



## Action Report

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**File #:** 16-117

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**TO:** Chair and Planning Commission

**FROM:** Eva Cutro, Community Development Director  
Paul Michaud, Senior Planner

**DATE:** April 19, 2016

**CONTACT:**

Paul Michaud, 480-348-3574

**AGENDA TITLE:**

Consideration of a private road for a portion of Nauni Valley Road  
Conditional Use Permit (CUP 16-01)  
Near northeast corner of 56<sup>th</sup> Street and McDonald Drive

**ACTION:**

Based upon the four findings of Section 1103.4 of the Town Zoning Ordinance as outlined in this action report, I move for approval of the Conditional Use Permit (CUP 16-01) for a private road on a portion of the existing Nauni Valley Drive adjacent to the property located at 6001 N Nauni Valley Drive, subject to the following stipulations:

1. This private roadway Conditional Use Permit (CUP) shall apply to the portion of Nauni Valley Drive as described in the legal description prepared by Anthony N Zaugg dated February 29, 2016.
2. This CUP shall be in substantial compliance with the documents submitted with this application, including the following:
  - a. Narrative prepared by Rose Law Group, dated March 7, 2016
  - b. Legal description prepared by Anthony N Zaugg dated February 29, 2016.
  - c. Roadway as-built plan, Sheets 1 and 2, prepared by Allen Consulting Engineers, Inc., dated March 30, 2016
3. The property owner of 6001 N Nauni Valley Drive and/or the property owner(s) of any lot created due to a lot split from 6001 E Nauni Valley Drive, shall provide the Town, in a form acceptable to the Town Attorney, a grant of access easement over the private roadway and a private roadway maintenance agreement for the portion of Nauni Valley Drive subject to this CUP. This form shall be reviewed by the Town Attorney, be in compliance to applicable local and state laws, and be recorded with the Maricopa County Recorder's Office. Said form shall be recorded prior to issuance of the Certificate of Occupancy or a final inspection for the home

(s) located on Lot 12 of Nauni Valley Ranch.

4. The property owner of 6001 N Nauni Valley Drive or said owner's designee shall improve the portion of Nauni Valley Drive subject to this CUP in compliance with the Local Cross-Section Option B of the Town General Plan. This shall include any necessary pavement improvement connecting Nauni Valley Drive to McDonald Drive within the McDonald Drive right-of-way. Also, it shall include the necessary transition of Nauni Valley Drive to the existing portion of Nauni Valley Drive located outside the area of this CUP.
5. The corner vision located at the northwest and northeast corner of the intersection of McDonald Drive and Nauni Valley Drive shall comply with Section 8-1-13, Corner Vision, of the Town Code, unless documentation has been approved by the Town Engineer for a modification to these requirements. Based upon the dimensions of said corner vision, any obstructions within the Nauni Valley Drive and McDonald Drive rights-of-way will need to be reduced in height or removed pursuant to said Section 8-1-13.
6. Prior to the recordation of the lot split of Lot 12 of Nauni Valley Ranch or within 60 days from approval of this CUP, whichever is earlier, the property owner of said lot or designee shall provide for Town approval the roadway plan referenced in Stipulation 4 and submit the required assurances necessary to guarantee completion of said improvements.
7. Prior to the recordation of the lot split of Lot 12 of Nauni Valley Ranch, the property owner of said lot or designee shall submit a demolition permit for the existing entry wall and the private roadway sign located within the right-of-way of Nauni Valley Drive. The final inspection and removal of said structures shall be completed no later than Certificate of Occupancy or final inspection for the home(s) on Lot 12 of Nauni Valley Ranch.
8. A private roadway sign may be installed on the street sign for Nauni Valley Drive pursuant to the Town standards for such sign, with all costs associated with said sign to be paid by the applicant requesting said sign. Alternatively, a similar sign may be installed on private property pursuant to Article XXV, Signs, of the Town Code.
9. Prior to issuance of the Certificate of Occupancy or a final inspection for the home(s) located on Lot 12 of Nauni Valley Ranch, the property owner of 6001 N Nauni Valley Drive or designee shall complete the roadway improvements referenced in Stipulations 4 and 6.

## **REQUEST**

BH Nauni Valley, L.L.C. is requesting approval of a private road for a portion of the existing Nauni Valley Drive adjacent to their property located at 6001 N Nauni Valley Drive (Assessor Parcels 169-44-012 and 169-44-024). The subject roadway for this application is 50 feet in width and approximately 745 feet in length.

Although this road existed prior to incorporation into the Town in 1961, the application request for the Conditional Use Permit is in response to an administrative lot split request at 6001 N Nauni Valley Road and the Town Zoning Ordinance provision that requires adequate access via a public road or a private road as defined by the Town Zoning Ordinance. Section 201 and Section 1103 of the Town Zoning Ordinance require a private road be approved by a Conditional Use Permit. It should be noted that the request does not include private access control gates or a guardhouse. These structures would require Town approval by a Special Use Permit.

## **BACKGROUND**

### Prior Meetings:

The Planning Commission held a study session on this application at the March 15, 2016 Planning Commission Meeting. The Planning Commission generally agreed that the private roadway maintenance agreement not include landscape maintenance on the west side of this roadway, did not specify additional landscaping plans as part of the CUP process, asked that the applicant work with the Town Engineer regarding possible reduction of the corner vision standard, noted that landscaping, as it may relate to safety at the intersection of McDonald Drive and Nauni Valley Drive, be addressed, asked that the applicant show the roadway transition from the CUP portion of Nauni Valley Drive to the non-CUP portion of that roadway, asked that the notice of the public hearing be mailed to all property owners within Nauni Valley Ranch, and asked the applicant to follow up with the property owner of Lot 13B in Nauni Valley Ranch. For further information, please refer to the draft minutes attached to this report.

### Update:

The Town Attorney has reviewed a draft of the private roadway maintenance agreement form. It includes exclusion of maintenance of landscaping west of the paved roadway within the Nauni Valley Drive right-of-way subject to this CUP. Maintenance of this landscaping is the responsibility of the adjoining property owner(s) and subject to typical Town code compliance procedures. A draft version of this form is attached to this report. This attached form is not fully acceptable to the Town Attorney. However, Stipulation 3 addresses the Town Attorney final review, compliance to applicable local and state laws, and recordation of this form.

The applicant has submitted to the Town Engineer documentation to request a modification of the typical 50-foot corner vision. This documentation was not complete and is still under review by the Town Engineer as of writing this report. The applicant still needs to incorporate the bicycle and pedestrian component. As submitted, the applicant is stating there is not required corner vision on the adjoining corner lots. Depending upon whether a modification is granted, it may be possible that none of the existing oleanders located at the northwest corner of the intersection of McDonald Drive and Nauni Valley Drive may require removal. This removal affects both the right-of-way and the property owners at 6001 and 6002 N Nauni Valley Drive. The property owner of 6001 N Nauni Valley Drive (Lot 13B), who is not party to this CUP, was issued a code violation regarding vegetative obstructions within the corner vision on their lot. As explained during the study session, any vegetative obstructions on Lot 13B and within the right-of-way that are generally located within the alignment of the corner vision will need to be cut back to a maximum height of two feet or be removed. The Town Code Compliance officer has been in contact with the owner of Lot 13B. Any

vegetative obstruction within the corner vision on Lot 13B will be removed via the code compliance process. Stipulation 5 addresses corner vision.

The applicant has provided additional information on the roadway transition on Nauni Valley Drive. Stipulation 4 addresses any necessary pavement improvement regarding both the transition from Nauni Valley Drive to McDonald Drive within the McDonald Drive right-of-way as well as the transition from Nauni Valley Drive within the area of this CUP to the existing portion of Nauni Valley Drive located outside the area of this CUP.

#### Public Comment & Noticing

The mailing notice of the April 19, 2016 Planning Commission was sent to all property owners within the Nauni Valley Ranch subdivision, plus those property owners within 500 feet of the area of this CUP. There was also a newspaper advertisement and site posting regarding this application.

To date, three property owners within the Nauni Valley Ranch subdivision contacted staff. A summary of these discussions is attached to this report. In summary, the comments received are generally favorable to the CUP and not favorable to creating an additional lot.

#### Plat/Roadway Background:

The applicant's narrative provides background on Nauni Valley Road. The subdivision was approved under Maricopa County jurisdiction in 1948 and annexed into the Town in 1961. The plat does indicate the intent of Nauni Valley Road as a private road. However, the ownership and maintenance of this road is not clearly recorded.

The definition of "Lot" in Section 201 of the Town Zoning Ordinance requires that a lot have "adequate frontage upon a public street" or "adequate and recorded access to a public street by a private road as defined by this ordinance." This "ordinance" refers to the private road regulations in Section 1103 of the Town Zoning Ordinance that requires a private road be approved by a Conditional Use Permit. The Town last modified the requirements for a private road in 2005. At that time, it changed the process to eliminate the Council approval via a Special Use Permit to only Planning Commission approval via a Conditional Use Permit. No available records exist that substantiate the private roadway has a Special Use Permit or Conditional Use Permit granted by the Town. As such, Nauni Valley Road is a lawful nonconforming roadway.

The applicant notes that over the last 70 years owners of certain lots in Nauni Valley Ranch have adjusted property lines and three of the original lots were split. This is true. However, the lot line adjustments did not affect existing access or create a new lot. Specifically, Article XXIII, Nonconformance, of the Town Zoning Ordinance, defines a "Nonconforming Lot of Record" as "any validly recorded lot which at the time it was recorded fully complied with the then applicable laws and ordinances, but which does not fully comply with the lot requirements of the Paradise Valley Town code relating to minimum lot area, lot width, or access." Section 2305 of the Town Zoning Ordinance allows construction of a home, lot combinations, and lot line adjustments on any "Lot of Record."

The above-noted provision regarding frontage and access to a lot is an important factor when the Town reviews a lot split or subdivision. Section 6-9-3, Standards of Design, of the Town Code requires all lot splits to meet the standards of Article 6-3 of the Town Code. Section 6-3-5.E, Lots, of

the Town Code states “Each lot shall have adequate vehicular access to a public street.” Since the property owner of 6001 N Nauni Valley Road is requesting a lot split, Sections 201 and 1103 now apply prior to approval of this lot split.

As noted in the applicant’s narrative, lot splits occurred on three of the original lots. The lot splits on Lots 1 and 15 created lots that both directly access and have frontage on the public roadway of 56<sup>th</sup> Street. As such, these lot splits comply with the Town Code and Zoning Ordinance. Lot 13 was split in 1983. Both of these lots access onto Nauni Valley Drive. However, the lot split case file does include an unsigned version of the lot split plat showing a one-foot non-vehicular access easement on the lot adjoining McDonald Drive. This non-vehicular access easement may have been suggested as a means to not change the number of driveways accessing Nauni Valley Road. It is unclear why this non-vehicular access easement was later removed as there are no minutes or other records to explain its removal.

#### Existing Roadway Condition

The roadway condition of Nauni Valley Drive varies in quality and type of improvement. Nauni Valley Drive varies in pavement width from 16 feet to 29 feet. There is two-foot wide ribbon curb along some of the properties.

This portion of the subject roadway also includes two existing entry walls located in the private road right-of-way. The applicant will be removing these entry walls. These structures could negatively impact the safe movement of vehicles and other modes of travel. Also, the existing walls on the lot proposed for the lot split is located outside the 50-foot corner vision as required by Section 8-1-13 of the Town Code. As part of the lot split under staff review, portions of this existing perimeter wall at 6001 N Nauni Valley Drive will need to be removed or modified to comply with the Town’s wall requirements.

The applicant has been asked to remove a sign that the road is a private road. This sign is located within the Nauni Valley Drive right-of-way, its present location may negatively impact the safe movement of vehicles and other modes of travel, and the sign area and height are not consistent with typical allowable signs in the Town. Stipulation 8 is proposed to address alternative private roadway signage options that comply with Town standards.

### **DISCUSSION/FACTS**

#### General Plan/Zoning

Roadways typically have no General Plan designation or Zoning District classification. The lots within Nauni Valley Ranch have a “Low Density Residential” General Plan designation and are zoned “R-43”. The Town General Plan shows Nauni Valley Drive as a local roadway and McDonald Drive as a Minor Arterial. There are three local roadway cross-sections in the Town General Plan. Staff supports Option B, which has an improved paved area of 26 feet in width that includes two-foot wide ribbon curbs.

#### Private Roadway Conformance

There are four findings in Section 1103.4 of the Town Zoning Ordinance the applicant must meet for the Planning Commission to approve a private road.

- 1. The use will not cause a significant increase in vehicular or pedestrian traffic in adjacent residential areas; or emit odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions; or contribute in a measurable way to the deterioration of the neighborhood or area, or contribute to the downgrading of property values.**

The applicant notes that approval of this Conditional Use Permit will result in pavement and curb improvements to Nauni Valley Drive that otherwise may not get completed. They assert that this will improve the neighborhood and property values. Being a private road, the Town does not improve or maintain this roadway. As noted previously, the applicant also intends to make pavement repairs on the portion of Nauni Valley Drive not adjacent to 6001 N Nauni Valley Drive.

The lot split that is dependent upon approval of this Conditional Use Permit will result in a new single-family home lot for this neighborhood. That will increase vehicular and pedestrian traffic. However, it is not expected to cause a significant increase in such traffic. The Trip Generation Manual by the Institute of Transportation Engineers estimates the typical single-family detached home averages between 8.78 to 10.09 vehicle trip ends per day.

Approval of this Conditional Use Permit does not alter the circumstance that Nauni Valley Drive has existed in its current location for almost 70 years. Approval will include a maintenance agreement provision for at least a portion of Nauni Valley Drive. A roadway maintenance provision presently does not exist. Approval of the Conditional Use Permit would make it the responsibility of BH Nauni Valley, L.L.C., or its successor, to maintain the subject roadway portion or provide the Town the ability to perform such maintenance at their cost should they fail to maintain this roadway portion.

- 2. The use will be in compliance with all provisions of this ordinance and the laws of the Town of Paradise Valley, Maricopa County (if applicable), State of Arizona, or the United States of America.**

The applicant states that all provisions of the Conditional Use Permit regulations and other applicable laws are met.

Approval of this Conditional Use Permit will make the lawful nonconforming roadway ownership and maintenance situation on a portion of Nauni Valley Drive conform to current Town regulations. Ideally, a Conditional Use Permit requiring roadway improvement to the roadway cross-section, Option B, and a roadway maintenance agreement is encouraged on the entire Nauni Valley Drive, but minimally is required for the road portion from the subject site of the requested lot split to the nearest public roadway.

- 3. The use will be in full conformity to any conditions, requirements or standards prescribed in the permit.**

The applicant commits to maintain conformity with all conditions, requirements or standards as prescribed and agreed to in the Conditional Use Permit.

Private roads are typically held to public roadway standards. The portion of Nauni Valley Drive adjacent to 6001 N Nauni Valley Drive will comply with public roadway standards for a local road. The right-of-way is 50 feet in width. The improved paved area will be 26 feet in width that includes two-foot wide ribbon curbs. The nonconforming roadway sign and entry walls at McDonald Drive will be removed. There is no turn-around or vehicle stacking issues as Nauni Valley Drive is not gated and has direct access onto both McDonald Drive and 56<sup>th</sup> Street.

**4. The use will not conflict with the goals, objectives or purposes of the zoning district or Policies of the Town of Paradise Valley as set forth in the Town's General Plan.**

Approval of this Conditional Use Permit will make the lawful nonconforming roadway ownership and maintenance situation on a portion of Nauni Valley Drive conform to current Town regulations.

Below are some of the policies in the Town General Plan applicable to this application request.

- The portion of Nauni Valley Drive adjacent to 6001 N Nauni Valley Drive will be improved to comply with the pavement standards of the local roadway cross-section, Option B. This improvement of the condition of Nauni Valley Drive supports Policy LU 2.1.1.4 that encourages the maintenance and revitalization of existing neighborhoods.
- Removal of the nonconforming entry wall and any vegetation near the entrance to Nauni Valley Drive at McDonald Drive keeps with the residential scale and character of the neighborhood while ensuring adequate access for emergency response vehicles in accordance with Policy M 4.4.2.2.

Lot Split

The associated lot split application meets the conditions to be processed by staff approval. Drainage, utilities, fire protection, and related matters will be reviewed as part of the lot split process. However, this lot split is dependent upon the approval of the Conditional Use Permit for the subject portion of Nauni Valley Drive. As such, the lot split will not be signed by Town staff or recorded until verification of the approval of the Conditional Use Permit and completion of the 15-day appeal process.

**ATTACHMENTS**

1. Vicinity Map/Aerial/General Plan/Zoning
2. Application/Narrative
3. CUP Maps, including lot split map for illustration purposes only
4. Draft Roadway Maintenance Agreement
5. Nauni Valley Ranch Plat 1948
6. Lot 13 Nauni Valley Ranch Lot Split 1983
7. Roadway Cross Sections
8. Noticing
9. Prior Minutes
10. Public Comments
11. Corner Vision (Preliminary)

C: - Jordan Rose/ Nick Labadie/ Rod Cullum (Applicant)  
- Case File: (CUP 16-01)