

**CITY OF MERIDIAN
FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION, AND ORDER**



Date of Order: November 9, 2022
Case No.: H-2022-0030
Applicant: Kristen McNeill, Givens Pursley LLP, representing Morgan Stonehill Partners
In the Matter of: Request to modify an existing development agreement (Instrument No. 2016-060157) by changing the development plan for the northern portion of the site from a retail grocery store to multi-family residential and vertically integrated residential; request for a conditional use permit for a multi-family development consisting of 345 apartment units on 11.65 acres in the C-G zoning district

Pursuant to testimony and evidence received regarding this matter at the public hearing before the City Council of the City of Meridian (“City Council”) on October 25, 2022, as to this matter, the City Council enters the following findings of fact, conclusions of law, decision, and order.

A. Findings of Fact.

1. The facts pertaining to the Applicant’s property (“Property”), the Applicant’s requests, and the process are set forth in the staff report for Case No. H-2022-0030, which is incorporated herein by reference.
2. The Property is encumbered by an existing development agreement (“Development Agreement” or “Instrument No. 2016-060157”).
3. The Applicant is requesting a modification to the Development Agreement to change the development plan for the northern portion of the site from a retail grocery store to multi-family residential and vertically integrated residential (“Proposed Project” or “Phase II”). Additionally, the Applicant is requesting a conditional use permit (“CUP”) for a multi-family development consisting of 345 apartment units on 11.65 acres in the C-G zoning district.
4. The Applicant is developing a multi-family project immediately to the east of the Property which consists of 360 apartment units (“Phase I”).
5. The City Council held a public hearing on October 25, 2022, and received testimony and evidence concerning the proposed modification to the Development Agreement and the proposed CUP.
6. The proposed modification to the Development Agreement would reduce the amount of land available for job-creating uses within this geographical area.
7. Certain roadway segments and/or intersection turning movements in this geographical area are failing, and the Proposed Project would exacerbate these issues.

8. Phase I consists of 360 multi-family units. Phase II would add 345 additional multi-family units immediately to the west of Phase I, resulting in a concentration of multi-family units in this geographical area.
9. The proposed CUP is inconsistent with the existing Development Agreement, which contemplates a retail grocery store on the northern portion of the Property, not a multi-family residential development.
10. The Applicant has failed to demonstrate that the proposed modification to the Development Agreement is superior to the existing Development Agreement.
11. Based on the foregoing, it would not be beneficial for the City to agree to a modification to the Development Agreement, which is binding on the City and the Applicant, and may only be amended by mutual consent.

B. Conclusions of law.

1. The City Council takes judicial notice of the Unified Development Code of the City of Meridian (“UDC”), codified at Title 11, Meridian City Code; all current zoning maps; and the City of Meridian Comprehensive Plan.
2. The City Council takes judicial notice of the Local Land Use Planning Act (“LLUPA”), codified at Chapter 65, Title 67, Idaho Code.
3. A development agreement is a binding contract. *Wylie v. State*, 151 Idaho 26, 32, 253 P.3d 700, 706 (2011). The legal effect of a development agreement is determined by the plain meaning of the agreement. *Id.*
4. A decision to modify a development agreement shall be made by the City Council. UDC § 11-5B-3(F)(2).
5. The City Council may modify an existing development agreement, but it is not required to do so under the UDC. UDC § 11-5B-3(F)(2). The City Council may deny a request to modify a development agreement if the proposed modification is not acceptable to the City. *See id.* Given the findings set forth above, the proposed modification to the Development Agreement is not acceptable to the City.
6. Courts in the Fourth Judicial District of the State of Idaho have held that a City Council’s decision to approve or deny a request to modify a development agreement is not subject to judicial review. *Brown v. City of Meridian*, CV01-19-06894, slip op. at 12 (District Court of the Fourth Judicial District of the State of Idaho, County of Ada, Nov. 11, 2021).
7. A decision to grant or deny a conditional use permit is based, in part, on whether the proposed use is in accord with the requirements set forth in the UDC, which include the utilization of binding development agreements. UDC § 1-5B-6; UDC § 11-5B-3(F). The proposed CUP is not consistent with the existing Development Agreement.

- C. Order.** Pursuant to the above findings of fact and conclusions of law, the City Council hereby denies the Applicant’s request to modify the Development Agreement because the proposed amendment is not acceptable to the City for the reasons set forth above. Additionally, because the proposed CUP is in direct conflict with the requirements set forth in the existing Development Agreement, the City Council hereby denies the Applicant’s request for a CUP for a multi-family development consisting of 345 apartment units.
- D. Final decision.** Upon approval by majority vote of the City Council, this is a final decision of the governing body of the City of Meridian.
- E. Judicial review.** Pursuant to Idaho Code section 67-6521(1)(d), if this final decision concerns a matter enumerated in Idaho Code section 67-6521(1)(a), an affected person aggrieved by this final decision may, within twenty-eight (28) days after all remedies have been exhausted, including requesting reconsideration of this final decision as provided by Meridian City Code section 1-7-10, seek judicial review of this final decision as provided by chapter 52, title 67, Idaho Code. This notice is provided as a courtesy; the City of Meridian does not admit by this notice that this decision is subject to judicial review under LLUPA.
- F. Notice of right to regulatory takings analysis.** Pursuant to Idaho Code sections 67-6521(1)(d) and 67-8003, an owner of private property that is the subject of a final decision may submit a written request with the Meridian City Clerk for a regulatory takings analysis.

IT IS SO ORDERED by the City Council of the City of Meridian, Idaho, on this 9th day of November 2022.

Robert E. Simison
Mayor

Attest:

Chris Johnson
City Clerk