HARRIS RANCH CID TAXPAYERS' ASSOCIATION

August 14, 2021

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

Re: Objection to Payment Requested by Developer for Conservation Easement

Members of the HRCID Board:

The purpose of this letter is to express our objection to the payment requested by the Harris Ranch developers ("Developer") of almost ***$2 million*** for a wetlands easement they granted on their property to the Idaho Foundation for Parks and Lands ("Idaho Foundation") in 2008 (Project ID No. GO20-7).

The request for payment submitted by the Developer indicates that they are seeking payment for the supposed "fair market value" of a wetlands easement they provided on ten acres of land which they still own along the north side of the Boise River west of S. Eckert Road ("Conservation Easement"). They apparently have submitted their request pursuant to Section 3.2(a) of the Development Agreement among the City, the HRCID and the Developer. That subsection provides for payment to the Developer of the "fair market value of the real property for rights of way, easements and other interests in real property" with respect to projects they undertake and dedicate to public use.

We object to the requested payment for at least four reasons:

1. The Developer originally undertook, in both written agreements and public disclosures, to "***donate***" the Conservation Easement to the public.

2. In addition, it appears from the appraisal submitted by the Developer to support the requested payment ("Appraisal") that ***the Developer intended to and thus may long ago have already taken federal and state income tax deductions for the "charitable non-cash contribution" of the Conservation Easement*** to the Idaho Foundation.

3. Moreover, it appears, based on documents the Developer has submitted as part of its request for payment, that ***the Developer also has been paid for the value of***

the Conservation Easement by the Ada County Highway District ("ACHD").

4. In any event, the "fair market value" of land required to be left undeveloped as wetlands and dedicated to the public, as a condition to a very large and profitable development, ***is close to zero***.

This thus appears to be a case of the Developer not only "double-dipping", but "triple-dipping." That is, it appears that they are now seeking payment for the Conservation Easement from the HRCID after previously (i) taking federal and state income tax charitable deductions in the exact same amount, and (ii) also receiving a payment from ACHD for the very same Conservation Easement.

Background[1]

Harris Ranch used to be just that – a ranch. Most of the land was used as pasture. One of the many conditions imposed by the City and others to the Harris Ranch development was the extension of E. Parkcenter Blvd. from Bown Crossing, over the Boise River, and into Harris Ranch. That entailed the construction of the E. Parkcenter Bridge, which was undertaken by ACHD.

To accomplish the extension of E. Parkcenter Blvd. and the construction of the new bridge, the Developer and ACHD entered into a multi-party "Development Agreement" in July 2005 ("Parkcenter Bridge Agreement"). That Agreement is complicated, and portions are not altogether clear. It includes the following:

- ACHD agreed to undertake construction of the E. Parkcenter Blvd. extension, including the bridge.

- The Developer agreed to contribute $3.5 million towards the costs of the project.

- The Developer agreed to "***donat[e]*** a portion of wetlands owned by Harris Ranch" (emphasis added) to accomplish any mitigation required by the U.S. Army Corps of Engineers in connection with the project.[2]

- The Developer apparently was entitled to receive credits from ACHD, to be applied against impact fees otherwise payable by the Developer to ACHD with respect to the Harris Ranch development,[3] in exchange for:

[1] Please note that the factual assertions in this letter are based on our current understanding of rather voluminous and complicated documents and agreements, which may be incomplete. We welcome any clarifications or corrections you can provide.
[2] The Boise River apparently is subject to the jurisdiction of the Corps.
[3] Local governments, including ACHD, are authorized by State law to impose fees on developers in connection with new development in consideration of the added burden on public infrastructure, including roads, resulting from such new development.

- The Developer's $3.5 million contribution to project costs; and

- "The value of wetlands ***donated*** by Harris Ranch for wetlands mitigation …" (Emphasis added.)

As the parties anticipated, the U.S. Army Corps of Engineers later required wetlands mitigation in connection with the project. The parties therefore entered into an amendment to the Parkcenter Bridge Agreement in November 2007 to address that requirement ("Amendment"). The Amendment includes the following:

- The Developer agreed to contribute the Conservation Easement in perpetuity on ten acres of apparently marshy pastureland they own in Harris Ranch along the Boise River.

- The Developer agreed to construct wetlands on the former pastureland over which the easement was granted.

- "***In exchange for providing the Conservation Easement*** and the construction and maintenance of the wetlands …" the Developer agreed to accept payment from ACHD of $1.3 million. (Emphasis added.)

- The Developer agreed that they would no longer be eligible for any impact fee credits or reimbursements for the acreage provided for wetlands mitigation.[4]

One might think that the contribution of $3.5 million towards the E. Parkcenter Bridge, plus ten acres of pastureland, was a major concession by the Developer. Please think again. The Harris Ranch development apparently consists of about 1,300 acres. As pastureland, Harris Ranch apparently had an assessed value (per the Appraisal) *before* the construction of the E. Parkcenter Blvd. extension into Harris Ranch, including the bridge, of ***less than $700 per acre***. That would mean the pastureland had a total value of less than $900,000 (excluding the Harris family's homes and other ranch buildings). According to the Appraisal, the value of the bare land *after* the construction of the E. Parkcenter Blvd. extension into Harris Ranch was almost ***$200,000 per acre.*** If only one-fourth of the total acreage in the development could be developed, that would mean ***the value of the land in Harris Ranch had increased by almost $65,000,000***.[5] That is more than a fair return on the investment of only $3.5 million, plus ten acres of apparently marshy pastureland.

[4] They may have surrendered this right in order to claim the "donation" as a charitable contribution for federal and state income tax purposes, as further explained below.

[5] We don't know how much of the former ranch can in fact be developed, so this is just a guess. It may be more.

Discussion

"**Donation**." The Developer agreed in clear and unequivocal terms in the Parkcenter Bridge Agreement and the Amendment to "donate" the Conservation Easement. And the Amendment expressly eliminated any right to impact fee credits or reimbursements from ACHD for the acreage donated by the Developer for wetlands mitigation. On the Harris Ranch development website at the time, in an excerpt included in the Appraisal, the Developer trumpeted the fact that "***Harris Ranch donated the 10-acre parcel valued at three million dollars*** and ACHD is paying for construction of the mitigation site." (Emphasis added.)[6] The HRCID therefore ought to honor the Developer's own agreements and characterizations of the Conservation Easement as a "donation," and thus pay them nothing.

Claimed Federal and State Income Tax Deductions. The Appraisal recites, on page 1, as follows:

> The client ***will*** use this report ***for income tax purposes for reporting a charitable non-cash donation***. The grantee is a qualified recipient for the ***donation***. [Emphasis added.]

That also is clear and unequivocal. The Appraisal says the Developer "*will* use," not "*may* use" the Appraisal to report a "charitable donation." And the Developer was apparently careful, in the relevant agreements and in public comments, to consistently describe the dedication of the Conservation Easement to the Idaho Foundation as a "donation." So, the Conservation Easement should be treated no differently here. That is the case even if the Developer's "charitable donation" was later denied by the IRS and/or the State of Idaho (possibly for reasons we will explain, below). And that is the case even if the Developer later decided that a cash payment from the HRCID was more attractive to them, financially, than a tax deduction.[7]

Prior Payment to Developer by ACHD for the Conservation Easement. The Amendment expressly recites that the payment of $1.3 million is "[***i]n exchange for providing the Conservation Easement*** and the construction and maintenance of the wetlands …" That again is clear and unequivocal. So, the Developer has already been paid by ACHD, pursuant to an express and negotiated agreement, for the value of the Conservation Easement. They thus should *not* be paid for the same Conservation

[6] The Developer's statement is at best an exaggeration in two respects. First, the Developer did not donate the land, which it still owns, but rather granted a conservation easement over it. Second, the Appraisal valued the land subject to the Conservation Easement at less than $2 million, not at $3 million. And that valuation assumed, incorrectly, that the land could be developed with single-family homes and "more intensively developed commercial and retail uses."

[7] We note that, at the time the Developer granted the Conservation Easement, the HRCID did not yet exist, and the CID Act may not even have been enacted by the Legislature. So, the only option for the Developer to recoup at least part of their "donation" was a tax deduction. With the establishment of the HRCID in 2010, they likely imagined the possibility of recouping even more of their "donation," by seeking payment from the HRCID.

Easement again by the HRCID. That would constitute a clear abuse of the CID at the expense of the homeowners in the Harris Ranch development.

We have not yet been able to determine how much it cost the Developer to construct the ten acres of "wetlands" on the Developer's pastureland. But even if it cost $1.3 million, however, that would only serve to confirm our point, below, that land you are required to dedicate in perpetuity to public "wetlands," as a condition to your very large and profitable development, has a fair market value of next to nothing. As the Developer still owns the land, they could still attempt to sell it – as a ten-acre parcel that can be used for nothing other than wetlands, forever. Given the potential liability inherent in land ownership, and the Developer's continuing liability for property taxes, we would be surprised if a willing buyer for this property could be found at any price.

Fair Market Value of "Wetlands". The Appraisal submitted to the HRCID by the Developer, as noted above, was intended by its terms to be used in connection with federal and state income tax deductions claimed by the Developer for a "charitable non-cash donation." The Appraisal thus values the land in question with and without the Conservation Easement. The valuation is based on the key assumption, noted on page 2 of the Appraisal, that:

> According to city personnel, ***the donation was not required*** in order to receive potential benefits as a result of the Parkcenter Bridge crossing of the Boise River … [Emphasis added.]

That assumption, however, is demonstrably untrue. The Developer was expressly obligated under the Parkcenter Bridge Agreement and the Amendment to contribute the ten-acre parcel as a condition for the construction of the E. Parkcenter Bridge. And the E. Parkcenter Bridge, by any measure, was *essential* to the Harris Ranch development. As we understand it, the Developer would not have been granted the requisite approvals for the development of Harris Ranch without the extension of E. Parkcenter Blvd. into Harris Ranch, including the construction of the bridge.[8]

In addition, the Appraisal assumed that "the highest and best use of the subject [property] in the before condition would be for a mixed-use development consistent with the development plan [for the balance of Harris Ranch] …." That assumption, however, is also demonstrably untrue. The Conservation Easement was *required* to be granted by the Developer as an *express* condition to the development of the remainder of Harris Ranch, and the land under it thus could never be used for "mixed use development."

In imposing those requirements, the City was exercising its police powers consistent with the U.S. Supreme Court decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Under those cases and

[8] As the Developer received consideration for the Conservation Easement, in the form of approval of their development (and the construction of the bridge), it seems doubtful that it could properly be considered a "charitable contribution" for federal or state income tax purposes.

their progeny, cities may impose conditions on land development, such as the construction by the developer of arterial streets and bridges and their dedication to the public, *without payment by the city to the developer of any compensation whatsoever*, provided, that there is a "nexus" between the development and the need for the improvements, and that the required improvements are "proportional" to the development.

Conclusion

We therefore request (and hope that we will not have to demand) that the Developer's request for payment be denied. And if, despite what we have explained above, the HRCID seeks nonetheless to make a payment to the Developer for the "fair market value" of the Conservation Easement, we request (and hope that we will not have to demand) that the Developer be required to submit a new appraisal that is based on the revised assumptions that: (I) the Conservation Easement was required to be granted by the Developer as a condition to the construction of the E. Parkcenter Bridge, and (II) the land on which the Conservation Easement is located *could not* be developed for "single-family uses" and "more intensively developed commercial and retail uses," but instead is limited to use as a wetlands and dedicated in perpetuity to the public. That appraisal would be based on facts, rather than on false "hypotheticals". We suspect that will result in a quite different valuation.[9]

We again note that this letter and our prior letters of objection do not include all our objections to proposed payments to the Developer, let alone to prior payments. We expect to provide additional objections as further information is made available to and reviewed by us.

We also note that, based on our reviews to date, we are concerned that there appears to be an emerging pattern of the Developer making payment requests (and receiving payments) to which they are not contractually and/or legally entitled. We do not intend to ascribe ill intent to the Developer in so noting, but it does make us wonder.

Sincerely,

pp Bill Doyle

Executive Committee,
Harris Ranch CID Taxpayers' Association

[9] We expect that the Developer at some point will also seek to be paid interest on its "donation," dating from 2008, pursuant to Sec. 3.2(a) of the Development Agreement. That may amount to $1.5 million or more. We would object to any such payment of accrued interest for the same reasons set forth in this letter.

Cc: The Honorable Lauren McLean, Mayor, the City of Boise
Council Member Liza Sanchez, Council 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