

BEFORE THE GARDEN CITY COUNCIL  
GARDEN CITY, ADA COUNTY, IDAHO

In the Matter of:	)	SUBFY2017-1/PUD2013-2
	)	
Bridge Townhomes PUD Amendment	)	FINDINGS OF FACT,
E. 35 <sup>th</sup> Street	)	CONCLUSIONS OF LAW
Garden City, Ada County, Idaho	)	AND
_____	)	DECISION

THIS MATTER, came before the Garden City Council for consideration on September 9, 2019. The City Council reviewed the application and materials submitted and considered public testimony. Based on the evidence presented, the City Council makes the following Findings of Fact, Conclusions of Law and Decision:

**FINDINGS OF FACT**

1. The property owner and applicant is Surfers Paradise LLC.
2. The location of the project is the Bridge Townhomes Subdivision, as noted in the Bridge Townhomes Subdivision Plat.
3. The subject property is 0.835 acres.
4. The initial decision regarding the Planned Unit Development was issued by the City Council on January 15, 2014 (PUDFY2013-2).
5. The original decision regarding the final plat was issued by the City Council on May 8, 2017 (SUBFY2017-1).
6. The project is in the TOD Node and Live Work Create designations of the 2006 Comprehensive Plan Land Use Map.
7. The project is in the M – Mixed Use Zoning District.
8. The application is for the modification of the following site specific conditions of approval for the Planned Unit Development Final Plat (PUDFY2017-1):
  - a. Allow for code requirement waivers for the fence/wall height (GCC 8-4A-3) and landscape requirements (GCC 8-4I); and allow for a further encroachment into required setbacks in deviation of GCC 8-2B-3:
    - (1) Amend site specific condition # 7 to allow the installation of shrubs to front the Greenbelt instead of trees on lots 7-15.

- (2) Amend site specific condition #12 to allow a 2' setback along the Greenbelt for the retaining rock wall and the fence instead of 3' setback.
  - (3) Amend site specific condition 28a to allow lots 5 and 7-15 to contain a retaining wall and fence within 2' from the edge of pavement, instead of landscaping retaining walls 3' from the edge of pavement of the greenbelt with all other structures 10' or more from greenbelt easement or 70' from ordinary high water mark.
  - (4) Add site specific condition #29 to approve an approximate 8' tall wall for the already constructed retaining rock wall.
9. The following sections of the Garden City Development Code applied to the original decision:
- a. Design Review: Title 8-Chapter 4, Articles B and C
  - b. Driveways: Title 8- Chapter 4, Article E
  - c. Erosion Control: Title 4-Chapter 15
  - d. Floodplain: Title 8-Chapter 3, Article B
  - e. Landscaping: Title 8-Chapter 4, Article I
  - f. Open Space: Title 8-Chapter 4, Article L
  - g. Parking: Title 8-Chapter 4, Article D
  - h. Planned Unit Development: Title 8-Chapter 6, Article B
  - i. Public water and sewer systems: Title 6
  - j. Sidewalks: Title 8-Chapter 4, Article E
  - k. Storm drainage and erosion control: Title 4-Chapter 14
  - l. Street design and development standards: Title 8-Chapter 4, Article E
  - m. Sustainable Development Provisions: Title 8-Chapter 4, Article G
  - n. Utilities: Title 8-Chapter 4, Article A
  - o. Zoning District Provisions: Title 8-Chapter 2, Article B
  - p. Subdivisions within a floodplain: Title 8- Chapter 5
  - q. Planned Unit Development and Conditional Use Permit Title 8- Chapter 6, Article B
10. The following sections of the Garden City Development Code apply to the requested modification:
- a. 8-2B-3 Form Standards
  - b. 8-4A-3 Fences and Walls
  - c. 8-4I-4A, Landscaping for Single-Family Residential Units
  - d. 8-6B-7A, Planned Unit Development Purpose
11. A copy of the application and plans were transmitted to interested and affected public agencies and written comments were received from:
- a. None
12. The record contains:
- a. Neighborhood meeting materials;
  - b. Application Materials;
  - c. Agency Referral Notice;

- d. Agency Comments;
- e. Public Comments;
- f. Property Owner Notices;
- g. Legal Advertisements in Idaho Statesman for hearings;
- h. Affidavits of property posting;
- i. Staff reports;
- j. Public Hearing Sign Up Sheets
- k. Planning and Zoning Commission Recommendation
- l. Design Committee Recommendation

13. The application was received July 15, 2019.
14. The applicant was scheduled for a City Council Public Hearing on September 9, 2019.
15. The City Council Public Hearing was held within sixty (60) days of receipt of the application.
16. A public hearing notice for the proposed application was published on July 19, 2019, and on July 16, 2019, notice was mailed to all property owners within a 300-foot radius of the said property in compliance with the public notice requirements of Section 8-6A-7 of the Garden City Municipal Code.
17. The applicant provided an affidavit that the property was posted on premise in accordance with Garden City Code.
18. On August 19, 2019, the Design Review Committee recommended approval of the request.
19. On August 21, 2019, the Planning and Zoning Commission recommended approval of the request.
20. During the public hearing on September 9, 2019:
  - a. The applicant, Todd Weltner represented the request.
  - b. Staff, Jenah Thornborrow, presented the staff report.
  - c. Public testimony in favor was received by Gary Asin, Jason Jones, Bryant Forrester, Douglas Gibson, Jim Neill, Nathan Fox, Molly Armpriest, Kristin Sherman, Chris Reiten, Brooke VanDam, Steven Johnson, Suzanne Michelle, Brian Vetter, Holly Little, and Hannah Ball. Testimony in opposition was received from Victor Myer, Nancy Baskin, Adrie Somalinog, and Patrick Little.
  - d. Todd Weltner provided a rebuttal.
  - e. The testimony was closed.
  - f. City Council discussion included the following points:

- (1) Aesthetics of the wall are not the issue.
- (2) The process was not followed.
- (3) The question is whether the application meets regulations.
- (4) The applicant should have known that they were constructing the wall outside of required setbacks.
- (5) No evidence has been presented that the code deviation is warranted.
- (6) An encroachment 1/3 into the 3' setback is substantial.
- (7) Encroachment can create a safety hazard for greenbelt users (specifically cyclist and unsteady walkers)
- (8) Revised landscaping plan creates an area that may not be maintained.
- (9) The City Council denied the request on a 3/0 vote.

### **CONCLUSION OF LAW**

In consideration of a modification request to the decision in SUBFY2017-1, the City Council provides the following analysis and conclusion of law. Pursuant to Garden City Code §§ 8-6B-7.E and 8-6B-2.D, in order to grant approval of a planned unit development, the City Council must make certain findings, including the following:

Each individual unit of the development, as well as the total development, can exist as an independent unit capable of creating an environment of sustained desirability and stability or that adequate assurance will be provided that such objective will be attained; the uses proposed will not be detrimental to present and potential surrounding uses, but will have a beneficial effect which would not be achieved under standard district regulations;

The streets and thoroughfares proposed are suitable and adequate to carry anticipated traffic and increased densities will not generate traffic in such amounts as to overload the street network outside the PUD;

Any exception from standard district requirements is warranted by the design and other amenities incorporated in the final development plan, in accordance with the PUD and the adopted policy of the council;

The PUD is in general conformance with the comprehensive plan;

The use is appropriate to the location, the lot, and the neighborhood, and is compatible with the uses permitted in the applicable zoning district;

The use will be supported by adequate public facilities or services to the surrounding area, or conditions can be established to mitigate adverse impacts;

The use will not unreasonably diminish either the health, safety or welfare of the community; and

The use is not in conflict with the comprehensive plan or other adopted plans, policies, or ordinances of the city.

Based on the record that was presented on September 9, 2019, the City Council is unable to make the above required findings.

Pursuant to the applicant's previous request, the City Council allowed deviations from Garden City's Development Code on May 8, 2017 but required several site specific conditions of approval. Now, the applicant is requesting more deviations from the Garden City Development Code and the site specific conditions of approval that were required on May 8, 2017. However, other than some conclusory statements, the applicant did not address how his requested modifications would comply with G.C.C. §§ 8-6B-7.E and 8-6B-2.D. It is the applicant's burden to make this showing.

The sufficiency of the record to support the modification request was specifically mentioned by Councilmember Page during deliberations, when he expressed disagreement with the Planning and Zoning Commission's Findings of Fact and Conclusions of Law. Speaking about a required finding for modification pursuant to G.C.C. § 8-6B-7.E, Councilmember Page stated, "I don't think anything in the record, none of the evidence before me, shows that is warranted." When addressing whether the modification would be in conformance with the comprehensive plan, which is another required finding pursuant to G.C.C. § 8-6B-7.E, Councilmember Page questioned how the modification would protect the greenbelt from private development.

Councilmember Souza agreed with the comments and there was no dissent by Council President Beaumont. Mayor Evans indicated that there was nothing to prevent

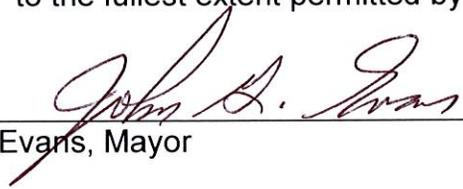
the applicant from coming back with a modified request or a plan on how to achieve substantial compliance with the existing conditions.

As the project is not in compliance with the existing conditions of approval for the Planned Unit Development, the current request to modify the Planned Unit Development should not be granted based on the existing record. The City Council has reviewed the application with regard to the record and Garden City Code, Title 8, and based on the conditions required but not followed, concludes that it is unable to make the required findings pursuant to §§ 8-6B-7.E and 8-6B-2.D.

### DECISION

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Garden City Council denies the modification request for SUBFY2017-1/PUDFY2013-2. The following apply to this decision:

1. All conditions noted in the May 8, 2017 City Council decision shall remain valid and in force.
2. Final decisions are subject to judicial review per Chapter 67-65 Idaho Code.
3. Pursuant to Idaho Code, a request for reconsideration must be submitted within 14 days of the final decision and prior to judicial review. The written request must identify specific deficiencies in the decision for which reconsideration is sought.
4. A takings analysis pursuant to Idaho Code may be requested on final decisions.
5. If any term or provision of this decision, to any extent, is held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

  
\_\_\_\_\_  
John Evans, Mayor

9-23-19  
\_\_\_\_\_  
Date