

December 31, 2019

**SENT VIA: E-Mail**

City of Garden City  
c/o Charles Wadam  
6015 Glenwood Street  
Garden City, ID 83714  
cwadams@gardencityidaho.org

Re: Request for Reconsideration

Dear Charlie:

As you are aware, I represent Surfer's Paradise, LLC, as it relates to the Bridge Town Homes development project. Comes now, Bridge Townhomes Development, by and through Surfer's Paradise, LLC, ("Surfer's") which hereby respectfully requests that the City Council reconsider its decision served upon Surfer's Paradise on December 24, 2020.

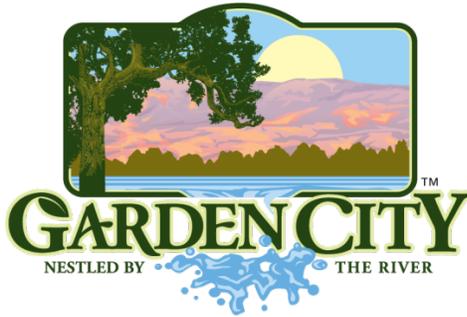
Surfer's, without waiving any and all prior requests for reconsideration and incorporating the same herein, asserts that the City of Garden City Council erred, as a matter of law, by failing to consider, discuss, and review the legal basis for a claimed wall height limitation which was legally deficient and incorrectly applied to the Bridge Townhomes Subdivision Planned Unit Development. Surfer's submitted, had reviewed, and approved plans for a wall height substantially equivalent to that which was submitted, reviewed and approved and which is in substantial conformance with any and all applicable ordinances relating to or associated with planned unit development, and which were approved by Design Review and by the Garden City Planning and Zoning Commission.

Sincerely,



Kim J. Trout

CC: Client



## OFFICE OF THE CITY ATTORNEY

6015 Glenwood Street ■ Garden City, Idaho 83714  
Phone 208/472-2900 ■ Fax 208/472-2996

**TO:** Mayor and Council  
**FROM:** Charles I. Wadams, City Attorney  
**DATE:** 1/8/2020  
**SUBJECT:** Reconsideration of Bridge Townhomes SUBFY2017-1

---

**BACKGROUND:** At the September 23, 2019 Council Meeting, the City Council approved written Findings of Fact, Conclusions of Law and Decision regarding what was understood to be an application for the modification of certain site specific conditions of approval for the Bridge Townhomes Planned Unit Development Final Plat (PUDFY2017-1). In the Findings of Fact, Conclusions of Law and Decision, the City Council denied the modification request for SUBFY2017-1/PUDFY2013-2. On October 4, 2019, the applicant, through legal counsel, submitted a Request for Reconsideration with the City. On October 7, 2019, the applicant submitted a Supplemental Request for Reconsideration.

On October 14, 2019, the City Council decided to consider the substantive issues, raised in the Requests for Reconsideration, at a subsequent Council Meeting. The public hearing on the reconsideration request was initially scheduled for November 12, 2019. On November 12, 2019, the public hearing was continued, as stipulated to by the applicant, to November 25, 2019.

On November 12, 2019, the applicant submitted an amended reconsideration proposal. Also, on November 12, 2019, the Development Services Director submitted a Response to the Requests for Reconsideration. After the public hearing on November 25, 2019, the previous decision was affirmed. The Findings of Fact, Conclusion of Law and Decision on Request to Reconsider was approved at the Council Meeting on December 9, 2019.

The applicant, through legal counsel, received the Findings of Fact, Conclusion of Law and Decision on Request to Reconsider on December 24, 2019. On December 31, 2019, the applicant, through legal counsel, submitted another Request for Reconsideration with the City. I am now providing a legal analysis to the City Council to assist in the review of the Requests for Reconsideration.

**ANALYSIS:** The current planned unit development is likely subject to judicial review under the Local Land Use Planning Act (LLUPA). LLUPA states:

[a]ny applicant or affected person seeking judicial review ... must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. **A written decision shall be provided to the applicant or affected person** within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. **A decision shall not be deemed final** for purposes of judicial review **unless** the process required in this subsection has been followed. **The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration** or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

I.C. 67-6535(2)(b) (emphasis added).

Currently, there is no case law interpreting I.C. § 67-6535(2)(b). Therefore, the analysis is of the plain wording of the statute. The statute states an applicant or affected person seeking judicial review “must” seek reconsideration. It does not state that the City Council must grant reconsideration. If a written decision is not provided on the request for reconsideration, “the request is deemed denied.”

Idaho Code § 67-6535(2)(b) requires an applicant to go back to the City Council and specifically state what the alleged deficiencies are in the decision to potentially give the Council an opportunity to correct any errors. It does not require the Council to make a decision on the request. Based on the plain wording of the statute, it is within the Council’s discretion on whether to consider the merits of a request for reconsideration on an application that is within the scope of LLUPA. There is nothing in the Garden City Code that provides for requests for reconsideration. Accordingly, there is nothing that prohibits an applicant from submitting a second Request for Reconsideration.

In the current Request for Reconsideration, the applicant claims the following issue, “the City of Garden City Council erred, as a matter of law, by failing to consider, discuss, and review the legal basis for a claimed wall height limitation which was legally deficient and incorrectly applied to the Bridge Townhomes Subdivision Planned Unit Development.” This issue was raised in the previous Requests for Reconsideration.

When the PUD was filed, fences and walls located along a “street frontage” within the front yard setback were required to be three and one-half feet (3.5’). However, this likely does not apply to the retaining wall because the greenbelt is not a “street.” When the PUD was filed, fences and walls located within rear and interior side setbacks were required to be six feet (6’). However, fences and walls on residential property with rear

and interior side yards located adjacent to commercial uses could be eight feet (8'). The height of fences and walls shall be measured from the existing grade.

Currently, the City has granted "dual frontage" for this development. Therefore, the retaining wall adjacent to the greenbelt is currently in the front yard. However, because there is not "street frontage," the three and one-half foot (3.5') requirement likely does not apply. The six-foot (6') requirement currently does not apply because that requirement is only for rear and interior side setbacks, and the retaining wall is in what is designated as a front yard. The City may have some discretion to eliminate the dual frontage, and designate the retaining wall in the rear yard, in which case the six-foot (6') requirement would be in play.

**CONCLUSION:** There is nothing that prohibits an applicant from submitting a second Request for Reconsideration. The applicant is only asking for clarification on how tall the retaining wall can be, which is an issue that was raised in the previous Requests for Reconsideration. By granting the reconsideration request, it would give the Council an opportunity to correct any errors before the matter would otherwise proceed to judicial review.