



OFFICE OF THE CITY ATTORNEY

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TO: Mayor and Council
FROM: Charles I. Wadams, City Attorney
DATE: 8/14/2023
SUBJECT: Request to Reconsider SAPFY2023-0001

ACTION REQUIRED: Within the City Council's discretion.

RECOMMENDATION: Considering the request for reconsideration.

FISCAL IMPACT/BUDGET IMPLICATIONS: Unknown.

BACKGROUND: At the June 26, 2023, City Council Meeting, the City Council (CC) orally approved with conditions SAPFY2023-0001 (The Residences at River Club Specific Area Plan (SAP)). On July 10, 2023 Mayor Evans signed the Findings of Fact, Conclusions of Law and Decision, which grants the SAP with conditions. On July 20, 2023, David H. Leroy, on behalf of the adjoining property owners, the Livingstons, Schmellicks, and Pattersons, submitted a request for reconsideration, alleging deficiencies in the final written decision compared to the oral approval. I am now providing a legal analysis to the City Council to assist in the review of this requests for reconsideration.

ANALYSIS: The conditional SAP 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.

Idaho Code § 67-6535(2)(b) (emphasis added).

The statute states an applicant or affected person seeking judicial review "must" seek reconsideration. It does not state that the CC must grant reconsideration. If a written decision is not provided on the request for reconsideration, "the request is deemed

MEMORANDUM ON REQUEST TO RECONSIDER AND/OR FOR CLARIFICATION OF SAPFY2023-0001, P.1

denied.” LLUPA requires an applicant to go back to the CC and specifically state what the alleged deficiencies are in the decision to potentially give the CC an opportunity to correct any errors. It does not require the CC to make a decision on the motion. Based on the plain wording of the statute, it is within the CC’s discretion on whether to consider the merits of a motion for reconsideration on an application that is within the scope of LLUPA.

Idaho Code § 67-6535(2) applies only to an “application required or authorized pursuant to this chapter.” *Id.* The following are subject to LLUPA review: (1) initial zoning following annexation; (2) rezoning of specific parcels or sites pursuant to Idaho Code § 67-6511; (3) conditional rezoning pursuant to Idaho Code § 67-6511A; (4) application for subdivision; (5) application for variance; (6) application for conditional use permit; and (7) “other similar applications” which presumably includes specific area plans. The current application is subject to LLUPA review because a specific area plan is one of the base zoning provisions listed in Garden City Code 8-2B-1(E).

Additionally, there is nothing in the Garden City Code that provides for requests for reconsideration, nor provisions for an appeal body for SAPs; however, this does not absolve petitioners of the responsibility to submit a request for reconsideration under LLUPA. See *Richardson v. Blaine Cnty.*, 171 Idaho 806, 812, 526 P.3d 976, 982 (2023) (rejecting petitioners’ claim that a lack of a local reconsideration requirement satisfied the statutory requirement). Accordingly, there is nothing that requires the CC to consider the instant reconsideration requests, although legislative intent encourages resolution of land use conflicts at the local level. *Id.* Arguably, the applicant has specifically stated what the alleged decision deficiencies are in the July 20, 2023 Request for Reconsideration.

A few recent cases have addressed the requirements of Idaho Code § 67-6535(2)(b). In *Richardson v. Blaine County*, a case from earlier this year, the Idaho Supreme Court upheld a dismissal as untimely of a request for reconsideration that was submitted 15 days after a CUP was granted. *Richardson v. Blaine Cnty.*, 171 Idaho 806, 526 P.3d 976 (2023). The Court also affirmed that the statute unambiguously requires filing a motion to reconsider prior to seeking judicial review. *Id.* The Court further clarified the interplay of LLUPA’s reconsideration request requirement and the Idaho Rules of Civil Procedure, holding the former superseded the latter. *Id.* at 815, 526 P.3d at 985.

A request for reconsideration must be timely. Under § 67-6535(2)(b), a request for reconsideration needs to be submitted within fourteen (14) days. While undefined in statute, the Idaho Supreme Court has discussed the moment when such a ruling is effective and, thus, the moment when the clock would begin to tick on a fourteen (14) day timeframe. *S Bar Ranch v. Elmore Cnty.*, 170 Idaho 282, 510 P.3d 635, 651 (2022). The Court ultimately held that it was within the discretion of the governing board to decide the date by which the ruling on the request for reconsideration was final, reasoning that a governing board “has authority to determine when a decision is final and appealable. The Court went on to say that the governing board must do so, however, in conformity with LLUPA.” *Id.* While LLUPA prescribes the timeframe for when an appeal may be taken, the exact moment of when a governing board has a final ruling is entirely within the

discretion of said governing board. *Id.* (citing *In re Quesnell Dairy*, 143 Idaho at 694, 152 P.3d at 565). However, the governing board must “notify the public of the date of that decision so an aggrieved party can file a timely appeal.” *Id.*

Here, the request for consideration was filed timely. At previous council meetings it was stipulated that the signing of the decision document would be the date of the final decision, starting the 14-day period. As the decision document was approved and signed on July 10, the July 20 Request for Reconsideration falls within this timeline.

CONCLUSION: The applicant likely has the right to submit a request for reconsideration. By granting the reconsideration request, it would give the CC an opportunity to correct any errors before the matter may otherwise proceed to court. Notice was formally provided on the date written next to Mayor Evans’ signature on the written decision, giving until July 24, 2023, to submit a request for reconsideration, and thus making Mr. Leroy’s request for reconsideration timely. If granted, CC would need to provide notice to the interested parties of the date of that decision so that an aggrieved party would have time to file judicial review.

If the CC decides to reconsider the SAP approval, because it thinks there is an argument that it somehow erred in its decision, the matter should be set for a future council meeting. However, the rule does not indicate that the CC has to agree that there are specific deficiencies in the decision for it to grant reconsideration. Accordingly, if the CC does not find it somehow erred in its decision, but wants to add wording to the written decision that was agreed upon during deliberations, CC could clarify the written decision on August 14, 2023 without having to set for a future council meeting. The difference is considering substantive changes or considering clarifying grammatical issues that are not substantive changes.

If the CC decides to reconsider the written decision, two motions should be made:

- (1) The first motion would be to move that CC reconsider the merits of the decision (motion to hear the request for reconsideration); and
- (2) The second motion would be to move that CC consider the merits of the request for reconsideration at a date certain (either at a future date or on August 14, 2023) (motion to consider the request for reconsideration at a date certain).

If the merits of the request for reconsideration are considered at a date certain, the CC has the discretion to modify the written decision at that time.

After my review of the record and the Findings of Fact, Conclusions of Law and Decision, I believe the CC could add some clarifying statements that were part of the CC deliberations. Therefore, attached to this memo as “Exhibit A” is an example of what my recommended changes could look like should CC decide to reconsider. I would recommend the CC not go beyond statements that are intended to clarify what the decision is, as a completely new decision, with substantive and significant changes, likely would require a remand and/or a new public hearing.

Exhibit A is only for illustrative purposes. I do not intend to suggest whether the reconsideration should be granted. However, if reconsideration is granted, the scope of the review should be limited. My purview is to give legal advice of what a reasoned reconsideration should and could look like in this context, which is what I am doing here. Idaho Code § 67-6511 gives municipalities the authority to create zones and allows requests to amend the zoning ordinance (i.e., make an application to rezone). Garden City Code establishes several base zones including SAP. See G.C.C. § 8-2B-1E. Idaho Code § 67-6535(2) and LLUPA review applies to, among other things: rezoning of specific parcels or sites pursuant to Idaho Code § 67-6511; conditional rezoning pursuant to Idaho Code § 67-6511A; and (7) “other similar applications” which presumably includes SAPs. The current application is likely subject to LLUPA review because a specific area plan is one of the base zoning provisions listed in Garden City Code 8-2B-1(E).

LLUPA unambiguously requires filing a motion to reconsider prior to seeking judicial review but it is within the CC’s discretion whether to consider the merits of a motion for reconsideration on an application that is within the scope of LLUPA. A request for reconsideration must be submitted timely, and this July 20 Request for Reconsideration falls within the timeline.

On July 10, 2023 Mayor Evans signed the Findings of Fact, Conclusions of Law and Decision. The SAP conditional approval is likely subject to judicial review LLUPA. On reconsideration request, 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.

Attorney David H. Leroy, on behalf of the adjoining property owners, the Livingstons, Schmellicks, and Pattersons, submitted a request for reconsideration on July 20, 2023. Therefore, if the CC wishes to reconsider the written decision, it has until September 20, 2023 to provide the new written decision. There are three council meetings before September 20, 2023:

- (1) August 14, 2023;
- (2) August 28, 2023; and
- (3) September 9, 2023.

Accordingly, time is of the essence on reconsideration matters. A decision is not deemed final for purposes of judicial review until after this process 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. Accordingly, I recommend that the CC decide what to do with the request for reconsideration on August 14, 2023. The reconsideration could be granted, without finding there are deficiencies in the current written decision, to clarify the decision.

CONCLUSIONS OF LAW

The Garden City Council reviewed the application with regard to Garden City Code, Title 8, and based on the conditions required herein, concludes the application **satisfies** the required findings under GCC 8-5B-6.

DECISION

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law contained herein, the City Council hereby does **APPROVE** the application, subject to the following conditions:

1. Approval of this application is for:
 - a. Approval of the Zoning Code Amendment.
 - b. Approval of rezoning the subject property from R-2 Low Density Residential to The Residences at River Club District/ DA
 - c. The approval of the conceptual Master Plan as conditioned
2. Future applications within the area designated by this Specific Area Plan application shall be in conformance with the Residences at River Club District, Development Agreement and in substantial conformance with the conceptual master plan.
3. If there is ever any judicial determination that the subject property's legal owner of record has not consented to this application the approval of this application shall be nullified and reversed.
4. The lot must be verified by the city as a legal lot of record or made into a legal lot of record.
5. A subdivision or Minor Land Division must be completed to separate the subject property area from the current parcel.
6. A development agreement shall be approved prior to the third reading and adoption of the rezone ordinance. The purpose of the development agreement will be to adopt the conceptual Master Plan.
7. Each structure required by code and each sub-area must obtain a design review approval prior to construction.
8. Connection to the city of Boise's sanitary sewer collection system must be coordinated with the city of Boise.
9. Required revisions to the Conceptual Master Plan include:
 - a. The height, as defined by adopted Code, of the area of the East Subdistrict, identified in the image referred to "Exhibit A" of the applicant's

rebuttal presentation on June 26, 2023, hearing shall be limited to a maximum of 35'. The review of this change to the East Subdistrict will be reviewed no later than the design review of the West Subdistrict.

b. Extend the publicly accessible bicycle and pedestrian pathway that runs adjacent to the golf course to connect the West Sub-district and the Pierce Park and State Street intersection. The pathway shall also provide for a potential future connection to the adjacent property at the westerly boundary.

b.c. There shall be no bicycle or pedestrian access to North Fair Oaks Place. A physical barrier between the East Subdistrict and North Fair Oaks Place shall consist of fencing, landscaping, and/or watercourse or some combination thereof. The review of this change to the East Subdistrict will be reviewed no later than the design review of the West Subdistrict.

e.d. The private road through the Central and East sub-districts shall be reviewed at the design review of the sub-districts to ensure that it adequately addresses the Garden City design consultant's recommendation to increase intuitive function of the traffic flow through the sub-districts to the State Street/Pierce Park intersection.

e.e. Design for adequate stacking for left turn movements onto State Street as requested by ACHD.

e.f. Vacate the existing right-of-way for Plantation Drive, and remove associated access onto State Street, as required by ACHD.

f.g. There shall be no unsignalized left turns into or out of the project from State Street, unless determined by Garden City and ACHD at a future date as safe and appropriate.

10. A Development Agreement shall be entered into that adopts the Master Plan with the following conditions:

- a. The master plan is conceptual.
- b. The phasing of the development will occur as identified in the master plan.
- c. The pathways shall be consistent or greater in width and landscaping buffering as depicted in the master plan.
- d. The irrigation drain may be piped in sections but shall be daylighted and utilized as an amenity as shown in the conceptual Master Plan. If the waterway amenity is precluded by the drainage district or property owner, an amenity that equally enhances the linear park shall be provided. Any revisions to the proposed amenity shall be reviewed with the future review of the West sub-district. If the waterway amenity is constructed, permission from the off-site property owner allowing for the construction of the off-site improvement shall be provided.
- e. No vehicular access shall be allowed onto a public right-of-way unless approved and according to the Ada County Highway District standards.
As recommended by ACHD, there shall be no vehicular access to North

Fair Oaks Place, except for emergency access if required by the fire authorities.

- f. The setbacks for any type of encroachments including but not limited to walls, bushes, artwork, etc. must be at least 18" from any sidewalk or multi- use path to not create shy space into the usable area of the sidewalk/path.
- g. Easements required to enact the Master Plan:
 - i. Shall be provided as required by the City Engineer, Development Services Staff, or this decision.
 - ii. Shall be recorded with Ada County Land Records.
 - iii. Shall be provided to Garden City once recorded.
 - iv. Shall define the grantee and adequate information to depict the location of the easement such as a legal description and illustration.
 - v. Shall be unobstructed unless otherwise specified.
 - vi. At a minimum, include easements for the following:
 - 1. Public utilities.
 - 2. Water and sewer
 - a. If not otherwise designated by the City Engineer the 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.
 - 3. Drainage.
 - 4. Public connections to and from the public rights-of-way (excluding North Fair Oaks Place) and pathways, including but not limited to users of Plantation Drive connecting to State Street.
 - 5. Public 12-foot, for a minimally 10-foot-wide concrete multi-use (bicycle and pedestrian) pathway along State Street.
 - 6. Publicly accessible 12-foot easement, for a minimally 10-foot-wide multi-use (bicycle and pedestrian) pathway that runs along the southern boundary of the subject property.
 - a. The term publicly accessible shall be defined to mean that the easement shall be perpetual and allow for public access with minor identified exceptions such as closures after customary travel hours.
 - h. New water and sewer services, and site grading and drainage must be provided for review and approval by the Garden City Public Works Department.
 - i. Should any connections be made to the Boise City sanitary sewer collection system, review and approval by Boise City Public Works must be provided.
 - j. The alignment of N. Pierce Park Lane shall reflect ACHD's 99% design plans for the intersection at State Street.

- k. The bus stop amenities as outlined in the conceptual master plan are a requirement of the infrastructure to be installed as part of the master plan.
- l. The design and location of the proposed bus stop must be approved by Valley Regional Transit prior to construction.
- m. The phasing for the removal of the current bus stop and the installation of the proposed bus stop shall be coordinated with VRT and included in the phasing plan.
- n. Private roads shall provide street names and stop sign signage.
- o. The construction of roadway projects shall be coordinated with Ada County Highway District.
- p. All sidewalks and public pathways shall be designed and constructed to the project boundaries so that they facilitate future connections except there shall be no connection to North Fair Oaks Place as provided further in condition 9.c above.
- q. The Master Plan is an approved plan that is not subject to the one-year expiration identified in GCC 8-6A-8.

11. Prior to the adoption of The Residences at River Club District SAP Ordinance, revisions to proposed code shall be made to:

- a. Provide any clarifying or clerical language that does not change the intent of the approved provisions.
- b. Make clear the following concepts are incorporated:
 - i. Amend regulations to limit the height of the area of the East Subdistrict, identified in the image referred to "Exhibit A" of the applicant's rebuttal presentation on June 26, 2023, hearing to a maximum of 35'.
 - ii. Amend regulations to clarify there shall be no bicycle or pedestrian (and, as recommended by ACHD, no vehicle) access to North Fair Oaks Place and a physical barrier between the East Subdistrict and North Fair Oaks Place shall consist of fencing, landscaping, and/or watercourse or some combination thereof.
 - iii. Add a new chapter to Garden City Code 8-8 Specific Area Plan Ordinances.
 - iii. Amend proposed code to be consistent with a new article of Garden City Code 8-8 Specific Area Plan Ordinances rather than the current proposal of including the proposed SAP in a new title 11.
 - iv. Add Garden City Code Sustainability and Nonconforming regulations by reference.
 - v. Add Language: Accesses onto public roads shall comply with the requirements of the Transportation Authority.
 - vi. Add Language: Specific Area Plan: The Residences at River Club District Ordinance shall supersede if in conflict with The

Residences at River Club District Master Plan.

- vii. Add Language: A variety of housing for the project shall be provided at a rate of at least 5% from each of two or more of the categories of universal design, studio, or one-bedroom units.
- viii. Pressurized Irrigation: utilize term “shall” rather than “may;” delete word “proposed.”
- ix. Amend Language: Remove word “potentially” and define “active adult” or change term to multi-family in regulations in the district’s language.
- x. Add Language: Design must meet “design character” as identified in the adopted master plan.
- xi. Office: language to require centrally and unique is needed.
- xii. Single family attached: Connection to sidewalk rather than drive-aisle needs clarified.
- xiii. Add language: Detached sidewalks are required to allow for landscaping and street tree buffers. Detailed criteria can be added to identify when a different solution is appropriate.
- xiv. Amend language: Add criteria for roof signs or maintain as prohibited.
- xv. Amend language: Maintain Electronic Message Boards as prohibited or with a master sign plan approval.
- xvi. Add language to require the integration of signage with the architecture.
- xvii. Amend language for perimeter screening: remove the allowance for vinyl fencing and add wrought iron as an alternative.
- xviii. Amend language in tree mitigation to require mitigation for trees equal to or less than 4” in diameter.
- xix. Amend language that will allow for private open space to provide for an aggregate of private open space within the project.
- xx. Amend language for open space to state that common open space areas shall not be adjacent to a collector or arterial street unless separated from the street by a constructed barrier of at least two feet (2') in height and an additional landscape buffer that incorporates shrubs and trees.
- xxi. Amend language for open space to remove the word “interior.”
- xxii. Amend language for pedestrian walkways to clarify when it is appropriate for pedestrian pathway (concrete or paved) to be considered open space, while precluding sidewalks from the open space calculations that are adjacent to public streets or primary private streets.
- xxiii. Amend language for parking to provide a definition for active adult if it will be utilized as standard.

xxiv. Adopt parking by reference, or incorporate the city's adopted parking, except for the proposed residential and bicycle parking standards:

Use	Total Required Vehicle Parking Spaces Per Dwelling Unit	Required Covered Vehicle Parking Spaces Per Dwelling Unit	Required Covered Bicycle Spaces Per Dwelling Unit
Dwelling, multi-family:			
Up to 1 bedroom	1	.5	.5
2+ bedrooms	2	.5	.5
Age Restricted	1	.5	.5
Dwelling, single-family detached	2	2	n/a
Dwelling, townhouse:	2	2	n/a
Guest Parking For developments with more than 2 dwelling units there shall be 0.5 additional vehicle parking spaces/unit provided for guest parking for the first 10 dwelling units. There shall be 0.1 parking spaces/unit provided for guest parking for every unit after the first 10 units.			

xxv. Amend language for bicycle connectivity standards to require connectivity to the boundary of public right-of-way except there shall be no connection to North Fair Oaks Place as provided further in condition 9.c above.

xxvi. Amend language setback language to clarify that the setbacks are reduced from parking areas only.

xxvii. Add language that the setbacks for any type of encroachments including but not limited to walls, bushes, artwork, etc. must be at least 18" from any sidewalk or multi-use path to not create shy space into the usable area of the sidewalk/path.

xxviii. Amend language to identify that the multi-use path on State Street shall be 10' in width.

xxix. Amend language within code that refers to bicycle routes and lanes to be consistent with the Institute for Traffic Engineers (ITE) definitions.

xxx. Provide a clearer Image of the conceptual Master Plan area for

codification.

- xxxi. Add Language: The design of structures and amenities must be compatible with "Design Objectives" and "Design Character" as identified in the master plan.
- xxxii. Adjust the requirement that parking cannot be within 40' of a corner to be state that parking cannot be within 25' from where two travel ways adjoin.