

BEFORE THE CITY COUNCIL  
GARDEN CITY, ADA COUNTY, IDAHO

In the Matter of:	)	CUPFY2021-0007
	)	
Conditional Use Permit	)	FINDINGS OF FACT,
303 E. 34 <sup>th</sup> Street	)	
and 3342 N. Carr Street	)	CONCLUSIONS OF LAW;
Garden City, Ada County, Idaho	)	AND DECISION
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THIS MATTER, came before the Garden City Council for reconsideration on June 28, 2021. The City Council reviewed the application and materials submitted. Based on the evidence presented, pursuant to Garden City Code Table 8-6A-1, the City Council makes the following Findings of Fact, Conclusions of Law and Decision:

**FINDINGS OF FACT**

1. This permit is for the request of a Farmers Market and Community Gathering Destination (rephrased in the review documents as Outdoor Event Center).
2. This use is not defined by Garden City Code.
3. The applicant is Jorre Delgado.
4. The property owner of record is Casino Beach LLC.
5. The location of the project is:
  - a. 303 E. 34<sup>th</sup> Street; Ada County Parcel Number R2734541500; described as LOTS 31/32 BLK 35 FAIRVIEW ACRES SUB NO 5
  - b. 3342 N. Carr Street; Ada County Parcel Number R2734541520; Described as LOTS 33/34 BLK 35 FAIRVIEW ACRES SUB NO 5
6. The property is a legal lot of record.
7. The scope of the request applies to the entire property.
8. The subject property is 0.85 acres.
9. The project is located in the C-2 General Commercial zoning district.
10. The project is located in the Live-Work-Create and Activity Node: Neighborhood Destination designations of the Comprehensive Plan Future Land Use Map.
11. The project is not located in the SFHA according to the 2003 FIRM.

12. The project is located in the SFHA according to the 2017 FIS.
13. The existing use on the site is Farmers Market and Event Center.
14. The following standards apply to this proposal:
  - a. Garden City Code 8-1A-4 Applicability
  - b. Garden City Code 8-1B Existing Nonconforming Properties, Structures, and Uses
  - c. Garden City Code 8-4A Design and Development Regulations- General Provisions
  - d. Garden City Code 8-4D Parking and Off-Street Loading Provisions
  - e. Garden City Code 8-4E Transportation and Connectivity Provisions
  - f. Garden City Code 8-4I Landscaping and Tree Protection Provisions
15. The following plans and policies apply to this proposal:
  - a. Garden City Comprehensive Plan
  - b. Garden City Sidewalk Policy
  - c. Garden City Street Light Policy
16. The following previous approvals apply to this proposal:
  - a. CUPFY2019-04
  - b. SUBFY2021-0005
17. Required materials per Garden City Code Table 8-6A-2 Required Application Information was provided:

<b>Conditional Use Permit</b>			
Provided			
Yes	No	NA	
X			Compliance Statement
X			Neighborhood Map
X			Will Serve

18. Additional application materials submitted include:
  - a. Site Plan;
  - b. Site Photos;
  - c. Irrigation Letter;
  - d. Landscape Plan;
  - e. 300' Neighborhood List;
  - f. Affidavit of Legal Interest;
  - g. Application;
  - h. Statement of Intent.
19. Agency Comments were received from:
  - i. Fairview Acres, March 26, 2021
20. Public Comments were received from:
  - a. Belinda Isley; In Support
  - b. Brooke Van Dam; In Support
  - c. Bryant Forrester; In Support

- d. Cae Odell; In Support
- e. Calvin Zito; In Support
- f. Helen Carnie; In Support
- g. Jane Miceli; In Support
- h. Janel Miles; In Support
- i. Joe Jaszewski; In Support
- j. Kasey Allen; In Support
- k. Lauren Brill; In Support

21. The following noticing was completed in accordance with GCC § 8-6A-7:

Receipt of application <a href="#">here</a>	03/16/2021	
Letter of Acceptance	04/16/2021	03/29/2021
Radius Notice	04/06/2021	03/17/2021
Interested Parties	None	None
Legal Notice	04/02/2021	03/17/2021
Agency Notice	04/06/2021	03/17/2021
Property Posting Sign	04/11/2021	04/08/2021
Affidavit of Property Posting and Photos	04/11/2021	04/08/2021

22. On 04/27/2021, the applicant, owners, and interested parties were noticed that there would be a non *de novo* consideration of the project by City Council on May 24, 2021.

23. On April 21, 2021, a public hearing before the Planning and Zoning Commission was held:

- a. It was noted that due to the applications being on essentially the same properties, that both applications would be heard simultaneously.
- b. Staff Hanna Veal presented the staff report.
- c. Will Howard, Michael McCue, Michael Slavin, Jorre Delgado, Chace Slavin, presented the application.
- d. Chairman Brown noted that late testimony be allowed except for those received by the Commission after 5:00 pm on April 21, 2021. He noted that the items could be read into the record by the individuals who sent them in.
- e. Public testimony was heard from:
  - i. Julie Compton in favor noting at times alcohol is an issue; most of the noise comes from the surfers and Quinn's Ponds; requested a 10:00 pm curfew; appreciates bike racks; issue of the grade between Greenbelt and 34<sup>th</sup> Street; vacation is needed to close the street for the market; trees need to be removed because of parking.
  - ii. Kasey Allen in favor noting respects for developer; will energize the community.
  - iii. Jodi Eichelberger in favor noting appreciation for the history and; access to artists and public events; however, many artists will not be able to afford the units; in support of the market.
  - iv. Janelle Miles in support noting: this area is valuable to Capital City Market vendors.

- v. Loren Kaehn in favor noting benefits of white-water parks; continued need for public parking and access including the Fire Department rescue team; congestion; engage irrigators.
- vi. Jason Jones in favor noting lack of his support for the easement to 35<sup>th</sup> Street.
- vii. Hannah Ball in favor.
- viii. Rebecca Arnold in favor of the market.
- f. Will Howard and Michael Slavin provided rebuttal:
  - i. The access needs to stay off the interior of the of the lot.
- g. Public testimony was closed.
- h. Discussion included:
  - i. Easement to create connection to 35<sup>th</sup> Street can be in the desired area, however upon working with the neighbors, if they are unable to obtain an easement in the applicant's desired, they can work with the staff to identify an alternative.
  - ii. Street Scape:
    - 1. The reason for the tree types is a good one.
    - 2. Tulip trees are not appropriate.
  - iii. Vacation of 34<sup>th</sup> Street:
    - 1. Biggest concern that it is maintained as public.
    - 2. Elevating the street is favorable.
    - 3. In favor of the vacation.
  - iv. Most of the comments are in support of the application.
  - v. Lack of sidewalk for market is not desirable:
    - 1. The lack of sidewalk was not the market's fault.
    - 2. Would like to see something that would make this more accessible to wheelchairs and walkers.
  - vi. This application is making up for things that were missed in the Waterfront District.
  - vii. Commended looking to the history of Garden City.
- i. Commissioner Wilde moved to approve the CUPFY2021-0007 application as drafted in the draft decision in the affirmative with the following modifications to the conditions of approval:
  - i. The sidewalk must be installed by the end of the year of 2022.
- j. Commissioner Rasmussen seconded the motion.
- k. The motion carried unanimously.
- l. Commissioner Rasmussen recommend approval the SUBFY2021-0005 application as drafted in the draft decision in the affirmative with draft conditions of approval with the following modifications to the conditions of approval:
  - i. The applicant works with Thurman Mill and adjacent owners to create connection to 35<sup>th</sup> Street can be in the desired area, however upon working with the neighbors, if they are unable to obtain an easement in the applicant's desired, they can work with the staff to identify an alternative.
  - ii. Trees within the development, including street trees, shall be approved by staff.
- m. Commissioner Pelton seconded the motion.
- n. The motion carried unanimously.

24. On April 26, 2021:

- a. Council Member Sousa requested that the item be moved from the City Council consent agenda to a special business agenda item;

- b. Discussion of potential concerns included the number and duration of events and concerns with compliance with alcohol regulations.
- c. Council Member Sousa moved to review the application noting that the Planning and Zoning Commission's decision may result in significant adverse impact to the City making the City affected or aggrieved by the final decision.
- d. Council Member Page seconded the motion.
- e. The motion passed unanimously.
- f. A council review shall stay all proceedings related to the application unless there is imminent peril to life and property, as determined by the commission or court order pursuant to G.C.C. § 8-6A-9. A.4.

25. On May 24, 2021, the City Council considered the application:

- a. Michael Slavin, for the applicant, was available for questions.
- b. Staff, Jenah Thornborrow, noted that the application was being reviewed per Garden City Code 8-6A-9, and that it is not de novo. Subsequently, written testimony that had been received by the City after the Planning and Zoning Commission's decision had not been included in the record for the City Council's review.
- c. Discussion noted:
  - i. No one is opposed to the Farmer's Market, but there are concerns to alcohol sales meeting the spirit and intent of code.
  - ii. With the vast number of changes happening in the neighborhood, an indefinite approval is not appropriate.
- d. Council Member Souza moved to approve the application with the following modifications:
  - i. The effective date of the conditional use permit be from April 21, 2021, to March 31<sup>st</sup>, 2022.
  - ii. One alcohol catering permit be permitted every 180 days.
  - iii. There be a maximum of 50 days of events.
- e. Council Member Beaumont seconded.
- f. The motion passed on a 4/0 vote.

26. On June 4, 2021, the applicant submitted a request for reconsideration.

27. On June 14, 2021, the City Council approved the request for reconsideration.

28. The reconsideration was scheduled for June 28, 2021.

29. On June 28, 2021, the City Council reconsidered the application:

- a. Michael Slavin, for the applicant, presented the request.
- b. Council Member Souza moved to approve the application with the following modifications:
  - i. There be a maximum of 100 events.
- c. Council Member Jorgensen seconded.
- d. In discussion of the motion, it was requested that number 15, requiring that all advertising, publicity, and promotion note the parking for the event is limited and encourages participants to utilize alternative methods of transportation.
- e. The motion passed on a 4/0 vote.

30. The record contains:

- b. Application Documents

- c. Noticing Documents
- d. Agency Comments
- e. Written Public Comments
- f. Staff report
- g. April 21, 2021, Planning and Zoning Commission Hearing Minutes and Audio
- h. Planning and Zoning Commission Signed Findings of Fact, Conclusions of Law and Decision
- i. April 26, 2021, City Council Minutes and Audio
- j. May 24, 2021, City Council Minutes and Audio
- k. City Council Findings of Fact, Conclusions of Law and Decision Document
- l. Reconsideration Request
- m. June 28, 2021, City Council Minutes and Audio
- n. Amended City Council Findings of Fact, Conclusions of Law and Decision Document
- o. Reconsideration Request

31. In order to approve a conditional use permit application, the following findings must be made:

<b>GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS</b>			
Conclusion			
Compliant	Not Applicable to this Application	Not Compliant	Standard
X			<p><b>Finding:</b> The use is appropriate to the location, the lot, and the neighborhood, and is compatible with the uses permitted in the applicable zoning district;</p> <p><b>Explanation:</b> The use is appropriate to the location, lot, and the neighborhood as location is in the Comprehensive Plan's land use designation of a Neighborhood Destination Center.</p>
X			<p><b>Finding:</b> The use will be supported by adequate public facilities or services to the surrounding area, or conditions can be established to mitigate adverse impacts;</p> <p><b>Explanation:</b> There are public services available that can accommodate the proposed development.</p>

X			<p><b>Finding:</b> The use will not unreasonably diminish either the health, safety, or welfare of the community;</p> <p><b>Explanation:</b> The use will not unreasonably diminish either the health, safety, or welfare of the community.</p>
X			<p><b>Finding:</b> The use is no in conflict with the comprehensive plan or other adopted plans, policies, or ordinances of the city.</p> <p><b>Explanation:</b> This application is cohesive with future land use designations of the Comprehensive Plan:</p> <ul style="list-style-type: none"> <li>a.) Activity Node: Neighborhood Destination</li> <li>b.) Live-Work-Create</li> </ul> <p>The application is supported by:</p> <p>Goal 1. Nurture the City</p> <ul style="list-style-type: none"> <li>a.) 1.1 Objective: Promote city events, seasonal holidays, and celebrations.</li> <li>b.) 1.4 Objective: Create a premier destination place to live, work, and recreate.</li> </ul> <p>Goal 2. Improve the City Image</p> <ul style="list-style-type: none"> <li>a.) 2.1 Objective: Encourage new and distinctive neighborhoods.</li> </ul> <p>Goal 3. Create a Heart for the City</p> <ul style="list-style-type: none"> <li>a.) 3.2 Objective: Create public gathering places at multiple locations throughout the City.</li> </ul> <p>Goal 11. Serve the City</p> <ul style="list-style-type: none"> <li>b.) Continue to maintain existing public facilities and support social services. Develop more civic uses sought by the community.</li> </ul> <p>Goal 12. Evolve as a Destination</p> <ul style="list-style-type: none"> <li>a.) 12.1 Objective: Support a positive business environment</li> <li>b.) 12.2 Objective: Continue to support commercial and industrial land uses.</li> <li>c.) 12.3 Objective: Create a premier destination for work, recreation, entertainment, culture, and commerce.</li> </ul>

18. The record was reviewed by the Planning and Zoning Commission to render their decision.

19. The record was reviewed by the City Council in its entirety to render the final decision.

### **CONCLUSIONS OF LAW**

The City Council reviewed the application with regard to Garden City Code Title 8, and based on the conditions required herein, concludes the application **meets** the standards of approval under **GCC 8-6B-2 Conditional Use**.

### **DECISION**

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law contained herein, the City Council hereby **APPROVES** of the application subject to the following conditions:

#### **Application Specific Requirements:**

##### Prior to Occupancy:

1. Occupancy of the site shall not commence until after a Certificate of Compliance has been obtained from Garden City Development Services Department.
2. Temporary use of the site can occur prior to the installation of the sidewalk and required landscaping.
3. A site plan for each event shall be submitted to North Ada County Fire and Rescue District with ample time for their review and comment.
4. All temporary structures shall obtain the appropriate permits prior to being placed on site.
5. A corrected Affidavit of Legal Interest shall be provided to Staff.

##### Site Specific Requirements for the Duration of the Use:

1. The effective date of the conditional use permit be from April 21, 2021, to March 31<sup>st</sup>, 2022
2. There be a maximum of 100 events.
3. Not more than one alcohol catering permit shall be permitted every 180 days.
4. If SUBFY2021-0005, Casino Beach is approved; the conditional use permit will no longer apply to the individual properties created through the subdivision once a building permit is applied for on the lot should it change the use of the lot.
5. The market shall be permitted on any and all common lots within the SUBFY2021-0005 Casino Beach Subdivision if the subdivision is approved.
6. Temporary closures of 34<sup>th</sup> Street north of Carr is permitted for automobiles only. 34<sup>th</sup> Street must maintain open to pedestrians and bicyclists. Any temporary closure of right of ways must obtain approval from Ada County Highway District and the Garden City Police and Clerk Departments.



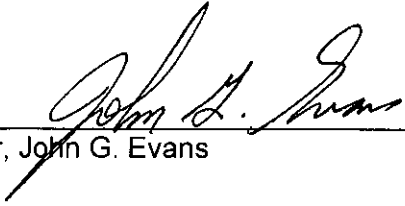
7. No closures of rights-of-way to bicycles and pedestrians wishing to gain access to the Greenbelt is permitted.
8. The vacation of 34<sup>th</sup> Street shall not occur unless approved by Garden City Council.
9. Restroom facilities, including hand washing facilities shall be provided.
10. Bicycle parking shall be provided.
11. Vehicular parking shall be provided.
12. Areas of pedestrian activity shall be separated from areas of vehicular use.
13. Between the hours of nine o'clock (9:00) P.M. one day and eight o'clock (8:00) A.M. the following day, it shall be unlawful for any person or business to make, cause, or allow loud or offensive noise by means of voice, musical instrument, horn, radio, loudspeaker, automobile, machinery, other sound amplifying equipment, domesticated animals, or any other means which disturbs the peace, quiet, and comfort of any reasonable person of normal sensitiveness residing in the area. Loud or offensive noise is that which is plainly audible within any residence or business, other than the source of the sound, or upon a public right-of-way or street at a distance of one hundred feet (100') or more from the source of said sound.
14. The use shall comply with all Idaho Code regulations regarding the sale, manufacturing, or distribution of alcoholic beverages.
15. The use shall comply with the licensing requirements as set forth in Title 3, "Business and License Regulations", of the Garden City Code.
16. Security shall be provided for the entire premises including inside the building and any parking lot or outside usable space. Security shall be provided in the prescribed manner:
  - a. Security personnel are required and shall wear identical attire clearly identifiable with the word "Security" on the backside of shirts; and
  - b. Security staff should have some means of two-way communication; and
  - c. Video surveillance is required; and
  - d. Parking areas shall be lighted; and
  - e. No loitering outside of the establishment shall be permitted.
17. This conditional use permit may be revoked at any time, if it is determined by the Garden City Chief of Police that parking and/or traffic, noise, or activities are having a significant detrimental effect on public safety.
18. All advertising, publicity, and promotion, including social media, for this event must state the following, "Parking for the event is limited, please use alternative modes of transportation such as walking, public transportation, bicycle, or ride-share services."
19. Events that are anticipated to utilize more than 50% of the on-street parking on 36<sup>th</sup> - 32<sup>nd</sup> Streets from Osage to the River, and Carr Street shall provide a shuttle service.

20. If the market is to use the public parking lot located on 36<sup>th</sup> Street, then a shared parking agreement shall be applied for and approved by City Council.

### **General Requirements**

1. Any changes in the design, construction, operation, or use shall be brought to the immediate attention of the Planning Official for determination if the changes are in substantial conformance with the City's action. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of that application prior to commencing any change.
2. This Conditional Use Permit shall not be transferable from one parcel of land to another. Unless otherwise stated in the conditions attached to a permit, the permit shall be granted to the applicant and successors in interest to the premises for which it was approved.
3. This approval is only approval of the conditional use permit. All other applicable permits must be obtained and completed prior to a certificate of compliance or occupancy.
4. The approval is specific to the application provided and reviewed. Final approval is based on substantial conformance. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of that application prior to commencing any change.
5. Final approval is subject to the approval of other reviewing agencies and City Departments. Any more restrictive standards adopted and made applicable by any Transportation Authority, Fire Authority or other Federal, State or Local regulatory agencies shall prevail.
6. All improvements and operations shall comply with applicable local, state, and federal requirements and procedures whether specifically addressed in the analysis of this application or not. This shall include but not be limited to 8-4A General Provisions of Design and Development Regulations.
7. The property owner is responsible to maintain the site to edge of roadway asphalt.
8. If there are any tree grates, they shall be widened to accommodate the growing tree trunk and prevent girdling of any trees planted in tree wells within sidewalks or other public right of way.
9. Plant materials which exhibit evidence of insect pests, disease, and/or damage shall be appropriately treated to correct the problem. Dead and diseased plant materials shall be replaced.
10. Where landscaping might impact motorist or pedestrian sight distance, shrubs shall be maintained below three feet (3') in height and trees shall be pruned so that the lowest branches will be at least seven feet (7') above the ground level.
11. A three-foot (3') clearance zone shall be maintained around the circumference of fire hydrants.
12. Retain and protect existing trees, vegetation, and native soils and integrate these features into the overall landscape plan as required by or exempted from Garden City Code 8-4I and as shown in the approved landscape plans.
13. If trees are staked, the stakes shall be removed within twelve (12) months to prevent damage to the tree.
14. All planting areas that border driveways, parking lots, and other vehicle use areas shall be protected by curbing, wheel stops, or other approved protective devices.
15. Trees shall be planted at least three feet (3') from curbs, sidewalks, driveways, and other hard surfaces to buffer from stress caused by vehicle overhang and compacted soils or planted with sufficient space to provide for the full maturity of the particular tree species.

- All other plant material, except sod or ground cover, shall be set back a minimum of one foot (1') from any curb edge to protect from vehicle overhang and mechanical damage.
16. The landscape installation shall stabilize all soil and slopes.
  17. All required landscaping shall be provided with an automatically controlled irrigation system in conformance with the best management practices for automatic irrigation systems.
  18. Demonstrate compliance with or an exemption from Garden City Code 8-4G prior to certificate of occupancies.
  19. This approval is for this application only. Additional permits, licenses and approvals may be necessary.
  20. Property maintenance standards shall be maintained as required by Garden City Code.
  21. The property owner is responsible for the maintenance of all landscaping and screening devices required.
  22. All outdoor living spaces must comply with Garden City Cod 8-3C General Provisions-Living Space Requirements.
  23. All outdoor service and equipment areas shall comply with Garden City Cod 8-4A-5 Outdoor Service and Equipment Areas.
  24. All stormwater systems must comply with Garden City Code 8-4A-7.
  25. Cross-Connections: All cross-connections between the domestic water lines and the irrigation water lines shall be in accord with the City's adopted standards, specifications, and ordinances.
  26. Materials submitted after the decision shall not be considered part of the record for this decision. If additional materials or information is submitted after the decision the application may be remanded to the decision-making body during which time the decision shall be stayed provided that there is no immediate threat to life or safety.
  27. No change in terms and conditions of this approval shall be valid unless in writing and signed by the applicant or his or her authorized representative and an authorized representative of the reviewing agency. The burden shall be upon the applicant to obtain the written confirmation of any change and not upon Garden City.
  28. The Commission may revoke a conditional use permit for any of the following: A) Violation of Garden City Code or State or Federal Laws; B) Failure to abide by any conditions of this permit; C) Causing or allowing a nuisance as determined by Garden City Code, in connection with the use for which the permit is granted.
  29. Any violation of the conditions of this application is a criminal offence.
  30. A certificate of occupancy or an application for a building permit shall be considered commencement of the use.
  31. All previous uses are null and void unless otherwise conditioned.
  32. Should there be a change in use, there is a clear intent to cease the use, or the use is discontinued for more than one year without written documentation submitted to the City, legal noticing, and property posting indicating intent to continue the use, this approval shall become void.
  33. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.
  34. Pursuant to Idaho Code, a request for reconsideration must be submitted within 14 days of the final decision and prior to judicial review. The written request must identify specific deficiencies in the decision for which reconsideration is sought.
  35. A takings analysis pursuant to Idaho Code may be requested on final decisions.
  36. If any term or provision of this decision, to any extent, is held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.



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Mayor, John G. Evans

6-30-21

Date