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Via Email (lleiby@gardencityidaho.org)

March 18, 2010

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
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**”) between October 2019 and January 2020.

In brief, the Application requested design review approval for a mixed-use development between 40th Street, 41st Street and Veterans Memorial Parkway adjacent to the Boise River Greenbelt. The intent of the Project is to create a dynamic apartment community, balanced with retail, commercial, and hotel uses, making the Project an active activity node and desirable hub for Garden City residents, guests, and those exploring Garden City along the Greenbelt.¹

¹ Succinctly, the “**Project**” is comprised of three structures. The centerpiece will be the five-story Boardwalk apartment building. It will contain 237 apartments (a mix of studios, one-bedroom units, and two-bedroom units, which promotes mixed income apartments) with associated amenities, eight retail spaces, and a 5th floor restaurant and/or a sports pub, open to the general public. The building is set significantly back from the Greenbelt to create a large open space (part landscape/part raised boardwalk) to provide the feel of a downtown plaza along the retail storefronts.

Across 41st Street, also fronting the Greenbelt, will be a nine-story, 148-room boutique hotel, with a pub/restaurant, convention meeting room space, rooftop bar, one main pool on the 6th floor, two spas located on the 5th floor, and two retail spaces. The hotel connection adds to the plaza-like feel to truly provide for a mixed use master plan project. The Applicant is in the process of compiling a conditional use permit application for the hotel. The hotel and central Boardwalk apartment building will be built over underground parking spaces to maximize parking while minimizing visible vehicle impact on the site.

Near 40th Street there will a 38-unit courtyard apartment building with internal parking. This building is sometimes referred to as “**406 Place**.”

The Applicant held several neighborhood meetings where neighbors provided positive complements overall on the Project and a few concerns regarding 406 Place. As explained in this letter, the Applicant listened closely to the comments at the neighborhood meetings and at the three DRC public hearings. This proactive listening led to the redesign of the Project – especially 406 Place – to address the comments.

After thorough review over the course of those three public hearings, the DRC unanimously approved the Application. The written and oral testimony considered by the DRC underscores the DRC's thorough factual review considering Garden City's Code's standards. 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.² There is no error in the DRC decision.

Kira Tabor has filed an objection of the DRC's decision with the City Council. We understand that Ms. Tabor does not like the Project nor the unanimous decision of the DRC. Nonetheless, Ms. Tabor has not identified any error in the DRC decision. Accordingly, we are respectfully requesting that the City Council reject Ms. Tabor's objection of the DRC decision in this matter.

Introduction

As required by Garden City Code, and as found by the DRC, the Project provides visual interest, supports the vision for this Activity Node³ articulated in the Comprehensive Plan, and positively contributes to the overall urban fabric of the community.⁴

² 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.

³ 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

The bulk of Ms. Tabor's letter references sections of the Garden City Comprehensive Plan and she specifically states that the design of the Project must meet all elements of the Comprehensive Plan.⁵ This is not correct. Ms. Tabor 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.⁶

The Local Land Use Planning Act ("LLUPA")⁷ 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."⁸ LLUPA also clearly provides that conditional use permits can be issued if found "not to be in conflict with the [comprehensive] plan."⁹ 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

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.

⁴ See, e.g., Garden City Code, Section 8-4C-3. F.

⁵ See, Kira Tabor letter, page 6.

⁶ As discussed further below, the proper time to consider consistency with the Comprehensive Plan is when the City adopts its zoning ordinances, not when it applies those ordinances in the context of a design review application.

The Project contains both allowed and conditional uses in the existing C-2 and R-3 zones. When the City legislatively approved these zones, the City made the finding then and there that the zones were in accord with the Comprehensive Plan, and the uses allowed within the zones, including the conditional uses allowed in the zones, do not conflict with the Comprehensive Plan. Because these zoning decisions have already been made, it 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.

⁷ Idaho Code Section 67-6501 et seq.

⁸ Idaho Code Section 67-6511(1).

⁹ Idaho Code Section 67-6512(a).

City Code that set the standards governing the review of design applications and the decisions of the DRC.¹⁰

In this case, the DRC applied the legislatively-adopted 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 to as the basis for design review denial, as Ms. Tabor is asking the Council (incorrectly) to do.¹¹

Specific Objections

Ms. Tabor has made several specific objections to the DRC decision which are addressed below.

Scale, Massing and Urban Form

As required by Garden City Code, and as found by the DRC, the Project has a scale, massing and urban form that relates to its surroundings.¹² The DRC was not – at first -- able to make

¹⁰ 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 Chapters and Articles identified in Section 16 (page 7) of the DRC decision. That is:

16. The following standards apply to this proposal:

- a. Title 8, Chapter 2, Article B: "Base Zoning District Provisions;"
- b. Title 8-Chapter 2, Article C, Section 15: "Land Use Provisions, Dwelling Unit - Multi-Family;"
- c. Title 8-Chapter 4, Article A: "General Provisions;"
- d. Title 8-Chapter 4, Article B: "Design Provisions for Residential Structures;"
- e. Title 8-Chapter 4, Article C: "Design Provisions for Nonresidential Structures;"
- f. Title 8-Chapter 4, Article D: "Parking and Off Street Loading Provisions;"
- g. Title 8-Chapter 4 Article E: "Transportation and Connectivity Provisions;"
- h. Title 8-Chapter 4, Article I: "Landscaping and Tree Protection Provisions;"
- i. Title 8-Chapter 4, Article L: "Open Space Provisions;"
- j. Title 8-Chapter 6, Article B, Section 3: "Design Review Committee;"

There was no error by the DRC in applying these ordinances and the standards contained in the ordinances.

¹¹ See the discussion found on pages 33-43, Idaho Land Use Handbook, February 3, 2020.

¹² See, Garden City Code, Section 8-4B; 8-4C-3. A and D; DRC Decision, pages 7 – 10. As described by the architects in the Application narrative:

All structures have been designed with existing adjacent structures and uses in mind. All buildings are set back in excess of the zoning requirements, and well beyond the 70-foot setback from the 6500cfs high-water mark (typically there will be between 50 to 100 feet of open spaces between buildings and the Greenbelt). The Greenbelt-facing elevations are significantly terraced to enhance the sense of openness and setback from the River.

that finding when the Project was first heard by the DRC. Consequently, the Applicant made design modifications in connection with 406 Place based on:

- DRC comments and suggestions provided to the Applicant at the pre-application meeting with the DRC on October 7, 2019;¹³
- Public and DRC comments and suggestions provided at the DRC hearing on December 2, 2019;¹⁴ and

At the east end of the main Boardwalk apartment building it is anticipated that the adjacent properties will be redeveloped to higher densities in the coming years. In fact, the Applicant has been talking with the owner of the property adjacent to the Greenbelt about a possible purchase. Nonetheless, the Applicant instructed the architects to direct the dwelling units away from these neighbors to reduce perceived privacy issues. The design also uses only clerestory (non-view height) windows at those Greenbelt-facing elevations. Trees will be planted along the property line, and a 6-foot tall decorative privacy wall will be built along the east property line. All landscape buffers meet or exceed requirements for tree density and spacing. Please note that the owner of Blue River Estates, Raina Gabbard, which is also located on this side of the Project, has provided a letter to the City in favor of the Project.

At 406 Place, the Applicant has stepped the massing down from five stories to four stories at the south elevation eliminating an entire story (as requested by nearby residents and as approved by the DRC). The building has also been shifted north to allow a 31-36-foot south setback, which is six to seven times the required 5-foot side yard setback. Where the north-facing units look across the drive aisle toward the nearest residence, the distance is 75-feet, and a landscape/tree buffer will be planted, along with the 6-foot tall decorative privacy wall. Similarly, landscape and a privacy wall will be used along the south and west lot lines along with the clerestory (non-view height) windows.

Each of the structures displays considerable variation in massing and articulation, avoiding long flat planes and intimidating vertical faces. To provide a cohesive architectural theme, there will be some commonality along with some variation in the materials used between all three buildings. Primary materials include composite woodgrain panels, composite fiber-cement panels, and artistic integral color stucco finishes.

All trash and recycling containers have been incorporated inside the buildings. Landscape relative to the internal parking provides more than one tree for every 5 parking spaces, and every space is located within 100 feet of a shade tree.

¹³ Comments provided by the DRC included: addressing the massing on the east side of the Project; colors and material suggestions; and roofline variations. See, Staff Report, page. 4.

¹⁴ Comments provided included: screening along the east property line needs additional screening with additional vegetation; 406 Place should address privacy and visual concerns with building placement, architectural elements and landscape buffering. See, DRC Decision, pages 2-4.

The concern raised at the DRC December 2, 2019 hearing was in connection with privacy, and this concern was related solely to the 406 Place building. Two neighbors, including Ms. Tabor, stated that they did not like the curb cut on 40th Street for the 406 Place entrance because of its proximity to their homes and the fact that cars would be entering and leaving 406 Place at this curb cut location. The DRC asked the Applicant to consider additional screening and buffering along both the south and east property lines.

Responding to the neighbors' comments and the DRC request, the Applicant went much further and directed the architects to eliminate the curb cut for 406 Place and increase the parking at the Boardwalk apartment building. Now the residents of 406 Place will enter the Project at the curb cut for the entrance to the Boardwalk

- Site specific conditions of approval adopted by the DRC.¹⁵

The Applicant and its architects took those comments and suggestions to heart and revised the Project design, especially regarding 406 Place. Other than in connection with 406 Place, the comments regarding the design and amenities of the Project were positive and complementary.

Design changes in connection with 406 Place include, without limitation: the removal of a roof deck from the southside of 406 Place; increasing the setback of 406 Place; removing a story from 406 Place; and recessing balconies to prevent looking down into neighboring properties. The result is that 406 Place has been set back enough from adjacent properties so the visual and sightline impact on those properties is similar to that of a two-story home set 10 feet from the property line.¹⁶

In her letter, Ms. Tabor provides her opinion that the Project does not comply with the intended character of the neighborhood, and states that other (unnamed) projects have been rejected by the City Council even though those other (unnamed) projects are, in her opinion, more compatible with the community.

Ms. Tabor does 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 rejected, and the decision of the DRC left standing.

Traffic

As noted in the City's Staff report and the DRC's written decision, some members of the public had concerns regarding traffic impacts on the existing public roads and existing neighborhoods. Ms. Tabor letter appears to be asking the Council to overturn the DRC's decision based on her belief that existing public roads will not support an increase in traffic.

However, as noted in the Staff report and the DRC decision, the DRC does not have the authority to address traffic generated by, and road infrastructure required in connection with the Project, both of which are governed by Ada County Highway District ("**ACHD**"), and which ACHD will address. There has been no error by the DRC in having the government agency with authority - ACHD - address traffic and public road infrastructure.

apartments. With that design change, cars enter the Project approximately 200 feet further north from the neighbors' homes. In addition, the architects pushed all of 406 Place further from the south property line, incorporated a landscape buffer for the entire length (with three times as many trees as originally shown), set the apartments back further, and eliminated view windows from the south-facing bedrooms. Approximately 50% more trees have been added along the east and west property lines. These design changes to address the neighbors' concerns will increase the cost of the Project by approximately \$1.7 million.

¹⁵ See, DRC Decision, page 11.

¹⁶ See, DRC Decision, pages 4-6.

For the Council's benefit, please know that the Applicant and its representatives have had (and are continuing to have) productive meetings with local government agencies, including ACHD.¹⁷ As discussed in the Application and at DRC hearings, the Applicant has prepared a traffic study that is being reviewed by ACHD. The study, which indicates there are not appreciable traffic or infrastructure issues, has also been provided to the City. The Applicant will be required to comply with all ACHD site specific and standard conditions of approval in connection with traffic and infrastructure improvements.

Further, the Applicant has worked to design the Project to help "trap trips" and protect existing neighborhoods from experiencing through traffic. Extensive connectivity enhancements that have been designed into the Project.¹⁸ As discussed in the Application and with the DRC, the design of the Project will maximize opportunities for pedestrian accessibility and minimize obtrusive effects of vehicle circulation:¹⁹

- Most parking has been incorporated into the buildings to virtually eliminate all but visitor and short-term parking at grade level;
- Extensive pedestrian connectivity is proposed throughout the Project; Bicycle use is encouraged with extensive bicycle parking (both surface and secured garage storage);
- Improvements to the Greenbelt will be made;²⁰ and
- A car share (i.e., ride share) program will be implemented.²¹

The Project is also located within a quarter mile of two existing public transportation stops.

¹⁷ In addition to meeting with ACHD, the Applicant met with Development Services, Public Works, Division of Building Safety, Idaho Department of Water Resources, Boise Fire Department, and Fairview Acres Lateral Irrigation District (whose water flows across the Project's property). The Applicant also held two neighborhood meetings on October 21, and November 26, 2019.

The Applicant is also working with various agencies to identify and create a plan to clean up nonindigenous and dangerous vegetation along the Boise River, coupled with the removal of trash and debris that has accumulated in that area over the years.

¹⁸ See, Garden City Comprehensive Plan, Goal 7, Connect the City, and Objective 7.3.

¹⁹ See, Garden City Code, Section 8-4C-3. B; Staff Report, page 8.

²⁰ The Applicant has proposed (for ACHD's consideration) vacation of a portion of the street right-of-way at the end of 41st Street, which would allow for development of an enhanced pedestrian connection to the Greenbelt. An additional connection to the Greenbelt would be located at the east side of the Project.

²¹ See, the Staff Report discussion generally and DRC Site Specific Condition of Approval Number 7.

An element of pedestrian connectivity involves sidewalks. Note that Ms. Tabor (page 5 of her letter) states that she and other residents would prefer attached sidewalks rather than detached sidewalks. Originally the Applicant had proposed attached sidewalks. However, both City Staff and the DRC were clear: detached sidewalks are required by Code (Garden City Code 8-4E-6.C) and will be required in connection with the Project. See DRC Decision, page 6.

Affordable Housing

Ms. Tabor mentions several objectives and action steps under the guiding Goal 6 of the Comprehensive Plan regarding Diversity in Housing. DRC Committee Member Gresham specifically acknowledged similar public comments made at the public hearings and encouraged the City to continue to investigate ways to promote affordable and workforce housing such as is found with the Project.²²

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 a project that: (1) recognizes that the City has established the project area as an Activity Node; and (2) honors the guiding objectives of the Comprehensive Plan to upgrade housing in the City and provide opportunities for mixed income housing.²³ As explained in the Application and at the DRC hearings, the Project represents different housing opportunities with a vibrant mix of apartment configurations, which mix supports opportunities for mixed income housing.

Conclusion

Although Ms. Tabor's objection to the DRC decision is misplaced, the Applicant and its consultants truly appreciate the comments of Ms. Tabor and others who provided testimony at the DRC public hearings. These comments, along with City Staff's professional comments, have been incorporated into and improved the overall design of the Project 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.

²² See, Page 6 of the DRC Decision. Note that the term "affordable" housing under Federal law typically refers to housing units that are affordable by households whose income is some percentage below the median household income in an area. We believe Ms. Tabor is speaking about housing and its affordability more generally.

²³ See, e.g., Comprehensive Plan Action Steps 6.1.1 and 6.3.2.

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

Sincerely,



JoAnn C. Butler

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