

Ronald E. Bush
3695 N. Gramarcy Lane
Garden City, ID 83703
July 8, 2020

City of Garden City
Planning and Zoning Commission
6050 Glenwood Street
Garden City, ID 83714
Sent by email to jthorn@gardencityidaho.org and to cwadams@gardencityidaho.org

Re: *SUBFY2020-06 Glass Island View Subdivision*

Dear Commissioners:

Please consider this letter as additional written testimony regarding the above-referenced subdivision proposal. Thank you for your decision to continue the matter to this month's hearing to allow for additional time for the proposal to be considered by affected parties. Here are my comments. I have been pressed for time to finish this task, so if I have gremlins of typos or grammar, please forgive me.

1. Signature by owner and Affidavit of Legal Interest. I previously highlighted the legitimate concern raised by the fact that the owner (Glass Creek) had not signed the subdivision application, nor the Affidavit of Legal Interest. Therefore, no owner has *certified that the information in the application and the accompanying materials is correct* and no owner has sworn under oath in the Affidavit of Legal Interest, that he/she/it is the owner of the property, and agrees to *hold harmless and indemnify* the City from any claims resulting from any dispute over the statements in the application or as to the ownership of the property. In response to that, Mr. Taunton filed a copy of a document purporting to appoint him as an attorney in fact (as distinguished from an attorney at law), with authority to act on behalf of Glass Creek. There is an obvious question as to whether an attorney-in-fact can properly sign an *affidavit* on behalf of someone else,¹ but Mr. Taunton said in the application that the "Affidavit of Legal Interest" is "not applicable" because he has

¹ The Affidavit of Legal Interest requires the owner to swear under oath to the following (emphasis mine):

1. That *I am the record owner of the property* described on the attached, and I grant my permission to [name/address] to submit the accompanying application pertaining to that property.
2. *I agree to indemnify, defend and hold the City of Garden City and its employees harmless from any claim or liability resulting from any dispute as to the statements contained herein or as to the ownership of the property which is the subject of the application.*
3. I hereby grant permission to City of Garden City staff to enter the subject property for the purpose of site inspections related to processing said applications.

full authority to sign the application. Importantly, the Affidavit of Legal Interest is required so that the City *knows, under oath* who owns the property - here, who are the owners of Glass Creek, LLC? This is not a subject of idle curiosity; rather, it is a requirement of the subdivision approval process and a critically important part of the protections to which the City is entitled to ask for and should insist upon having, in regarding to the indemnification and hold harmless requirements. In that setting, the Affidavit of Legal Interest absolutely is “applicable,” and I would request your Commission to inquire of the planning department and the city attorney as to (1) what authority exists for that requirement to be waived, if any; and (2) what good reason is there for allowing a waiver, even if one could be granted.

2. An open question as to whether this real property can be subdivided at all. As set out in paragraph six of Ms. Thornborrow’s draft of preliminary findings for your Commission, the subdivision application describes the property in this manner: **a parcel of land being a re-subdivision of a portion of Lot 70, Block 1 of “The Amended Plat of a Portion of Lot 1, and all of Lots 2, 3, 4, 5 and 6, Block 1 of The Plantation No. 2” (Subdivision), located in Government Lot 2 in the Southwest Quarter of Section 30, Township 4 North, Range 2 East, Boise Meridian, Garden City, Ada County, Idaho.** The Plantation No. 2 Subdivision is one of the multiple subdivisions that were developed around the Plantation Golf Course. The neighborhoods, as you know, are among the nicest and oldest planned developments in Garden City, and were developed over several decades starting in the early 1980’s. (You may be aware that one of the homes immediately adjacent to the proposed subdivision was built and lived in for many years by late Ted Ellis, a prominent Idaho banker. After his retirement from banking he was elected mayor of Garden City, as described in his obituary: “...he proudly served as the mayor of the City of Garden City from 1994 to 2006. During his time as mayor, he is credited for changing the image of the city and building infrastructure that is still in place today.”

I have reviewed the Master Declaration of the Plantation subdivisions (which are, in essence, the “CC & Rs” of the subdivisions), and its various amendments. I have reviewed the plats, including the Amended Plat referenced above. I have tried to locate any applicable documents that are recorded with the Ada County Recorder concerning the parcel of land sought to be developed. I have found nothing that expressly exempts this parcel of property from a critically important provision of the Master Declaration, specifically Section 5.16(B) of the “General Standards” provision of the Master Declaration², which is headed “No Further Subdividing and which reads in pertinent part: “*No Lot, Common Area, or Condominium may be further subdivided....*”

I have looked carefully for something that would make this provision inapplicable but have found nothing. Perhaps there is some express language elsewhere that makes clear that this particular parcel of property *can* be further subdivided, but I have not found it. It is not surprising that the prohibition against further subdivision *would*

² This is found at p. 45, LL 1976 (and following) of the Master Declaration.

apply, as when the Plantation subdivisions were developed no one would have considered for a moment the scenario which has unfolded today – *i.e.*, the golf course being used for residential development. It was the golf course, after all, which was the most significant element of the entire planned development, the primary selling card for the developer, and – no doubt – one of the primary amenities for the families who purchased lots and built homes in the subdivisions, many of whom – community leaders, businesspeople, doctors, lawyers and other professionals, retired generals and other military officers – continue to live in those same homes today. It is fair to say that no one at the time would have considered (or been agreeable to if it were made known to them), the prospect of the golf course, rather than the property along the golf course, being developed into something other than a golf course.

Perhaps there is some provision of the Master Declarations which expressly allows what Glass Creek seeks to do in this application. But given what I describe above, it may be prudent for your Commission to delay any action on this application until Glass Creek can do so, if they can do so. And, I raise the subject here so that if Glass Creek's response to this issue is not satisfactory to the City or to existing homeowners, then the issue is preserved for future review.

3. Soil report and floodplain issues: I admire my neighbors who have spent enormous time and effort in scrutinizing the details of the application dealing with the floodplain and the soil engineering, which is a corollary issue with the floodplain issues. Suffice it to say that the information supplied to the City about the application (which, remember, has not had the owner's certification to the correctness of the information in the application and the materials submitted in support of the application, nor any statement under oath by the owner accepting the responsibility to indemnify and hold harmless the City from any claims resulting from any dispute over the information in the application or over ownership) contains significant issues about the location of the high water line of the Boise River, the integrity of the subsurface soils (or lack thereof) of the building lots, and the proper location of any floodplain setbacks. These issues are problematic for the integrity of any residential structure that might be placed on the lots, problematic for the upstream and downstream residents in a flood event, problematic for Garden City in connection with its responsibilities to FEMA, and problematic for not just anyone who might buy such a lot, but also other property owners throughout the City as to whether the availability of federal flood insurance can be maintained.

In reviewing those questions, I was reminded that it is my understanding that Glass Creek used "proxy" soil samples for the City to base any approval upon. In other words, Glass Creek provided information about soil samples taken elsewhere on the golf course, each of which is a considerable distance away from this proposed subdivision property, as information for city staff to rely upon in considering the suitability of the site for residential development. It seems quite apparent that using such proxy sampling is inappropriate and not reliable here, and raises question about why they were used at all. I urge the development staff to recommend to the Commission and for the Commission to require that a Soils Engineering Report be

prepared and submitted which is tied directly to the actual site and, in particular, to the portions of that site which have been called into question.

The other floodplain issues are well-documented and described in comments from other persons and I will not attempt to recount them here. I do raise the question, however, of whether this application justifies the otherwise frequent approach of a contingent approval from this Commission – in other words that you would approve the application subject to contingencies that must be satisfied. Sometimes it is the sounder course to deny the application until it is resubmitted by the applicant, if and when the serious questions can satisfactorily be answered. There is good reason to do so here.

Thank you for your thoughtful consideration of these matters, on this important subject.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ronald E. Bush", with a horizontal line extending to the right.

Ronald E. Bush

REB/r