
HARRIS RANCH CID TAXPAYERS' ASSOCIATION

August 20, 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 Reimbursements Requested by and Paid to the Developer

Members of the HRCID Board:

The purpose of this letter is to express our objection to the reimbursements requested by the Harris Ranch developers ("Developer") for certain road improvements, including to a partial payment already made to the Developer for those improvements, totaling more than ***\$1.2 million*** (Project ID No. GO20-6).

The Developer apparently requested reimbursement in August 2020 for the costs of constructing:

- (1) The round-about at E. Parkcenter Blvd. and S. Old Hickory Way,
- (2) The round-about at E. Parkcenter Blvd. and S. Shadywood Way,
- (3) The round-about at E. Parkcenter Blvd. and S. Wise Way, and
- (4) E. Parkcenter Blvd. between S. Old Hickory Way and S. Barnside Way.

It appears that about \$1 million of such request was *already paid* to the Developer by the HRCID in the last fiscal year, and that the remaining almost \$200,000 of such request is proposed to be paid in the current fiscal year.

We object to these payments for the following reasons:

- These are improvements the costs of which must be borne by the *developer* in every other real estate development in the City of Boise, past and present. Those costs thus should be borne by the Developer here, as well.

- The improvements described in (1), (2) and (3), above, are *expressly prohibited* by Idaho law from being financed by a CID.
- Reimbursement for the improvements described in (4), above, is premature, as nothing has yet been built on either side of that length of road, and thus it's impossible to determine at this point whether reimbursement for those improvements may or may not be permitted by Idaho law.
- In any event, it's impossible to determine with any precision what costs may be reimbursable, as the Developer chose to bid out these four projects as part of much larger construction contracts which consisted primarily of improvements that are *expressly prohibited* under Idaho law from being financed by a CID.

We have separately addressed our first point with you previously. We thus will elaborate here only on our three additional points.

The “Round-Abouts”

The definition in the Idaho Community Infrastructure District Act of “community infrastructure”, the costs of which can be financed by a CID, provides in relevant part as follows:

Community infrastructure *excludes* public improvements *fronting individual single family residential lots*.

Idaho Statutes, Sec. 50-3102(2). (Emphasis added.) Thus, any improvements which “front” on single-family residential lots *cannot* be financed through a CID.

The round-abouts for which the Developer has requested reimbursement under (2) and (3), above, are surrounded *on all four sides* by single-family townhomes. The round-about under (1) above has single-family townhomes on two sides, and vacant land the ultimate uses of which remain to be seen on the other two sides. Thus, *all* those round-abouts “front” on individual single-family lots. Therefore, *none* of those costs can be reimbursed to the Developer by the HRCID.

We are at a loss to understand on what basis the Developer sought reimbursement for these costs, and nothing in the documentation they submitted to the HRCID (more than 900 pages) appears to explain that.¹ But, based upon some of the Developer’s prior submissions to which we have objected, we can speculate.

The Developer might argue that the round-abouts, as they occur at the intersection of crossing streets, do not “front” on *any* property. That may be the only argument the

¹ Given the length of the submission by the Developer, we may have missed the explanation. If so, we will appreciate being directed to it.

developer can conjure to support their requested reimbursement. In our opinion, this would constitute yet another abuse of the CID by the Developer.

Under general rules of statutory construction, words used in statutes are to be given their plain, ordinary, generally understood meaning. The word “fronting” is generally understood to mean “in front of.” Moreover, the first rule of statutory construction is to give effect to the intention of the legislature. The obvious intention of the State Legislature in Idaho’s CID legislation was to *prohibit* the financing, through a CID, of improvements that primarily serve single-family homes, including townhomes. We strongly doubt that, if a development consisted *entirely* of single-family homes and townhomes, the State Legislature intended to allow a CID nonetheless to finance that portion of streets, water mains, sewer mains, storm water mains, lighting and signage located within intersections, while prohibiting it everywhere else in the development.

Moreover, if that were the Developer’s logic, then we don’t understand why they haven’t also sought reimbursement for all the other intersections in Harris Ranch. To date, they have not. And we firmly are of the view that they cannot. Intersections do not exist in some separate world apart from the streets of which they necessarily are a part. If the streets on every side of an intersection front on single-family homes, then the intersection does, as well.²

The Road “in Front of” the Possible Future “Town Center”

The requested reimbursement by the Developer includes a one-block section of E. Parkcenter Blvd. which runs between two parcels which apparently are slated for future development as a “Town Center.” Based on the City’s “Harris Ranch Specific Plan” (SP01) adopted in connection with the Harris Ranch development, those two blocks supposedly in the future may consist of mixed-use retail, commercial and multi-family residential properties. But that is just the plan and such plan, if realistic from a financial standpoint, would have been built out by now. The advent of internet commerce, not to mention our experience with COVID, as well as the stunning appreciation in the value of residential properties in the Treasure Valley, at least suggests that those original plans may need to be revisited again. Thus, until something is actually built on those

² Although we are somewhat embarrassed to make the following point, we feel compelled to do so by the Developer’s apparent justification for its reimbursement request. If you look at the roundabouts in question, you will see that, unlike properties at the corners of traditional street intersections, the lots at the corners abutting roundabouts do not have a “squared” corner. Rather, due to the large and circular nature of the “round”-abouts, the lots at the end of the blocks which have “round-about” intersections instead are broadly and continuously curved, from E. Parkcenter Blvd. to the applicable cross-street. Thus, if you were to stand at each point along that curve of the property line facing outwards, you would find the entire round-about to be “in front of” you.

The Developer certainly would not suggest, we hope, that “in front of” must be determined based on a spatial plane determined by the facade of the home in question, rather than the property line. Otherwise, the Developer could artificially create repeated street segments that didn’t “front” on single family homes by angling the facades of single-family homes across the street from each other, two opposite each other towards the left, and the next two opposite each other towards the right, continuing down each block.

properties, it cannot be “assumed” that they will consist of commercial, retail and multi-family properties, and not include single-family homes or townhomes. Thus, any requested reimbursement is necessarily premature and certainly not based on actual conditions that comply with the requirements of the CID Act.

Indivisible Construction Contracts

The submission by the Developer reveals that they entered into at least two different construction contracts with respect to the improvements for which they have sought reimbursement. It further reveals that those construction contracts did not separately break out the costs allocable to the improvements in question. And those contracts primarily included road and other work which, it appears, both the Developer and the HRCID agree *cannot* be reimbursed through the HRCID. The Developer, it appears, thus engaged in an extended exchange with the City, acting through the HRCID, in an attempt to *estimate* that portion of each contract attributable to costs which, at least in the view of the Developer, were reimbursable by a CID.

The Developer could have bid out the two contracts (they are required to bid them out pursuant to their Development Agreement with the HRCID as well as State law) so that the supposedly “reimbursable” portions of each contract were separately stated. But curiously, they failed to do so which suggests that, at the time the contracts were bid, the Developer did not anticipate that any parts of it were reimbursable by the HRCID. While that may be speculation on our part, the question remains why wouldn’t they otherwise have done so?

There is nothing in Idaho’s CID legislation, so far as we have been able to determine, that permits the HRCID to make payments to the Developer based on “estimated” rather than actual costs. And the “estimates” made seem to us to be no more than vague speculation on the part of both the Developer and the HRCID. Construction contracts for larger projects like these (as opposed to, say, a kitchen remodel), are complex and interdependent on a wide variety of factors. We won’t go into detail here as to why that is so. But we are confident that both the Developer and the City appreciate that fact. So any attempt to break out the cost of any particular component of the overall contract is at best a guess. We find nothing in the Idaho CID statute or in the Developer Agreement that allows payments to the Developer by the HRCID based on such “guesses.” And, as the Developer could have bid out the contracts to separately and specifically identify the costs of the segments for which they are now seeking reimbursement, the consequences of their failure to do so should on fall the Developer, and not the HRCID, nor least of all the homeowners and taxpayers in the Harris Ranch development.

Conclusion

For the foregoing reasons, we request (and hope again that we will not have to demand, from the standpoint of potential litigation) that: (1) the requested payment for the remainder of the Developer's original reimbursement request be denied, and (2) that the HRCID require the Developer to repay to the HRCID the prior payment made to the Developer for such improvements, with interest at the Developer's interest rate specified in the Development Agreement.

We note, again, that this letter and our previous letters do not include all our objections to prior, requested, or proposed reimbursements to the Developer. We again ask that the approval, let alone payment, of any further reimbursements to the Developer cease pending the resolution of our objections and related legal issues.

We note, lastly, that we are increasingly concerned that the requested reimbursements by the Developer, based on our limited reviews to date, appear to show an emerging pattern of their requesting payments to which they are not contractually and/or legally entitled. That is more than a little disturbing to us as it should be to all parties involved with the CID.

Sincerely,

pp Bill Doyle

Executive Committee,
Harris Ranch CID Taxpayers' Association

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