

DAVID H. LEROY

ATTORNEY AT LAW

THIRD SET OF COMMENTS TO THE GARDEN CITY COUNCIL VIA THE GARDEN CITY PLANNING AND ZONING COMMISSION ON THE PROPOSED RIVER CLUB SAP APPLICATION FILE SAPFY 2023-0001

SUPPORT FOR ORAL COMMENTS - PLANNING AND ZONING HEARING SESSION - APRIL 27, 2023

I.

FURTHER INTRODUCTION

As noted earlier, we formally represent the Livingstons, Schmellicks and the Pattersons, all Garden City residents affected by the Application. (The “Objectors”) I also will speak orally as a spokesman, per your rules, for other neighbors, as identified.

Subsequent to the time that this Office’s Second Set of Comments on the above topic was prepared and filed with the City Clerk on April 17th and 18th, 2023 the following additional documents, studies and proposed testimony were filed by other parties with the City:

1. The Ada County Highway District Review and Comments on the Residence at River Club Specific Area Plan, dated April 17, 2023, comprised of nine pages with Exhibits.
2. A 21 page “Design Vision Presentation,” dated April 20, 2023, filed by the Applicant, mostly of renderings and generic photographs, but also confirming some SAP relevant-details and layouts.
3. As of this date, these Objectors have also just received an update of the Garden City Planning “Specific Area Plan (SAP) Staff Report” which replaces that document which had been drafted for the March 15 Planning and Zoning Commission Hearing. All copies previously seen by the Objectors were marked “Working Draft” on each page of said report. We now, for the first time, review, analyze and comment on this final or revised Report by the staff. We may also request a delay in any Commission decision, if necessary, to further respond to or rebut any further change made therein or any inconsistent oral statements at hearing offered by Staff, if such further changes materially impact the full consideration of the position of these affected R-2 neighbors.

II.

THE ACHD REPORT AND RECOMMENDATIONS

The Objectors have complained that this SAP amendment leaves future development decisions to a “design review consultant,” thereby removing the Commission and the Council from all but appeals.

The Highway District comment also further confirms the previously expressed concerns of these Objectors that the adoption of this proposed SAP removes such future decision making of Garden City officials from traditional consultative processes to summary, staff level judgments, as follows, at page 2 of the ACHD report:

“The intent is to establish standards and guidelines for future phases. However, Garden City staff has indicated that future development applications may not be required once the Specific Area Plan is in place. Because of this, ACHD has recommended conditions to be required by Garden City that are included as part of this report.”

The District also confirms the usage of the estimated 4945 vehicle trips per day traffic generation figure used by these Objectors. Presumably, the Applicant no longer disputes that number. That equates to 4.8 trips per day per proposed dwelling unit. This figure suggests to these Objectors that a minimum of 1500 vehicles will be based in the project area, driven by the occupants of the 750 units. Please note, as discussed below, the developer plans only for 1100 parking spaces, to be inclusive not only of residential use, but also to accommodate commercial and restaurant patrons, transit riders, event visitors and all others. The only spill over parking available will be found in the Plantation Subdivision streets.

At page 3, the ACHD demands that until the completion of the widening of State Street and revised Pierce Park intersection, the project must be limited to no more than 113 residential units and 4500 square feet of commercial space, confirming that State Street, as currently configured, has significant rush-hour traffic problems.

At pages 4-6, the lack of on-site turning lane que space and the limitation of the Eastern access to right turn in, right turn out only, and the inadequacy of the planned internal private driveway to and from the “East Sub-district” (Phase 3) are discussed. Redesign of the Phase 3 connectivity is demanded as an approval condition by ACHD at page 8, paragraph 1. Finally at page 8, paragraph 10, as feared by these Objectors, the ACHD Report predicts:

“ Given the estimated trip generation anticipated to be generated by the land uses proposed in the Specific Area Plan, a connection from the East Sub-district to Fair Oaks Place will likely create cut-through traffic, and increase volumes above local street thresholds, on existing residential streets with front-on housing. This scenario is undesirable

for homeowners, and not in conformance with ACHD policy. ACHD will not allow a vehicular connection from the site to Fair Oaks Place.”

However, the District goes on to recommend, as feared by the Objectors:

“that the City require pedestrian and bicycle connectivity at this location and throughout the site.”

If this happens, daily and nightly, the estimated new ten percent of the entire population of Garden City will have direct access into the formerly sedate North Fair Oaks Place street and adjacent neighborhoods. If this happens, several hundred pedestrians/cyclists per week will foreseeably also traffic these general neighborhood streets. Overflow parking from the River Club residents and visitors will encroach.

Finally, again at Page 8, in explaining its Recommended Conditions, the ACHD again confirms these Objector’s position that City staff and consultants alone may control the future build out of this huge complex without further application submission or review. ACHD also seems to suggest that, if a future application is by some circumstance required for Phase 3, that ACHD might reserve the right to later revisit and possibly reverse its position on the vehicular connection to North Fair Oaks:

“Garden City staff has indicated that future development applications may not be required once the Specific Area Plan is in place. Because of this ACHD recommends that Garden City include the following site specific conditions as part of their action on the Specific Area Plan application OR that the City require development applications for all future phases that will be transmitted to ACHD for review and approval, allowing ACHD to establish site specific conditions of approval at that time.”

In summary, especially as long as Phase 3 is included in this SAP, the Plantation Subdivision community is now and will remain at risk of all forms of traffic and parking being channeled into it via North Fair Oaks connectivity.

III.

THE APPLICANT’S DESIGN VISION PRESENTATION

The map layouts included in the current “vision” of the Developer continue to illustrate and propose Phase 3, as the “East Sub-District” with no direct contiguity to any public street, except possibly North Fair Oaks, and to illustrate, very graphically, that this proposed collection of “multi-family residences” on 8.6 acres has no immediate utility to or physical relationship with either State Street or the SAP promised-featured-amenities of commerce, transportation,

central recreation, connectivity, dining, shopping, open space or sense of place. It is simply a peninsular appendage of dense housing, inadequately connected to somewhat distant, undersized and turn- limited State Street ingress and egress points. There is no “mixed use” in Phase 3. It is not an SAP. Mere adjacency, does not give a dense and vertical residential building of five stories of an estimated length of up to 650 feet in relevance as an activity center. Phase 3 is merely a threat to the existing neighborhood, with no functional SAP purpose.

As the neighbors vigorously testify, Phase 3 was not part of the original concept sold to them in exchange for development upon and within the Golf Course. The Applicant’s slide presentation makes liberal usage of superlative and comforting adjectives and verbs like “best in class,” “high quality,” “cultivate,” “embrace,” “prioritize.” However, even a cursory examination of these promises, easily indicates that a contrary impact will result. The Applicant’s visionary suggestions of:

“Create compatibility with existing residential development” fall very poorly upon the adjacent R-2 neighbors who are facing the proposed traffic, parking and monolithic adjacency of the three and five story structures in Phase 3 real estate close feet to their now comfortable kitchens and patios. Even the Will Gustafsen-promised six foot high wrought iron boundary fence to isolate Phase 3 preclude pedestrian and bicycle traffic onto North Fair Oaks Place has never seemed to materialize.

“Embrace the local views” is also a bit challenged given the overlay and orientation of all the three phases of residential units either fronting on State Street or blocking the current green space view corridor of both the existing neighborhood and the traveler driveway on that arterial. The Plantation Subdivision homes are one and two story family residences. At an estimated fifty five feet in height, both the five story Phase 3 and the SAP buildings along State Street will be about 83% taller-almost double the height- of the peak of the highest rooftop in the established neighborhood. The Objectors do not seek that “embrace.” Rather, they enjoy the current pastoral view, as the Comprehensive Plan promotes.

“Prioritize Open Space” is also hard to do when 22 acres of grassy, tree-filled golf acreage is consumed in the process. This is especially true when part of the trade off is by replacement with eight acres of asphalt parking lots and interior streets.

In sum, the “Birds Eye View Looking South” slide, from an elevation of 150 feet above ground or so contained in the Applicant’s presentation appropriately illustrates the very outer limits of what might be legitimately proposed to Garden City as an SAP District. It also shows exactly what has no place being considered at all or ever included in such a District: The entirety of Phase 3 is not shown at all!

IV.

GARDEN CITY FINAL SAP STAFF REPORT

Of great concern to these Objectors, the Final Staff Report, just received and prepared by Jenah Thornborrow, for the April 27th P&Z Commission hearing, continues to contain and incorporate various consultant recommendations at pages 6 through 10 urging pedestrian, bicycle and even vehicular connectivity to North Fair Oaks. However, the Staff has not presented with equal contexting or reference the numerous legal and factual objections, including the promises of Developer against such access, which have been already submitted from several quarters and should be likewise identified within the record. Instead of a direct dialog or any citation of source or development of such detail, these directed criticisms are presented as “concerns” in summary form or swiftly dismissed. A inadequate list of 20 one word or short phrase objections as bullet points taking one half a sheet is found on page 38. At page 22, the vigorous objections to ownership confusion, Master Declaration violation and Spot Zoning are summarily dismissed. This brevity precludes a voting member of the Commission or the Council utilizing and relying upon the Report from obtaining any objective understanding of the negative case against the SAP from the staff document itself.

At page 14, consistent with the objections of the existing neighbors, the Report now advises that the most objectionable feature of Phase 3, density, will be “30 units/acre,” down from the “35” which was promised in the Draft Report. These Objectors are uncertain where or how the Staff obtained this new detail. However, no layout alterations or other explanation of this new calculation relieves the complaints and concerns about the still foreseeable negative impacts of Phase 3.

At pages 18-19, the Staff repeats the ‘written reasoned statements’ of the SAP code and the Development Code Amendment and Rezone Required Findings of 8 6B-5D and 8 6B-10 F, all which must be entered into this Record if the Commission is to recommend anything but denial to the Council of this Application. As noted in this Third Comment and our earlier and individual written and oral presentations, these Objectors respectfully suggest that said positive findings can not be made as this Application is presented. Instead, we specifically request that this Commission utilize the Draft form Findings of Facts and Conclusions of Law and Recommendation before you, as prepared by the Staff, entering thereon appropriate data and reasons to deny the Application or to return it to the Applicant with instructions.

At page 23 of the Report, the issues of School Bus and Fire access are again noted, but unresolved. These Objectors have no doubt that North Ada County Fire and Rescue, property contacted and pursued, will require the typical second access point off of North Fair Oaks, if the 744 units, including Phase 3 are authorized. Likewise, if pedestrian and bicycle access are authorized, the North Fair Oaks traffic circle will become the pick up and drop off point for all K-12 children living in the development. (See the Boise School District request noted at page 27 of the Report) Thus, these forms of vehicular access will necessarily be involked upon the

neighborhood under all circumstances, if Phase 3 is built. These readily anticipated negative impacts on the adjacent neighborhood must be factored, now, into the Commission and Council decisions, despite their failure to yet be fully pursued.

As noted above, at page 22, the Report gives summary, undeveloped and dismissive treatment of three major issues previously and consistently raised at length by these Objectors and other neighbors:

1. A lack of adequately demonstrated ownership detail, constituting a defect in its standing to apply as a qualified Applicant. Staff proposes that you merely draft conditions to verify and later to nullify, if we are correct. These are a curious set of remedies. They are also inconsistent with City Code, as we pointed out in our Second Comments.
2. The Master Declaration of the subdivision actually precludes this subdivision of the golf course and the entire SAP exercise without HOA approval, in the opinion of these Objectors. We are not asking the City to enforce the CC&Rs. However, this purported Applicant, upon this issue, does not comply with City Code requirements, as also stated in our earlier Comments.
3. The Spot Zoning challenge is evident and well asserted here. Staff makes no effort at explanation about or refutation of the earlier Comments of these Objectors or others. It suggests no finding or rationale for the Commission or Council upon which a Type II Spot Zoning legal challenge is unfounded. Instead, you are merely directed to consult various pages of the Givens Pursley Handbook. We stand by our objection.

From pages 24 - through 25, your Staff now even aggressively promotes the proposition of North Fair Oaks Place as a required and approved pedestrian and bicycle access and connection. This SAP is sold to the City as prioritizing “open space connectivity.” The SAP is sold to the neighborhood residents as utilizing a State Street bike path to Plantation River Drive solely for that connection. The City is now on notice, as is the Applicant, that the pertinent subdivision HOA surrounding the alleged entry point, as well as various neighbors individually, dispute that the planned access is a public right of way to the Greenbelt path. Incredibly, the City Staff proposes to the Commission:

“Whether the connection to the Greenbelt is public is an issue of bike and pedestrian connectivity that is tangential but not fundamental to this application. Subsequently, it is suggested that this matter be addressed separately from the application.”

These Objectors respectfully suggest that whether the existing neighborhood should become a transportation corridor and whether the 1500 or more River Club recreationists have

any access at all to the Greenbelt, even via State Street and then Plantation River Drive, is a most fundamental and immediate issue of broad significance. The City Staff have become obvious and imaginative advocates for something even the Developer promised would not happen. The Staff certainly should not be allowed to suggest to you decision makers that the Commission and Council should “approve it anyway and we will figure out later if it is possible”.

At page 28, the Staff advises that “No Compliance Concerns Identified” as to Code 8-6-B-6 “Applicability.” Presumably, the Staff is not suggesting that the Commission can make all of the Required Finding necessary under Subsection 6-E as this SAP Application neither is “consistent with the comprehensive plan, as amended including the future land use map” nor “promotes the orderly planning and development of land,” nor still “complies with all city zoning regulation and codes in effect.”

As noted in our earlier Comments, deficiency in any one such criteria, or more, requires denial of the Application. Further, the Maps only Transportation note clearly appears to be located at the intersection of State Street and Glenwood, not on or adjacent to the subject property. Just as obviously Phase 3 has no real role as a neighborhood destination “activity” node, contrary to the Staff conclusion. Despite any ordinance text to the contrary or long term reference in the codes or plans of other jurisdictions, destroying Garden City “Open Space/Future Parks” for private gain by an Applicant would appear to be in conflict with the published Future Land Use Map.

On page 31, the Staff discusses applicable Idaho Code Local Land Use Planning Act provisions, but has failed to highlight again for the Commission the apparent Type II Spot Zoning issue identified by these Objectors, as might have been appropriate in that text.

Page 34 of the Report suggests that this Application conflicts only with two Goals and Objectives of the Comprehensive Plan: Connect the City and Maintain a Safe City. As noted in these Objectors, Second Comments pages 4-5, arguable nearly all of those Goals are far more conflicted than compatible with this SAP. The key to that conclusion, as measured against these lofty precepts, is that the negative impacts to the existing, established neighborhood of R-2 family homes, protected by CC&R’s, the Zoning Ordinance and a Comprehensive Plan, have been entirely disregarded, both procedurally and factually. Nowhere do the Applicants or the staff honestly and directly consider and present our obvious and legally-protected set of concerns and rights.

Instead, in noting the only conflicts which the Staff admitted, they gave just three reasons for incompatibility: an unrestricted left turn onto State Street, the removal of the pedestrian path and lack of a planned school bus stop on a local road. Utterly unaddressed, utterly unrecognized in the Report are the significant conflicts of many types and on many levels which this proposed development, particularly with Phase 3, will significantly impact the existing R-2 neighborhood and its citizens. The Staff’s failure to recognize the School, Fire, pedestrian, bicycle street parking and even the potential for a future-required vehicular impacts on the Plantation

Neighborhood must be addressed by the Commission and the Council.

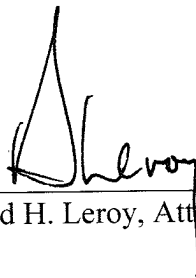
V.

CONCLUSION

This Application, four years in the making, has expanded the proposed SAP in area and scope to the point where it is no longer legally permissible in current form to approve. Procedurally, the Developer has failed to follow neighborhood Master Declaration preliminaries and has added an unnecessary, unrelated and existing resident damaging Phase 3. As offered by your Staff in draft form, the typical Findings of Fact, Conclusions of Law and Recommendations do not adequately and comprehensively address the factual and legal findings which this Record will justify. Accordingly, the proper judgment of the Commission at this time should be either to deny the Application, or as these Objectors have twice before suggested, return it to the Developer for further refinement, consistent with the CC&R's, the Code and the Comprehensive Plan.

Respectfully Submitted:

DATED This 26th day of April, 2023.



David H. Leroy, Attorney for the Objectors