HARRIS RANCH CID TAXPAYERS' ASSOCIATION

September 29, 2021

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

Re: Facilities Cannot Be Financed by the HRCID Unless They Are Publicly Owned

Members of the HRCID Board:

The purpose of this letter is to provide additional grounds for prior objections by the Harris Ranch CID Taxpayers' Association ("Association") to certain payments, totaling ***over $7 million***, previously made to and recently requested by the Harris Ranch developers ("Developer"). As the Association indicated in our earlier letters, our review of previous and proposed payments to the Developer by the City of Boise ("City"), acting through the HRCID, is in its initial stages while we await the receipt of additional documents that we have requested from the City.

We are sorely disappointed and deeply concerned about the following. It increasingly appears to us that the Developer has long been engaged in an effort to extract many millions of dollars from the HRCID (and thus from Harris Ranch homeowners and taxpayers) to which it appears they are not lawfully entitled. Moreover, it appears to us that the City, acting individually and through the HRCID, has been facilitating the Developer's efforts, as (i) you have approved those payments even though they appear to have been made on the flimsiest of legal grounds, and (ii) you have entered into agreements with the Developer in an apparent attempt to provide them legal "cover" (however slight) to support some of those payments.

Discussion

The purpose of a community infrastructure district ("CID") is to finance the acquisition and construction of "***public facilities***," defined in the Idaho CID Act ("CID Act") as "community infrastructure." The specific types of such *facilities* are listed in the CID Act and include the following:

- Roads, streets, and bridges
- Trails
- Public parking facilities

- Water supply facilities
- Wastewater facilities
- Stormwater facilities, and
- Parks, open space and recreation areas

Idaho Statutes, Secs. 50-3102(2) and 67-8203(24).

The CID Act expressly requires 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, Sec. 50-3101(2). (Emphasis added.) To make that perfectly clear, the exact same language is repeated in Section 50-3107(1). Despite this requirement, the City, acting through the HRCID, has financed ***many millions of dollars in facilities which are privately owned and which are located on land which is privately owned***. We find that to be rather stunning.

The essential aspects of "public facilities" are actually twofold: (1) they are *owned* by the state or a local government (and thus "public" in that respect), and (2) they are *available for use* by the general public (and thus "public" in that respect, as well). Thus, for example, no-one could reasonably argue that a *privately*-owned parking garage which was also available for use by the public was a "public facility" within the meaning of the CID Act. Similarly, no-one could reasonably argue that a *publicly*-owned parking garage that was available for use *only* by an adjacent *private* company was a "public facility" within the meaning of the CID Act.

To be doubly sure that private facilities are not financed through CIDs, the CID Act also requires that the "public facilities" financed by a CID "may be located ***only*** in or on lands, easements or rights-of-way ***publicly owned by this state or a political subdivision thereof***." Idaho Statutes, Sec. 50-3105(2). (Emphasis added.) It is important to note that this "location on public lands" requirement *is in addition to*, and not a substitute for, the express "public ownership of facilities" requirement and the implicit "public use of facilities" requirement. Thus, for example, a public parking garage must be located on land *owned* by the state or a local government, a public road must be located on a right-of-way *owned* by the state or a local government, public parks or open space must be located on land *owned* by the state or a local government, and a public water, wastewater or storm water drainage system must be located on land or within rights-of-way *owned* by the state or a local government. The Legislature has made all of that perfectly clear. That's presumably in part because, unless the state or a local government *owns* both the facilities *and* the land in question, it does not control the ultimate use or disposition of that public property.

Thus, the CID Act prohibits the funding of *privately*-owned stormwater drainage and retention facilities, or *privately*-owned open space or wetlands. But that's exactly what the HRCID has done.

What we have discovered is that the City, acting through the HRCID, for many of the payments it has made to the Developer, has ignored the first two requirements – that the facilities financed be (1) *owned* by the public, and (2) *available for use* by the public. The City, acting through the HRCID, instead has treated the third requirement – that the facilities financed be located on

property owned by the public – as the *only* requirement. Moreover, they have allowed the Developer to satisfy that requirement on the most insubstantial of grounds. That is, the City has made payments of many millions of dollars to the Developer based not on the City or other local government entity *owning* the facilities and the land underneath them, but rather on the City having only the slightest interest in the underlying property. Public ownership of land and improvements necessarily involves substantive rights, obligations, and liabilities. The members of our Association understand that, as we suspect that you do, as well. But that's exactly what the City and Ada County Highway District ("ACHD") have sought to avoid, and understandably so. That is not what the Legislature intended, or the CID Act requires, however, to justify financing through the HRCID.

In particular, the HRCID has paid the Developer for *privately*-owned stormwater drainage and retention facilities and wetlands facilities which sit on *privately*-owned land, to which the public apparently has *no* access. Those payments apparently were based on:

- In the case of the stormwater facilities, an "easement of access," provided by the Developer to the City or ACHD, which permits the City or ACHD (respectively), in their sole discretion, to "maintain" those facilities if the private nonprofit Harris Ranch Master Homeowners Association fails to do so; and

- In the case of the wetlands facilities, a "conservation easement" provided to a *private* nonprofit corporation, which years later was amended to add or substitute the City for the apparent sole purpose of facilitating a payment to the Developer by the HRCID.[1]

That is all quite disturbing.[2]

An "easement for access" provided to the City or ACHD by the *private* owner of stormwater facilities which sit on *privately*-owned land and which are required to be *privately* maintained, which permits the City or ACHD, in their sole discretion, to maintain the facilities upon a failure of the *private* party which is obligated to do so, obviously does not convert the *private* stormwater facility into a "*public* facility." Similarly, a "conservation easement" provided to a *private* nonprofit corporation by the *private* owner of wetlands facilities, which sit on *privately*-owned land and are required to be *privately* maintained, and which does not afford access to or use of the wetlands by the public, obviously does not convert the *private* wetlands into a "*public* facility." That is not remedied by a subsequent amendment to the easement agreement to add or

[1] The "conservation easements" serve only to preserve the property as wetlands, apparently as required by the U.S. Army Corps of Engineers. The public, however, presumably is not allowed access to or use of the private property, other than to look at it from afar. *Publicly* owned property which constitutes "wetlands," on the other hand, can be used by the public for recreational and other activities under applicable law.

[2] We note that the HRCID has also made payments to the Developer totaling over $400,000 for Idaho Power electric utility line undergrounding and extensions. We are awaiting receipt of additional documents from the City regarding those payments. But we expect that the electric utility lines are owned by Idaho Power, and located in easements owned by Idaho Power, and thus that these "reimbursements" are unlawful for substantially the same reasons as those for the stormwater and wetlands facilities.

substitute the City for the apparent sole purpose of attempting to justify a payment to the Developer by the HRCID.

The specific projects for which payments have been made or recently requested include:

Project Name	Project ID No.	Payment Date	Amount Paid
2011 Conservation Easement – Wetlands – Land Value	GO15B-4	9/3/2015	$1,331,540
2011 Conservation Easement – Land Value	GO17B1-1	10/31/2017	$303,699
Barber Junction Ponds – Land Value	GO19-1	10/4/2019	$654,000
Sediment Basins/Barber Road – Land Value	GO19-1	10/4/2019	$194,000
Storm Water Ponds WS – Land Value	GO19-1	10/4/2019	$958,979
Warm Springs Creek Realignment – Land Value	GO19-1	10/4/2019	$1,230,000
2007 Wetlands Conservation Easement	GO20-7	(payment requested)	$1,979,000
TOTAL:			**$6,651,218**

We note that the Developer, with one apparent exception,[3] has *not* been paid for the costs of construction of these facilities. We don't yet know why but can speculate. Is it perhaps because ***the facilities themselves are not owned by the City or other local government entity***, and thus don't qualify for financing through a CID? The answer, it seems, is "yes".

The Developer instead has sought to be paid (and has been to date) for the supposed "value" of the land on which the facilities sit, ***even though that land is not owned by the City or other local government entity, either.***[4] We do not understand how the City could have justified this.

The City's apparent rationale would permit the HRCID to reimburse the Developer for the supposed "value" of land under a *private* road into the foothills within the HRCID north of the Harris Ranch development, on land *privately* owned by the Harris family, if the Harris family simply granted the City an "easement of access" to "maintain" the road, if the City chose to do so in its sole discretion, at the Harris family's default. The City's apparent rationale would also permit the HRCID to reimburse the Developer for the supposed "value" of land *privately* owned

[3] As we noted in our August 30, 2021, objection letter, the Developer apparently has been paid for the construction of a sediment basin owned by the Harris family located on land owned by the Harris family. We suspect that that "easement of access" was provided to the City, rather than ACHD, because only Harris family lands drain into that basin, while roads dedicated to the ACHD within the HRCID drain into the other stormwater facilities.

[4] We have separately objected, including by our letters to you dated August 16, 2021, and August 30, 2021, to the valuations of the land. We assumed at the time, however, perhaps naively, that the land under those improvements had been conveyed to the City, the ACHD or other local government entity. But we have subsequently learned that they were not. ***We note again that the "value" of land which is required to be dedicated to public use as a condition (or precondition) to development is practically nothing.*** No-one is going to pay you much if anything for land that they must immediately convey to the public.

by the Harris family, in the same foothills, if the Harris family granted a "conservation easement" on the property to the City but with the public having no access whatsoever to the property. Either suggestion is simply absurd. There would be a publicly owned "easement." But there would be no "public facilities."[5]

What the CID Act requires, as a condition of any payment to the Developer, is that those stormwater and wetlands facilities be OWNED by the City or another local government, AND that the land on which they are located be OWNED by the City or another local government.[6]

Conclusion

We thus request that the City, acting through the HRCID, (i) recover all those previous payments from the Developer, plus interest from the date of payment at the rates provided in the Development Agreement among the City, the HRCID and the Developer ("Development Agreement"), and (ii) refuse to make any additional such payments to the Developer going forward. To the extent that for any reason the City is reluctant to seek to recover those previous payments from the Developer, we suggest that you offset such amounts, with interest, against any pending or future payments that the Developer requests that are permissible under the CID Act and the Development Agreement.

As we've noted previously, the HRCID has spent considerable sums, as has the City (both at the expense of homeowners and taxpayers in Harris Ranch), for administrative, financing and other related fees and costs with respect to the payments made by the HRCID to the Developer which appear to be unlawful. We therefore also request that the City (as the party responsible for all this) refund to the HRCID the proportion of those costs and fees related to the apparently unlawful payments, and that those amounts be applied to pay down the debt incurred by the HRCID for those purposes (and/or to refund homeowners in the HRCID for the special taxes imposed on them to pay such debt).

[5] We note that a "conservation easement" by itself is ***not*** "community infrastructure" under the CID Act. It is not a "park," nor an "open space," nor a "recreation area," nor a "bank and shore protection and enhancement improvement," which are the grounds upon which the Developer is apparently requesting payment. Those, if they are publicly owned, are all "public ***facilities***". A conservation easement, on the other hand, is just a piece of paper, and not a "facility" which the public can enjoy.

[6] Why wouldn't the City or the ACHD want to own all that land? At least three potential reasons come to mind. First, the City or the ACHD, rather than a private party, would then be saddled with the expense of maintaining such properties. Second, the City or the ACHD would then also be saddled with potential liabilities for damages if the facilities failed to perform their intended functions, or someone was injured on them. Third, if the City or the ACHD owned the properties and facilities, the properties and facilities would no longer be part of the property tax base. Those all seem to be pretty good reasons for the City and the ACHD *not* to want to own these stormwater and wetlands facilities and properties.

Postscript

We note that at recent public meetings of the HRCID Board, City Council President Elaine Clegg made statements to the following effects:

- She argued that a reduction in the special tax annual levy rate for homeowners in the HRCID, to offset some of the dramatic increase in those special property taxes from the rather extraordinary increases recently in the value of homes in the Treasure Valley, would only delay the "reimbursements" to the Developer. Ms. Clegg further argued that such a delay in turn would increase the "interest" ultimately due to the Developer from the HRCID under the Development Agreement, and thus only increase the ultimate cost of those "reimbursements" to homeowners and taxpayers in the Harris Ranch CID.

- She also complained about the cost entailed in the HRCID having to retain outside legal counsel to advise the HRCID in response to the objection letters and emails submitted by the Association, as well as by innumerable Harris Ranch homeowners and taxpayers. She explained that those costs would have to be paid by the homeowners and taxpayers in the HRCID.

City Council President Clegg's supposed concern for the costs to be borne by homeowners and taxpayers in the HRCID seems to us to be disingenuous.[7] Ms. Clegg has been on the HRCID Board since its inception more than eleven years ago. In that capacity, she has approved many millions of dollars of payments to the Developer which, it appears, were unlawful. Those payments were made at the direct expense of homeowners and taxpayers in the Harris Ranch CID. Please allow us to suggest that a much more effective and substantial way for Ms. Clegg to save Harris Ranch homeowners and taxpayers millions of dollars in special taxes would have been to *reject* the Developer's requests for those payments in the first place.

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.

Sincerely,

pp Bill Doyle

Harris Ranch CID Taxpayers' Association

[7] We are developing an impression that City Council President Clegg is more sympathetic to the Developer in these matters and is unsympathetic if not somewhat antagonistic towards the homeowners and taxpayers in Harris Ranch. So far as we can recall, she has not made a single public comment in the past three months to convey understanding of or appreciation for the perspectives of homeowners and taxpayers in Harris Ranch, or the concerns expressed by our Association. This was further confirmed by her comments at the September 7 HRCID Board meeting. We are at a loss to understand why.

Cc: The Honorable Lauren McLean, Mayor, City of Boise
Council Member Lisa 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