
HARRIS RANCH CID TAXPAYERS' ASSOCIATION

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: The HRCID’s “General Obligation” Bond Election Failed

Members of the HRCID Board:

As you know, the Harris Ranch CID Taxpayers’ Association (“Association”) provided a memorandum to you and to the City almost three months ago that explains in detail why we believe that the HRCID, the bonds it has issued, and the special taxes and assessments it has imposed violate both the Federal and State Constitutions in numerous ways. Two weeks ago, we provided you a letter to the effect that the formation of the HRCID appears also to be fundamentally flawed from a statutory standpoint. We have also provided you a letter questioning the tax-exempt status of the outstanding “general obligation” bonds.¹

Our review of the HRCID continues and much remains to be reviewed. But we have recently identified what appears to be another fundamental legal flaw, this time with the supposed “election” conducted to approve the issuance of \$50 million in “general obligation” bonds by the HRCID and the imposition of perhaps \$100 million or more in special property taxes over as many as 50 years.

Discussion

From what we have been able to determine to date, the issuance of \$50 million in “general obligation” bonds by the HRCID was approved by three “Yes” votes in an election supposedly

¹ Our hope is that the substance of our original memorandum, our additional letter, and our letter questioning the tax-exempt status of the bonds have been shared with your various stakeholders, including your investors. Those are issues, we expect, that stakeholders would review with considerable interest. Those issues have been referenced in public meetings by the HRCID, in reports in the local press and on the City’s website, and thus can make their way to bond market participants. Failure to disclose such issues to investors, we imagine, may result in serious contractual and/or Federal securities laws issues. Those are not matters in which we are knowledgeable let alone expert. Our concern is, in part, parochial as we expect that the HRCID would seek to impose any financial costs or penalties related to any investor claims or securities violations on the homeowners in the HRCID. We hope that you will share the substance of this letter with them, as well.

held on August 3, 2010. We previously had assumed, before we had access to some of the relevant documents, that those three “Yes” votes came from members of the Harris family. That’s because (i) the Harris family and its related entities owned all the property in the HRCID at the time of its formation in 2010, (ii) there reportedly were no residents in the HRCID when it was formed, and (iii) the CID Act permits voting by non-resident property owners. But we were mistaken.

We have now reviewed affidavits apparently submitted two weeks or so after the election on behalf of those who voted “Yes.”² It appears that the “Yes” votes were instead cast by: (1) Barber Valley Development, Inc. (a Harris family business entity), as a non-resident owner of property in the HRCID, (2) Harris Family Limited Partnership (another Harris family business entity), also as a non-resident owner of property in the HRCID, and (3) a Ronald Murray, who allegedly resided at the time in a mobile home on property owned by the Harris family off Barber Road just inside the boundaries of the HRCID.³

As we noted in our original memorandum, we are puzzled that the City, acting through the HRCID, did not avail itself of the opportunity to obtain a judicial determination as to the validity of the HRCID, the general obligation and special assessment bonds that were authorized, and the special taxes and assessments that have been imposed. That option was available to the City under the Judicial Confirmation Act. Idaho Statutes, Secs. 7-1300 *et seq.* The City and its related entities have recently utilized that Act in other contexts, as outlined in our original memorandum.

We have recently learned that the City of Eagle did avail itself of that option in 2013 in connection with its formation of the Spring Valley Community Infrastructure District No. 1 and the authorization of \$325 million in “general obligation” and “revenue” bonds. That is, they brought an action under the Judicial Confirmation Act to seek a determination by the court regarding the validity of the Spring Valley CID and the bonds it had authorized.

² We note that the affidavits are substantially abbreviated from the “Forms of Electors Oath” *required* by and attached to the Resolution No. 3-10 of the HRCID Board calling the special election (“HRCID Election Resolution”). The affidavits contain only one of the five required certifications, all of which are essential to the validity of those votes. The affidavits apparently were prepared and submitted to the City by counsel for the Developer. Counsel for the Developer obviously was in a position to know and understand the nature and content of the five required certifications, but nonetheless failed to include most of them. That is at least curious if not also suspicious. These failures constitute a separate and additional grounds for challenging the validity of the election.

³ The existence of such a resident voter within the HRCID, again, is at least curious if not also suspicious. That’s because the Board expressly recited, in Section 3 of the HRCID Election Resolution, as follows: “Based upon the content of certain prior Petitions executed by the current Owner of all real property located within the current boundaries of the District, ***it has previously been represented to both the District Board and the Boise City Council that there are or should be no resident qualified electors***, as that term is defined in the Act, currently residing within the boundaries of the District.” (Emphasis added.) Moreover, attached to the Development Agreement is a series of email exchanges with an Ada County Clerk’s Office Elections Specialist confirming that, at least as of mid-February 2010, there were *no registered voters within the proposed boundaries of the HRCID*. It appears that the HRCID thus may have failed to provide a polling station in a precinct within the boundaries of the HRCID, and otherwise to comply with absentee voting and other requirements under State election law and/or the CID Act. These present yet additional grounds for the invalidity of the election.

The final decision of the Ada County District Court in that case is noteworthy in at least two respects. First, the District Court held that, where voting is done in whole or in part based on land ownership in a CID rather than just residency, *only natural persons and not business entities can vote*. Second, the decision relies in part on an Idaho Supreme Court case⁴ which held that an election by a special purpose district (in that case, an irrigation district) which is based on land ownership can include as voters *only* those landowners who are registered to vote *in the county in which the election is held*.⁵

As noted above, two of the three “Yes” votes in the HRCID “general obligation” bond election were by business entities (a corporation and a limited partnership, respectively) and not by a natural person. ***Thus, under the Idaho Constitution, both of those votes are invalid.*** So, the election, it appears, may turn on the “vote” of a single person who did not own any property in the HRCID but allegedly instead lived as a tenant in a mobile home on land owned by the Harris family (and whom the Developer and the Harris family previously disclaimed even existed).

As for Mr. Murray, there is nothing in the records we have been provided to date that indicates that he was a “qualified elector” under Idaho law, or that his vote was secured in compliance with the CID Act. For example, we do not know whether he was at least 18 years old, had lived in Ada County for at least 30 days prior to the election, was registered to vote in Ada County⁶, or was not disqualified from voting (for example, if he were a felon on parole). According to the County Clerk’s Office, Mr. Murray was not a registered voter within the HRCID at least as of February of that year. We also don’t know whether he was provided the election materials required by the CID Act.⁷

In addition, as he was living on Harris family property, it may be that Mr. Murray was an employee or former employee of the Harris family. Thus, Mr. Murray may have been influenced, or perhaps unduly influenced, to vote “Yes” in the election.⁸ He was certainly

⁴ *Pioneer Irrigation Dist. v. Walker*, 20 Idaho 605 (1911).

⁵ The Idaho Constitution requires, in order to vote, that you be a natural person, a citizen of the United States, at least 18 years old, a resident of this State, and a resident of the county in which you seek to vote. Idaho Constitution, Art. VI, Sec. 4.

⁶ The HRCID Election Resolution required only that resident voters be “registered to vote in the State of Idaho”, which is contrary to the Constitutional requirement.

⁷ Idaho Statutes Sec. 50-3112 provides in part: “(5) The ballot material provided to each voter shall include: (a) For an election concerning the issuance of bonds, an impartial description of the bonds to be issued and an impartial description of the property taxes to be imposed; the method of apportionment, collection and enforcement and other details sufficient to enable each qualified elector to reasonably estimate the amount of tax he or she will be obligated to pay; and a statement that the issuance of the bonds and the imposition of property taxes is for the provision of certain, but not necessarily all, community infrastructure that may be needed or desirable within the district, and that other taxes or assessments by other governmental entities may be presented for approval by qualified electors ...”

⁸ For example, Idaho Statutes Sec. 18-2319 provides: “ATTEMPT TO INFLUENCE VOTES. No person shall attempt to influence the vote of any elector by means of a promise or a favor, ... or threats of withdrawing custom or dealing in business or trade, or enforcing the payment of a debt, or discharging from employment, or bringing a suit or criminal prosecution, or any other threat of injury to be inflicted by him, or by any other means.”

known to the Harris family, as the Developer's lawyers were able to obtain an affidavit from him regarding his "vote". Or it may be that one or more people in addition to Mr. Murray also resided on the property, but were dissuaded, or perhaps unduly dissuaded, from voting "No" in the election. At this point we simply don't know.

But that's not all. According to the official certification of the election by the HRCID's Clerk (that is, the City Clerk), ***there was one "No" vote in the election.*** The official election results, even assuming that Mr. Murray's "vote" was lawful, and excluding the unlawful votes by the Harris family business entities, were one vote in favor, and one vote against. As the Idaho Constitution and the CID Act require 2/3rds voter approval, ***the HRCID's "general obligation" bond election therefore failed, and the bonds which have been issued are void.***

In the documents provided to us to date, there is a letter from the Developer's lawyers to the City Clerk, dated two weeks after the election, that enclosed the affidavits for the three "Yes" votes. The letter alleges that the lawyer had "been informed" that a person who did not reside or own property in the HRCID was "mistakenly allowed to vote." It is apparent, from a simple process of elimination, that the "mistaken" vote was the only "No" vote. At this point, we have only the Developer's lawyers' letter to back that claim. But the official canvassing of the election results by the HRCID's Clerk, reviewed by the City Attorney's Office, and approved by the Board of the HRCID on August 10, 2010, could not be changed via a letter from the Developer's lawyers. The Developer would have had to file a request for a recount pursuant to Idaho Statutes Sec. 34-2301 within 20 days of such canvas, which so far as we know they failed to do.

But even if Mr. Murray were a qualified elector, had not been impermissibly influenced in his vote, and was the only qualified voter in the election, it would mean that \$50 million of bonds, and perhaps \$100 million or more in special taxes, were all approved by the "vote" of a single individual who did not own any property in the HRCID and thus would not have paid ANY of the untold tens of millions in special taxes over perhaps as many as 50 years. That can't be right.⁹

Conclusion

Based on the information we have been provided to date, it appears that the HRCID "general obligation" bond election failed to garner the required 2/3rds vote, that the bonds therefore were not lawfully authorized, and that the outstanding bonds therefore are void.

We note, again, that this letter and our previous letters do not include all our objections to the HRCID, its bonds, its special taxes and assessments, and the prior, requested or proposed reimbursements to the Developer. We again ask, and in fact now demand, that all further financings and activities of the HRCID *cease* pending the resolution of these legal issues.

⁹ We note that the Harris family, as we have observed previously, apparently did own two homes in the center of what became the HRCID. But they carved their two Harris Ranch homes out of the HRCID, apparently to spare themselves from having to pay the HRCID special taxes, and thus could not vote as residents in the HRCID.

Finally, please note that we have attempted to advise you of our concerns regarding the City, acting through the HRCID, continuing to approve payments to the Developer that are legally questionable if not unlawful. As we have noted previously, doing so may have serious legal consequences for the City, the HRCID and the Developer. We are not practicing lawyers, and thus do not have any particular knowledge or expertise regarding such matters. So, our expressions of concern are based rather on general knowledge and publicly available information. To date, it seems that our concerns have not been taken seriously. We had hoped for an open, collaborative dialogue with our elected officials to address our concerns and to look for a mutually agreeable resolution. Instead, you have responded only with silence. We are left to wonder why.

Sincerely,

pp Bill Doyle

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