September 27, 2021

Members of the Board
Harris Ranch Community Infrastructure District No. 1 ("HRCID")
City of Boise
150 N. Capitol Blvd.
Boise, Idaho 83702

Re: Our Reply to the Developer's Lawyers' First Four Letters of Response

Members of the HRCID Board:

The Harris Ranch CID Taxpayers' Association ("Association") recently was provided copies of four letters written to you by lawyers for the Developers, who are reputed to be among the best in Idaho in representing *real estate developers* and their interests. Those letters respond to four of the letters the Association has submitted to you over the past two months. As we have noted in the past, we are simply homeowners and taxpayers in Harris Ranch trying to protect our interests. We are not practicing lawyers and we are not being paid for our efforts. Our letters: (1) express our objections to various past and proposed payments to the Developers made and proposed to be made at our expense without our review and consent, and (2) seek to correct mistaken understandings under which you appear to have been laboring.

It seems important to us, and possibly also helpful for you, that we reply to their responses.

Preliminary Remarks

The Developer and Their Lawyers. We note first that the Developer's lawyers are obligated, under the Rules of Professional Conduct governing their profession, to "zealously" advance the interests of their client, the Developer. That is, they are obliged, as we understand it, to do everything in their powers (within the bounds of the law, of course) to advance their client's interests. Their client's interests in these regards, so far as we can determine, are to maximize the amount of money that the Developer is paid by the HRCID. Those payments, however, come at the direct expense of the homeowners and taxpayers in the Harris Ranch CID.

The Developer can afford to have their lawyers write these letters, at least in part, because the Developer has been paid millions upon millions of dollars by the HRCID, which again comes at the direct expense of the homeowners in the HRCID. We homeowners, of course, are not being paid or otherwise provided those same millions upon millions of dollars to protect ourselves

from any overreaching by the Developer and the City, acting both separately and through the HRCID. We expected, perhaps naively, that the City would have done so on our behalf.

The Developer's lawyers state repeatedly in their letters that, among other things, we have "misrepresented" what they assert are "the facts". We acknowledge and apologize, and have repeatedly admitted, that we are not familiar with all the "the facts" regarding a project in which the Developer and its many lawyers and other professionals have been intimately involved for 15 years or more. The Developer has numerous lawyers, appraisers, contractors, real estate brokers, and other professionals at its disposal. We, unfortunately, do not. Nor, for that matter, does the City. Rather, we are having to rely primarily on our common sense, and on our reading of provisions of the law which, to our relief, seem straight-forward. And City staff have had to deal with the Developer and their expensive outside professionals on their own, without anyone to "zealously" represent the interests of the homeowners in the HRCID, who are paying for everything that the HRCID does.

It seems to us that the Developer's lawyers' letters are long on characterizing the nice things that their client has sought to do through the HRCID, and on denigrating the concerns and efforts of Harris Ranch homeowners and taxpayers, and rather short on legal reasoning. Obfuscating the issues can be an effective strategy, especially when the law is against you. We understand that. But we hope that you see through it.

The Original Purpose of CIDs, and the Fundamental Problem with the Idaho CID Act. CIDs were originally conceived as a means of financing public infrastructure required by new residential development – the local access streets, the water, sewer and stormwater laterals, the street lighting, the local parks, and such, required for a new subdivision. They were introduced in Florida in 1980, and in California in 1982. For reasons we don't yet know, however, the Idaho CID Act, not adopted until 2008, *expressly prohibits* the financing of exactly those types of improvements. That's because the CID Act forbids the financing of any public facilities "fronting individual single family residential lots." Almost all the Harris Ranch development to date, however, consists of single-family homes and townhomes. This has created a very significant financial incentive for the Developer and their lawyers to come up with tortured interpretations of the CID Act in an attempt to receive payment for facilities the financing of which is barred by the plain language of the statute. It appears to us that the City, acting both separately and through the HRCID, has been complicit in these efforts from the outset, and has not exercised its fiduciary responsibility to the homeowners and taxpayers in the HRCID.

The Obvious and Equitable Solution. It remains our view, as it has been from the beginning, that the fairest, most expeditious and even-handed way for the City, acting through the HRCID, to resolve these issues is to submit them to the courts for determination using the Judicial Confirmation Act.[1] That would allow everyone (including the Developer and the homeowners)

[1] Class action or similar litigation brought by the homeowners likely would take years to wind its way through the courts, and could include additional and rather unpleasant causes of action. Judicial confirmation actions, on the other hand, receive expedited priority in the courts. Idaho Statutes, Sec. 7-1310.

to have their day in court (and in the courts of appeal) in an impartial setting where all of the legal issues we have identified could be resolved in a legal forum. To date, you have not responded to our proposal. We don't understand why not. It gives the appearance that the City, acting through the HRCID, or at least its Board, has shown a bias towards a large developer against a group of homeowners. We wonder why you would, rather than at least remaining neutral and exercising the badly needed oversight for the HRCID.

Discussion

With those preliminary remarks, we will attempt to reply to the substance, but not the entirety, of each of the Developer's lawyers' responses, in chronological order (so far as we are aware), starting with our letter and their respective response.

Our July 14 Letter

In our first letter to you, we objected to the proposed payment to the Developer of almost $1.9 million for the supposed "value" of the land underlying some of the local access roads that the Developer has constructed in the Harris Ranch development. We explained that those lands should be valued based on the assumption that they must be dedicated to public use, and not on the false assumption that they could be developed with, for example, new homes.

The Developer's lawyers have not yet responded to this letter, so we hope that they agree with us, and have withdrawn their request for reimbursement. We hope that they therefore also agree with us that almost all their past and proposed payments for the supposed "value" of land required to be dedicated to public uses and purposes are also impermissible, as the "value" of such land is essentially nil.

Our August 7 Letter

In our second letter to you, we objected to the proposed payment to the Developer of more than $7.5 million for (1) local access streets, water, sewer, stormwater and irrigation systems, street lighting and signage on several blocks south of E. Parkcenter Blvd. in Harris Ranch, and (2) a series of stormwater retention ponds south of the Warm Springs arterial bypass. Our principal objection was the fact that most of those facilities "front" on single family residences, and thus are ***expressly prohibited*** *under the Idaho CID Act from being financed.*

The Developer's lawyers' August 27 response to our three-page letter is almost 50 pages long with attachments. Their letter first sings the praises of their Harris Ranch development, as representing a number of "firsts". That's all very nice, although it has no bearing on the substance of our objections. They conclude their prefatory remarks by saying that "Harris Ranch is different. The HRCID made that possible." We agree completely with that sentiment. Harris Ranch is the only development in the State, to date, where the developer is paid by the City, acting through the HRCID, for facilities that every other developer in the state must pay for itself

and recover through the sale of its properties. In Harris Ranch, the homeowners pay for the same infrastructure twice – once when property is purchased and again through our "special" property taxes.

The Developer's lawyers also assert that the CID "is not an ATM for the developer." Please forgive us for saying so, but that's precisely what it appears to be to us. It appears to us that the Developer is using the HRCID, with the active cooperation of the City, to extract tens of millions of dollars from homeowners and transfer them to the Developer, and almost always on the flimsiest of legal grounds.

To our point that the plain meaning of the term "fronting" is "in front of," the Developer's lawyers instead argue that it means "touching". If that is what the Legislature intended, however, then that is what the Legislature could have said. But they didn't, and for obvious reasons. The water, sewer and stormwater laterals and related facilities, for example – most of which are under the street – are not "touching" single family residential lots. But the Developer's lawyers appear to concede that they can't be financed through the HRCID. Why not? Because they are "*in front of*" single family residential lots. Moreover, it defies logic and common sense to suggest that, if a developer inserts a narrow strip of commonly-owned property – perhaps just an eight-inch curb –between a block of single-family homes and a street, that the Legislature intended the street and all that lies beneath it to be financeable through the CID.[2]

Our August 14 Letter

In our third letter to you, we objected to the proposed payment to the Developer of almost $2 million for the supposed "value" of a conservation easement over wetlands. Our principal objection was that the value of land required to be dedicated to public purposes is close to zero.

In the Developer's lawyers' response, dated August 30, they clarify several things, which we had invited in our letter and therefore appreciate. Thus, for example, they clarify that the Developer did *not* contribute $3 million to the cost of the E. Parkcenter Bridge over Boise River, contrary to our understanding, but instead made a cash deposit of $3.5 million with the Ada County Highway District ("ACHD") which later was returned to them. For that temporary "cash deposit", the value of their property in Harris Ranch, by our reckoning based on their "appraisals," increased by at least $60 million following construction of the E. Parkcenter Blvd. bridge over the Boise River.

As for our point that the appraisal the Developer submitted is based on false "hypothetical" assumptions, their response is "we stand by it". And if the homeowners in Harris Ranch

[2] The Developer's lawyers', in their argument, reference Boise City Code provisions regarding "frontage." Those provisions are irrelevant in construing a State statute, and in any event those provisions do not require "touching." They also cite supposed "legislative history" regarding the "legislative intent" of the "fronting" language. Their citation, however, is to a comment by the lobbyist for the developers and construction trades, which is inconsistent with the plain language of the statute. The plain language of the statute is what controls, not gratuitous comments by a lobbyist.

disagree, they invite us to submit our own appraisal. We will be happy to do so if the Developer or the City would pay for it. But the obligation to justify their requested reimbursement rests on them. We therefore repeat our request that they be invited to submit a new appraisal based this time on the fact that the land must be dedicated in perpetuity to use as a wetland and could not be developed with homes or other profitable purposes.

We note in addition that, since our August 14 letter, we have identified three additional "grounds" (so to speak) for objecting to the proposed payment. The first is the fact that neither the wetlands improvements nor the property on which the wetlands are located is owned by a local government entity, as required by the CID Act, but they instead are still owned by the Developer. The CID Act states not just once but twice that "Only community infrastructure to be publicly owned by this state or a political subdivision thereof may be financed pursuant to this chapter." Idaho Statutes, Secs. 50-3101(2) and 50-3107(1). The second is the fact that the wetlands easement was granted to a private nonprofit corporation rather than to a local government as required by the CID Act.[3] The third is the fact that the wetlands easement was granted in 2007, before the CID Act was adopted, the HRCID established, and the Development Agreement executed. So, the proposed reimbursement is not just one way wrong, or two ways wrong, or even three ways wrong, but four ways wrong.

Our August 20 Letter

In our fourth letter to you, we objected to past and proposed payments to the Developer for the construction of three roundabouts on E. Parkcenter Blvd. plus a block-long stretch of that road. Our principal objection to these payments is that they are ***expressly prohibited*** *by the CID Act, as they front on single-family residential lots.*

The Developer's lawyers have not responded to this letter, so we hope that they have agreed with us, and thus have withdrawn their request for reimbursement and will reimburse the HRCID for the prior payments from the HRCID, plus interest, as we requested.

Our August 27 Letter

In our fifth letter to you, we explained that the HRCID has not been used to fund "local amenities," but rather improvements of general benefit to the City and its residents.

The Developer's lawyers' response dated September 17, in summary is: (i) that the projects are among the types of improvements that the CID Act permits to be financed, and (ii) that there is

[3] It appears that the Developer and the City at some point after the grant of the original easement may have amended it to artificially insert the City between the Harris family and the non-profit organization, with the City in doing so retaining no substantive rights, responsibilities, or liabilities. That, we believe, would properly be characterized as a "sham" transaction entered into for the apparent sole purpose of providing the Developer a legal "fig leaf" in order for them to claim compensation from the HRCID for the supposed "value" of the conservation easement. This is quite disturbing to us and suggests an ongoing attempt by the City itself to facilitate the extraction of millions of dollars from homeowners and taxpayers in the HRCID and their transfer and payment to the Developer.

nothing in the CID Act which prohibits the financing of improvements which are of general benefit to the City and its residents, so long as they are of some benefit to the homeowners in the HRCID. Again, their arguments are vacuous. It would allow *almost any public facility in the City of Boise* – widening and other improvements to State Street north of downtown, a new City wastewater treatment plant, a new downtown police or fire headquarters, or a new downtown City park – to be funded through the HRCID, as they all would be of some "benefit" to homeowners in Harris Ranch. That is one of the fundamental flaws with the CID Act – it allows improvements which primarily benefit the general public to be funded entirely by homeowners in a comparatively small CID. Another fundamental flaw is that the CID Act does not require all property owners who may specially benefit from local improvements to be included in the CID. So, neighbors in Harris Ranch in otherwise identical circumstances are taxed at very different rates. That can't be right.

Our August 30 Letter

In our sixth letter to you, we objected to the proposed payment to the Developer of $1.4 million for "interest" in connection with prior expenditures already made by the Developer. Our principal objections were: (1) reimbursements for projects undertaken before the formation of the HRCID are impermissible; (2) reimbursements for facilities not owned by a local government are impermissible; (3) reimbursements for facilities fronting single family homes are impermissible; and (4) payments for the supposed value of land which had to be dedicated to public uses cannot be based on the assumption that the land could instead be developed into homes or other profitable purposes.

Special Statute of Limitations. The Developer's lawyers' over-arching argument in their response, dated September 15, is that the special statute of limitations of 60 days under the CID Act for challenging actions by the Board has long since passed with respect to all those prior payments. So, their argument in essence is that, even if the prior payments are unlawful, the Developer still gets to keep all that money. We believe such arguments are outrageous and that it's important to address the special statute of limitations in more detail.

First, the Developer's lawyers fail to note that the special limitations period does *not* apply to the proposed payments for "interest," as those have not yet been approved by the Board. Payments of "interest" for prior unlawful payments certainly cannot be lawful.

Equally important is the fact that many of the prior payments were made before *any* homes had yet been built in the HRCID, and thus there were not *any* homeowners who could be heard to object. It would be an obvious and fundamental denial of due process and equal protection under the Federal and State Constitutions if homeowners were deprived of *any say whatsoever* by application of that limitations period. And purchasers of homes built after such payments to the Developer by the HRCID were not given any notice of a right to object to such payments, let alone to the formation of the HRCID, the three "votes" to approve $54 million in bonds, or the imposition of the special taxes and assessments on their property, while the Harris family

deliberately excluded their own homes in Harris Ranch from the HRCID.

Reimbursements for Projects Undertaken before the Formation of the HRCID. The Developer's lawyers' response to this objection is simply to assert that such payments are *not prohibited* by the CID Act, and that the Development Agreement contemplates them. We *strongly* disagree. The CID Act clearly, expressly and repeatedly contemplates that it will be used *only* to finance *prospective* improvements, and not past projects.

In the very first section of the CID Act, the Legislature states: "Only community infrastructure ***to be*** publicly owned by this state or a political subdivision thereof may be financed pursuant to this chapter." (Emphasis added.) The words "to be" are obviously and necessarily a reference *to the future*. If the Legislature had intended to include public facilities built in the past, they would not have included the words "to be." Similarly, the Legislature in the next section states that "A district development agreement ***shall be*** used to ***establish obligations*** of the parties to the agreement related to district financing and development…" (Emphasis added.) An agreement cannot "establish obligations" with respect to actions that have already occurred in the past. In addition, the CID Act provides that "Community infrastructure ***to be*** financed or acquired, or publicly or privately constructed pursuant to this chapter shall be subject to the required bidding procedure for any Idaho public agency." (Emphasis added.) Yet again, these are references *to the future*.[4]

The Legislature did not add to the CID Act an express prohibition to the effect that "A district shall *not* be used to finance public facilities constructed in the past," as they likely assumed that no-one would have the temerity to suggest that it did.

The Developer's lawyers then assert that the Development Agreement "expressly contemplates" reimbursements for projects that took place prior to the formation of the HRCID. That is patently false. Section 2.1(a) of the Development Agreement provides in relevant part that "Owner [the Developer] may … cause ***to be*** constructed the community infrastructure improvements … in accordance with plans and specifications approved by the Municipality [the City]." (Emphasis added.) That is a reference, yet again, *to the future*. Section 2.1(b) adds that "The Acquisition Projects ***shall be*** constructed in a good and workmanlike manner …" (Emphasis added.) Again, a reference *to the future*. That usage continues throughout the Development Agreement. So, the reference in Section 2.4, cited by the Developer's lawyers, to a "prior conveyance or dedication of easements" as not being a bar to the Developer constructing and being reimbursed for community infrastructure improvements is simply a reference to a conveyance or dedication *before* constructing public facilities, but *after* the execution of the Development Agreement.

[4] We do wonder how projects undertaken by the Developer before the HRCID was even formed could have complied with public bidding requirements. We assume that documents yet to be provided to us by the City will address this issue.

We could continue with many additional pages of citations to the CID Act and the Development Agreement to further illustrate the fallacy of the Developer's lawyers' arguments in these regards but hope that the foregoing suffices.

Reimbursements for Facilities Not Owned by a Local Government. The Developer's lawyers' response to this objection is to assert that it is sufficient for improvements to be located on an "easement" granted to a public entity. We note first that Section 50-3101(2) of the CID Act requires that all "community infrastructure" financed pursuant to the CID Act be "publicly owned". To avoid any possibility of doubt, this requirement is repeated in Section 50-3107(1). Moreover, Section 50-3105(2) requires ***in addition*** that community infrastructure "may be located only in or on lands, easements or rights-of-way publicly owned by this state or a political subdivision thereof".

So far as we've been able to determine to date, with respect to the stormwater facilities, the Developer has only granted "easements for access" for "maintenance", at the sole option of the City or ACHD, and only upon the default of the Harris Ranch HOA to maintain them. But the facilities themselves and the land on which they sit are still *privately owned*. Such "easements of access" are worth practically nothing. And that is the amount to which the Developer is entitled for granting them – practically nothing.

And, so far as we've been able to determine to date, the Developer has granted conservation easements to a private non-profit corporation, which does not qualify as public ownership. It appears that at least one of those easement agreements was subsequently amended to artificially insert the City between the Harris family and the private non-profit corporation, with the City retaining no substantive rights, obligations, or liabilities. That in our view can fairly be characterized as a "sham" transaction entered into by the City for the apparent sole purpose of providing the Developer a "fig leaf" under which to claim payment for the supposed "value" of the land.

By their reasoning, the Developer could build a private road on land owned by the Harris family in the foothills above the Harris Ranch development and be paid by the HRCID not only for the cost of the road but also the "value" of the land under it, if the Harris family just provided an "easement of access" to the City or ACHD to maintain the road, at its sole option, upon the failure of the Harris family to do so. We are incredulous that the Developer's lawyers are making such arguments.

If the Developer desires to be paid for the supposed "value" of the land under its private stormwater and wetlands facilities, then it first must convey those facilities and the land under them to the State or a local government. Of course, the "value" of such lands, required to be conveyed to a public body as a condition of development, would still be practically nothing.

Reimbursements for Facilities Fronting Single Family Homes. The Developer's lawyers did not respond to this objection. We can only hope that it's because they are conceding this issue.

Payments for the Supposed Value of Land which Had To Be Dedicated to Public Uses. The Developer's lawyer's response to this objection is to assert that the City could have mandated something other than the stormwater system that it did, thereby allowing more land for development.[5] The simple answer to that is that the City didn't, and therefore that the land required to be dedicated to public purposes has nominal if any value. It cannot be the case that every square foot of Harris Ranch could have been developed into single family homes and other profitable uses, and that all the public infrastructure required for such development – the streets, the stormwater systems, the wetlands and the parks – exist in some alternative universe in which they take up no space.

Conclusion

We hope the foregoing cuts through at least some of the obfuscation by the Developer's lawyers in their four letters of response.

Sincerely,

pp Bill Doyle

Harris Ranch CID Taxpayers' Association

Cc: The Honorable Lauren McLean, Mayor, the City of Boise
Council Member Lisa Sanchez, Council President Pro Tem
Council Member Patrick Bageant
Council Member Jimmy Hallyburton
David Hasegawa, City of Boise
Jaymie Sullivan, City of Boise
Rob Lockward, City of Boise
Amanda Brown, City of Boise

[5] The Developer's lawyers suggest that they could have reduced the required size of the stormwater management system if they had used "permeable pavers" in the development. We expect that would ***not*** have been acceptable to ACHD for the streets in the Harris Ranch development. So perhaps they are suggesting that the concrete alleys behind all the homes in Harris Ranch, which provide access to homeowners' garages and which the Developer has touted as a special feature of the development, could instead have been done with "permeable pavers." We suspect that would ***not*** have been viewed as a "plus" by prospective home purchasers.