

BEFORE THE CITY COUNCIL  
GARDEN CITY, ADA COUNTY, IDAHO

**THIS IS NOT A PREDETERMINED DECISION. ALL EVIDENCE WILL BE CONSIDERED. A DIFFERENT DECISION MAY RESULT IN AN UPDATE OF THE FINDINGS OF FACT, CONCLUSIONS OF LAW, OR CONDITIONS**

In the Matter of:	)	SUBFY2020-01
	)	
	)	
Combined Preliminary & Final Plat Subdivision	)	
AND Planned Unit Development	)	FINDINGS OF FACT
At the terminus of W. 53 <sup>rd</sup> Street	)	CONCLUSIONS OF LAW,
Garden City, Ada County, Idaho	)	AND DECISION
_____	)	

THIS MATTER, came before the Garden City Council for consideration on October 12, 2020. 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 applicant is David Hale with Hale Development.
2. The property owner of record is CS2 LLC
3. The location of the project is Garden City, ID 83714. Assigned Ada County Parcel #: S0536141980.
4. The subject property is 7.216 acres.
5. The application is for a Combined Preliminary and Final Plat Subdivision with a Planned Unit Development Subdivision.
6. The project is located in the MU - Mixed Use Commercial and Transit Oriented Development designations of the Comprehensive Plan Future Land Use Map.
7. The project is in the Mixed Use Zoning District.
8. The project is not located in the floodplain according to the 2003 FIRM.
9. The project is not located in the floodplain according to the 2017 FIS.
10. The following section of the Garden City Development Code apply to this proposal:
  - a. Garden City Code 8-5: Land Division Regulations
  - b. Garden City Code 8-4A: Design and Development Regulations – General Provisions

- c. Garden City Code 8-4B: Design and Development Regulations – Design Provisions for Residential Structures
- d. Garden City Code 8-4D: Parking and Off-Street Loading Provisions
- e. Garden City Code 8-4E: Transportation and Connectivity Provisions
- f. Garden City Code 8-4G: Sustainable Development Provisions
- g. Garden City Code 8-4I: Landscaping and Tree Protection Provisions
- h. Garden City Code 8-4L: Open Space Provisions
- i. Garden City Code 8-6A: Administration – General Provisions
- j. Garden City Code 4-14: Storm Drainage and Erosion Control
- k. Garden City Code 8-6B: Planned Unit Development
- l. Garden City Code Title 6: Public Water and Sewer Systems

11. The applicant provided the following application information:

<b>Materials Provided Per GCC Table 8-6A-2 Required Application Information</b>			
Provided			
Yes	No	Waived	
X			Compliance Statement
			Preliminary Title Report
X			Neighborhood Map
X			Subdivision Map
X			Site Plan
X			Landscape Plan
X			Schematic Drawings
X			Lighting Plan
X			Topographic Survey
X			Grading Plan
		X	Hydrology Report
X			Will Serve
		X	Natural Hazard and Resource Analysis
		X	Dedications and Easements
		X	Covenants and Deed Restrictions
			Subdivision Name and Reservation
		X	Verification that address is an Ada County Approved Address
			Other: Neighborhood meeting materials Geotech Report

\* Items that were waived may be required for review later.

12. The following noticing was completed in accordance with GCC 8-6A-7:

Noticing Requirement	Required Date	Completion Date
Neighborhood Meeting	07/31/2020	10/22/2019
Receipt of Application	08/11/2020	08/20/2020

Letter of Acceptance	09/20/2020	09/04/2020
Radius Notice	09/01/2020	08/20/2020
Interested Parties	n/a	n/a
Legal Notice	08/28/2020	08/20/2020 Email 08/24/2020 Published
Agency Notice	09/01/2020	08/20/2020
Property Posting Sign	09/06/2020	08/28/2020
Affidavit of Property Posting and Photos	09/09/2020	08/28/2020

13. Agency Comments were received by
  - a. Ada County Highway District
  - b. Central District Health
  - c. Garden City Engineer
  - d. North Ada County Fire and Rescue District
  - e. Settlers Irrigation District
  - f. West Boise Sewer District
  
14. Written testimony was received by:
  - a. Grasmick
  - b. Swarts
  - c. Willadsen
  
15. The record contains:
  - a. Application Documents
  - b. Noticing Documents
  - c. Agency Comments
  - d. Public Comments
  - e. December 16, 2019 Design Review Committee Pre-Application Minutes and Audio
  - f. September 16, 2020 Planning and Zoning Minutes and Audio
  - g. September 21, 2020 Design Review Committee Minutes and Audio
  - h. October 5, 2020 Design Review Committee Minutes and Audio
  - i. October 12, 2020 City Council Minutes and Audio
  - j. Planning and Zoning Commission Recommendation
  - k. Design Review Committee Recommendation
  - l. City Council Decision
  
16. On December 16, 2019, a pre-application conference was held with the Design Committee. The Committee provided the following comments and requests:
  - a. David Hale presented the pre-application materials.
  - b. The Committee made the following comments and suggestions:
    - i. Consider adding site building pop outs or another solution to add fenestration to the elevations on street/common driveway visible side facades.

- ii. Consider adding a more plaza like design at terminus point. Consider addressing internal circulation and amenities, such as a potential dog park or community garden for access drive to be more plaza like.
  - iii. Consider looking at sidewalk that takes accesses into account to create more consistent sidewalk. Consider other treatment to define sidewalk and other solutions.
  - iv. Consider adding connectivity across long strip of parking on southwest end.
  - v. Consider connectivity to amenity area, such as addressing the fire lane as an amenity.
17. On January 6, 2020, a public hearing before the Design Review Committee was held and the application was continued at the request of the applicant to a date certain of 2/3/2020 to address engineering issues.
15. On September 16, 2020, a public hearing before the Planning and Zoning Commission was held:
- 1. Applicant, David Hale, presented the application.
  - 2. Staff, Hanna Veal, presented the staff report
  - 3. There was no public testimony.
  - 4. David Hale provided rebuttal testimony.
    - a. Willing to create a water featured monument sign.
    - b. Subdivision liability for pedestrian pathway from Glenwood to and through proposed subdivision.
    - c. Settlers Canal should be considered and amenity.
  - 5. Public testimony was closed.
  - 6. Commissioner Pounds moved to approve the application as drafted in the draft decision in the affirmative with draft conditions of approval.
  - 7. Commissioner Pelton seconded the motion.
  - 8. The motion carried unanimously.
18. On September 21, 2020, a public hearing before the Design Review Committee was continued at the request of the applicant to a date certain of October 5, 2020.
19. On October 5, 2020 a public hearing before the Design Review Committee was held:
- I. David Hale presented the application.
  - II. Staff, Hanna Veal, presented the staff report.
  - III. There was no public testimony.
  - IV. David Hale provided rebuttal testimony.
    - a. Settlers Canal has been altered overtime and most correspondence between the applicant and Settlers Canal has to do with the proposed retaining walls, not using the canal as an amenity.

- b. The development should provide for a safe route and connection from Glenwood to Fred Meyer.
  - c. Applicant is in support of incorporating water features into the monument sign for the development.
  - d. Clarification of 6' wrought iron fence along the south side of the property and a 42" fence along the property line adjacent to Fred Meyer.
  - e. The Planned Unit Development code required variety in housing is met townhome groupings consisting of either two, three or four units.
  - f. The design of the proposed units has not changed since the last application. Fenestration of the end units has changed slightly.
- V. Public Testimony was closed.
- VI. Discussion included:
- a. Code requires that sidewalks on the adjacent public roads be detached, the sidewalks around the proposed cul-de-sac should be detached where they connect to 53<sup>rd</sup> street to facilitate remainder of 53<sup>rd</sup> Street to be code compliant.
  - b. Fencing gate should work with topography of the property.
  - c. Lack of connection on the south property line.
  - d. The connection between the proposed development and Fred Meyer (to the north) is not approved yet, and needs to be existing prior to final plat approval.
- VII. Committee Member Labrie moved to approve the application as conditioned in the draft decision with the request to add:
- a. Sidewalk shall be a detached sidewalk at the cul-de-sac connection to 53<sup>rd</sup> street.
  - b. Emergency easement and pedestrian easement to Fred Meyer's property must be received prior to the final plat approval.
  - c. Further Design Review Committee approval required for the additional fenestration of the end units
  - d. Further Design Review Committee required approval for the south side connectivity.
- VIII. Committee Member Gresham seconded the motion.
- IX. The motion passed on a 3/3 vote.
- X. The motion carried unanimously.

20. On October 12, 2020 a public hearing before the City Council was held:  
**This will be updated to reflect the hearing proceedings.**

21. In consideration of a combined preliminary and final plat subdivision with a planned unit development the following findings shall be made:  
**The draft findings are written based on the recommendations from the Planning and Zoning Commission and the Design Review Committee. The City Council will review all evidence, and the draft findings may be updated based on their review and consideration.**

<b>GCC 8-5B-5: SUBDIVISION PROCESS: REQUIRED FINDINGS</b>			
Conclusion			Standard
Compliant	Not Applicable to this Application	Not Compliant	
X			<p><b>Finding:</b> The subdivision is in conformance with the Comprehensive Plan;</p> <p><b>Explanation:</b></p> <p>The subdivision is in conformance with the intent of the Mixed-Use Commercial designation of the Garden City Comprehensive Plan Future Land Use Map. The subdivision is in conformance with Goal 2: Improve the City Image, Goal 4: Emphasize the Garden in Garden City, and Goal 7: Connect the City.</p>
X			<p><b>Finding:</b> The subdivision is in conformance with all applicable provisions of this title;</p> <p><b>Explanation:</b></p> <p>The proposed subdivision is in conformance with the requirements of Garden City Code as conditioned herein.</p>
X			<p><b>Finding:</b> Public services are available or can be made available; and are adequate to accommodate the proposed development;</p> <p><b>Explanation:</b></p> <p>Services are available to serve the site and the proposed development.</p>
	X		<p><b>Finding:</b> The subdivision is in conformance with scheduled public improvements in accord with the city's capital improvement program;</p> <p><b>Determination:</b></p>

			Currently the City does not have a capital improvements program.
X			<p>Finding: There is public financial capability of supporting services for the proposed development</p> <p><b>Explanation:</b></p> <p>The subdivision is in conformance with this finding. The record does not contain evidence that there is not public financial capability of supporting the developments services.</p>
X			<p>Finding: The development will not be detrimental to the public health, safety or general welfare;</p> <p><b>Explanation:</b></p> <p>The development is for residential use, which is allowed in the Mixed Use zone. It is not anticipated that any uses or activities will be detrimental to the surrounding properties upon completion of the site work.</p>
X			<p>Finding: The development preserves significant natural, scenic or historic resources</p> <p><b>Explanation:</b></p> <p>No natural, scenic, or historic features of major importance are known to exist on the site.</p>

<b>GCC 8-6B-7 PLANNED UNIT DEVELOPMENT: REQUIRED FINDINGS</b>			
Conclusion			Standard
Compliant	Not Applicable to this Application	Not Compliant	
X			<b>Finding:</b> The applicant has demonstrated that the proposed development can be

			<p>initiated within two (2) years of the date of approval.</p> <p><b>Explanation:</b></p> <p>Approval of this application is conditioned that the development shall be initiated within two years of the date of approval.</p>
X			<p>Finding: 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.</p> <p><b>Explanation:</b></p> <p>The proposed development and each structure can successfully exist independently of the surrounding area and will not be detrimental to the neighborhood.</p>
X			<p>Finding: 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</p> <p><b>Explanation:</b></p> <p>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.</p>

	X		<p>Finding: Any proposed commercial development can be justified at the locations proposed.</p> <p><b>Explanation:</b></p> <p>No commercial development is proposed.</p>
X			<p>Finding: 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.</p> <p><b>Explanation:</b></p> <p>The applicant has requested reduced setbacks between the residential lots and for more than four residential units to take access from a driveway. The reductions are warranted by the design and the incorporation of required amenities.</p>
X			<p>The area surrounding said development can be planned and zoned in coordination and substantial compatibility with the proposed development.</p> <p><b>Explanation:</b></p> <p>The proposal is compatible with the surrounding uses and vision.</p>
X			<p>Finding: The PUD is in general conformance with the comprehensive plan.</p> <p><b>Explanation:</b></p> <p>The proposed PUD design is intended to bring higher densities to the area in conformance with Mixed Use Residential and TOD Node designations of the comprehensive plan.</p>
X			<p><b>Finding:</b> The existing and proposed utility services are adequate for the population densities and nonresidential uses proposed.</p>

			<b>Explanation:</b> There are adequate services available for the proposed densities.
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22. The record was reviewed by the City Council to render the decision.

**CONCLUSIONS OF LAW**

The Design Review Committee reviewed the application with regard to Garden City Code, Title 8, Chapter 4, and based on the conditions required herein, concludes the application **meets** the standards of approval under **GCC 8-5B-5 and 8-6B-7**.

### **DECISION**

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, and decision contained herein, the Garden City Council hereby **APPROVES** of SUBFY2020-01, a Combined Preliminary and Final Plat with a Planned Unit Development subject to the following conditions:

#### **Specific Requirements:**

1. This approval is for a combined preliminary and final plat with a Planned Unit Development for a residential subdivision encompassing 68 lots – 61 designated for residential use, and 7 common lots. This approval does not preclude other uses as allowed by Garden City Code.
2. Recordation of the plat shall be considered completion of the planned unit development.
3. The waivers requested and approved through the planned unit development process include:
  - a. A density of 7.4 units per acre.
  - b. Setbacks as proposed by this application
  - c. More than four units to take access from a common drive.
4. Lots 2, 7, 34, 55 and 68 are common lots, Lot 3 is a common drive lot, all common drives and common lots shall be owned and maintained by the Mountain View Townhomes Property Owner's Association.
5. The applicant shall comply with all requirements of the City Engineer.
6. Recordation of the plat shall be considered completion of the planned unit development.

#### **Prior to City Signature on Plat**

1. Emergency access easement and pedestrian cross access easement to Fred Meyer's property must be received prior to the final plat approval.
2. Provide a note on the final plat to read, "Minimum building setback lines shall be in accordance with the following":
  - a. Front Setback: 20'
  - b. Rear Setback: 15' min
  - c. Side Setback: 5' and 0' common lot line
  - d. Street Side Setback: 15'

3. A permanent 10' utility easement designated on along all lot lines common to a public or private right-of-way.
4. All side yard lot lines have a 5' property drainage and irrigation easement.
5. All driveways have a 20' parking easement.
6. All private street names shall obtain approval from the Ada County street name committee.
7. The CC&Rs must state: "The Association shall not be dissolved without the prior written approval of the City of Garden City, Idaho.
8. The applicant shall comply with all requirements of the City Engineer.

**Prior to approval of construction plans**

1. All construction must meet zoning standards at the time of development.
2. All pressure irrigation systems must meet requirements and obtain city engineer approval prior to construction.
3. The applicant shall mitigate for removed trees or shall provide a certified arborist's certification demonstrating the trees removed were dead, dying or a hazard in accordance with GCC 8-4I-7 (Tree Preservation Provisions).
4. All stormwater systems shall be built in compliance with 8-4A-7 of Garden City Code.
5. All internal sidewalks, common driveways with curbing, hardscaping, and stormwater facilities shall be constructed in substantial compliance with the approved plans, or as conditioned.
6. Sidewalk shall be a detached sidewalk at the cul-de-sac connection to 53<sup>rd</sup> street.
7. Further Design Review Committee required approval for future south side connectivity.
8. Thurman Mill shall be utilized as an amenity feature.

**Prior to approval of building permits for structures**

1. Further Design Review Committee approval required for the additional fenestration of the end units.
2. All development shall be required to provide for sustainable development practices based on a point system.

**General Subdivision Requirements:**

1. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of that application prior to commencing any change.
2. The approval is specific to the application provided and reviewed.
3. This approval is for this application only. Additional permits, licenses and approvals may be necessary. All other applicable permits must be obtained.
4. The applicant shall comply with all requirements of the reviewing agencies.
5. Final approval is subject to the approval of other reviewing agencies. Any more restrictive standards adopted and made applicable by any Transportation Authority, Fire Authority or other Federal, State or Local regulatory agencies shall prevail. This approval shall not annul any portion of Garden City Code or other applicable regulation unless specifically noted.
6. All improvements and operations shall comply with applicable local, state and federal requirements and procedures whether specifically addressed in the analysis of this application or not.
7. The Development Services Director may enter into a restricted build agreement on the City's behalf, provided the agreement is in compliance with the approved restricted build agreement policies.
8. All utilities on the site, including telephone, cable television, and electrical systems shall be underground and in compliance with Garden City Code 8-4A-8.
9. Required easements must either be on the plat or provided in a recordable document that includes a legal description and illustration.
10. Property maintenance standards shall be maintained as required by Garden City Code.
11. The property owner is responsible for the maintenance of all landscaping and screening devices required.
12. Driveway openings in curbs shall comply with the requirements of the Transportation Authority. The driveway shall be straight or provide a 28-foot inside and 48-foot outside turning radius.
13. Plant materials which exhibit evidence of insect pests, disease, and/or damage shall be appropriately treated to correct the problem. Dead plant materials shall be replaced.

14. Where landscaping might impact motorist or pedestrian sight distance, shrubs shall be maintained below three feet (3') in height and trees shall be pruned so that the lowest branches will be at least seven feet (7') above the ground level.
15. A three foot (3') clearance zone shall be maintained around the circumference of fire hydrants.
16. Retain and protect existing trees, vegetation, and native soils and integrate these features into the overall landscape plan.
17. Required landscape areas shall be at least seventy percent (70%) covered with vegetation at maturity, with mulch used under and around the plants. Use of mulch, organic or rock as the only ground cover in required planting areas is prohibited.
18. If trees are staked, the stakes shall be removed within twelve (12) months to prevent damage to the tree.
19. All planting areas that border driveways, parking lots, and other vehicle use areas shall be protected by curbing, wheel stops, or other approved protective devices.
20. Trees shall be planted at least three feet (3') from curbs, sidewalks, driveways and other hard surfaces to buffer from stress caused by vehicle overhang and compacted soils, or planted with sufficient space to provide for the full maturity of the particular tree species.
21. All other plant material, except sod or ground cover, shall be set back a minimum of one foot (1') from any curb edge to protect from vehicle overhang and mechanical damage.
22. The landscape installation shall stabilize all soil and slopes.
23. All required landscaping shall be provided with an automatically controlled irrigation system in conformance with the best management practices for automatic irrigation systems.
24. Property maintenance standards shall be maintained as required by Garden City Code.
25. The property owner is responsible for the maintenance of all landscaping and screening devices required.
26. System Installation Required: Each and every lot within the subdivision shall have underground pressurized irrigation water. The pressurized irrigation system shall be constructed and installed at the same time as the domestic water lines, but shall not necessarily be in the same trenches.

27. Cross-Connections: All cross-connections between the domestic water lines and the irrigation water lines shall be in accord with the City's adopted standards, specifications and ordinances.
28. Utility easements that are unobstructed by permanent structures shall be provided along front lot lines, rear lot lines, and side lot lines when deemed necessary by the City Engineer. Total easement width shall not be less than ten feet (10'), with twelve feet (12') recommended, front and rear, with at least twenty feet (20') required for water and sewer easements for main lines.
29. Unobstructed easements, including but not limited to, drainage, water, and sewer easements shall be provided as required by the City.
30. Materials submitted after the decision shall not be considered part of the record for this decision. If additional materials or information is submitted after the decision the application may be remanded to the decision making body during which time the decision shall be stayed provided that there is no immediate threat to life or safety.
31. Any changes in the design, construction, operation or use shall be brought to the immediate attention of the Planning Official for determination if the changes are in substantial conformance with the City's action. Any modification to approved plans shall require submittal and approval of these modifications prior to construction. Final approval is based on substantial conformance with the plans reviewed and approved.
32. Any substantial changes to the design shall be reviewed by the Design Review Committee for compliance with Garden City Code 8-4. Any other changes that are not in substantial conformance with the approval shall be remanded to the decision-making body.
33. The applicant shall submit payment to the City for all outstanding fees incurred by the City in obtaining a review of this project prior to the City issuing any permits or signing the final plat.
34. In the event that an applicant and/or owner cannot complete the non-life, safety and health improvements, within the time specified in the final subdivision approval or prior to occupancy, the City may require a surety agreement in accordance Garden City Code. Unless financial guarantees of improvement completion has been accomplished, no approval of the final subdivision or recording thereof shall be permitted unless the applicant provides satisfactory proof that all required public improvements and facilities have been fully and satisfactorily constructed and installed.
35. This application shall be considered intent to abandon any and all previous uses on the site unless otherwise identified in this decision; all previous uses at this location

shall be considered abandoned. Occupying the site for reasons beyond construction prior to a Certificate of Occupancy is a criminal offense.

36. Approval of this subdivision shall become null and void if the applicant fails to record a final subdivision within one (1) year of the approval. Development shall commence within two (2) years of approval. If the timetable is not met and the applicant does not receive a time extension, the application will expire and become null and void.
37. The Planning Official may authorize a single extension of time to record the final subdivision not to exceed one (1) year. Additional time extensions up to one (1) year as determined and approved by the City Council may be granted. With all extensions, the Planning Official or City Council may require the preliminary subdivision or combined preliminary and final subdivision to comply with the current regulations.
38. Final decisions are subject to judicial review pursuant to The Idaho Administrative Procedures Act, Chapter 65 Title 67 Idaho Code.
39. 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.
40. A takings analysis pursuant to Idaho Code may be requested on final decisions.
41. 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.

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Mayor, John G. Evans

Date