

Robert Kendrick,
Developer Casita Development LLC
May 12, 2020
Grand Terrace Development Hwy 99

Rebuttal to Knox Properties and Sydnee B. Dreyer, attorney for Knox

Part 1: Rebuttal to Knox Properties

Knox Properties LLC argues the project wasn't thought out or planned well and there will be a higher level of traffic, incur extensive queuing, and envisions greater traffic than reported in the Traffic Impact Analysis. Mr. Knox is unaware of the nature of high density "transit oriented" housing developments and the concerns Mr. Knox and his colleagues argued are fear based and unrealistic.

Through conscientious and deliberate planning, the Grand Terrace community is a 196-unit development enhanced with walking trails, pedestrian trails, bike paths, open space and parks, including a Heritage Center recognizing the historical nature of the past by incorporating a renewed Farm House and Barn on the property. Grand Terrace has 16.7 acres including some organic farmland, forested land, community gardens, open space allowing for biking and walking as a primary mode of transportation while underpinning a pastoral feel of the neighborhood along with beautiful open valley views.

In recognizing the past and rebuilding the existing Farm House and Barn we will be embracing the natural relationship between the environment and sustainable, healthy living. As a high density Transit Oriented Development RVTD is overjoyed with the opportunity to install a Bus Stop at the main entrance for South Bound travel, while two North Bound Bus Stops are easy walks away, one with traffic control lights. As a high density development Grand Terrace will have access to safe and convenient Rapid Transit that will rank this development with a high level of users, as one of the most accessible within the City.

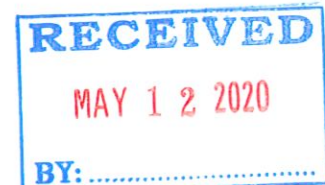
" transit-oriented housing will probably reduce total vehicle travel at the regional level, compared to the counterfactual where that housing was not built or was built in a more sprawling location. Granting reductions in trip generation for the transit-oriented nature of that housing is certainly a step in the right direction, but fundamentally it is misleading to think that such transit-oriented housing generates any trips at all at a regional scale. A more reasonable starting point is to consider that new development is just as likely to reduce traffic, air pollution, and greenhouse gas emissions as it is to increase them."

Adam Millard-Ball from the University of Santa Cruz

Mr. Knox also argues that it will be unsafe getting on and off the highway, and that the traffic will enter on and off his property, use his exit area, cause more accidents, cause him a loss of business and create difficulties for his clients.

Mr. Knox is mostly accurate as to the existing danger, and the cause is from the non-conforming 50 foot paved entrance under his use. Grand Terrace and Mr. Knox's legal access entrance is blocked with landscaping and signage and is now too narrow for use coming off the highway. The favored entrance is the larger accessible non-conforming paved entry. The combination of U-Turns and regular traffic coming onto the Knox properties through the non conforming driveway makes this a very dangerous condition and encourages motorist to use the area for making U-Turns both from the North and the South.

With the installation and widening of the legal access point the dangerous situation that exist now will be removed and the newer development will make the access safer for all users, including those driving on the Highway.



Mr. Knox also mentioned the speed along the highway and how unsafe the highway will be by adding more cars exiting on and off the development. We asked ODOT if it was possible to reduce the speed limits but they said the traffic will slow down just by what they call Traffic Culture. From their experience with the installation of sidewalks, bike paths and people walking down the highway creates a culture of safety and that drivers will slow down when they see sidewalks and pedestrians.

Mr. Knox also argues the access easement is too steep and refers to the easement as his land but when splitting his lot and developing storage units he designed the entrance off the access easement driveway rather than designing a newer entry from his existing lot. He opted to maximize the remainder lot but sacrificed a steeper and narrower driveway instead. Concurrent with that development Mr. Knox encroached into the easement several feet with block walls. The entrance off the Highway was further narrowed by his installation of a Sign and a large Landscape mound, this came to our attention through our ALTA survey and our surveyor Polaris Survey notification.

The combinations of intentional encroachments and narrowing our access driveway and entrance, deliberately locating the Storage Complex access point within the easement rather than choosing a separate area then encouraging the use of a dangerous non conforming 50 foot driveway all runs contrary to his argument that "common sense should prevail" in lieu of studies and models in engineering the traffic on our development.

If we were to adopt the common sense approach Mr. Knox uses in developing, then his judging us as negligent would be appropriately called for.

The Grand Terrace development integrates work force housing on a transit route for Downtown Ashland to the South and Medford to the North where city jobs are an easy ride, walk, bike ride away making this Transit Oriented community an asset to our community and our environment.

Critical to creating transit-oriented communities is that ridership is highest among low to moderate income households, this promotes transit ridership, and creates a more vibrant, transit oriented community

It should be further noted that typical households in auto-dependent neighborhoods spend about 25 percent of their income on transportation costs, but this number drops to 9 percent in neighborhoods with a variety of mobility options. Although the TIA indicates volumes of traffic, this development will greatly reduce traffic within the Transit District.

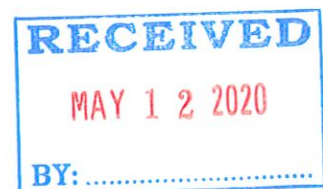
This is a Workforce Housing development and the savings from rent and traffic modes plus cost efficient housing designs allows these families to save, spend more money in the local economy, and spend on essential services such as healthcare. These benefits are not just individual, but societal as well, as they place less strain on social services and resources.

Mr. Knox has many fears but in all reality the benefits from this development will most likely rotate toward Mr. Knox and in the end he will become a happy beneficiary of the byproducts of this development and make him a real advocate for housing, even if it is in his neighborhood.

"Truth is stranger than fiction, but it is because fiction is obliged to stick to possibilities, Truth isn't." Mark Twain

Part II: Rebuttal to: Sydnee Dreyer

1. Ms. Dreyer argues that the driveway takes access from the intervening properties is incorrect and not a matter of fact. The driveway doesn't take access from other intervening properties but is a continuous route that is unrestricted and non exclusive and it takes access from the Highway which is a Public Right of Way.



The commercial properties belong to Knox LLC and the subject property all enjoy the rights to use a mutual access easement.

2. The argument that the northerly access should meet street standards because there are greater amount of car trips than written in the code which calls for projects that have greater than 250 trips be required "two" points of egress. The code doesn't add additional access points above two if the trips exceed the 250 mark, this is only a baseline for safety of ingress and egress. Is Ms. Dreyer arguing that for each 250 car trips a driveway should be added. It's a superfluous argument.

AMC 18.4.3.080.C.3.d. requires all multi-family developments which have a trip generation of 250 vehicles (~30 units) provide two driveway access points. The proposal complies. The code does not require a driveway access point for every 250 vehicle trips.

3. Ms. Dreyer argues the northerly driveway should meet Street Standards because it is more than 165 feet and too long. This access is a Shared Driveway as noted in Municipal Code Section 18.6.1.030 Definitions. A shared driveway is a driveway used to access two or more lots or parcels. The code requires driveways that are greater than 50-feet in length to be improved to flag driveway standards. The proposed improvements provide for street like features as required by AMC 18.4.3.080.B.4.

4. Ms. Dreyer argues that the driveway bisects existing commercial developments but that is not true, the driveway is an egress and ingress access point for the commercial developments vehicular traffic.

5. The argument the driveway is steep isn't relevant at this point since the developer will grade the driveway to the required code standards at development time. Additionally, the existing driveway grades are between 13 to 15 percent which is less than the maximum driveway grade allowed by code. The grade of the driveway will be altered some with the proposed construction and will demonstrate compliance with the grading standards at that time.

6. The suggestion that 1857 cars will be lined up on a tiny long driveway is a nothing but fiction and will never happen. If there are only 200 + parking spaces with cars where did the other 1600 cars come from?

7. AMC 18.4.6. speaks to the Public Facilities. Within this section of code, when and where the dedication of public streets are required is addressed. In this case, the public street is Hwy. 99. The proposed improvements are consistent with the public facility standards excepting the locations where street improvement exceptions are sought for the sidewalks along the Hwy.

AMC 18.4.6.040.D. speaks to connectivity standards for developments when there are no physical constraints, barriers to the development of connected streets. Due to the lack of adjacent public streets to connect too, topographical constraints and the railroad, public street dedication is not required within the development. Consistent with AMC 18.4.6.040. E.2. if public street dedication was required, they would not be connected to other public streets due to physical constraints and the adjacent developments.

8. Ms. Dreyer is arguing the Northern access should be "street" and not a driveway but a public street dedication is only required under AMC 18.4.6.040.C.1, Dedicated Public Streets Required. All streets serving four units or greater, and which are in an R-1, RR and WR zone, must be dedicated to the public and shall be developed to the Street Standards of this section.

Also: The parking area and the driveway accesses proposed are consistent with the standards of AMC 18.4.2.030 for the development of multi-family housing that is subject to the Site Design Review standards. The number of parking spaces proposed is based on the number of bedrooms. The parking lot and the driveway are designed in accordance with 18.4.3.080. AMC 18.4.3.080. B.4 The shared driveway that is a



legal point of driveway access via the easement and the driveway is proposed with street-like features but it is not a public street nor is it required to be a public street.

9. Easement: Ms. Dreyer argues the intent written by Mr. Van Dijk is relevant.

Review by Applicant Attorney:

Casita Developments llc
153 Will Dodge Way
Ashland Oregon 97520

Re: PA-T3-2019-00001, 1511 Highway 99 North
Grand Terrace Development
Mutual Access Easement

Dear Bob

With respect to the Mutual Access Easement and the letter submitted by Mr. Knox from Mr. Van Dijk.

“The easement at issue here is an express easement for ingress and egress.”

It is unambiguous and without any expression of any limitation on the extent of use to be afforded the realty benefitted by the easement.

Van Dijk executed recorded documents specifically reserving and benefitting the applicant’s property with the rights under the easement and made no mention of any limitation on any contemplated or proposed use of the created easement.

If the words of an easement, viewed in the context of the entire document, clearly express the purpose of the easement, then a court will look no further for its intended use. See *Watson v. Banducci*, 158 Or App 223, 230, 973 P2d 395 (1999).

Here the easement is clear-- ingress and egress which is exactly what applicant proposes.

Any statement to the contrary by Van Jijk, Knox or anyone else for that matter is inadmissible parol evidence and may not be considered. See generally “If the terms conveying an easement are unambiguous, the terms control the uses thereafter permissible, and parol evidence will not be considered. *Gorman v. Jones*, 232 Or 416, 375 P2d 821 (1962)”.

Knox may use his land burdened by the easement so long as it “is consistent with, and does not unreasonably interfere with, the rights of the easement owner. See *State, By & Through Dep’t of Fish & Wildlife v. Kortge*, 84 Or App 153, 158, 733 P2d 466, rev den, 303 Or 534 (1987).”

But he may not unreasonably interfere with the rights afforded applicant’s realty for ingress and egress purposes. His interest in using his land encumbered by the easement must give way if there is a conflict between Knox’s desired use of realty and the easement holder.

That is why the easement holder/applicant’s realty is deemed the dominate estate and Knox’s realty is deemed the servient tenement/estate.

Joseph E. Kellerman
Hornecker Cowling LLP
14 North Central, Ste 104
Medford, OR 97501

Respectfully submitted by:
Robert Kendrick
Casita Development LLC
Grand Terrace Development
May 12, 2020

