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March 8, 2022

Via U.S. Mail

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Re: *Application for Referendum Petition / Garden City*
Our File: N – 4600.47

Dear Sponsors:

The law firm of Olsen & Hoggan, LLC serves as legal counsel for Garden City. You are receiving this letter because you are one of the first three sponsors of that certain Application for Local Referendum Petition filed with the Town of Garden City, Utah on February 16, 2020 (the “Application”). Pursuant to the Utah Election Code, legal counsel for Garden City is required to review the Application to determine whether the proposed referendum is legally referable to voters and to notify you of this determination in writing.¹ We have determined that the proposed referendum sought in the Application is referable to voters based on the analysis below.

Under the Utah Election Code, a proposed referendum of a land use law is legally referable to voters unless one of the following is true:²

- (a) the proposed referendum challenges an action that is administrative, rather than legislative, in nature;
- (b) the proposed referendum challenges a land use decision, rather than a land use regulation, as those terms are defined in Utah Code §§ 10-9a-103 or 17-27a-103;
- (c) the proposed referendum challenges more than one law passed by the local legislative body; or

¹ Utah Code § 20A-7-602.8(1).

² The analysis is somewhat counterintuitive because the Election Code indicates the issue is referable if the four criteria are not present or if they do not apply. This is backwards from the more familiar analysis of whether statutory requirements are met.

(d) the application for the proposed referendum was not timely filed or does not comply with the requirements of this part.³

The first criteria requires that we determine if the action of the Garden City Town Council which is the subject of the Application was a legislative action or an administrative action. Although not always easy to distinguish, the Utah Supreme Court has indicated that legislative actions are identified by two “key hallmarks”, namely, legislative power “generally (a) involves the promulgation of laws of general applicability, and (b) is based on the weighing of broad, competing policy considerations.”⁴ Conversely, the Supreme Court has stated administrative action involves “applying the law to particular individuals or groups based on individual facts and circumstances.”⁵ In applying these hallmarks in several cases in the last few years, the Utah Supreme Court has made clear that “site-specific rezoning is a legislative act – and thus subject to referendum.”⁶ In this case, the action by the Garden City Town Council that is the subject of the Application is the decision to “re-zone” certain properties to the PUD Zone. In other words, the action was a site-specific zoning action which is a legislative action and subject to referendum. Therefore, the first criteria under § 20A-7-602.8(2) does not apply.

The second criteria of § 20A-7-602.8(2) requires that we determine if the action of the Town Council was a “land use decision” or the adoption of a “land use regulation.” This is in reality just a restatement of the first criteria using different terms. The Utah Land Use Development and Management Act defines a “land use regulation” as a “legislative decision enacted by ordinance, law, code or map, resolution, specification, fee, or rule that governs the development of land” and which “includes the adoption of a zoning map”⁷ On the other hand, a “land use decision” is defined as a “an administrative decision of a land use authority . . . regarding a land use application”⁸ Thus, a “land use regulation” is adopted through a legislative action and a “land use decision” is the outcome of an administrative action. In this case, the action of the Garden City Town Council in granting a request to “re-zone” specific parcels of property is tantamount to the adoption of an amendment to the zoning map and is thus the adoption of a land use regulation. Therefore, the second criteria under § 20A-7-602.8(2) does not apply.

The third criteria of § 20A-7-602.8(2) requires that we determine whether the proposed referendum challenges more than one law adopted by the Garden City Town Council. The Application states it is challenging the vote to “approve a re-zone of several residential parcels and one commercial parcel into a PUD zone” The minutes of the meeting of the Garden City Town Council indicate that decision was made at the request of Sun Communities on a single request for re-zone. It does not appear that multiple laws are being challenged by the Application, and therefore, the third criteria of § 20A-7-602.8(2) does not apply.

³ Utah Code § 20A-7-602.8(2).

⁴ *Baker v. Carlson*, 2018 UT 59, ¶ 13, 437 P.3d 333, 336.

⁵ *Baker v. Carlson*, 2018 UT 59, ¶ 14, 437 P.3d 333, 336.

⁶ *LD III LLC v. Mapleton City*, 2020 UT App 41, ¶ 20, 462 P.3d 816, 821, *cert. denied sub nom. LD III v. Mapleton City*, 466 P.3d 1076 (Utah 2020); *see also Baker v. Carlson*, 2018 UT 59, ¶ 16, 437 P.3d 333, 336 (quoting *Krejci v. City of Saratoga Springs*, 2013 UT 74, ¶ 32, 322 P.3d 662).

⁷ Utah Code § 10-9a-103(33).

⁸ Utah Code § 10-9a-103(31).

The last criteria of § 20A-7-602.8(2) requires us to determine if the Application was timely filed and if it complies with the requirements for a valid application. Under the Utah Election Code, an application for a referendum petition must be filed before 5 p.m. “within seven days after the day on which the local law was passed.”⁹ The decision being challenged was made by the Garden City Town Council on February 10, 2022, and the Application was filed six days later on February 16, 2022. Therefore, the Application was timely filed.

Applications for referenda petitions must contain the following to be valid under the Utah Election Code:

- (a) the name and residence address of at least five sponsors of the referendum petition;
- (b) a statement indicating that each of the sponsors is registered to vote in Utah;
- (c) a statement indicating whether persons gathering signatures for the petition may be paid for gathering signatures;
- (d) the signature of each of the sponsors, acknowledged by a notary public; and
- (e) (i) if the referendum challenges an ordinance or resolution, one copy of the law; or
(ii) if the referendum challenges a local law that is not an ordinance or resolution, a written description of the local law, including the result of the vote on the local law.¹⁰

We have determined that the Application contains the five required elements set forth above, although there appears to be some confusion as it relates to the last element which requires a copy of the resolution or ordinance. The Application indicates “one copy of the relevant ordinance accompanies this application.” However, no such copy was attached to the Application. Moreover, a review of the minutes of the February 10, 2022 meeting indicates that the Garden City Town Council made a decision to zone the property in question without referring to a specific ordinance. In other words, the Town Council clearly voted and approved zoning the property in the PUD zone, but it did not specifically indicate it was adopting an ordinance to do so. In situations like this, the Election Code indicates “if the referendum challenges a local law that is not an ordinance or resolution, a written description of the local law, including the result of the vote on the local law” must be contained in the Application. In this case, the Application does state that “the Garden City Town Council voted to approve a re-zone of several residential parcels and one commercial parcel into a PUD zone at the request of Sun Acquisitions.” This description meets the requirements of the Election Code for the fifth required element of an Application. Therefore, because the Application was timely filed and contained the information required by the Utah Election Code, the fourth and last criteria of § 20A-7-602.8(2) does not apply.

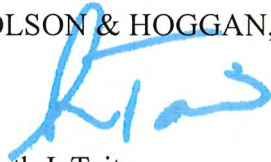
In summary, § 20A-7-602.8(2) of the Utah Election Code states that a land use law is legally referable to voters unless one of the four criteria described above applies. Because none of

⁹ Utah Code § 20A-7-601(5).

¹⁰ Utah Code § 20A-7-602(2).

the four criteria applies to the Application in this case, the proposed referendum in the Application is legally referable to voters.

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SJT/tf

cc: Garden City
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