigation district has approved and accept the work. We are erasing the last portion of it.

Commissioner Morrison – This will go through Design Review?

Sue Cummings – Yes, the Design Review staff will address a lot of the concerns.

Clint Boyle (Applicant) – I appreciate the opportunity to address the Commission tonight regarding this particular project. Sue did a good summary of it. It's a multi-family complex that is coming into an area that is essentially an infill project. All of the surrounding property has been previously developed in years past. Currently there is a mini-storage that sits immediately adjacent to the east of this project, the existing apartment complexes to the south of the project, as well as to the west of the project and commercial development to the north of the project. Again, this is the last vacant piece of property on the street to come in for development so we are excited to bring something in that will be a quality development.

I'm going to hit on a couple of points brought up. First of all, regarding Nampa Meridian Irrigation District we have had significant coordination with them already. They have actually approved design plans for the Eggars Lateral. There's a license agreement that has also been prepared, approved by the board and is in the process of being recorded. We've had extensive coordination with them.

As far as the letter and the indication of the labor, the irrigation district each year will, upon petition from a developer, if they have the means with their crews during the winter months, they will actually supply the labor to install tiling projects, to install the pipe etc. for tiling their ditches and laterals. That indication is the developer saying hey, I would love to purchase the materials and have the irrigation district install them, if it facilitates keeping the irrigation district's crews busy during the winter months. In the off season it helps the developer in lowering some of his cost and labor to install. Essentially, that is what that statement is, they can't commit. Their job at this point will be able to see what their schedule is towards the end of the season in September and let the developer know. If they don't do it, the developer's contractor goes in and puts the facility in. That's really all there is with Nampa Meridian Irrigation District which is working with them on the intricacies of putting the pipe in.

There is another comment brought up about Design Review and yes, this will go through the Design Review process. Through the Conditional Use Permit elevations were required and what-not. They are in the process of working those elevations over as we speak. John Price, who many of you are probably familiar with, is the architect that will be involved in this locally,

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along with another group, Vantage Architecture. They understand they have some work to do on some of the elevations and those will go through the Design Review process. Essentially, what's in front of you tonight, the Conditional Use Permit, is step one of a multi-step process with Design Review.

We have coordinated with the various agencies. This is in the Bench Sewer District. There were some comments in your staff report about capacity. We have actually coordinated further with them and there is not a sewer capacity issue. They've gone through their engineer, reviewed it and have indicated to us they are just fine with the capacity with the existing sewer line that is already in place on Ophonga Street.

There's been coordination with the other utilities as well. The Fire Department is one other issue I wanted to hit on. I've personally met with the Fire Department Marshall on the project, and initially, he had a response letter with some concerns. This meets the Fire Department Code for aerial access which basically means they need to be able to bring a truck in and drop a latter and be able to get up on the roof areas of the units. They were concerned about having carports adjacent to the buildings that may somehow restrict that latter access to the roofs, so we have met with them and agreed we will remove the carports from in front of the buildings. The developer would like to have the opportunity to place those carports in the center parking area. The Fire Department is acceptable to that. I think we have an update with their approval and we intend to meet the other conditions. There's a hydrant that needs to be installed and some minor items there with the drive width which I think needed a one foot increase on the width.

Regarding Condition # 8, Sue indicated we would like to see a minor correction or amendment striking the last sentence starting with the applicant shall provide written approval. This comes down to the issuance of building permits. In your letter you'll find the recent update from the Nampa Meridian Irrigation District which has no aversion to the issuance of building permits prior to the Eggars Lateral being tiled. This was a key point because this allows the developer to start construction on the apartment buildings and be able to begin that vertical construction. That will allow the tiling to occur while some vertical construction is happening. We will not encroach into Eggars Lateral area until that piping is done. Those are requirements from Nampa Meridian and part of the license agreement. We intend to comply with all of Nampa Meridian Irrigation District's requirements as they have submitted in their two letters.

We are in agreement with the conditions as outlined in the staff report. As Sue indicated, we feel this project is a going to be a benefit to the City. It's in an area supported by transit with a bus stop in very close proximity. We are in the shadows of St. Alphonsus which is a major employment center. There is very easy access to the Greenbelt down Irving Street which is less than a mile away. You can get on a path that takes you over the trestle bridge and onto the Greenbelt. There's an elementary school within a mile so this really has a lot of benefits. It's in a great area to support. You'll find there are some existing apartments and similar density in the area. We feel this is a good location. We respectfully ask for your approval tonight.

Commissioner Barker – This is a question for the applicant. Staff indicated you might have had some discussions with the tire store because it seems to me it might be very tempting to drive through the Les Schwab business in order to access these apartments. What was your

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discussion?

Clint Boyle – I have not directly communicated with Les Schwab. We received the letter they submitted requesting some signage. We submitted a response into the City and I'm not sure if that ended up in your packet on the 29th of March, indicating the developer intended to meet the requirements of Les Schwab, as they've outlined in their letter. This letter was submitted into staff addressing the Les Schwab comments. I haven't directly spoken with Les Schwab but we indicated we're in agreement with those provisions.

Commissioner Stevens – I don't think we have a copy of that letter, so you may submit it if you'd like. We'll have to keep this for 10 days.

Commissioner Stevens – For the record, we received an e-mail dated March 29 from Clint Boyle addressed to Matt and Greg Gregerson and Sue Cummings. Particularly, with regard to the Les Schwab issue, it says the developer will install the signs as requested along Ophonga. We'll mark this as Exhibit 1.

Commissioner Morrison – This is a question for the applicant. Would you be amenable to submitting a phase document that delineates what you will not construct until such time as the Eggars Lateral is tiled?

Clint Boyle – I can probably delineate that right now in the hearing and submit a document if you'd like. The end units on both buildings, the very last units, which would be three units on each end of the building, will not be constructed until the Eggars Lateral is tiled.

Commissioner Morrison – I think that's an important issue because currently the proposed use encroaches into the easement. There's no reason you could build that.

Clint Boyle – Hopefully, I clarified delineated but they would leave the last unit, which is three-story so essentially three units off of both buildings. If you look, the encroachment is a very minimal area on the corners of both of those buildings, but the developer has already indicated he will leave those off. The footings and slabs for those are very easily accommodated once Eggars is tiled and that facility has been approved by Nampa Meridian Irrigation District.

Commissioner Morrison – I understand that. In order to facilitate moving ahead with this, it seems to me it was on page eight of the packet. We had an east and west building pad footprint. I'm assuming right is north and left is south. If I understand correctly, the last unit on the east side would be that last two-bedroom unit. On the west side would be the last two-bedroom unit, is that correct?

Clint Boyle – That sounds correct. Let's look at the floor plan.

Commissioner Morrison – It appears to be enough width to keep you out of the east.

Clint Boyle – It's those very last units that have a little bit of encroachment.

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Sue Cummings – Is this the right page?

Commissioner Morrison – I'm looking at Palisades Apartment's west and east building pad footprint drawing submitted as part of the packet. I wanted to make sure I understood, the applicant would not build the two southern most units, one on the east building pad and one on the west building pad, until such a time when the Eggers Lateral is tiled.

Clint Boyle – That is correct. That would be the last two-bedroom unit on the south end of the east building, and the last two-bedroom unit on the west building.

Commissioner Morrison – Correct.

Clint Boyle – In essence, six units total would not be constructed until the Eggers is tiled and the irrigation district has signed off on that line.

Commissioner Stevens – This question is for staff. Do we have any issues? I know you did not condition signs in your report, but it sounds like there is an opportunity for us to condition it because it seems the developer seems to be in agreement with it. Do those signs need to go through the City in terms of their design and that sort of thing?

Sue Cummings – I think small directional signs don't require a permit, if that's the kind of sign they've agreed to.

Commissioner Stevens – Would that be the sort of thing that would make sense for us to ask? There's absolutely no indication of what kind of signs we're talking about, other than what Les Schwab wants them to say and then this e-mail. Is this the sort of thing staff would recommend we ask for some detail on, as one of the conditions?

Sue Cummings – Since we're legally not capable of (Interrupted by Rob Lockward)

Rob Lockward (Legal) – The sign is contemplated by the Les Schwab e-mail which I've seen. I think it actually constitutes an offsite improvement, which would be outside of our jurisdiction to put a condition on, since it would be on Les Schwab's property. Really, what you have is a gentleman's agreement between the developer and Les Schwab to erect appropriate signage if conditions warrant it because it would be contemplated to be on Les Schwab property. If there's any sort of sign permit that would be required, they would need to work jointly, as directed.

PUBLIC TESTIMONY

Moe Stark – I own the Honey Baked Ham store. I thought that property was commercially zoned, not residential. When did that happen?

Commissioner Stevens - You're allowed to put residential in a commercial zone. It's really a down zone, so it's an allowed use.

Moe Stark – My biggest concern is the drive-thru traffic like they were talking about Les

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Schwab cars cutting through there. I've got cars coming into my parking lot on two wheels, coming around two corners at times. You add 350 more people in the back and it's going to put a lot of strain on my parking lot itself. People cut through to get back over to Curtis, take a right to get on the freeway when traffic is backed up on Curtis and Fairview, so it's going to add more activity in my parking lot, Les Schwab's property and the guys down the street. I don't know if the traffic studies have been done to the best of whoever's ability is to do, but I sit in my store every morning and watch cars scream through there all the time. Do you see where my building is? It's right next door to Les Schwab to the west. It's a major thoroughfare for me right now. I don't know how much traffic it will generate when they say 350. The only legal access to that place is to come around off of Curtis, come down Ophonga and cut into that apartment. Otherwise, you're going to be coming further down and coming off of Liberty through those apartments back in there to come in that way. That will create a lot of traffic in that apartment complex which is directly behind my building to the south. I don't know if traffic studies have been done very well and I understand there were 36 apartments originally proposed and now it's up to 47. When did that all take place?

Commissioner Stevens – Those are questions you can ask staff. We only have what's in front of us.

Moe Stark – There are concerns. That letter you got from Les Schwab, who is the signer on that?

Commissioner Stevens – The staff packet has been available to the public and you have had the opportunity to look through that. I'm sorry, we're not prepared to sit and answer questions from the public. You can talk to staff. We're not prepared to answer this type of questions. Staff is telling me David Gibson.

Moe Stark – That's all I have right now, but I think traffic flows needs to be studied a little closer. Come and sit in my store with me and I'll show you what happens every morning along there. It's pretty interesting.

Harold Dore – I've lived in my house for 18.5 years. There is only one way into there and that's Fairview and Curtis. If you're going to build a three story building across from Les Schwab's parking lot, you should know they start working on semi-trucks at 6:30 in the morning. That's what the big two-story building is. They take tires off all day long and all that noise is going to ricochet right inside that building where it's going to be three-stories from their main driveway and then that little roof is going to hold all that noise down to the ground. I get nervous.

The road is the main thing. We only have one way in and out of that place. It's a terrible road. I'd rather see an industrial place go in there instead of 40 people every day going in and out, four times a day. I have six little units on that road. Mine is a very old place. I've been living there for 18.5 years and making payments on it since then. All the semi trucks come in from Les Schwab. They all come in from the hot tub place, that's how they unload. The mini-storage unit next door, there's only two parking spaces for that entire place. On Saturdays when they have their big auction, the entire Ophonga Street fills up. Semi trucks can't even get into the storage

there because they can't get their trucks in. They have to unload in the street and bring them in by pickup trucks. It's a lot of overkill on that road, 300 to 400 cars a day. If you go right down the road just a little bit further, I think it's Raymond, there is a 116-unit complex that has failed and the ground is all stubbed out. It's a vacant lot now. There's another 48-units down there. There's a bunch of apartment complexes in that area that never got off and they have all the stubs in the ground. Do you know Raymond Street, past Liberty? It's a pretty ugly site there now. You've got all these apartments allotted for that and never got built. It's really going to put more traffic in that area. It would be nice to finish that project first, or find something else. I have watched the road for many years. It's hard to get out when the bar has something going on. It's difficult every day. There are lots of accidents every day right in front of Les Schwab. If they punch that road coming in all the way through to Liberty, that might be something nicer. I know they wanted to put more buildings on that little piece of ground, some garages about five or six years ago. I went to a neighborhood meeting a few weeks ago. It was 36-units and then it grew to 47. That's a pretty good increase.

REBUTTAL

Clint Boyle –The project has gone through reviews with Ada County Highway District reviewing the traffic on Ophonga Street and its well within the standards set by ACHD. In fact, it's far below what they would typically allow on a commercial or even residential street, as far as the number of trips on that road.

As far as the comments regarding a traffic study, from the sounds of it, there may be an issue with some cut-through traffic. We heard from the Honey Baked Ham owner about that. Les Schwab has submitted comments. Regardless of this particular project, it sounds like they've had an issue. I guess the question raised by our developer is, why haven't they taken action if they felt it was such a detriment already? He feels like they are trying, through this process, to exact some signage and some other things out of the developer. This developer wants to be a good neighbor. He's here to stay and he has done a lot of projects in this city. He's working on a skilled nursing center off of Americana Terrace, along the river right now. He's been involved with Summit Dental and other projects around, so it's not somebody coming in to do a project and leave town. He's vested in this town and he wants to be a good neighbor. He's willing to put up the signage as we indicated. With Les Schwab, we'll have to find out the scope. He's envisioning some small two-by-two, no cut-through traffic, business traffic only type of signage with his commitment to Les Schwab. There is additional public access adjacent to Honey Baked Ham. On the east side of Honey Baked Ham is public right-of-way and a public access point out to Fairview. In addition to access out to Curtis, there is access out to Fairview Road. I wanted to make sure that is clear, that is a publicly dedicated right-of-way and improved access that extends from Ophonga out to Fairview Road. I happen to be very familiar with this area, as well. I moved to the Boise area about 13 years ago and oddly enough, I lived in the Heartland Park Apartments which are immediately west of this site. The apartments you see on the aerial in front of you to the west of this site. I'm very familiar with Ophonga Street and very familiar with Honey Baked Ham and the other commercial users, the usages around there because I've visited them during my time there. For all intents and purposes, during the time I was there, Ophonga, in my estimation, was a very low volume, certainly not a high volume, high traffic roadway. I've spent a lot of time in that area. Recently, I've been out on site at different times

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and haven't had any problem with access, in or out at all. I understand their concerns. It seems like there are people out there who violate the rules, or do what they should do and we do our best to try to minimize that as much as we can. That's what our client is willing to commit to, is the signage and the request Les Schwab had. Quite frankly, the neighborhood meeting, we sent out over 200 notices for this project with all of the property owners in the area and all of the tenants in all of the units. At our neighborhood meeting we had three people come out. One of them was Mr. Dore. This is the first time I have actually had the opportunity to have the Honey Baked Ham owner out. I apologize I didn't catch his name. Considering the notification, I would say the developer has made a very concerted effort to try to make sure he brought something that was quality into the neighborhood and something the neighbors could buy off on.

The final thing I would like to say regarding this project with regards to traffic is, realize this property is currently zoned C-2D. As a Design Review designation, it is already zoned for a laundry list of different residential and commercial uses. With that said, there are a variety of uses that will generate significantly more traffic than what's in front of you tonight and does not require any Conditional Use Permit in the area. Hopefully, you'll take that into mind. We're doing the best we can to make sure we minimize those traffic impacts by working with those property owners and we can commit on record that the developer will do the signage he committed to with Les Schwab.

PUBLIC HEARING CLOSED

COMMISSIONER BRADBURY MOVED TO APPROVE PUD12-00003 PURSUANT TO THE FINDINGS AND CONCLUSIONS OF CONDITIONS OF APPROVAL IN THE STAFF REPORT INCLUDING THE REVISED CONDITION DELIVERED TO US TONIGHT.

COMMISSIONER MEYER SECONDED THE MOTION.

Commissioner Bradbury – I think it sounds like we have a problem with cut-through traffic over in that area. I'm not certain the blame can be laid at the feet of this particular project. The Highway District has reviewed the traffic impacts of this project on the street infrastructure, and as indicated it is approvable and should be approved. I'm not certain this body is in a position to attempt to regulate a way for the potential cut-through traffic, which probably takes place on just about every busy intersection in this City. I don't know if we're in a position to solve that problem even though it probably is a legitimate problem that needs to be addressed in some fashion. I'm not sure what body is to do that.

Commissioner Barker – I used to work in this area and I will agree there is a problem with cut-through traffic on that corner. As long as the businesses in this area off of Fairview continue to have their service access off of the back street, then there really doesn't appear to be an easy way to cut it off. However, as the applicant stated, this problem has existed before this development. I think with some care, the residents of this development can be cautioned about cutting through, but I think that's probably the best we can do. At some point there may be enough of a problem that ACHD, as well as others, will need to take a look at what's happening on the corner.

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Commissioner Story – I wanted to comment on cut-through traffic as well and echo the sentiments of my fellow commissioners. Actually, I'm not an attorney but when I first read this staff report and read the letter from Les Schwab, I couldn't believe this came from an attorney who admitted he had a safety problem and has done nothing about it, and wanting the adjacent developer to do something about it. It's a public record. If it's really that big of a problem I would like for them to step up and do something about it, instead of trying to put it on this developer.

Commissioner Demarest – Was there a traffic study done?

Commissioner Stevens – Yes, on page 35 of our packet ACHD submitted comments to us which indicate this will not exceed what the road can handle.

ROLL CALL VOTE

COMMISSIONER BRADBURY	AYE
COMMISSIONER MEYER	AYE
COMMISSIONER BARKER	AYE
COMMISSIONER STORY	AYE
COMMISSIONER MORRISON	AYE
COMMISSIONER DEMAREST	AYE
COMMISSIONER STEVENS	AYE

ALL IN FAVOR NONE OPPOSED, MOTION CARRIES.