

SECOND SET OF COMMENTS TO THE GARDEN CITY COUNCIL VIA THE GARDEN CITY PLANNING AND ZONING COMMISSION ON THE PROPOSED RIVER CLUB SAP APPLICATION FILE: SAPFY2023-0001  
Planning and Zoning Hearing Session - April 27, 2023

I.

FURTHER INTRODUCTION

This Memorandum adopts, incorporates, updates and supplements the prior submission of comments dated February 15, 2023, made by this office on behalf of our clients Dr. John and Lynn Livingston, 6273 North Fair Oaks Place, Bob and Recí Schmellick of 6253 North Fair Oaks Place and Dave and Jeanne Patterson of 6326 North Charleston Place, Garden City, Idaho 83703.

These “Objectors” created a website at “preserveplantation.com” and have been at the forefront of expressing the very serious concerns of the neighborhood residents who perceive that they will be greatly affected by the proposed “massive” development, as illustrated by their passout flyer attached hereto as Exhibit “1.”

The diagram on the flyer well illustrates how the particularly challenging to them is the so-called “Phase 3” of up to 260 units, some predicted at 5 stories high, contained within an approximately 8.6 acre peninsular-shaped real property appendage, which has neither State Street frontage, nor direct public access, and which projects directly toward and into the established R-2 neighborhood of family and retiree-couple homes. The pending and inevitable conflicts created by this area, should this SAP be authorized as proposed, are easily foreseen and characterized by the Objectors as problematic “Points to Consider” on the bottom section of flyer.

These neighbors were most conciliatory, even supportive, of Mr. Gustafson’s original, exploratory proposals to develop townhouses or other appropriately sized structures within the footprint of the tenth golf hole, fronting directly on State Street. They remain personally friendly with Mr. Gustafson. However, the transfer of this real estate to the large, corporate, out of state developer and the consequential explosion of the size, scope, unmanageable, inadequately-addressed and readily foreseeable impacts on the existing Plantation Subdivision neighborhood and State Street has challenged and changed that original support into a fearful and energetic opposition, as again expressed herein. Apparently at some point well after the original discussions about this project, some person at Lincoln Property Company decided to seek 50% more profit by adding Phase 3 to the SAP, invoking predictable and significant negative consequences upon all surrounding interests.

II.

THE OWNERSHIP AND LEGAL STANDING OF THE APPLICANT STILL REMAIN CONFUSING

Our original comments raised this point as to the somewhat confused or convoluted relationship between the listed applicant "LB River Club Owner, LLC.", and the purported title holder, Lincoln Property Company. The City must, within its record of application be sufficiently clear on party in interest standing to proceed with lawfully valid hearings and actions. Presumably, this has covered by the City Attorney. However, as to this issue, my clients have noted and do endorse the letters and attachments of their fellow concerned neighbor, Ronald E. Bush of 3695 N. Gramarcy Lane, dated March 7, 2023 and supplemented April 10, 2023 as to this alleged defect. This issue will be relevant as to any subsequent appeal.

### III.

#### THE CITY SHOULD NOTE THE FAILURE OF THE DEVELOPER TO COMPLY WITH THE PROHIBITION AGAINST FURTHER SUBDIVISION PROVISION CONTAINED IN THE NEIGHBORHOOD HOMEOWNER'S ASSOCIATION MASTER DECLARATION

Point IV, on pages 3-5 of our original Comments developed and presented this issue for the City. In response, the Developer's Counsel Joann Butler, posted the following text on the advocacy website of the "Save Plantation Group":

"The Master Declaration of the Plantation is not binding on the Application's subject property. Even if it was, which it is not, as acknowledged by the Objectors and their attorney, private restrictive covenants have no authority in connection with the City's review of an application under the City's rules and regulations. Any reference to private restrictive covenants has no bearing on the City's public review of the Application. The Applicant expects that the City will review the Application according to the public process without reference to private restrictions."

These Objectors are unaware of any proof or response from the Developer which shows that the Declaration is "not binding on the Application's subject property." We have asked to receive it and nothing has been received in return. As noted before, the only entity exempted from the "No Lot or Common Area . . . may be further subdivided . . . by the Owner thereof" provision of Section 5.16.B of these CC&Rs was the original Grantor, "Plantation Development, Inc." As previously noted, the golf course area, including the threatened four holes, are both "open space" and "Lot 1" in the CC&Rs and the associated maps. Other Master Declaration limitations which protect neighborhood owners are also implicated.

Therefore, these Objectors restate to the City that we believe that an Applicant, without an unfettered real property right to accomplish the project proposed on a particular parcel, should not be considered a lawful applicant entitled to invoke the City's application review and approval mechanisms as to this zoning charge or any subsequent such development.

Seeking pre-approval clarification from your staff as to this allegation seems also directly relevant under the City's required review and finding requirements of Garden City Code Section 8-6B-4(E)(2)(6) which provides:

“THE PROPOSED USE(S) AND DEVELOPMENT OF THE  
SUBJECT PROPERTY SHALL BE APPROPRIATE FOR  
THE LOCATION, THE LOT AND THE NEIGHBORHOOD”

With all due respect to the opinion of Ms. Butler stated in full above, when the Master Declaration issue is legitimately framed, these Objectors urge that the City and its planning staff do have a duty to inquire, report and resolve the apparently preventative conflict, as required by City Code. The SAP is not appropriate at this site.

#### IV.

THE APPLICANT AND ITS AFFECTED NEIGHBORS ALSO STILL  
DISAGREE ON THE ISSUE OF WHETHER THIS PROPOSED SAP AT THIS SITE  
CONSTITUTES IMPROPER “SPOT ZONING” UNDER IDAHO LAW

We reside peacefully in an upscale, single residence, well developed, highly desirable, R-2 zoned neighborhood located on the only golf course green space in Garden City. Beginning with the definition issued to you by your own City Attorney Charles Waddams, in November of 2020, as this project was stirring, our Comments of February 15, under, Point III, pages 2-3. cautioned that your Comprehensive Plan diagram must be consulted. That the elimination of a Future Land Use Map area still currently designated as a site for “Future Parks/Open Space” and “Green Boulevard Corridor” by a small, localized and inconsistent zoning area, to confer unique benefits upon a single developer, at the expense of negative impacts to the neighbors, could constitute “Type Two” spot zoning under Idaho case law.

To this argument, Ms. Butler, for Lincoln Property Company has posted a rebuttal:

“The Applicant's consultants were actively involved in the public hearing process surrounding the 2019 and 2021 updates to the Comprehensive Plan. With the Application's narrative we have provided the Commission with an overview of how the Application is firmly based on the guidance of the City's legislatively-adopted Comprehensive Plan.”

It is true that the Applicant attempted to foreshadow the smaller, more palatable versions of this project by Comprehensive Plan changes during a series of interactions with the City beginning as long as four years ago. However, nothing about those general textual language alterations pre-authorized a massive development at this location dropped into the middle of the City's only golf course and a peaceful residential neighborhood. Significantly, is noted the area

mapping apparently has not been changed to eliminate the golf course as green, open space. Ms. Butler directs us, in her reply, to consider “Tab 3, pages 1-14 of the Applicants narrative for this Application” which she asserts “provides an extensive analysis of all the rezone Findings required by Garden City, especially in connection with consistency with the Comprehensive Plan.” The very general language and conclusory statement contained therein do not absolve the obvious conflict with the Maps and Plan

At one time, there may have been a concordance between what was preliminarily envisioned, mutually by the City and earlier developers, but the Lincoln Property Company plan presented in SAPFY 2003-0001 no longer represents such consistency. In these Objectors’ views, to the contrary, many of the required code findings now illustrate conflict and contrast to the letter, spirit and intent of the Garden City Comprehensive Plan, as amended, rather than attest to “consistency” bringing Type II, Spot Zoning squarely into play, as follows:

For example, consider these issues:

1. Goal No. 2: “Improve the City Image” There are no extant design details for this massive project. It’s true image is unknown.
2. Goal No. 3: “Create a Heart for the City” The “North of the River” heart of Garden City already exists in the R-2 neighborhood known as Plantation with its Riverside golf course.
3. Goal No. 4: “Emphasize the Garden in Garden City” - Destroying 22 acres of green space makes this an unlikely claim.
4. Goal No. 5: “Focus on the River” - The focus of this SAP will be and is State Street. Sadly, the focus of Phase 3 is North Fair Oaks Place, forcing neighborhood conflict.
5. Goal No. 6: “Diversity in Housing” Of course this proposal will offer housing choices and density not already extant along State Street. However, the pursuit of “diversity” should not authorize either an excess of “density” nor be allowed to impair the quality of life for a long-existing, well settled R-2 neighborhood.
6. Goal No. 7: “Connect the City” This SAP connects nothing but State Street and potentially, over our strenuous objections, North Fair Oaks Place to the detriment of those who wish not to be connected.
7. Goal No. 8: “Maintain a Safe City” Large, concentrated apartment complexes do not traditionally reduce crime or otherwise enhance safety for a community.
8. Goal No. 9: “Develop a Sustainable City” Adding one more bus stop at a State Street site where a massive development has sprouted should not characterize this SAP as

environmentally friendly. The estimated new traffic count discussed below belies that claim.

9. Goal No. 10: "Plan for the Future" The existing R-2 neighborhood, unfettered by this SAP has many years of viable future quality of life to offer its current denizens. The SAP is disruptive of the present and promises a chaotic future in numerous particulars. These Objectors adopt and refer the city the various correspondence of neighbor Debra Reidel 6570 West Plantation Lane submitted November 7 and December 30, 2022 and February 3 and 24 for many examples of these factual and legal conflicts.

Per Idaho case law, this SAP foreshadowing massive and preceeding development on current and future open space, thrusting Phase 3 into a developed R2 neighborhood is readily discernable as Type II spot zoning.

At page 12 of TAB 3 of the Application, the Developer promises that the height and scale of the SAP will be "compatible with the existing neighborhoods and which compatibility will be fully vetted with the design review professionals at the City." At noted above, this alleged compatibility, is illusory when measured fairly and from the R-2 neighborhood perspective. Likewise, as discussed in Point VIII below, leaving the final design and resolution of the inevitable conflicts under the authority of the "design review professionals" is an abandonment of both traditional Commission and Council duties and the neighbor's rights.

## V.

### THE ELIMINATION OF THE OPEN SPACE ON GOLF COURSE HOLES 10, 11, 7 AND 8 WOULD ALSO APPEAR TO RAISE FLOOD PLAIN ISSUES FOR BOTH THE NEW UNITS AND WE EXISTING NEIGHBORS

At page 7, Point IX of our prior Comments, the Objectors discussed the still-then developing sewer and water connection plans for the SAP District site. Since that time, we note that Garden City has issued a conditional "will serve" utility letter as of June 25, 2022, assuming an intended connection to the adjacent Boise City system. As far as we are aware, however, no similar letter exists from the Boise City sanitary sewer collection system to confirm either existing or future capacity for the approval of a viable connection. The Applicant is responsible for confirming both adequate sewer capacity and the existing system depth at that location. Apparently, that has not been done.

Of even more gravity, however are the Boise River Flood Plain issues which appear to be completely-unaddressed as to both the low-lying neighbors and the proposed construction site, except for this single Section in the SAP Application at Tab 3, page 10:

"A portion of the Residences at River Club will lie on the northern fringe of the Boise River 100-year floodplain approximately 1/4 mile from the Boise River. As stated in the "Natural Hazard and

Resource Analysis Report,” on file with the City, proposed structures will be elevated above the base flood elevation in accord with the City’s Flood Hazard ordinance.”

This appears to be an inaccurate or incomplete statement, especially as to the most objectionable Phase 3 of the SAP. All of that entire approximately 8.6 acres seems to lie within that 100-year flood plain boundary as viewed in the 2017 FEMA Proposed Floodplain Revisions Map, as consulted by the Objectors. The Natural Hazard Report referred to by Ms. Butler contains only one, four sentence, generic paragraph under the title “Floodplain,” leaving many development issues unaddressed.

For example, upon information and belief, some areas of the golf course can receive with some regularity, the overflow or Springtime flood waters from both the high stage Boise River and some runoff from the North End and Foothills areas of Boise via what the Application characterizes as an irrigation system “drain.” Most recently in 2017, this occurred as shown in the attached photo, Exhibit 2. In fact, much of the golf course area would seem to meet the technical federal definition of “Flood Fringe.”

If said water can no longer use the low-lying portion of the golf course acreage as a Spring runoff catch basin, some of said overflow will naturally be displaced back toward the existing lowest-elevation neighborhood lots more adjacent to the River, increasing the flooding potential of those homes. The elevation of new building sites, as is also proposed for Phase 3 sitting immediately adjacent to our homes, is most concerning.

These Objectors suggest that the FEMA 2017 Proposed Floodplain Revisions map and the requirements for Community Floodplain Development issued by that Agency may require that this 22 acre river-adjacent area should have a far more careful analysis of this issue than the mere assurance that “the proposed structures will be elevated.” Compensatory storage issues for the potential water displacement by these “elevations” would seem to be warranted.

Of note also, is that the 2017 FEMA proposed map amendments made floodplain additions within both this back-nine area of the Golf Course and extended the new area of the 100 year Flood Plain into the condominium, townhouse and residential neighborhood West of the Clubhouse.

## VI.

### THE TRAFFIC IMPACTS, AS STUDIED, REMAIN OF SIGNIFICANT CONCERN

In our earlier Comments, Point VI pages 5-6, the Objectors alleged that the “Traffic Impacts Have Not Been Fully, Adequately Studied.”

In reply, Ms. Butler posted:

“The Objectors and their attorney are not traffic/transportation experts and have no credentials to opine as to the facts of traffic impacts, appropriate mitigation, internal circulation or parking requirements. The speculation by the Objectors is just that - speculation.”

As the Applicant suggested, we have consulted the Kittleson and Associates Traffic Impact Analysis compiled on behalf of the developer. We are not nor did we pretend to be “traffic experts.” Nor did my clients merely “speculate” into existence their statistics about State Street impacts.

The Objectors, rather than citing Kittleson directly, originally characterized the data as an “ACHD traffic study” of likely impacts on State Street. The numbers which we used, rather than speculation were these: 4945 daily vehicle trips, mitigation needed by 2026, including possible additional turn or traffic lanes, 95% probability of cars backing up and impeding traffic, and a development cap of 83% of the current proposal being necessary to avoid unacceptable traffic conditions.

It is our belief that those numbers, which we found within the ACHS website, are stated, summarized on interpreted from the original Kittleson study itself. For example, that Analysis Study at page 2 thereof, contains this sentence from which our data, in part, was drawn:

“ The Residences at River Club Development, consisting of up 750 multi-family units, approximately 15,000 square feet of retail uses, and approximately 15,000 square feet of restaurant uses is estimated to generate a total of approximately 4,945 daily trip ends.”

Please note that the daily trip count criticized by the Applicant, when used by us, is drawn from their own expert’s report.

The Objector’s common-sense points as to traffic are these:

1. This massive development will introduce daily a huge number of cars onto already very crowded State Street from an area that now produces zero trips.
2. Phase 3 of the Project has NO direct State Street access and should not be included as a permitted appendage, angling away from the arterial. It also does not appear to have adequate internal access and circulation toward State Street through the rest of the SAP’s conceptual development’s layout.
3. Phase 3 of the Project obviously and directly also threatens the existing neighbors and neighborhood, if not cancelled, by compelling, under traditional development standards, several forms of direct access connections and traffic through North Fair Oaks Place. Contrary to our wishes, the following experts

and reports, as found in the record of this Application recommend it exactly that, as follows

1. CITY'S CONSULTANT - DEREK HURD IN FEBRUARY 2023 STATES:

"Add bike and pedestrian connection to N. Fair Oaks Place for important greenbelt connection to N. Fair Oaks Place for important greenbelt access for recreation work and school commuting and safety?"

"Consider vehicular access from east stub to North Fair Oaks for access to signalized intersection"

2. THE DESIGN REVIEW REPORT 2-24-23 BY BRETT LABRIE, ARCHITECT OFFERS:

"Pedestrian and bicycle connectivity should be required at the connection of North Fair Oaks Place to the East sub district"

3. A BOISE CITY PLANNING AND DEVELOPMENT LETTER 3-15-23 PROPOSES:

"Include a public easement and a paved pedestrian and bicycle pathway . . . to connect with Fair Oaks Place, as proposed in the original application a safer and more comfortable pathway link to access . . . far safer"

4. THE STAFF REPORT PAGES 9-10 STATES THAT DURING THE FEBRUARY 21, 2023 CONSULTATION, PROPOSALS INCLUDED:

"Fair Oaks needs to be connected for purposes of bicycle and pedestrian connectivity"

"Consider motor vehicle access to Fair Oaks, pending ACHD's review"

5. THE APPLICANTS RESPONSE WAS:

"ACHD discourages the connection of two public roads, State Street and N. Fair Oaks" with a private road (ACHD policy 7212.2)

"Applicant has met with ACHD and advised ACHD that will address this issue in its recommendations to Garden City"

6. AS OF THIS DATE, NO ACHD REPORT ON ACCESS ISSUES AND REQUIREMENTS HAS BEEN RECEIVED.



7. THE FIRE DEPARTMENT WILL REQUIRE ACCESS TO PHASE 3 FROM NORTH FAIR OAKS.

No expert's report is necessary to perceive that this massive SAP, as proposed, particularly with the Phase 3 appendage, is a traffic problem on every front. From a neighborhood objection to traffic point of view, if the SAP is to proceed, it should be "right-sized," not oversized, with Phase 3 entirely eliminated.

VII.

THE SAP WILL IN FACT FORCE GREENBELT ACCESS THROUGH THE NEIGHBORHOOD, IF PHASE 3 IS ALLOWED

These Objectors appreciate and acknowledge the Applicant's proffered position on this issue, as posted by Mr. Butler:

"The Applicant has worked diligently with its neighbors on Fair Oaks Place who have voiced their concern that a pedestrian and bicycle connection not be made to Fair Oaks Place. The Applicant supports its neighbors' position and no such connection is shown in the Application."

However, as noted above, if Phase 3 is allowed, pedestrian, bicycle and even some forms of vehicular access will inevitably be forced upon the neighborhood, the Applicants preliminary designs and modest assurances notwithstanding. However, if Phase 3 goes away, then the next statement offered by Ms. Butler can perhaps become an operative reality:

"Both the Applicant (and we assume its neighbors) support bikes and pedestrians continuing to access the Greenbelt using the existing designated bikeway at Plantation River Drive and the planned multi-purpose pathway on State Street."

Even if each of the occupants of this huge development, when seeking river recreation were to proceed two thirds of a mile East on State Street, before walking, biking or driving South on Plantation River Drive, the City must conclude, as we previously noted and demonstrated in our earlier Comments, Point VII, page 6, "The SAP in fact has no adequate public access to the Greenbelt through the neighborhood." The lack of off-street parking and the location and design of the long, narrow, hard to find pathway are inappropriate to service hundreds of people, without creating major conflicts within the adjacent neighborhood.

VII.

THE SAP PROCESS IS NOT RIGHT FOR A MASSIVE DEVELOPMENT THRUST INTO

## AN EXISTING NEIGHBORHOOD

At page 5, Point V, the Objectors previously attempted to ask the Commission and Council to retain the regular planning and zoning review process over any development at this site, rather than to create an SAP which pushes the majority of future planning detail to a “design review consultant,” leaving affected neighbors with only appeal rights to the Commission and its Council. On these points and others we also direct the City to the March 3, 2023 letter of our neighbor Andrea Fogleman 6420 West Plantation Lane. No design review consultant, however expert and well-intended, can sort through and balance the conflicts which this, as proposed, over-sized and under-detailed SAP concept will bring to this neighborhood. These concerned citizens of Garden City deserve the customary full protection of regular notice and hearing processes to preserve their quality of life. After the fact appeals presented to you on a minimal record will not be adequate to do so. It is difficult enough for the ordinary citizen to receive and react to official notices of what may come before the Commission or the Council. It is impossible to envision another such process being effective as to what the consultant may be considering on Tuesday. Likewise, it should not be lost on the City that the current SAP application itself, has no adequate level of rendering, imagery or other detail as to what may be forced into this neighborhood, such as a standard application for rezoning and construction would utilize. An SAP is wrong at this site.

Furthermore, with appendages like Phase 3, it cannot in the entirety, be justified as a transit oriented development, unique area of development or activity node. It is simply an overlarge apartment complex with frosting. To the extent that it impacts and impairs the quality of life in the sedate and well-established R-2 Plantation Neighborhood and potentially disturbs those tax paying citizens of Garden City, the SAP should be rejected.

## VIII.

### CONCLUSION

These Objectors, and their similarly situated friends and neighbors, including others who may also identify themselves to you by submitting independent written or oral comments, reincorporate and re-adopt and revise their February 1<sup>st</sup> comments, now offered to both the Planning and Zoning Commission and the Garden City Council, as follows:

1. Require the Applicant to Withdraw and Revise the SAP Application to comply with applicable Garden City Codes and the Comprehensive Plan and supply appropriately sufficient and compliant detail therein.
2. Suggest to the Applicant that it eliminate Phase 3 from the subsequent Application, confining its apartment, commercial and condo ambitions with lesser impact to State Street adjacent parcels and thereby eliminating or mitigating the potential damage to the adjacent established neighborhood and North Fair Oaks Place and adjacent streets..

3. Work with the Objectors to clarify and the Applicant to compel compliance with all applicable CC&Rs and utilize appropriate and existing homeowner amendment procedures to obtain neighborhood approved Supplement Declarations to define, explain and conform the planned development through the existing property owners, perhaps winning the Homeowners' Association endorsement or a collectively agreeable proposal

4. Recommend for developments of this magnitude adjacent to existing residential neighborhoods, that elected and appointed officials should retain full and traditional involvement and continuing authority, rather than delegating the same to staff-level agents and "design review consultants" via an SAP approach.

5. Ask the SAP Applicant to designate and protect the remaining golf course as an "open site area in perpetuity," utilizing a deed restriction per Garden City Development Code 8.6B, 6. A-6 and embracing the Open Space/Future Parks designation of the Comprehensive Plan maps.

In summary, neither the Planning and Zoning Commission nor the City Council can or should make the findings required under Garden City Ordinance 1018020, as amended, and Development Code Section 8-6B-6, Specific Area Plan, to approve this Application. Section 8-6B-6-E specifies that all of the six factual findings stated therein must be made. This proposal fails, as noted above and by other neighborhood comments, and in the letter of Dr. John and Lynn Livingston filed April 17, 2023, in that it:

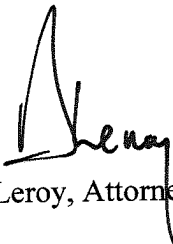
1. Is not "consistent with the city comprehensive plan, as amended, including the future land use map" . . .
2. Does not promote "the orderly planning and development of land . . .", and
3. Does not comply "with all city zoning regulations and codes in effect at the time of the SAP application."

As says the Code:

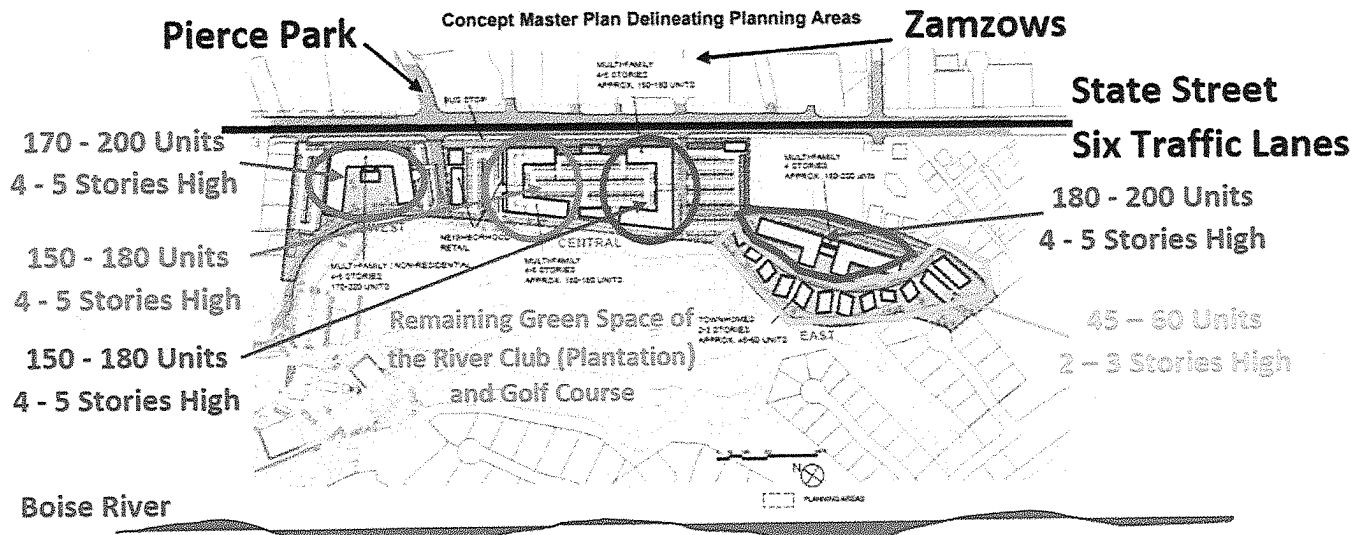
"If an application does not meet one or more of the criteria above, the application shall be denied, and the reason the application does not meet the finding or findings shall be in writing."

DATED This 17<sup>th</sup> day of April, 2023

Respectfully Submitted:

  
David H. Leroy, Attorney for the "Objectors"

# Proposed: 750+ High Density Units & Mixed-Use Spaces Along State Street



A Specific Area Plan Application (SAP) has been presented to Garden City. This is a request for a change in zoning in preparation for the development of The Residences at the River Club. If approved as proposed, the development would include over 750 units in 4-5 story buildings—townhomes, apartments, and mixed-use retail. For additional information and updates please visit: [www.preserveplantation.com](http://www.preserveplantation.com)

## POINTS TO CONSIDER:

- **The proposed development is far too massive**—it will have a negative impact on the quality of life and property values of neighboring residents and businesses.
- **Proposed parking is inadequate**—overflow parking will affect neighboring businesses' parking lots and neighborhood streets.
- **Traffic and congestion**—additional car trips on State Street will increase by thousands per day resulting in safety issues for drivers, pedestrians, bicyclists, and emergency vehicles.
- **Reduction of green space**—once taken away, will not return. There will be a negative impact on the environment, the flood plain, and wildlife in the area.

Please turn the page

# EXHIBIT "1"



**EXHIBIT "2"**