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Fourth Judicial District, Ada County
Phil McGrane, Clerk of the Court
By: Deputy Clerk - Maxwell, Kari

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WEE BOISE, INC., an Idaho corporation, including its members KRISTEN JONES and JASON JONES, Petitioner, vs. CITY OF GARDEN CITY, an Idaho municipal corporation, Respondent.	Case No. CV01-20-03481 **MEMORANDUM DECISION REVERSING DENIAL OF PETITIONER'S APPLICATION**

Petitioner has petitioned this court under Idaho's Administrative Procedures Act to review a decision by the Council for the City of Garden City denying a request by Petitioner to approve the design of a structure Petitioner intends to build on land Petitioner owns in Garden City.

The ability of the owner of real property inside the limits of Garden City to use land as he chooses is subject to significant government oversight and restriction. Garden City has created geographical areas or zones in which landowners may only use their land for certain purposes and in certain ways. In addition, Garden City has overlayed on its zoning map what it calls "overlay districts" which include another set of restrictions on use and requirements for government oversight. To whom the landowner must seek permission and the exact process he must undergo

to do so varies depending upon the zone and the district in which his land falls and the use or uses he desires to put the land to.

Petitioner owns two adjacent lots in an area of Garden City where the City permits owners to use their property for both commercial and residential, but not industrial, purposes. Petitioner's land also falls within the "Surel Mitchell Work-Live-Create (WLC)" overlay district. Petitioner decided to develop its property and intends to build a structure containing some residences and some space for commercial shops. Petitioner planned to include more than two dwellings.

Because of these things, under Garden City's regulatory structure, Petitioner was required to submit a proposed design for the structure to Garden City's design committee who is required by city code to "work in partnership with applicants on design review," to "act as the decision maker on design applications," and to "serve as an expert on all matters of design that come before the city." GCC 8-6A-2(D). The City empowered the design committee to promulgate by-laws as well. *Id.* The court infers that the bylaws (or some other provision of the City Code) require that landowners, before they may apply to the design committee for approval, must submit a request to a Planning Official to "pre-approve" their plans. This process apparently allows landowners to get what amounts to an advisory opinion from the Planning Officer about what the design committee is likely to do and allow the landowner to make changes to his proposed design, if he wishes, prior to seeking approval from the design committee itself. Landowners whose applications are not approved by the design committee may appeal to the City Council. Any interested party may also appeal such decision to the City Council.[1]

[1] This court uses the word "appeal" because that is the word used in the Garden City Code. However, under the Code structure the City Council does not "review" the decision by the design committee so much as the City Council makes its own independent decision. Similar to how the Idaho Supreme Court may choose to 'review' a decision by the Idaho

Petitioner submitted a "pre-application" to the Planning Officer who recommended changes to Petitioner's design. Petitioner incorporated the recommended changes and applied for approval of the design to the design committee. The design committee approved the design, conditioned on Petitioner making some further modifications to the plan. A citizen living near Petitioner's property appealed to the City Council. The City Council then denied the application. Petitioner subsequently filed this action asking this court to review the City Council's denial.

When reviewing a decision under the Administrative Procedures Act, a court does not substitute its judgment for that of the agency as to the weight of the evidence presented. I.C. § 67–5279(1); *Marshall v. Idaho Dep't of Transp.,* 137 Idaho 337, 340, 48 P.3d 666, 669 (Ct.App.2002). This court instead defers to the agency's findings of fact unless they are clearly erroneous. *Castaneda v. Brighton Corp.,* 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998); *Marshall,* 137 Idaho at 340, 48 P.3d at 669. In other words, the agency's factual determinations are binding on the reviewing court, even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial competent evidence in the record. *Urrutia v. Blaine County, ex rel. Bd. of Comm's,* 134 Idaho 353, 357, 2 P.3d 738, 742 (2000); *Marshall,* 137 Idaho at 340, 48 P.3d at 669.

A court may overturn an agency's decision where its findings, inferences, conclusions, or decisions: (a) violate statutory or constitutional provisions; (b) exceed the agency's statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence in the record; or (e) are arbitrary, capricious, or an abuse of discretion. I.C. § 67–5279(3). The party

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Court of Appeals. What lawyers would call a 'de novo' review. However, the City Council is not limited to the information before the design review committee and may consider additional information presented to it.

challenging the agency decision must demonstrate that the agency erred in a manner specified in I.C. § 67–5279(3) and that a substantial right of that party has been prejudiced. *Price v. Payette County Bd. of County Comm'rs,* 131 Idaho 426, 429, 958 P.2d 583, 586 (1998); *Marshall,* 137 Idaho at 340, 48 P.3d at 669. If the agency's decision is not affirmed on appeal, "it shall be set aside ... and remanded for further proceedings as necessary." I.C. § 67–5279(3).

Petitioner argues in denying its application, the Garden City Council reached conclusions that were not supported by the record; that the Council did not follow applicable statutes when issuing its decision; and that the procedures followed did not afford Petitioner the process it is due under the constitution.

ANALYSIS

The City Council's conclusion of law was that the design application "does not meet the standards of approval under GCC 8-4C and the required findings under GCC 8-6B-3D."

Garden City Code 8-4C provides a large number of various requirements depending upon the structure involved. It includes requirements for the maximum number of feet a structure may be set back from a curb, GCC 8-4C-3(A)(2), and the minimum required width for secondary pedestrian pathways. GCC 8-4C-4(B)(1)(d). The Council's decision does not specify which of the standards of approval under GCC 8-4C it concluded the applicant failed to meet, and the City has failed to point any out in its argument. None are apparent from the record. Therefore, the court will simply review GCC 8-6B-3D.

Garden City Code 8-6B-3D governs the design review committee. It does not technically govern decisions by the City Council. However, as discussed above, under Garden City's code structure, the City Council may review decisions by the design committee.

Garden City Code 8-6B-3D provides:

> D. Required Findings: In order to approve a design review application and based on the standards set forth in chapter 4, article C of this title, the design review committee shall make the following findings:
>
> 1. The proposed design is in conformance with the purpose of the zoning district and all dimensional regulations of that district;
>
> 2. The proposed design adheres to standards for the protection of health, safety, and general welfare;
>
> 3. The proposed design creates a sense of place and contributes to the uniqueness of the different districts and neighborhoods within the city;
>
> 4. The proposed design improves the accessibility of development to nonmotorized and public modes of transportation;
>
> 5. The proposed design supports a development pattern in nodes rather than strip commercial along arterial corridors;
>
> 6. The proposed design supports a compact development pattern that enables intensification of development and changes over time; and
>
> 7. The proposed design provides outdoor spaces and landscaping compatible with the southwest Idaho climatic conditions and that encourage pedestrian activity.

The design review committee made all the required findings as to Petitioner's design. However, when reviewing that decision after the citizens appealed, the City Council found the design did not meet the requirements under GCC 8-6B-3D(1), D(2), and D(4). Petitioner argues that these findings are not supported by substantial evidence in the record. The court will address them in turn.

The City Council's conclusion that the proposed design did not meet the dimensional regulations of the Surel Mitchell Work-Live-Create overlay zoning district was not supported by substantial evidence.

The City Council concluded that Petitioner's design did not meet the dimensional regulations of the zoning district. Petitioner argues this conclusion is not supported by substantial evidence.

The first step in addressing Petitioner's argument is deciding what "in conformance with … all dimensional regulations of that [zoning] district" means. What is a zoning district? What is a dimensional regulation? The court will start with the first question.

As discussed above, Garden City has divided the land within its boundaries into zones and overlay districts. As is suggested by the name, the boundaries of the districts are not contiguous with the zones. The district map overlays the zoning map. What then is a "zoning district" as used in GCC 8-6B-3D? Neither party addressed such questions.

Garden City calls the areas into which it has divided the land within its boundaries where the City has limited the permissible uses for that land "base zoning districts," *see* GCC 8-2B-1; although, the City elsewhere refers to these geographical areas as zones or simply as districts. In some places the name of the district includes the permissible use. For example, GCC 8-2B-1(A) defines "residential districts" as areas of the city that are "exclusively for residential use." As discussed above, Garden City has also adopted what it calls "overlay districts" or "overlay zoning districts." *See* GCC 8-3A-1.

The definitions of the base zoning districts in GCC 8-2B-1 do not include an explicit statement of purpose. The definitions of the overlay zoning districts in GCC 8-3A-1 do. Therefore, this court concludes that "zoning district" in GCC 8-6B-3D(1) means "overlay zoning district" as used in GCC 8-3A-1, and not "base zoning district" as used in GCC 8-2B-1.

Petitioner's land lies within the Surel Mitchell Work-Live-Create overlay zoning district. The City Council held that Petitioner's design did not comply with the dimensional regulations of that overlay zoning district. The dimensional requirements for structures in the Surel Mitchell Work-Live-Create overlay zoning district are set forth in GCC 8-3C-3(A). These include minimum and maximum set-backs for buildings, height restrictions on buildings, a maximum allowed height for buildings, and a maximum area buildings may cover. *See* GCC 8-3C-3(A)(1)-(11). Code Section 8-3C-3 provides other requirements in sub-sections B-H, but these are not "dimensional requirements." Those exist only in sub-section 8-3C-3(A). The other sub-sections include requirements that are clearly not "dimensional" in nature, such as the number of parking spaces required, the number of trees required, and the quality of materials that may be used on the exterior of buildings. Thus, the finding required under GCC 8-6B-3D(1) that a design meet the dimensional regulations of the Surel Mitchell Work-Live-Create is a finding the design meets the standards in GCC 8-3C-3(A)(1)-(11). The only dimensional requirements for developments in the Surel Mitchell Work-Live-Create overlay zoning district are: a minimum set-back to accommodate a sidewalk (GCC 8-3C-3(A)(1)), minimum and maximum set-backs from the property line ((A)(2) and (3)), minimum set-backs for yards ((A)(4)-(6)), minimum set-backs from side streets ((A)(7)), and limitations on the size of development area and buildings ((A)(8)-(11)). That is it. As discussed, the other sub-sections of GCC 8-3C-3 include design standard developments in the overlay zoning district must meet, such as a requirement that landscaping in certain areas contain a mixture of both evergreen and deciduous plants, *see* GCC 8-3C-3(H)(2); however, those are not defined in the ordinance as dimensional requirements and cannot rationally be viewed as such.

Petitioner argues the City Council's finding that Petitioner's design failed to meet the dimensional regulations in GCC 8-3C-3(A) is not supported by the record. This court can find no basis in the record for such a finding and the City points it to none.

Instead, the City points to things various members of the City Council said during deliberations and various statements citizens made during the hearing on the application as alternative bases for denying the design review application. For example, the City argues that this court should uphold the Council's denial because, the City argues, the evidence supports a conclusion that the design did not conform to the "purpose" of the Surel Mitchell Work-Live-Create overlay zoning district. The City argues the "purpose" of the district was to have places where there was an equal ratio of residential and commercial places and, therefore, that is a "dimensional requirement."

When asked at oral argument where this one-to-one ratio dimensional requirement is expressly stated, counsel for the City argued the Council divined this requirement not from the express language of the ordinance that explicitly states the Purpose of the Surel Mitchell Work-Live-Create overlay zoning district, GCC 8-3C-1; not from the express language of the other Garden City ordinances regulating the Surel Mitchell Work-Live-Create overlay zoning district; not from the express language of Garden City's Comprehensive Plan; but rather from the Council's interpretation of Garden City's Comprehensive Plan, specifically language in the Comprehensive Plan that developments involving consolidation of parcels should be "restricted." How the Council leaped from the language that developments that involve consolidating lots (as Petitioner's application did) should be restricted to the conclusion that every development (including ones that do not involve consolidating parcels) in the Surel Mitchell Work-Live-Create overlay district must

include an equal number of residential and commercial units was never explained. That is not an interpretation of the language of the Comprehensive Plan; it is the invention of a zoning ordinance that did not exist. The City's argument strikes the court as *post hoc* grasping at straws.

Petitioner argues the court should not reach this argument because it was not stated in the Council's written decision as a reason for denying the application. The court agrees with Petitioner.

The Local Land Use Planning Act (LLUPA) requires that approval or denial of any application required or authorized under the LLUPA[2] be based on standards and criteria set forth in a comprehensive plan, zoning ordinance, or other regulation. I.C. § 67-6535. The approval or denial of such an application must be in writing and must be accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the facts relied upon, and explains the rationale for the decision. I.C. § 67-6535(2). The only writing in this record that can even passingly be said to meet that description is the City Council's December 10th "Final Decision" denying the design review application. The only reasoned statement the Council gave for its denial is that it could not make the findings required under 8-6B-3(D)(1), (D)(2), and (D)(4). The explanation given for the Council's determination that the application did not meet Section 8-6B-3(D)(1) was that it did not meet the dimensional regulations of the zoning district. The only dimensional regulations applicable are those found in GCC Section 8-3C-3(A). The record clearly shows Petitioner's plan met those requirements. Because the LLUPA requires written explanations of the findings made and the reasons they were made, the court will not consider the City's other arguments about why this court should uphold the Council's denial on grounds the Council did not articulate in its written decision.

[2] The parties agree that design review applications fall under the LLUPA.

Alternatively, however, the court will also find that, to the extent the Council interpreted the Garden City Code as expressing a dimensional requirement that developments in the Surel Mitchell Work-Live-Create overlay district have a one-to-one residential to non-residential space ratio, the Council erred as a matter of law.

Garden City Code 8-3C-1 expressly states the purpose of the Surel Mitchell Work-Live-Create overlay zoning district. It reads:

> The purpose of the Surel Mitchell work-live-create (WLC) neighborhood overlay district is to create a neighborhood that allows commercial or small scale manufacturing activity with dwelling units located within, near, or nearby the working spaces. Specifically, these provisions are intended to:
>
> A. Allow for property development that incorporates both living and working spaces, including, but not limited to, craftsman and artisans retail and work spaces, workshops, and art studios;
>
> B. Provide flexibility and incentives for the development of a work-live-create neighborhood;
>
> C. Provide for a location within the city for new, startup businesses;
>
> D. Provide for smaller, more affordable dwelling units;
>
> E. Maintain and build upon the existing mixed use and small scale development character of the neighborhood;
>
> F. Ensure work-live uses minimize conflicts and protect the health, safety and welfare of existing development; and
>
> G. Ensure that the design of structures and site development is compatible with the intended character of the Surel Mitchell work-live-create neighborhood.

Nothing in this statement of purpose requires a ratio of one to one residential to commercial spaces within this overlay zoning district. The LLUPA requires cities who chose to enact zoning ordinances to adopt through a plan, ordinances, or regulations, a set of standards or criteria in "express terms…in order that applicants, interested residents, and decision makers alike may know

the express standards that must be met in order to obtain a requested permit or approval." I.C. § 67-6535. Within an overlay zoning district, the governing board must "establish clear and objective standards." I.C. § 67-6511. Nothing in GCC 8-3C-1 is a clear or objective standard, other than the district will allow a mixture of commercial, residential, and manufacturing uses close to each other and that any development must include both living and working space. There is nothing about the ratio of one to the other.

Nowhere else in GCC 8-3C, which creates and governs this type of overlay zoning district, or anywhere else in the Garden City Code or Comprehensive Plan, is a requirement that developments in the Surel Mitchell Work-Live-Create overlay zoning district include an equal number of commercial and residential units, or an equal number of manufacturing and residential units. If that is what the Garden City Council intended to do when it enacted GCC 8-3C, it failed. If the Garden City Council now (as opposed to in the past) wants that to be a requirement of development within that overlay zoning district, the Council can amend its regulations. However, it may not deny an application under the current zoning regulations on grounds the Council now decides that it wishes it had written its regulations in a different way.

The legislature amended I.C. § 67-6511 in 2013 to include the command that governing bodies of overlay zoning districts establish "clear and objective standards" for the districts. At the same time, it amended I.C. § 67-6535 to include the word "express," i.e., to include the command that governing bodies express those clear and objective criteria so that everyone will know what they are. *See* I.C. § 67-6535. The legislature has removed the subjectivity from applications covered by the LLUPA. Applicants and residents should not have to worry over whether the reviewing officials will decide their design "fits" the overlay zoning district or whether the

reviewing officials will approve or deny their application on some other subjective basis, such as whether the City Council feels like the design promotes the general welfare or promotes public safety. Objective criteria are exactly that--anyone should be able to read Garden City's Comprehensive Plan, or zoning ordinances, read a petitioner's plan, and easily determine if the plan will or will not be approved. "Compatible with the intended character of the Surel Mitchell work-live-create neighborhood," if a standard, is neither a clear nor an objective one.

The court is not unmindful of the difficulty of the task the legislature has placed on those governmental bodies that choose to restrict how their residents may use their land by creating overlay zoning districts. It may be that such districts will end up severely restricting permissible uses to be sufficiently clear and objective under the LLUPA. An overlay zoning district where every building must be the specified size, shape, and color and put to the same specified use would result in a boring place to live, but those are clear and objective standards that are easy to express. How government entities go about meeting the LLUPA's requirements, while still allowing some room for creativity and diversity of development within a given overlay zoning district, will be the challenge for any government entity that decides to create one. But simply because the legislature has created a difficult task does not mean this court, or entities like the Garden City Council, may ignore the legislature's commands.

If the Garden City Council decides that every development in the Surel Mitchell Work-Live-Create overlay zoning district must have a one-to-one ratio of residential to commercial units, it may express that clear and objective standard in a particular zoning ordinance or other regulation and applicants and residents will know that any development in that overall zoning district must

have that ratio. At the time it denied Petitioner's application, it had not done so. The Council erred in denying the application on that basis.

The City Council's finding that the application failed to adhere to standards for protection of health, safety, and general welfare was not supported by substantial evidence.

The City Council held the application failed to "adhere to standards for protection of health, safety, and general welfare." The Council explained this finding by saying: "There is a lack of parking. The design will cause pedestrians to utilize a street lacking in sidewalk." Petitioner argues this finding is not supported by substantial evidence in the record.

The first step in addressing that argument is to determine what are the required "standards for protection of health, safety, and general welfare?" As noted above, the LLUPA governs applications such as this. As discussed above, under the LLUPA, regulations in overlay zoning districts must be clear and objective and expressed in a way everyone can understand.

Garden City Code Section 8-6B-3(D)(2) standing alone does not comply with the requirements of the LLUPA. Simply saying an application must meet some unstated standards related to protecting health, safety, and the general welfare is a far cry from adopting a clear and objective standard telling an applicant what the applicant needs to do to protect the general welfare to obtain approval of his application. The language of 8-6B-3(D)(2) leaves an applicant bereft of any idea what he must do to protect or promote the general welfare. Must he build a police station? Declare his Independence?

Where Section 8-6B-3(D)(2) fails to meet the standards required under the LLUPA, the court will look elsewhere. The Council's explanation for its decision was that the design lacked parking. The court interprets this to mean parking for privately owned motor vehicles given

another sub-section of GCC 8-6B-3D discusses publicly owned and non-motorized transportation. *See discussion infra.*

Structures in the Surel Mitchell Work-Live-Create overlay zoning district, GCC 8-3C-3(G)(1), require one off-street parking space for each living unit.

Garden City Code 8-6B-3(G)(2) reads: "Working spaces over 500 square feet of interior floor area shall be required to provide one parking space for every one thousand five hundred square feet or portion thereof; or the number of parking spaces needed to serve employees and patrons as determined by the planning and zoning commission.

Under Garden City's code structure, the planning and zoning commission is distinct from the Planning Official, the design review committee, and the City Council. There is no evidence in the record that Petitioner's design was ever reviewed by the planning and zoning commission, or that the planning and zoning commission made any determinations as to the number of parking spaces that would be needed to serve employees and patrons for this project. Additionally, the language in Section 8-6B-3(G)(2) regarding the number of spaces required is whatever the planning and zoning commission decides it should be, fails to comply with I.C. §§ 67-6511 and 67-6535. Governing bodies must express clear and objective standards in their comprehensive plan or their zoning ordinances for applicants to meet. They may not delegate to someone one else to determine what the standards are on a development-by-development basis.

The remainder of sub-section 8-6B-3(G)(2) is so vague as to be largely unintelligible. This court is not sure there is any reasonable interpretation of that clause. What constitutes "working spaces over 500 square feet of interior floor area?" A single interior room over that size dedicated to work? Ten working spaces so dedicated of 60 square feet each? If the design includes working

spaces over 500 square feet of interior space, the design must also include one parking space for every 1,500 square feet of what? Working space? Total space? Neither party addressed any of their written arguments to how this court should interpret this code section. The court will do so based only on the language of the ordinance.

This court interprets "working spaces over 500 square feet of interior floor area…must provide one parking space" to mean any design having one, or more than one, working space that exceeds 500 square feet of interior floor area must also include at least one parking space. Petitioner's design did not include any working spaces over 500 square feet of interior floor area. Therefore, this sub-section is irrelevant.

Thus, GCC-8-6B-3(G)(2) required the application to include one off-street parking space for each residential living unit. Those spaces had to be in the rear of the principal building or otherwise screened from the public right of way. *Id.* Petitioner's plan includes two residential units and two off-street parking spaces in the rear of the structures. Petitioner's design clearly met these requirements.

There is a statement by the City that the parking spaces are intended to be in an alleyway that Petitioner has not yet constructed. Why the City views that fact as relevant to the approval or disapproval of the design application has not been explained. The design review process is not an invitation for the City Council to consider the practical feasibility of the applicant being able to construct his project as designed. The Council should not be considering such things as whether Petitioner will be able to make the alleyway during a design review any more than the Council should be considering whether Petitioner will be able to finance its development. The question is

simply—if built according to this design, will the property conform to the applicable zoning ordinances?

The only applicable clear and objective standard expressed regarding parking spaces for developments in this overlay zoning district is a requirement that the development include one parking space for each residential unit located in the rear of the principal building. Petitioner's design clearly met those requirements. If the City Council found that the design failed to meet this standard, that finding was not supported by substantial evidence in the record. If the City Council denied the application because the City Council invented some other requirement for parking spaces that it has not clearly and objectively expressed in its zoning ordinances, the Council erred as a matter of law.

The City Council's determination that the design did not improve the accessibility of development to non-motorized and public modes of transportation was not supported by substantial evidence.

The Council held the applicant failed to show that the design "improves the accessibility of development to non-motorized and public modes of transportation." Petitioner argues there was substantial evidence in the record showing the design did improve "the accessibility of development to non-motorized and public modes of transportation" and, therefore, the Council's finding the design did not do so was not supported by substantial evidence.

The first step in reviewing the Council's decision is to determine what "improves the accessibility of development to non-motorized and public modes of transportation" means. Improves relative to what? The existing state of the land? Other designs submitted for development? What does "improves accessibility of development" mean? This development? I.e., this design makes it easier for users of non-motorized transportation to access this land than they

currently are able to do? This design has more ways for users of non-motorized transportation to access this development than a competing design for development on the same land? Or does "access to development" mean "development" generally? I.e., other developed structures on other land. If that is the meaning, does that include only adjacent parcels? Everything in that zone? Everything in that district? Everything in the city? Does improving accessibility to "modes of transportation" mean literally that? I.e., every development must be able to accommodate a public bus driving onto the property being developed? Or does it simply mean that the design must improve access to the property by people who utilize modes of transportation that do not have a motor or that are owned by the public? Neither party has addressed such questions. This ordinance is again a far cry from the clear and objective standard required under the LLUPA.

To the extent it can give them practical meaning, this court will simply give the words of that ordinance their plain meaning: The design being reviewed must, if the land is developed according to the design, improve access to that land by users of non-motorized transportation or users of public transportation.

There is little evidence in the record about the access of such users to the land Petitioner sought to develop at the time the application was made. What evidence is in the record establishes the parcels were bare dirt lots privately owned. Therefore, the court concludes the access to those parcels by users of non-motorized transportation and public transportation was none. Thus, if the design allowed for any access, that would be an improvement.

The evidence in the record shows the development, if built according to the design, would consist of residential and commercial units, and included places where the residents and customers could access the land on foot and by bicycle. There was a bus stop in reasonable proximity from

which people could walk to the development and shop. That is clearly an "improvement" in the "accessibility" of these parcels to users of non-motorized and public transportation. The Council's finding otherwise was not supported by substantial evidence. If the Council instead invented some other standard and denied the application for failing to meet whatever that standard was, the Council erred as a matter of law.

The City's argument on this issue is limited. It seems to argue that "improves…accessibility" means "improves…accessibility" as much as the Council wants it to or improves accessibility sufficiently so the Council is satisfied. The City also implies that it reads the standard to mean: If the land is developed according to the design, it will be easily accessible by a large number of users of non-motorized and public transportation (or perhaps a number the City Council deems sufficient). Finally, there is an implication that the City Council reads the standard to mean: "If the land were developed according to the design, users of non-motorized and public transportation would have equal or greater access to or ease in accessing the land as users of other transportation methods." None of those interpretations are consistent with the standard's plain language. As written, the standard simply requires the design to be an improvement in the accessibility by such users to the land being developed. This design clearly did so. Where the access to the land by such users at the time the application was made was zero, almost any design would have been an improvement in accessibility. The Council erred in concluding otherwise. Again, the Council may not deny a design review application that meets what few clear and objective standards the City has enacted simply because, upon reviewing the application, the Council wishes it had enacted more requirements or different requirements.

CONCLUSION

The Garden City Council's findings that Petitioner's design failed to meet the few clear and objective standards that exist in the Garden City ordinances applicable to the Surel Mitchell Work-Live-Create overlay zoning district are not supported by substantial evidence in the record. To the extent the Council denied the application because the Council held the application did not meet unclear and subjective criteria in the Garden City ordinances, such as whether the design would promote the general welfare, the Council erred as a matter of law. To the extent the Council denied the application because the design failed to meet an objective standard that did not exist—a requirement that development designs in the Surel Mitchell Work-Live-Create overlay zoning district include an equal number of residential and non-residential units—the Council erred as a matter of law.

Petitioner is the prevailing party and is entitled to an award of costs. Petitioner asks this court include in those costs an award of attorney fees. That request is denied.

Petitioner seeks an award of fees under I.C. § 12-117. That statute provides for an award of fees in actions between a political subdivision of the state, which include cities, and a person where the person prevails, and the government has acted without a reasonable basis in law or fact. The statute includes administrative proceedings, such as the proceedings before the City Council that led to the denial of Petitioner's design application, and civil judicial proceedings such as this one. As the court understands it, Petitioner argues this court should award it attorney fees in this action, not because the City has presented arguments to this court in this proceeding that are without a basis in fact or law, but rather because the City denied its design review application in the hearing before the City Council without a basis in fact or law.

That is an unusual request, but there is some precedent for it. *See Fischer v. City of Ketchum,* 141 Idaho 349, 109 P.3d 1091 (2005) and *Homestead Farms. Inc., v. Board of Commissioners*, 141 Idaho 855, 119 P.3d 630 (2005). Thus, this court will not consider whether the Garden City Council had a basis in law or fact for the arguments it made in this action, but rather whether the Garden City Council's decision to deny Petitioner's application was made without a basis in fact or law.

Petitioner's view of this process is as follows: The Planning Officer and the design review committee conditionally approved its design based on the applicable zoning ordinances for the Surel Mitchell Work-Live-Create overlay zoning district. When citizens subsequently complained, the City Council ignored the few clear and objective zoning ordinances applicable to that district and denied the application on subjective grounds, such as whether there was enough parking to "protect public safety," or whether the design improved accessibility to non-motorized and public transportation "enough" or "sufficiently," or that the design was "too much work" and "not enough live;" that the Council simply invented a zoning ordinance that it has never passed—a requirement that developments within the Surel Mitchell Work-Live-Create overlay zoning district have a one-to-one ratio of commercial and residentials units—and denied its application on these arbitrary grounds. There is much support in the record for Petitioner's view.

The court agrees that the Council's apparent finding that language in the Comprehensive Plan saying—developments that include combining parcels should be restricted—can be interpreted as meaning—any development in the Surel Mitchell Work-Live-Create overlay zoning district must have an equal number of residential and non-residential units—is without a basis in law, fact, reason, or language, ((The implied argument that the language in the

Comprehensive Plan gives the Council free reign to deny any design application that involves combining parcels, on whatever arbitrary grounds it determines or for no other reason at all, is similarly without a basis in law. If the language of the Comprehensive Plan means anything, it means the Garden City Council, when it is promulgating the clear and objective standards required under the LLUPA for developments within the overlay zoning districts it creates, should limit the circumstances where developers may combine parcels.

The difficulty the court has with awarding fees under I.C. § 12-117 is that the Council's denial had a basis in the City's existing zoning regulations. Much of GCC 8-6B-3 is so vague that it is hard to conceive of a decision by the Council that would not be supported by the language of that ordinance. Easy to say almost anything either does or does not "create a sense of space," meet some unspecified standard about protecting the general welfare, or conform to the purpose of the overlay zoning district, particularly when the purpose of the overlay zoning district includes something so vague as "provid[ing] flexibility and incentives for the development of a work-live-create neighborhood." *See* GCC 8-3C-1(B). Section 8-6B-3 is so vague and subjective that it is hard to say the Council's subjective determinations about how much parking is "enough" parking to "protect public safety" was without a basis in law.[3] If the Council can be said to have acted without a basis in law, or more precisely contrary to law, it was either in enacting GCC Sections 8-6B and 8-3C, or in failing to amend them in 2013 when the legislature amended the LLUPA to require governing bodies express clear and objective standards for overlay zoning districts and to

[3] There was no dispute of fact about how many parking spaces would be included. There was some discussion about the likely number of on-street parking spaces that would be available to people who live or work or come to patronize the stores in this development. Some of that depended on actions other government agencies, such as the Ada County Highway District, may or may not take in the future. The Council never made any factual determinations about how many on-street parking spaces would be available. It simply held the two off-street parking spots in the plan were not, in the Council's subjective view, enough to protect public safety.

express the criteria on which those bodies will be approving or denying applications. Absent a reason to believe that a court has previously held those ordinances do not comply with the LLUPA, the court is unwilling to hold that the Council's decision to deny the application based on those ordinances was without a basis in law. That is the only basis articulated for the requested award of attorney fees; therefore, the court declines to award attorney fees.

The decision of the Garden City Council denying Petitioner's design review application is *Reversed.* The City Council is hereby Ordered to approve Petitioner's application. Costs, but not fees, are awarded to Petitioner.

3/3/2022 1:47:32 PM
JONATHAN MEDEMA
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2022, I served a true and correct copy of the within instrument to:

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ADA COUNTY, IDAHO

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3/3/2022 3:58:36 PM

By: Kari Maxwell
Deputy Court Clerk