



**EAGLE MOUNTAIN CITY
CITY COUNCIL MEETING
JUNE 20, 2023**

TITLE:	ORDINANCE/PUBLIC HEARING - An Ordinance of Eagle Mountain City, Utah, Approving the First Amendment to the Pole Canyon (AKA Firefly) Master Development Plan.		
ITEM TYPE:	Amended Master Development Plan & Amended Master Development Agreement		
FISCAL IMPACT:			
APPLICANT:	Oquirrh Wood Ranch et al & DAI as developer(s) -- with Nate Shipp, David Vitek & Heather Upshaw representing		
GENERAL PLAN DESIGNATION Parks and Open Space, Neighborhood Residential One, Neighborhood Residential Three, Agricultural/Rural Density Two, Town Center Mixed-Use, Business Park/Light Industry, Regional Commercial, Community Commercial	CURRENT ZONE Residential per adopted 2010 Master Development Agreement	ACREAGE 2,786 per Applicant	COMMUNITY Firefly (formerly "Pole Canyon")

PUBLIC HEARING:

Yes

PREPARED BY:

Robert Hobbs, Planning

PRESENTED BY:

Robert Hobbs -- Planning Manager

RECOMMENDATION:

Staff recommends that the City Council consider approving the proposed applications -- unless Council deems that further deliberation on major, outstanding ARMDA and Community Plan issues/topics is yet required.

BACKGROUND:

On January 19, 2010, a Master Development Agreement (MDA) for the Pole Canyon project became effective. The Agreement memorialized annexation of 2,764.51 acres of land per the legal description associated with the annexation petition. The Agreement further recorded commitments entered into between the City and developer (PCIG) respecting the development and build-out of the Pole Canyon project. Three amendments to the MDA have also been approved since that date.

The project's original Development Agreement with the City contains a "Land Use Element Exhibit 2". It references 18 residential

planning areas or pods (1,984.32 acres), five commercial areas (186.86 acres), and three industrial pods (451.36 acres). Between the residential areas and one of the commercial sections, the total maximum residential unit count approved for development in Pole Canyon tallied 9,659 units -- a number that is still vested.

The 2010 MDA recognized that at least 178 acres of open space would be required in Pole Canyon. One hundred of those acres were assumed to be derived from the donation of the Boy Scouts of America land that is positioned on the northwest corner of the development. Matters addressed by the Agreement and subsequent amendments included, in part, the approval process for build-out of Pole Canyon, infrastructure improvements, a traffic study, existing agricultural uses, etc.

About a year ago, the applicant approached the City with the concept plans for a re-envisioned development. The re-imagined project contemplated revising the existing Master Development Plan and Agreements to substantially improve its design/layout. Per the applicant, the newly imagined development community now called "Firefly" has "a purpose driven mission of creating a community which allows children to maximize their potential while minimizing their use of electronic devices, social media, and gaming." The revision effort has resulted in submittal of an application package [Amended and Re-Stated Master Development Plan and Agreement (ARMDA)] that seeks to replace the previously approved entitlements.

Legal counsel has been analyzing the proposed Firefly applications for a while now. Staff has reviewed the applicants' materials -- as relating mostly to planning and zoning matters -- and provided comments to the City Planning Commission and now presents this summary report to City Council. Generally, Staff supports the general aspects of the proposed changes to the master development plan (shifting of density to the east, focus on outdoor recreation and trail system, regional park, industrial park, and more creative housing and neighborhood designs, etc.).

On January 10, 2023, the Planning Commission heard this matter and tabled the same until the 24th to allow further review time of the application package and report materials. On January 24th, the Planning Commission voted to recommend to the City Council that

the applications be approved with conditions as noted in the Planning Commission Action/Recommendation section hereafter. Refinement to plans and developer's presentation have since ensued; the attached plans are the most current provided by the Applicant/developer(s) team.

April 18th saw another delay as the item was again postponed. Since then, additional work has been done on the ARMDA and master plan with various small group meetings being a part of the work effort.

ITEMS FOR CONSIDERATION:

The January 09, 2010 [original] Development Agreement and three subsequent amendments may be [found here](#) for comparison.

Council, matters that you might wish to review and/or take note of include, but are not limited to, [still] the following:

1. The Applicant already has an existing Development Agreement vested on, or against, the property; and,
2. The property's zoning of "Residential" [no longer "on the books"] will still be assigned to the land even if the Master Development Plan and Agreement Amendment requests are approved. Incidentally, Staff has (as time permits) started procuring examples of planned [unit] development standards that are used when reviewing non-traditional, "cookie cutter" type plan layouts with their, often desired, zoning exception treatments; and,
3. The project contemplates 154.40 acres of commercial land and 494.84 acres of industrial ground. Regarding residential use of the property, the Applicant is entitled to 9,659 residential dwelling units on, or within, the 2,764.51-acre property and is proposing the same be positioned in 13 planning areas yielding a spread average of 3.47 du/a (dwelling units per acre); and,
4. The proposed, Amended Development Agreement acknowledges vested residential density, recognizes that it is a theoretical cap but also precludes losing density via any ordinance or other action implemented, or taken, by the City (e.g., a code change) following the date of its passage; and,

5. The new Community Plan for Firefly contemplates the movement of 1,639 homes from the west side of SR-73 to the east side. The Applicant believes this shift will provide "...a better, and well thought out disbursement of [residential] density...".

6. Housing within the Project envisions a mixture of detached housing, twin-homes, townhomes, condominiums, apartments, shared drive housing and units combined with, or in, some commercial buildings; and,

7. The Applicant is asking for some setback relief (e.g., 5' sides) with some homes. It should be noted that the Applicants intend "on using curvilinear design in many areas which while having a minimum 5' setback, there will often be greater separation between homes. See page 4-09 of [the] community plan." However, the number of homes being proposed to have 5' sides has been reduced in number from what is shown in 4-09 since they made their exception request. For those houses affected, please note that the old (2005) "Residential" Zone (no longer in the City's code) assigned to the property per the original Master Development Agreement recognized four "tiers" of residential development therein -- each with succeeding densities and lot configuration rules. As far as the tiers and their respective single-family detached controls, please note as follows:

Tier I standards were associated with minimum 1/2 acre lots. They mandated that side setbacks be not less than 12' on one side and 18' on the other -- unless approved otherwise by the Planning Director [10% deviation allowed] due to mitigating circumstances (e.g., slope issues, etc.). Minimum required street frontages for building lots containing detached homes was required to be at least 125' unless on a cul-de-sac.

Tier II standards were associated with smaller than 1/2 acre lots (size not defined -- just density per acre allowed). Side setbacks were set at 5' on one side and 10' on the other. Lot frontage was set at 55' unless a property abutted a cul-de-sac.

Tier III standards were silent on minimum lot size and minimum street frontage but allowed even higher densities than Tier II. The minimum side setbacks for building lots was to be the same as Tier II (5'/10'). A minimum building separation standard was also provided.

Tier IV standards followed suit with Tiers II and III allowing yet greater density in a project. No minimum setbacks or frontages were stated (only building separations).

Tier II is the most comparable to what is proposed in the majority of Lower Hidden Valley's neighborhood planning areas for detached housing product construction.

8. Per the proposed, amended Agreement the Applicant (developer) intends to provide 420+ acres of improved open space (mix of parks, trails and open land) within the project. More specifically, the Project is intended to feature (quoting from a statement from the Applicant's team):

"A contiguous trail system [that] will connect the furthest southeast corner of the property to the very northwest corner. Nearly all neighborhoods will have trails [some horse] that will connect to the main trail system providing a truly walkable community."

"Pocket parks in NPAs [neighborhood planning areas] have been combined to provide larger parks which will allow for greater programming and maintenance efficiencies. There may still be some periodic HOA controlled pocket parks."

"Three initially planned parks or amenity areas have a wide range of activities programmed." Examples suggested by the Applicant include: A tournament style multi-sports field, pickleball and basketball courts, a park with skateboard and pump track, traditional playgrounds, climbing walls, NICA high school/mountain bike course, downhill mountain bike facility, amphitheater(s), roadway underpass (SR-73) for safe walking between parks, indoor/outdoor playground with amusement park style play areas (HOA maintained), large-scale splash pad for Firefly residents, hiking trails, mountain bike trails, equestrian trails, community campground open to Firefly and Eagle Mountain City residents (HOA managed), agricultural and equestrian "area" and a 4H/FFA/high school rodeo practice area.

9. If the Amendment package is approved, future subdivision development will be reviewed, as proposed, the processes in City code with some adjustments as per the current Exhibit E rendition provided by the Applicant -- versus a prior version of Exhibit E that was an "on again-off again" proposition; and,

10. The design guidelines for the project's housing are to be adopted by reference in the proposed Amended/Re-Styled Development Agreement and will expectedly appear within CCRs (covenants, conditions and restrictions). The City should cause that any conflicting standards default to City standards -- save single and two-family architectural standards; and,

11. Firefly also will incorporate areas of commercial and light industrial (expectedly not manufacturing or processing businesses however); and,

12. Wayfinding signage is proposed in the development; and,

13. A [new] traffic study and memorandum related to the project has been submitted to the City (see attachments); and,

14. The Applicant intends to use rights-of-way widths/profiles as illustrated in the attached roadway sizing .pdf; and,

15. Staff has not received public comments (either verbal or in writing) respecting this application as far as is known. Any agency, department or other official commentary respecting this application set is hereto attached; and,

16. The Applicant was proposing an expedited review process in the new MDA for those entitlements or subdivisions that come after this approval [after approval of the Amended Plan and Development Agreement]. The current ARMDA still has that exhibit imbedded therein as 'Exhibit E' titled "Development Application and Review Process". However, the document has been edited such that detached single-family and apartment geared plats, plus commercial site plans and vertical mixed-use site plans are still proposed to be reviewed by Staff only. This is at odds, obviously with present code and state code as pertaining to the subdivisions. Staff, in alignment with the Planning Commission therefore recommends that Exhibit E be removed or reworked again.

17. The Applicants' legal counsel has been continually working with the City's attorney in reviewing the ARMDA in detail and making changes. Both a clean and redlined copy of the ARMDA are hereto attached for Council perusal. Issues for future Mayor and Council

consideration outside of zoning matters will include topics related to project utility provision, tax increment financing, and, creation of a public improvement district (PID) proposed by the developers.

18. Paragraph 14 of the ARMDA allows any density displaced by the donation of land for a school, church or governmental structure/site to be recovered elsewhere in the project and apparently leaves open anywhere in the single-family project (vs. the same pod were the density was initially lost) to receive the channeled units. This is clarifying language beyond the original MDA.

The paragraph's language does temper density recovery in the event that land transacted to facilitate introduction of a school, church or governmental structure/site, if sold at less than market value then replacement residential unit count shall be proportionally reduced. The example given in the text uses a 50% valuation number. "[If] property within the Project is sold at 50% of its appraised fair market value for a school, church, or governmental building, such sale shall result in the loss of $3.47 \times 50\% = 1.735$ units/acre of the developed acres." Again, where the loss will affect density (in the same pod or other region) seems unanswered -- at least in that paragraph. (Further commentary is provided in finding # 20 hereafter.)

19. Paragraph 43 of the ARMDA proposes that the City's "vested laws" shall govern in the event of a conflict between said laws and the ARMDA except as specifically modified by the ARMDA. While the ARMDA is a land use contract, conservative rules used by many jurisdictions, in and out of state, would have City laws always take precedence and ARMDA regulations only being able to be more restrictive than those laws.

20. Utility and emergency services are, or expectedly may be made, available to the project. Paragraph 9.10.3 of the proposed ARMDA notes that, "The City acknowledges that the development of the Property proposed pursuant to this ARMDA will satisfy the minimum level of service for Parks, Trails and Open Space, Culinary Water, Storm Water, Sanitary Sewer, and Transportation (which levels of service are established in the City's impact fee facility plans and impact fee analyses.)...". Further language addresses payment of impact fees. Utility service provision [infrastructure] plans are provided by the Applicant(s) in separate exhibits to the ARMDA. Robust discussion during the Council's May 2nd meeting regarding

[negotiated] provision of 3,000 acre-feet of water to the proposed project suggests that additional discussion regarding that particular needs to happen as part and party to conversation about Firefly's development.

21. A few "Questions and Answers":

Q: What is the effect of any post Jan. 19, 2010, Eagle Mountain City zoning code amendments that affect density?

A: New regulations may not interfere with developer's ability to achieve 9,659 dwelling units per MDA; ARMDA states that current city code applies except as set forth in the ARMDA (this more clearly suggests that Firefly is a planned development styled project with inherent "variances").

Q: Does the MDA allow the developer to place schools and churches within the residential portion of the Project and not lose density to them?

A: The MDA does not require the developer to lose units for the development of non-residential uses (civic, religious, commercial, industrial). Specifically, section 4.3 of the MDA entitles them to develop the "Maximum Residential Units (including the densities identified in the Land Use Element)". Additionally, Section 4.3 also states that any ordinance or City standard adopted after the date of the MDA which limits their ability to develop the vested densities is "Inapplicable". In that sense, they are only required to comply with current standards that do not result in a reduction of their vested density. Section 4.4 also supports the intent that they can develop the densities vested in the Land Use Element. Note, Staff believes that it was not the intent of the original MDA density transfer allowance to let the Applicant "double dip" by selling property for non-residential uses and then still developing out all of the density.

Q: May multiple-family unit buildings be built as a reaction to the shifting of densities within the Project?

A: The MDA is silent on what types and number of units make up the

Maximum Residential Units. As such, the language of 4.3 and 4.4 (which entitle the developer to build the units that are vested in the Land Use Element) expectedly controls. Viewed differently, if the developer was entitled to 1000 units in a Neighborhood Planning Area, they could build any combination of multi-family or single-family to achieve that density. They can obviously build less...but they are entitled to build up to the maximum in any combination needed to make it fit. That said, note that the understood intent of the original MDA and MDP was to build a majority of the residential housing as single-family detached units, with very little multi-family. Such was the impression given by the Applicant/developer(s) during the ~2010 approval process.

Q: As far as building height is concerned, how does the City's currently adopted code regulate or define it?

A: Height is measured from the average of the highest finished grade and the lowest finished grade of the structure to the highest point of the roof, excluding ancillary structures. Where permitted by EMMC 17.25.030 the maximum height of accessory dwelling units (ADUs) located above a detached garage is 35 feet.

Q: What is the impact of the developer's proposed height definition?

A: It would allow for additional home height potentially higher than 35'; consider that the City's definition caps height at the highest point of a home (e.g., a ridgeline on a gable roofed build) vs. the developer's proposal that the height be figured at a point midway between the highest point [again, for example a ridgeline] and the bottom of the roof system (i.e., eave edge).

Q: Is the 5' side yard setback request still on the table?

A: As of 4/11/2023, the 5' side yard setback request is being scaled back to only apply to certain housing to be explained by the Applicant.

Q: Is a Public Improvement District (PID) an agreeable financing

instrument for use with the Project?

A: There are certainly pros and cons to using a PID, and questions for the Council to consider (what types of improvements to include, what type of notice do buyers/residents receive, will development pay down the PID, etc.). A Cty PID policy would be necessary in order to approve a PID for this development.

Q: Staff interrogatory: By allowing introduction of potential commercial uses in planning areas (NPAs) 9, 10 & 12, without losing residential density [it would be allowed to be displaced and re-distributed, wouldn't that allow "double dipping" by the Applicant?

A: (From Applicant) "It has always been planned that we would have neighborhood commercial within 9 and 12 and that this would be where the "village center" would be located. The density being shown in those NPAs has always contemplated the possible mixed use as well as the MF residential density. We have limited the lack of density loss to NPA 9 and 12 and provided for a formula when commercial is added to other NPAs."

Q: Staff interrogatory: Has Tract talked about removing the data center property from Pole Canyon/Firefly?

A: (From Applicant) "Yes, but it would be at the Master Developers discretion to assure appropriate standards are in place."

Q: Staff interrogatory: Why start [what?] with 0.1-acre districts?
[Legal Counsel Opinion Deemed Warranted]

A: (From Applicant) "This simply forms, or establishes, the 10 districts that would be needed over the life of the project. The actual size and final boundaries of each district will expand as needed to account for phasing of the project."

Performance standards ensuring public facilities' compliant provision

Fire Station:

MDA: A requirement for the City and developer to cooperate to provide a place for a fire station was noted in the original MDA.

ARMDA: The ARMADA causes the developer to provide by dedication up to 2 acres to the City for a fire station.

Rodeo Grounds:

MDA: A requirement for the developer to provide 20 acres of improved rodeo grounds (when development buildout threshold met) was noted in the original MDA.

ARMDA: The ARMDA deems the MDA requirement as satisfied vis-à-vis the provision to the City of 100 acres of Boy Scouts of America ground in lieu of the rodeo land.

Q: Should the developer get credit for re-acquiring the BSA property and making the land part of their open space when the property was purportedly supposed to have come back to the City in the first place?

A: The plan with this ARMDA is to improve the BSA property for mountain bike trails, camping, trailhead parking, and other uses. If they received open space credit previously for donating this property to the BSA, it seems logical that improving the open space for active recreation and camping would qualify for open space credit. However, this is ultimately a Council decision.

BSA Land:

MDA: A requirement for the developer to donate land to the City as open space (rodeo arena and interim facility) as part of the First Amendment and in cooperation with the City and the BSA.

ARMDA: The ARMDA contemplates the developer re-taking control of the BSA property, improving it consistent with the Community Plan, and then making all trails and improvements therein public.

Ensuring Improvements are Dedicated and Installed in a Timely Fashion:

MDA: Regarding issuance of building permits (13.1): "No building permit shall be issued by the City for construction in the PCIG [Pole Canyon/Firefly] property, unless PCIG or its successor has substantially completed the required infrastructure to comply with City requirements for phasing of infrastructure and completion of off-site improvements required by the relevant project or proposed

construction...." Language thereafter addresses monetary securities and dedication/completion of improvements to meet City standards. ARMDA: Clarified and added language above and beyond the MDA's verbiage (11.2.1): The "Master Developer agrees to spend at least the 'PTOS [Parks, Trails and Open Space] Spend' in the amount and at the stages described in the PTOS Schedule. Master Developer will attempt to coordinate the completion and order of parks, trails and open space improvements with the phasing of the overall Project. Notwithstanding, and excepting only Phase 1 improvements and dedications described in 11.2.1 above [see ARMDA], Master Developer may elect to build in any order or in connection with any Phase, partial or complete phases of any of the parks, trails, and open space improvements set forth on page 3-05 of the Community Plan so long as the Master Developer actually spends the PTOS Spend at the issuances of building permits identified in the PTOS Schedule."

REQUIRED FINDINGS:

The approval criteria for Master Development Plans are stated in EMMC 16.10.070. The approval criteria for Master Development Agreements are in EMMC 16.10.080. Although it is to be replaced in its entirety, the [originally] approved Pole Canyon Master Development Agreement and associated Amendments should also be consulted and considered when reviewing this application. Master Development Plan and [Master] Development Agreement Amendment requests require legislative-based decisioning on the part of Council.

PLANNING COMMISSION ACTION/RECOMMENDATION:

The Planning and Zoning Commission during their regularly scheduled public hearing of January 24 2023, voted to forward a favorable recommendation of the proposed Master Development Plan and Amended and Re-Styled Master Development Agreement Amendments to the City Council. In so doing, the Commission, however, did recommend:

1. That none of the Applicant's requested exemptions from required City setback residential standards be approved. That is, the setbacks, frontages [of residential lots], and road widths [proposed for use in Firefly] shall conform to City code.
2. That Exhibit E [City processing of subsequent Firefly applications]

not be a part of the ARMDA.

3. The Council cause that any conflict(s) between City code and the proposed ARMDA require the City's code to prevail.

ATTACHMENTS:

[ORD--Pole Canyon MDP Amendment #1 \(Firefly\)](#)

[Summary of Updates to Firefly as of 06.13.23](#)

[Pole Canyon vs Firefly](#)

[ARMDA \(2023-06-13\)](#)

[ARMDA Redlines \(2023-06-13\)](#)

[Technical Guidelines](#)

[Land Use Master Plan](#)

[Community Plan](#)

[Exhibit I to ARMDA -- Parks Plans \(A, C and White Hills\)](#)

[Exhibit L to ARMDA - Data Center Overlay Zone](#)

[Planning Presentation](#)