

To: Mayor Chadwick, Councilman David Hershey, Councilman Kevan Wheelock,  
Councilwoman Jennifer Salmonsens, Councilman Kevin Nielsen

From: Citizens for Star

Subject: Questions the City Council might ask Willowbrook

April 17, 2023

Dear City Council,

Attached to this letter are our comments on the Proposed Development Agreement Submitted  
by Willowbrook

Respectfully,

The Citizens for Star organization

Rochelle Henson 5233 N. High Prairie Place, Star  
Richard Moore 25385 Desert Springs Circle, Star  
Cherie Shields 9947 W. Lanktree Gulch Rd., Star  
Lisa Priapi 10325 W. Lanktree Gulch Road, Star  
Anadeane Galbraith 9758 W. Lanktree Gulch Road, Star  
Sabrina Newberry 9909 W. Lanktree Gulch Rd., Star  
Sara Kalfas 4241 Cowboy Lane, Star  
Kyriacos Kalfas 4241 Cowboy Lane, Star  
Monte Smith 10257 W. Lanktree Gulch Road, Star

Recording requested by and  
when recorded return to:

Planning Director  
City of Star  
P.O. Box 130  
Star, ID 83669

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(Space Above for Recorder's Use)

## **DEVELOPMENT AGREEMENT Willowbrook Golf Community**

This Development Agreement ("Agreement") is entered into by and between the City of Star, a municipal corporation in the State of Idaho, hereinafter referred to as "City", and Willowbrook Development, Inc., an Idaho limited liability company and hereinafter referred to as "Owner".

WHEREAS, Owner owns parcels of land totaling approximately 726.6 acres in size, currently located within Ada County, zoned RR, and more particularly described in **Exhibit A** of Ordinance \_\_\_\_\_, which is attached hereto and incorporated by reference herein (the "Property");

*Incomplete. What Ordinance? Blank spot in form.*

WHEREAS, Owner requested that the Property be annexed into the City, be rezoned, and be developed in accordance with the applicable ordinances and regulations of the City and this Agreement.

*How is the application in compliance with the applicable regulations? The project does not comply with the Comprehensive plan specifically in the density. Also, golf courses in R zoning designations of the Municipal Code require a Conditional Use Permit.*

WHEREAS, the City, pursuant to Section 67-6511A, Idaho Code, and Star City Code at Title 8, Chapter 1, has the authority to enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for a specific purpose or use which is appropriate in the area, but for which all allowed uses for the requested zoning may not be appropriate;

### *Section 67-6511A, Idaho Code*

*(c) The governing board shall analyze proposed changes to zoning ordinances to ensure that they are not in conflict with the policies of the adopted comprehensive plan. If the request is found by the governing board to be in conflict with the adopted plan, or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision*

providing public services, including school districts, within the planning jurisdiction, the governing board may require the request to be submitted to the planning or planning and zoning commission or, in absence of a commission, the governing board may consider an amendment to the comprehensive plan pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code. After the plan has been amended, the zoning ordinance may then be considered for amendment pursuant to paragraph (b) of this subsection.

We think that this means that the City can stipulate amendments to the development plan where it is deficient in providing necessary infrastructure for city services such as police and fire protection or necessary schools. We have pointed out in a separate letter where these plans are lacking or non-existent.

The density of the residential uses and commercial developments are not appropriate for the area. The existing neighborhoods are rural residential.

WHEREAS, the City has authority to enter into development agreements to condition annexations and re-zones;

WHEREAS, Owner desires to be assured that it may proceed with allowing its Property to be rezoned and developed in accordance with this Agreement;

Disagree; the Proposed Agreement is Conceptual in nature, incomplete and in violation of City Municipal Code and the Comprehensive Plan. It may also be contrary to ACHD, ITD and CHD4 guidelines. Promise to adhere to ACHD guidelines is covered in paragraph 2.6 of this document.

WHEREAS, the parties agree to the zoning designation for the Property as described herein;

Disagree: the current Comprehensive Plan Map was approved on June 7, 2022. It designates the northern hillside and mesa area as LDR (maximum 1 unit per acre). This would be consistent with RR or R-1, with special transition overlays to protect the existing housing developments from encroachment by developers. R-2 runs counter to this guaranteed protection. How long after the Comprehensive Plan was amended will Developers be allowed to propose zoning that overwhelms existing housing and road infrastructure? Was there a City hearing wherein a special R-2 zoning was agreed to by the City Council, even though the Comprehensive Plan changed the land use to LDR (maximum 1 unit per acre)? Where is the documentation for this decision?

WHEREAS, a Request for Annexation and Zoning of the Property to R-2-DA was made as File No. \_\_\_\_\_, which applications were approved on \_\_\_\_\_, 2022; WHEREAS, the intent of this Agreement is to protect the rights of Owner's use and enjoyment of the Property while at the same time mitigating any adverse impacts of the development upon neighboring properties and the existing community and ensuring the Property is developed in a manner consistent with City Ordinances;

We think this is self-serving and untrue. To us, no mitigation of adverse impacts of the development are in evidence in the plan. It makes the Special Transition overlays meaningless. And there is no mitigation in evidence that the development will happen in a manner consistent with City Ordinances, the Comprehensive Plan and the adjustments for the Special Overlay areas.

There have been no mitigations proposed to mitigate adverse impacts of the development on neighboring properties. This is particularly concerning with the traffic impacts to the existing rural residential roadways. How are traffic impacts going to be mitigated? The TIS outlined several impacts that cannot be addressed in its current form with existing roadways in developed communities. This development is not consistent with City Ordinances and most importantly the Comprehensive Plan. The Findings for the Annexation and Zoning cannot be made.

THEREFORE, the City and Owner, for and in consideration of the mutual covenants, duties and obligations herein set forth, hereby agree as follows:

**Section 1. Legal Authority.** This Agreement is made pursuant to and in accordance with the provisions of Idaho Code Section 67-6511A and Star City Code, Title 8, Chapter 1. **Section 2. Development/Uses/Standards.**

**2.1 Development Acreage and Uses Permitted.** As to the Property described on **Exhibit A**, Owner is allowed to develop the Property as follows:

- Zoning Classification: The zoning classification of the Property shall be R-2DA.
- Strongly disagree. RR or R-1 are the only zoning classifications that are consistent with the LDR (max 1 unit per acre) density and would work with a like-kind development with the adjacent residences. ACHD requirements may make even R-1 difficult, given the Road and Traffic conditions revealed in the TIS.
- R1 or RR are consistent with the Comprehensive Plan Land Use of LDR (Max 1 unit per acre)
- The Owner shall comply with all city ordinances relating to the Property except as otherwise provided herein.

**2.2 Site Design.** The Property shall be developed in substantial conformance with the approved Conceptual Master Plan, a copy of which is attached hereto and incorporated by reference herein as **Exhibit B**.

This map is conceptual only, and not detailed enough for the Council to make an informed decision. Please refer to our letter and 36 inch x72 inch full-scale maps that were provided to the Council in shipping tubes. There are roads, school property and emergency water storage locations missing from this map. Viewing it at the 8 ½ x 11 scale is not informative.

Traffic impacts are also not addressed as well as the commercial designated parcel. What are the impacts of a commercial development to a rural residential neighborhood?

The conceptual plan does not give enough details to waive the required CUP process for the golf course.

- 2.3** Uses. The Property is hereby approved for a 175-acre golf course and associated clubhouse facilities. Any further residential or commercial uses on the Property may not proceed unless and until the Council approves a Preliminary Plat application and Planned Unit Development application and a modification of this Development Agreement to incorporate Council's conditions of approval on such subsequent applications and any updates to the Conceptual Master Plan. All future uses are subject to review requirements as stated within the Unified Development Code, unless specified within this Agreement.

The golf course is being touted as "open space" and is proposed as justification for the housing density for the rest of the development. But it is a separate commercial enterprise, not under the ownership of the HOA. It will be operated separately by Willowbrook or another buyer. In other developments, the open space is owned and maintained by the HOA, not used as "open space" and then converted to a commercial enterprise owned and operated by the developer.

How can you approve one section of this development without looking at the entire proposal and all of the impacts? Segmenting approval is dangerous and does not take into account the full impact the development has on the community and what mitigations are necessary.

What are the impacts from the golf course? What happens if the course fails in the future.? What protections do the neighbors and community have that this would not be converted to more homes or other uses not compatible with neighboring community?

- 2.4** Setbacks. The development shall comply with the standard setbacks for the applicable zone based on Unified Development Code in place at the time of preliminary plat approval unless exceptions are approved with a Planned Unit Development.

Not true. Refer to the full-size map and letter you each were provided. There are set-back violations of code in the smaller lots, which comprise 135.8 acres of the total. Special Transition Overlays are ignored. These areas should provide for greater setbacks, not less.

Development should comply with R1 not R2 zoning.

- 2.5** Proportionate Share Agreement for ITD Improvements. Owner agrees to participate in the costs of construction or improvements to the portions of the State

Highway System within the City of Star and/or City of Star Area of City Impact. Owner will pay the traffic mitigation fee determined by the Idaho Transportation Department (ITD) as follows: Owner will pay the City the determined amount for Residential per buildable lot within each phase prior to signature on the final plat for the applicable phase. Owner will pay the City the determined amount for Commercial prior to issuance of a building permit. The City will allocate the funds to roadway improvements in the vicinity of the project. Owner shall pay this amount (unless otherwise revised by ITD) directly to the City of Star. The City will maintain this contribution in a specific Development Contributions account, to be distributed to ITD when requested for use with a specific Idaho Transportation Improvement Plan (ITIP) project within the City of Star Area of City Impact or City Limits in accordance with the terms of the Intergovernmental Agreement between the Idaho Transportation Department and the City of Star dated April 22, 2020.

- 2.6 Compliance with ACHD Conditions.** Owner will comply with all site specific conditions imposed by Ada County Highway District (ACHD) based on ACHD's review of the Traffic Impact Study.

This is not possible, given that the traffic loading generated by the Conceptual Road system indicates that several existing Rural roads would need to be converted to 5 lane collector roads, which would necessitate road widening and encroachment into existing private property, most of which have driveways that back onto these collector roads.

This needs to be specifically proposed, outlined and reviewed prior to any approvals. There are too many impacts to the existing community and roadway system to "kick the can down the road". The impacts and mitigations need to be identified and addressed before any approvals.

- 2.7 Changes and Modifications.** No change in the use or restrictions specified in this Agreement shall be allowed or changed without modification of this Agreement pursuant to the requirements of the Star City Ordinances. In the event Owner changes or expands the use permitted by this Agreement or fails to comply with the restrictions without formal modification of this Agreement as allowed by the Star City Ordinances, Owner shall be in default of this Agreement.

What are the repercussions of Owner defaulting on the final agreement? It doesn't stipulate that here. This needs to be agreed in this document before approval is given.

- 2.8 Conditions, Bonding for Completion.** All of the conditions set forth herein shall be complied with or shall be bonded for completion by Owner before an Occupancy permit will be granted. Failure to comply with the Star City Ordinances or the terms of this Agreement shall result in a default of this Agreement by Owner. Owner may be allowed to bond for certain conditions at one hundred and fifty percent (150%) of the estimated cost of completion pursuant to Star City Ordinances.

It doesn't say what the penalties are, just that the Owner may take out a bond. Who "estimates" the cost of completion of the defaulted acreage?

**Section 3. Affidavit of Property Owner.** At the City's request, Owner shall provide an affidavit agreeing to submit the Property to this Agreement and to the provisions set forth in Idaho Code section 67-6511A and Star Zoning Ordinance and such affidavit is incorporated herein by reference.

**Section 4. Default.** The failure of Owner, its heirs or assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, to faithfully comply with any of the terms and conditions of this Agreement shall be deemed a default herein. This Agreement may be modified or terminated by the Star City Council as set forth in the Star City Ordinances. In the event this Agreement is modified, Owner shall comply with the amended terms. Failure to comply with the amended terms shall result in default. In the event the City Council, after compliance with the requirements of the Star City Ordinances, determines that this Agreement shall be terminated, the zoning of the Property or portion thereof that has not been developed in accordance with this Agreement shall revert its prior zoning designation.

Disagree. When a default happens, all undeveloped non-golf course property should revert to the zoning currently part of the Comprehensive Plan, which is R-1. However, if the development of the golf course is deemed to be in default by the City Council, the vacant land should not revert to any zoning as the land was already used to justify the density proposed as open space. Filling it up with houses would increase the density, road loading, and traffic beyond the ACHD loading limits.

All uses of such property, which are not consistent with the prior zoning designation, shall cease. A waiver by the City of Star for any default by Owner of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.

Again, the golf course should revert to R0, or open space, as it was used as open space to justify the housing density proposed.

**Section 5. Unenforceable Provisions.** If any term, provision, commitment or restriction of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of the instrument shall remain in full force and effect.

This is unclear. Let's look at an example. If Aerie Way and/or Wing Road become unbuildable for any reason, the developer, under the terms in this section, would still be able to complete the same number (1094) of houses, even though there would be no way for the roads to handle the increased traffic.

This is why we need mitigation measures before any approvals.

**Section 6. Assignment and Transfer.** After its execution, this Agreement shall be recorded in the office of the County Recorder at the expense of Owner. Each commitment and

restriction on the development subject to this Agreement, shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property and shall run with the land. This Agreement shall be binding on the City and Owner, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns: provided, however, that if all or any portion of the Property is divided, each owner of a legal lot shall only be responsible for duties and obligations associated with an owner's parcel and shall not be responsible for duties and obligations or defaults as to other parcels of lots within the Property. The new owners of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect only to such owner's lot or parcel.

There should be a section in the Development Agreement that delineates a path of resolution in the event of a Business Failure of the Golf Course. This section should state that the golf course should remain a golf course in perpetuity unless there is a business failure. In that event, the City of Star should be deeded the golf course for the express purpose of maintaining it as a public park. This is what lawyers do, and it should be agreed in this Development Agreement.

## **Section 7. General Matters.**

**7.1 Amendments.** Any material alteration or change to this Agreement shall be made only after complying with the notice and hearing provisions of Idaho Code Section 67- 6509, as required by Star City Code.

Mr. Nate Mitchell has stated in public meetings that anything impacted citizens wanted would have to be part of the Development Agreement, or it would be ignored. Therefore, we request the following to be added to this Agreement:

1. Country Rural Residential lot size of 1 acre minimum
2. No road widening of existing roads.
3. Road traffic loading to meet ACHD and ITD standards
4. Berm buffer protection on all new or modified entry/exit roads
5. Asphalt networked walkways, trails, pathways, bike paths linked with the planned paths of the Star Transportation and Pathways Committee.
6. The golf course ownership will be held in an irrevocable Trust, citing the City of Star as the beneficiary owner if the course experiences a business failure. The City will be instructed to not develop the property for additional housing, but will manage and maintain the golf course as a public park.
7. Use 100% treated wastewater for irrigation of the golf course.
8. Using treated sewage water to recharge the aquifer is expressly forbidden. No one wants to drink treated water that has been recently dumped into the source of our wells.

9. Willowbrook will remediate any effects on Hillsdale and Monument Ridge wells and water infrastructure damaged or incapacitated due to Willowbrook's development.

10. Willowbrook will not allow golf course parking to overflow into surrounding Hillsdale and Monument Ridge neighborhoods.

11. Hillsdale and Monument Ridge HOAs will get approval and sign-off on the CC&Rs of the new Golf Course Community.

12. All construction vehicles will access the planned development at the CanAda Rd./Purple Sage intersection to minimize the impact on the Hillsdale and Monument Ridge communities.

**7.2 Paragraph Headings.** This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

**7.3 Choice of Law.** This Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Agreement. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Ada County, Idaho.

**7.4 Notices.** Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below.

Star:	City of Star Attn: City Clerk P.O. Box 130 Star, ID 83669
Owner:	Willowbrook Development, Inc. Attn: Richard M. Phillips 210 Murray Street Garden City, ID 83714
and with copy to:	Deborah Nelson Givens Pursley LLP 601 W Bannock St Boise, ID 83702

**7.5 Effective Date.** This Agreement shall be effective after delivery to each of the parties hereto of a fully executed copy of this Agreement.

**7.6 Attorney Fees.** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney fees as determined by a court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

*[end of text; signatures follow]*

