

Memorandum**To: Charles Wadams
Jenah Thornborrow****Copy: Garden City Mayor and City Council****From: JoAnn Butler and Bob Taunton****Re: Response to Ordinance 1018-20 Questions Posed by City Attorney**

The Council has received a packet of information for its December 14, 2020 hearing compiled by its Planning Director and City Attorney regarding Ordinance 1018-20. The City's Attorney has provided a summary Memorandum for the Council that begins on page 86 of the Council's information packet. On page 12 of Mr. Wadams Memorandum (page 97 of the Council's information packet), Mr. Wadams provides a list of 11 questions and advises the Council that "If the above questions can be satisfactorily answered, then the proposal [i.e., Ordinance 1018-20] is likely valid and legal. If the above questions cannot be satisfactorily answered, then the proposal should not be adopted."

Using the information contained in the public record, we have provided the following information to assist the Council with its review and finding that these questions can be satisfactorily answered. The answers to questions 1-3 and 7-11 are ancillary to questions 4-6, which questions 4-6 are the actual findings the Council must make in connection with any Development Code amendment,¹ including the text amendment contained in Ordinance 1018-20.

Mr. Wadams questions:

1. Why does the proposed code amendment improve the current code on Specific Area Plans?

The answers to the questions below provide the reasons why Ordinance 1018-20 improves upon the applicable sections of the existing Development Code.

2. What are the deficiencies in the current code?

As stated by staff in its report to the Council:²

E. Current Deficiencies

The applicant and/or staff have identified the following deficiencies in Garden City Code:

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- ¹ 8-6B-5 DEVELOPMENT CODE AMENDMENT:
 - A. Purpose: The purpose of this section is to establish procedures for amendments to the text, tables and graphics of this title, including supplements, changes, modifications or repeals.
 - B. Applicability: The provisions of this section shall apply to all text within this title. . . .
 - D. Required Findings: In order to grant a text amendment to the development code, the council shall make the following findings:
 1. The text amendment complies with the applicable provisions of the comprehensive plan;
 2. The text amendment shall not be materially detrimental to the public health, safety, and welfare; and
 3. The text amendment shall not result in an adverse impact upon the delivery of services by any political subdivision providing public services within the city.

- ² Staff Report, November 9, 2020, File Number CPAFY2020-00005; pages 6-8.

- 1) There is not a current base zoning district that specifically intends to implement the Comprehensive Plan future land designations of Neighborhood Destination Center, Transit Oriented Development Node, and Future Planning Areas.³
- 2) Currently a preapplication meeting is required with the Planning and Zoning Commission for a Specific Area Plan (SAP). As the code provisions currently set forth are quasi-judicial in nature this can create bias.⁴
- 3) Under the current code, unless the applicant requests a development agreement, there is no mechanism to ensure that an approved SAP will be constructed. This may lead to fragmented development where portions of a SAP are implemented on some of the properties and other properties do not adhere to the plan. This increases uncertainties for those investing in components of a plan as well as the community overall.⁵

3. What is the benefit to the City?

In addition to other benefits cited in this Memorandum, as analyzed by staff, the proposed ordinance changes provide a level of assurance to investors and public that an approved project will be implemented.⁶ In addition, the text amendment:

- provides the City with an additional planning tool to:
 - implement the Comprehensive Plan land use designations and policies; and
 - facilitate the planning of unique areas and developments where conventional zoning mechanisms may not achieve the desired results
- promotes the master planning of new and redevelopment sites, including:
 - TOD Activity Nodes;
 - Neighborhood and Destination Activity Nodes; and
 - Future Planning Areas

As stated in the PowerPoint presentation to Council on November 9th, benefits stemming from changes to the SAP section of the City's Development Code include:⁷

³ The Comprehensive Plan calls for the City to implement the Comprehensive Plan, in part, by amending the Development Code to facilitate the development of Neighborhood Destination Centers, Transit Oriented Development and Future Planning Areas. See, Comprehensive Plan, Sections, e.g., 10.4.1; 10.4.2; pages 34-5.

⁴ Section 8-6B-6D.2 now requires an applicant to hold a pre-application conference with the Planning & Zoning Commission. This practice has long been frowned on as creating a potential conflict with the Commission because (1) Commission is required to give an applicant pre-application guidance, but the Commission also (2) must sit in judgment of the application the Commission gave guidance on prior to submittal.

⁵ As stated further by staff on page 7 of its November 9th staff report to the Council:

Under the current regulations nothing precludes property with an approved SAP from building to underlining zoning regulations unless there is a Development Agreement (DA). This includes setbacks, densities, height and uses. For SAP projects that may have several lots that are then sold separately, there are insecurities for investors that the other properties will develop as planned. Similarly, there is insecurity that is created for public service and infrastructure planning. The proposal will promote orderly and efficient development patterns that will avoid the conflicts and financial loss that occur with piecemeal development decisions. . . . [T]he code as currently adopted is more likely to result in disconnected redevelopment. Developing in this manner falls short of meeting the objectives as set forth in the purpose section of the SAP. . . . This proposal creates the ability for a zoning ordinance to be tailored to a desired development pattern and context of the surrounding area.

⁶ Id. Page 7.

⁷ The summary page from the November 9th presentation to the Council is attached to this Memorandum.

- Transforms the existing SAP code into a flexible base code planning and regulatory tool
- Avoids the need to create multiple codes [for TOD, Neighborhood Activity Nodes and Future Planning Areas]
- Improves implementation of Comprehensive Plan Future Land Use Designations & Policies by filling gaps in the code
- Requires master planning
- Improves regulation of phased developments
- Establishes certainty for phased projects for the Community, City & the Developer
- Emphasizes design as the essential element
- Creates context-sensitive development
 - Supports place-making
 - Overcomes traditional Euclidean zoning premised on separation of uses.

4. Does the text amendment comply with the applicable provisions of the Comprehensive Plan?

Following public hearings, both the Design Review Committee and the Planning & Zoning Commission recommended that Council approve the specific area plan text amendment because they found the text amendment is in accord with the applicable provisions of the Comprehensive Plan.⁸

The Comprehensive Plan calls for the City to implement the Comprehensive Plan, in part, by amending the Development Code to facilitate the development of Neighborhood Destination Centers, Transit Oriented Development and Future Planning Areas. Ordinance 1018-20 does just that.

As Stated in the Planning & Zoning Commission Findings:

This proposal most notably applies to the future land use designations of the Comprehensive Plan:

- a) Activity Node: Neighborhood Destination
- b) Activity Node: Transit Oriented Development
- c) Future Planning Area

However, the proposal could be utilized elsewhere if there is a . . . phased project proposed that could benefit from this tool.

In and of itself, a Comprehensive Plan is not legally binding. However, a required Conclusion of Law for zoning amendments both in in Garden City Ordinance and Idaho State Statutes is that the amendment is in conformance with the Comprehensive Plan.

The proposal is supported by the Comprehensive Plan's Objectives:

- 2.1.4 Explore the opportunities to create distinctive neighborhoods
- 2.3.6 Promote good design
- 2.4.5 Improve the City's gateways
- 3.1.1 Develop a vision for a city center or multiple centers including the Expo Idaho site
- 3.1.2 Partner with Ada County to implement the vision for the Expo Idaho site
- 3.1.4 Transform the Expo Idaho site to an urban center for the city
- 5.4.1 Evaluate creating a more urban setting along portions of the Boise River
- 10.3.1 Develop master plans

⁸ See, e.g., Planning & Zoning Commission Findings, adopted August 27, 2020, pages 3-4.

- 10.3.2 Focus on neighborhoods of rapid change and regeneration
- 10.4.1 Amend the Development Code for TOD's
- 10.4.5 Amend the Development Code for destination and neighborhood centers
- 10.4.6 Transition development to be compatible with the existing surroundings⁹

5. Is the text amendment materially detrimental to the public health, safety, and welfare?

Following public hearings, both the Design Review Committee and the Planning & Zoning Commission recommended that Council approve the specific area plan text amendment because they found the text amendment would not be materially detrimental to the public health, safety, and welfare.¹⁰

6. Does the text amendment result in an adverse impact upon the delivery of services by any political subdivision providing public services within the city?

Following public hearings, both the Design Review Committee and the Planning & Zoning Commission recommended that Council approve the specific area plan text amendment because it does not result in an adverse impact upon the delivery of services by any political subdivision providing public services within the city.¹¹

7. Is the requested zoning district significantly different from the surrounding area?

Of course, Ordinance 1018-20 is not a request for the rezone of any property. Ordinance 1018-20 only allows a property owner to make an application requesting the existing zone of a property be changed to a Specific Area Plan base zone.

Any such future application would have to meet the requirements of the Development Code for a complete application, and the complete application would have to be reviewed through Garden City's public hearing review process. Ultimately, the Council will only approve an application if it can make the required findings that promote the orderly planning and development of land.¹²

8. Will the district benefit a few landowners while creating negative impacts to surrounding landowners?

⁹ Id.

¹⁰ Id., page 4

¹¹ Id., page 4

¹² 8-6B-6.E. Required Findings: In order to grant approval of an SAP application, the deciding body shall make the following findings. If denying an SAP application, the deciding body shall state findings as to why such application does not comply with one or more of the following findings:

1. The SAP application, as conditioned, is consistent with the city comprehensive plan, as amended, including the future land use map and the land use planning area guidelines and land use designations, if applicable;
2. The SAP application, as conditioned, meets the minimum requirements of this chapter;
3. The SAP application promotes the orderly planning and development of land, as set forth in the purpose for this process;
4. The SAP application will create a district that is identifiable as a distinct area of the city with a distinguishing character.
5. The SAP application has been noticed and public hearing held in accordance with this code;
6. The SAP application complies with all city zoning regulations and codes in effect at the time of the SAP application.

The control of whether any development in the City (not only an SAP but also any other rezone, any conditional use, or any variance) negatively impacts surrounding landowners rests, of course, with the city through its regulations and the public hearing process.

What can be appreciated with an SAP is the extensive neighborhood outreach, the planning, and the development phasing required with an SAP application. These elements provide the city and surrounding landowners a better understanding of what the development is proposed to be, and the timing of that development, so they can comment accordingly during the public hearing process.

9. Will the amendment affect a small area and provide private, rather than public benefit?

Ordinance 1018-20 is a city-wide ordinance to implement the public benefits outlined in the city's Comprehensive Plan. Any property owner, no matter the size of their property, may make application for a rezone to SAPD. Such property owner will be required to go through the public hearing process where the applicable decision body will determine if the application assists in implementing the public benefits outlined in the city's Comprehensive Plan.

10. Should a master environmental impact review, or some other review, be conducted prior to the City Council deciding whether the proposed code amendment is a sound idea?

We are not sure what is meant by a "master environmental impact review." But, since Ordinance 1018-20 is not a request for the rezone of any property and, if adopted, would only allow a property owner to make an application requesting the a rezone from an existing zone to a Specific Area Plan base zone, it appears there would be little to be gained from an impact review.

Please note that, in connection with a particular SAP application, just as with any discretionary application (e.g., a rezone, a conditional use permit, a variance) Garden City departments and ancillary governmental agencies often require impact reviews such as a traffic impact study.

11. How many acres should be required before the proposed SAPD becomes applicable?

As provided in the proposed section 8-6B.B, the owner of any property, no matter the size of the property, can make an application to change the existing zone of the property to a Specific Area Plan District:

6-6B.B. Applicability: An SAP may be utilized anywhere within the city that would benefit from a master plan and phasing approach. An SAP application is encouraged for the development or redevelopment of properties defined in the comprehensive plan as TOD Activity Nodes, or as Neighborhood Destination Activity Nodes, or as Future Planning Areas. An SAP application shall be required prior to the development or redevelopment of properties defined in the Comprehensive Plan as Future Planning Areas that are not incorporated into the city on or before the 11th day of January 2021 [this is the assumed date of the adoption of Ordinance 1018-20].

Because the existing Development Code limits an SAP to a property of 10 acres or more, the concept of parcel size for a rezone to SAPD was discussed with staff, the Design Review Committee and the Planning & Zoning Commission. Staff also discussed the size of parcels to be rezoned SAPD with the staff at Boise City to glean insight from Boise's experience (Boise does not limit the size of a property whose owner may request a rezone to SAPD). Just as any request for the rezone of a property is not limited by the size of a property, during the course of public hearings and work sessions it was determined that the more consistent course was to not restrict a rezone to SAPD to a particularly-sized parcel.

Benefits to Garden City

- ▶ Transforms the existing SAP code into a flexible base code planning and regulatory tool
- ▶ Avoids the need to create multiple codes
- ▶ Improves implementation of Comp Plan Future Land Use Designations & policies by filling gaps in code
 - TOD and Neighborhood/Destination Activity Nodes
- ▶ Requires master planning
- ▶ Improves regulation of phased developments
- ▶ Establishes certainty for phased projects for Community, City & Developer
- ▶ Emphasizes design as the essential element
- ▶ Creates context sensitive development
 - Supports place-making
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