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Sent by Email: cwadams@gardencityidaho.org

July 17, 2019

Garden City Mayor and City Council
c/o Charles Wadams
City Attorney
City of Garden City
6015 Glenwood Street
Garden City, Idaho 83714

RE: Glass Creek, LLC/Plantation Country Club /Garden City File No. EAS FY2019-5/Request for Reconsideration
BS Matter No.: 23576.1

Dear Charlie:

As you know, our firm, along with Bob Taunton of Taunton Group, represents Glass Creek, LLC ("**Glass Creek**"), owner of Plantation Country Club ("**Plantation**").

On July 8, 2019, the City Council heard Mr. Taunton's application requesting the vacation of a 15-foot easement within Plantation. For lack of a second on a motion to approve the requested vacation, the vacation was denied. We are requesting that the Council reconsider its hasty decision, which resulted in an erroneous and illegal action.

We acknowledge that we may not have provided the Council with enough basic information and legal analysis upon which the Council could base a proper decision. With this letter we are providing the Council with that information and analysis so the Council can understand how and why its decision to deny the vacation request is contrary to fact and law.

Since purchasing Plantation in December 2018, Glass Creek has sought to remove existing title encumbrances that are not in use[1] and/or that solely benefit Glass Creek. The removal of such title encumbrances will assist this private property owner in connection with the redesign of Plantation.

[1] For example, the unused water and sewer easement referenced in Garden City File No. EASFY 2019-6, which Glass Creek requested the City vacate. The Council vacated this unused easement on July 8, 2019.

In a 1980, our client's predecessor, Plantation Development, Inc. ("**Plantation Development**"), reserved for itself, and was the sole beneficiary of, the 15-foot easement that the Council erroneously refused to vacate. As the successor in interest to Plantation Development, Glass Creek now is the sole beneficiary of the 15-foot easement.[2] This 15-foot easement was not created in connection with any plat is located solely on real property owned by Glass Creek.

In 1991, the plat for The Plantation No. 2 was amended.[3] The land surveyor who prepared the 1991 plat, as required,[4] noted on the plat any easements recorded since the original plat for The Plantation No. 2 was recorded. Accordingly, the 1980 15-foot easement was noted on the 1991 plat. The mere notation of the 1980 privately held easement on the plat did not change the meaning and intention of the 1980 15-foot easement, which is to be held and reserved solely to Plantation Development (and now its successor, Glass Creek).[5]

Now, in 2019, Glass Creek, the sole beneficiary of the 1980 15-foot easement, desires to vacate the easement. Because the 1980 easement is referenced on the 1991 plat, the 1980 easement has, arguably or technically, become a part of the plat. State Code requires that to vacate a publicly approved plat, or part of that plat, the vacation must be publicly approved.[6]

Accordingly, Glass Creek, the sole person affected by the vacation, made application for public review and approval. The requested vacation was wrongly denied at the Council's July 8th public hearing.

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[2] Corporation Deed, Instrument No. 8007799. With the 1980 Corporation Deed, Plantation Development granted to The Plantation Master Association, Inc., the road rights-of way in The Plantation Subdivisions No. 1 and No. 2. These roads have since become public roads. The 1980 Corporation Deed also reserved to Plantation Development the 15-foot easement.

[3] Amended Plat of a Portion of Lot 1, and all of Lots 2, 3, 4, 5, and 6, Block 1, The Plantation No. 2, recorded March 14, 1991, as Instrument No. 9112820.

[4] Personal communication with James Washburn, Idaho licensed land surveyor.

[5] The Amended Plat for the Plantation No. 2 was prepared for and recorded by the two owners of Lots 2, 3, 4, 5, 6 and a portion of Lot 1, Block 1: a mortgage company and a husband and wife. These lot owners had no ability to change the content of the 1980 privately held easement. These owners made that point on the 1991 plat by stating: "The easements as shown on this plat are not dedicated to the public."

[6] See, Idaho Code § 50-1306A(a): Any person, persons, firm, association, corporation or other legally recognized form of business desiring to vacate a plat or any part thereof must petition the city council if it is located within the boundaries of a city . . . .

On July 8th, two members of the public spoke voicing their concern that the City might somehow be giving something away by vacating the 1980 easement referenced on the 1991 plat. However, all members of Council acknowledged that the 1980 easement is privately owned, and that there is no legal impediment to vacating the 1980 easement that was technically part of the 1991 plat:

> Mayor Evans: It's private property . . . we had an explanation of how the easements were originally there. . . the City has no interest in them. We can't impose a public access easement . . .
>
> Council Member Beaumont: If this were a pubic easement, I wouldn't even consider vacating it. . . . Again, if this were a public easement, I wouldn't hesitate for a moment to say that I wouldn't consider vacating it. But since . . . the city has, we have no interest in it.
>
> Council Member Souza: They own it. It's theirs. It's their easement.
>
> Council Member Mitchell: I don't see that there's any legal basis to deny [the] resolution [to vacate the easement]. . . .[7]

Because the City has no public interest in the privately held 1980 easement, there is no public interest being served with a denial of the vacation request. Further, the Council voiced improper motives for denying the vacation. The stage was set with an exchange between Council Member Souza and the City Attorney prior to the Council's deliberation:

> Council Member Souza: Mr. Mayor I think this would go to the attorney and specifically regarding the [15-foot easement]. If that easement were to continue to exist could another party such as the HOA or the City negotiate to purchase that easement in the future? And if it was vacated tonight if it still exists or not?
>
> City Attorney: Council President, if it's vacated tonight it would no longer exist. That is true. The only beneficiary to that easement is the Plantation Golf Course. So I really don't know what there is to negotiate because they're the only beneficiary of the easement.
>
> Council Member Souza: But someone could purchase it from them potentially?

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[7] There is no doubt that the City has absolutely no public interest in the 1980 easement. Case law in Idaho clearly provides that any easement noted on a plat can only be considered a public dedication of the easement if there is an explicit dedication to the public showing the clear intention of the owner of the easement. There is no such intention shown here and the mere notation of the 1980 easement on the 1991 plat does not make the 1980 easement pubic: ". . . just filing the plat is not enough, public dedication also requires that the plat show the owners' intent clearly and explicitly. . . . the law requires more to show a clear intent for public dedication than just filing a plat with labeled areas." Rowley v. Ada County Highway District, 156 Idaho 275, 280, 322 P.3d 1008, 1013 (2014) (citations omitted).

City Attorney: Potentially.

Council Member Souza: Thank you.

Then, during deliberation, even after all Council Members acknowledged the private ownership of the 1980 15-foot easement:

> Council Member Souza: I really don't know what's being gained by the applicants [sic] . . . And I'm not sure that anything is necessarily being lost. Although I think something could potentially be lost . . . . I don't have a reason to vacate it. And I see it as a potential bargaining chip (unintelligible) HOA or the City fostering a future to obtain it in exchange for something to develop or sell. . . . I don't have a compelling reason to vacate it.

The compelling reason to vacate the 1980 private easement is that the Council conducted the public process required by State code in connection with the vacation request, and that public process determined that the City had no public interest in the privately held easement. With no public interest, the City cannot just hold onto private property because the City thinks that it can leverage some future advantage either for itself or some other private party such as the homeowners' association.

Further, to answer the Council Member's initial question: What is gained by the applicant with the easement vacation is the unencumbered use of the applicant's private property without fear that the City will refuse to correctly vacate the private easement – in essence take the easement (and without just compensation) – and hold that easement in the City's back pocket as a potential bargaining chip either for some future, as yet unknown City benefit, or to benefit another private property owner (such as the homeowners' association).[8]

This the City cannot do. The proper legal course of action, based on the facts and the law, is to vacate the part of the 1991 plat that is the 1980 easement.

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[8] When taking private property is not for a legitimate public purpose but for an impermissible private purpose, the government action – in this case the denial of the vacation – must be reversed. See, Kelo v. City of New London, Conn., 545 U.S. 469, 125 S.Ct. 2655 (2005). See also, Idaho Code § 7-701A adopted by the State of Idaho in response to Kelo: No political subdivision can acquire private property for any alleged public use which is merely a pretext for the transfer of that private property to another private party.

Charlie, we respectfully ask the City Council to reconsider its July 8, 2019 decision in connection with City File EAS FY2019-5 and approve the vacation as requested. If you would like to discuss the content of this letter further, I will be happy to meet with you at your convenience.

Sincerely,

JoAnn C. Butler

cc: Will Gustafson (will@willgus.com)
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