

# BUTLER SPINK L.P.

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September 24, 2021

Garden City Mayor and City Council  
c/o Lisa Leiby, City Clerk  
6015 Glenwood Street  
Garden City, Idaho 83714

**RE: Garden City File No. DSRFY2019-25/Boardwalk Residences  
Butler Spink Matter No. 23723.1**

Dear Mayor and City Council Members:

Our firm represents Vida Properties, LP (the “**Applicant**”) whose managing partner is Michael Talbott. The Applicant owns the property in connection with the application referenced above (the “**Application**”). The Applicant and Erstad Architects presented the Application to the Garden City Design Review Committee (“**DRC**”) on August 16, 2021.

The Application requested design review for the “**Boardwalk Residences**”, an 18-story condominium building with commercial space at 510 E. 41st Street in Garden City (the “**Parcel**”). The building was previously reviewed and received design review approval in 2020 as a nine-story hotel. After the approval, for several reasons, the Applicant reconsidered the use of Parcel.<sup>1</sup> The Applicant worked with its architects to expand the original intent to create a dynamic housing community, an activity node and a desirable hub for Garden City residents.<sup>2</sup>

The DRC approved the Application. The written and oral testimony considered by the DRC underscores the DRC’s thorough factual review and consideration of the City’s Code standards.

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<sup>1</sup> As Mr. Talbott explained in the public hearing, having owned a hotel for 16 years, he understands the risks hotels face even in the best of times. In these (not the best of hospitality) times, coupled with the City’s and the region’s need for an influx of housing, it became apparent to the Applicant that housing should be a higher priority over hotel rooms.

<sup>2</sup> The Applicant has two other residential projects in the immediate vicinity. The first, known as the “Boardwalk Apartments”, is a five-story apartment building located east of the Boardwalk Residences. The Boardwalk Apartments will have 234 apartments with associated amenities, eight commercial spaces, and a 5<sup>th</sup> floor restaurant and/or a sports pub, open to the general public. The second residential project, adjacent to the Boardwalk Apartments and known as “406 Place”, contains a 38-unit courtyard apartment building.

This factual review forms the basis of the DRC's reasoned decision in connection with each of the findings required to be made by the DRC.<sup>3</sup> There is no error in the DRC decision.<sup>4</sup>

Wendy Carver-Herbert has filed an objection of the DRC's decision with the City Council. We understand that Ms. Carver-Herbert does not appreciate the Boardwalk Residences nor the decision of the DRC. In her opinion, the Boardwalk Residences are "not right." Nonetheless, Ms. Carver-Herbert has not identified any error in the DRC decision.<sup>5</sup> Accordingly, we are

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<sup>3</sup> See, DRC Decision, pages 7 – 10 and Garden City Code Section 8-6B-3.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.

<sup>4</sup> The DRC approved the Boardwalk Residences on a 2 to 1 vote. Commissioner Gresham voted against the Application, not because she did not like the design or the design conditions of approval, but because she did not like the height of the building:

"I like the conditions that you guys have come up with. I'm not going to be able to vote that way because I'm opposed to the height in this area."

See, DRC Transcript, page. 9.

Of course, the DRC has no authority to deny an application that conforms to the zoning regulations, including height. In this case, the applicable C-2 zone has no restriction on height. As stated by the other Commissioners:

"I don't have an issue with height." See, DRC Transcript. Page 3, Commissioner Labrie.

"I don't have a problem with the height of the project. It's in a zone that allows for unlimited height. . . . Unlimited is very tall. If we pick a number of stories it – it seems arbitrary. . . . So I see this height as compliant." See, DRC Transcript, page 4, Commissioner Hurd.

<sup>5</sup> Ms. Carver-Herbert seems to imply there is some sort of error because she feels the Applicant has "bait and switched" the City by changing the use of the Parcel (See, DRC Transcript, page 17). There is no error, and the Applicant, as any applicant, does have the right to modify the use of its property so long as that applicant goes

respectfully requesting that the City Council reject Ms. Carver-Herbert's objection of the DRC decision in connection with the Boardwalk Residences.

### Analysis

As required by Garden City Code, and as found by the DRC, the Boardwalk Residences provides visual interest, supports the vision for this Activity Node<sup>6</sup>, and positively contributes to the overall urban fabric of the community as a well-designed residential structure meeting the purpose of Garden City Code.<sup>7</sup>

Much of Ms. Carver-Herbert's appeal states that the Boardwalk Residences do not meet what she perceives as the intent of the Garden City Comprehensive Plan or the intended character of the area. This is not correct. Ms. Carver-Herbert would have the City Council incorrectly, illegally, elevate the guidance of the Comprehensive Plan to that of legally controlling zoning law to govern this design review decision. This would be inappropriate.<sup>8</sup>

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through all of the required City processes. The Applicant's change to an allowed multifamily development has proceeded through all of the City's rigorous public processes.

In addition, and without providing any detail, Ms. Carver-Herbert implies that there is a procedural issue in connection with notice for the DRC hearing. Staff confirmed for the DRC that notice had been correctly provided. See, DRC Transcript, page 22.

<sup>6</sup> Activity nodes are identified on the Land Use Map for neighborhood centers, local and regional destinations, and locations in proximity to existing and future transit stations and stops. Activity centers range in size depending on their function and location. Some nodes may be centered around the intersection of major streets or extend down a street to connect major community facilities. The common characteristics of the activity nodes are a mix of uses, public spaces, compatible transition to the uses surrounding the nodes and non-motorized connections to within a quarter mile walkable area of the node center. See Comprehensive Plan, page 33.

<sup>7</sup> See, Garden City Code, Design Provisions for Residential Structures

Section 8-4B-1 PURPOSE :

- A. To create residential development that is safe, sustainable and convenient, and that enhances the quality of life of its residents;
- B. To promote quality building design in residential development that enhances the visual character of the community;
- C. To ensure that the design of structures and site development is compatible with the intended character of the neighborhood as set forth in the comprehensive plan;
- D. To promote neighborhood and walkability in residential design; and
- E. To create open space areas and neighborhood amenities that contribute to the aesthetics of the community, provide an attractive setting for buildings, and provide safe, interesting outdoor spaces for residents.

<sup>8</sup> The proper time to consider consistency with the Comprehensive Plan is when the City legislatively-adopts its zoning ordinances, not when applying those ordinances in the context of a design review application.

The Local Land Use Planning Act (“LLUPA”)<sup>9</sup> requires municipalities to adopt a comprehensive plan to guide zoning decisions. LLUPA clearly requires zoning districts to “be in accordance with the policies set forth in the adopted comprehensive plan.”<sup>10</sup> LLUPA also clearly provides that conditional use permits can be issued if found “not to be in conflict with the [comprehensive] plan.”<sup>11</sup> However, in the context of other land use applications, such as in connection with design review, LLUPA does not mandate either “accordance” or “not in conflict” with a comprehensive plan.

A comprehensive plan, including Garden City’s Comprehensive Plan, establishes visionary and aspirational goals for a city. In Garden City, these aspirational planning goals have been implemented or codified by the City with the legislative adoption of those portions of Garden City Code that set the standards governing the review of design applications and the decisions of the DRC.<sup>12</sup>

In this case, the DRC applied the legislatively-adopted dimensional requirements for the C-2 zone and the design review standards contained in Garden City Code in its review of the Application, and the DRC made extensive findings that the Application satisfies the requirements of Garden City Code. Accordingly, the Comprehensive Plan cannot be used as the basis for design review denial, as Ms. Carver-Herbert is asking the Council (incorrectly) to do.<sup>13</sup>

In her appeal, Ms. Carver-Herbert provides her opinion that the Boardwalk Residences do not meet the legislative intentions of the City. The DRC did not agree and Ms. Carver-Herbert does

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The Boardwalk Residences is located in the C-2 zoning district. Multifamily dwellings are a permitted use in the C-2 zone. When the City legislatively approved this zone, the City made the legislative finding then and there that the zone was in accord with the Comprehensive Plan, and that the uses allowed within the zone, do not conflict with the Comprehensive Plan. Because these legislative zoning decisions have already been made, it is now appropriate to apply – not the Comprehensive Plan – but the applicable Garden City ordinances, and the standards contained in those ordinances, to evaluate the design review Application. See, e.g., Urrutia v. Blaine City, 134 Idaho 353, 358 (2000).

See also, the discussion found on pages 33-43, Idaho Land Use Handbook, February 3, 2020.

<sup>9</sup> Idaho Code Section 67-6501 et seq.

<sup>10</sup> Idaho Code Section 67-6511(1).

<sup>11</sup> Idaho Code Section 67-6512(a).

<sup>12</sup> The adopted ordinances setting out design review standards and implementing the aspirational design review goals of the Garden City Comprehensive Plan are found in the Garden City Code Section 8-6B-3.D as identified and discussed by the DRC in Section 26 (pages 8 – 11) of the adopted DRC decision.

<sup>13</sup> See the discussion found on pages 33-43, Idaho Land Use Handbook, February 3, 2020.

not provide information that indicates error by the DRC in applying the relevant Garden City Codes and design standards to the Application. Accordingly, the objection should be turned away, and the decision of the DRC left standing.

Although it is the standards set in Garden City Code that the DRC must adhere to when reviewing a design application, the Applicant, and the Applicant's architects, have taken care to design the Boardwalk Residences such that the design: (1) recognizes that the City has established the area as an Activity Node; and (2) honors the guiding objectives of the Comprehensive Plan to upgrade housing in the City and provide housing opportunities.<sup>14</sup>

### Conclusion

Although Ms. Carver-Herbert's objection to the DRC decision is misplaced, the Applicant and its architects truly appreciate the comments of Ms. Carver-Herbert and others who provided testimony at the DRC public hearing. These comments, along with City Staff's and the DRC's professional comments, have been incorporated into conditions of approval, which will improve the overall design of the Boardwalk Residences as approved by the DRC.

The written and oral testimony considered by the DRC, and the deliberation by the DRC in reaching its decision, underscores the thorough review of Garden City Code's standards that underpins the DRC's sound decision in approving the Application. Nothing has been raised in objection to indicate error by the DRC in reaching its reasoned decision to approve the design review Application.

Accordingly, we respectfully request that the City Council uphold the decision of the Design Review Committee.

Sincerely,



JoAnn C. Butler

cc (via email):

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<sup>14</sup> See, e.g., Comprehensive Plan Action Steps 6.1.1 and 6.3.2.