



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

October 10, 2008

Hon. John Evans
Mayor
City of Garden City

HAND DELIVERED

RE: Title to Greenbelt Adjacent to Riverside Village

Dear Mayor Evans:

As you are aware, a number of individuals and organizations requested that the Land Board require the City to open the greenbelt in Riverside Village to bicycle use. The purpose of this letter is to convey the results of the Attorney General's legal review of this request.

While the Land Board understands and appreciates the intensity of the feelings on both sides of the controversy, the Board's role in this controversy turns on a narrow question of law rather than the broader policy question that underpins the dispute. The issue is whether precluding bicycle use of the Riverside Village greenbelt violates the restriction in the deed from the Land Board to Garden City that the land to be used "only for greenbelt and park purposes for the benefit of the public."

The Board has a long established history of reserving easements for public access along the Boise River during its disclaimer process. The Board, however, has left the details of management of those easements to the local government. This policy is based upon the recognition that local government, not the State, has the regulatory infrastructure to regulate public use of these lands. As such the Board typically leaves it to local governments to define the type of permissible public use of these lands, subject to limited Land Board oversight.

Although the 1980 Agreement and some of the subsequent public records discuss bicycle use of this section of the greenbelt, the operative question is whether exclusion of bicycle access violates the requirement that the lands be used for "greenbelt and park purposes." This language was chosen by the Land Board to ensure that these public trust lands would be open to public use in perpetuity but also with the recognition that local governments need some discretion in defining the type of use that would be permitted based upon conditions unique to each segment

of the greenbelt. Nowhere is the term “greenbelt and park purposes” defined to require all types of public access. Instead, a “greenbelt” is defined as “a belt of recreational parks, farmland or uncultivated land surrounding a community.” Thus, it is our conclusion that so long as Garden City provides for reasonable public access to the greenbelt, it is in compliance with the deed restriction.

While Garden City has the power to regulate public use of the greenbelt, under the governing legal documents, it has a duty to ensure public access to the greenbelt adjacent to Riverside Village. In the course of our review, our Office discovered that the title to the subject lands has not been conveyed to Garden City in violation of the 1980 Agreement.

By way of background, the 1980 Agreement (“Agreement”) entered into among the State of Idaho, the Riverside Group and Jack Hoke (Exhibit A, enclosed) required the parties to perform a number of actions. Paragraph 5 of the Agreement requires the Developer (originally Riverside Group and later IFI) to convey certain portions of the greenbelt that were not owned by the State to a public or quasi-public entity “to assure a continuous greenbelt and public way along said [Boise] river.” This conveyance was to be made when the State conveyed the State-owned lands to the same entity, in this case, Garden City. In consideration of this conveyance, the State was to relinquish two (2) sportsman access easements that the State had obtained in 1974 deed (Exhibit B, enclosed) from Jack Hoke that connected the three (3) State parcels. Agreement, ¶ 8. In other words, prior to the 1980 Agreement, the State either owned or had an easement for continuous public access along the length of the subdivision from Glenwood to the downstream end of the future subdivision as shown on the maps and described in the 1974 deed.

Our Office’s investigation into the title to what we describe as the “connecting lands” between the parcels conveyed to Garden City by the State in 1998 (see Exhibit C, enclosed) shows conflicting deeds and an erroneous legal description that clouds title to these parts of the greenbelt. First, the 1998 deed from IFI (Exhibit D, enclosed) contains an erroneous legal description. The metes and bounds description, last line, second full paragraph, makes a call “northeasterly” to “Lot 51.” We believe this to be in error and should be “northwesterly” and “Lot 5A.” As it now reads, the legal description does not define any property, and therefore the conveyance is probably ineffective.

Second, and more importantly, our research show that the “connecting lands” were conveyed to Garden City in April 1998 (Exhibits D and E, enclosed), and then purportedly conveyed to the Riverside Village Association, Inc. (“connecting lands” between parcels #1 and #2) and The Woods Home Owners Association, Inc. (“connecting lands” between parcels #2 and #3) in October 1998 (Exhibits F and G, enclosed). In other words, there are “dueling deeds” for the parcels that should be owned by Garden City. Furthermore, the deeds to the Homeowners were recorded prior to the deeds to Garden City.¹ The October 1998 deed to the Riverside Village Association also contains the erroneous legal description described above.

We have concluded, based upon our research and present knowledge, that the April 1998 deeds to Garden City will likely prevail over the later deeds to the homeowners. Also, it is

¹ There is one portion of the “connecting lands” between parcels #2 and #3, tax parcel #R7476310050, for which there is no second deed to the Woods Home Owners, about 1/5 of the greenbelt between parcels #2 and #3.

possible that a court could reform the erroneous legal description in the deed if the deeds were brought before a court for some reason. The problems described above, however, constitute clouds to the title to the land that were required by the 1980 Agreement to be held by Garden City.

The solution to these clouds on the title is simple. The successor in interest to IFI (IFI was dissolved as an Idaho corporation in 2000) must convey another deed to Garden City with the correct legal description for the portions of the "connecting lands" between parcels #1 and #2. Additionally, the respective homeowners associations must convey a quitclaim deed to Garden City to remove any possible cloud on the title.

The current controversy is but yet another chapter in a long running dispute over this segment of the greenbelt. As representatives of the public, the State and Garden City have a responsibility to bring this controversy to a close so that the public may have certainty with regard to its use and enjoyment of the greenbelt. Thus, the State respectfully requests that Garden City take action to remedy these clouds on the title to the Riverside greenbelt as soon as possible to ensure continuous publicly-ownership of the greenbelt. If these violations of the 1980 Agreement are not remedied within a reasonable time, the State will have no choice but to bring an action to enforce the reversionary clause in the 1998 deed to Garden City and to seek to quiet title to the subject greenbelt and reassert its easement arising from the 1974 deed.

Please provide us with your plan to address the above described title issues within thirty days so that we can get this matter resolved and the final terms of the Agreement implemented. Thank you.

Very Truly Yours,

A handwritten signature in cursive script that reads "Steven J. Schuster". The signature is written in black ink and is positioned above the typed name.

STEVEN J. SCHUSTER
Deputy Attorney General
Department of Lands