

**Midway City Planning Commission Regular Meeting
May 17, 2017**

Notice is hereby given that the Midway City Planning Commission will hold their regular meeting at 7:00 p.m., May 17, 2017, at the Midway City Community Center
160 West Main Street, Midway, Utah

Attendance:

Jim Kohler – Co-Chairman
Natalie Streeter
Stu Waldrip
Jeff Nicholas
Nancy O'Toole
Bill Ream
Kevin Payne
Shauna Kohler

Staff:

Michael Henke – City Planner
Lindy Rodabough – Admin Assistant
Wes Johnson – City Engineer
Joshua Jewkes – City Attorney

Excused

Steve Nichols – Chairman

6:50 P.M. Work/Briefing Meeting

- City Council Liaison Report, no action will be taken and the public is welcome to attend.

7:00 P.M. Regular Meeting

Call to Order

- Welcome and Introductions; Opening Remarks or Invocation; Pledge of Allegiance
Opening Remarks or Invocation.
 - ❖ Invocation was given by Jeff Nicholas
 - ❖ Co-Chairman J. Kohler led the Pledge of Allegiance

ITEM: 1

Review and possibly approve the Planning Commission Meeting of April 19, 2017.

Motion: Commissioner O'Toole: I move that we accept the minutes as stated with no changes.

Seconded: Commissioner Streeter

Ayes: Commissioners Streeter, Waldrip, Nicholas, O'Toole and Ream

Nays: None

Motion: Passed

ITEM: 2

Diann Burgener is requesting Preliminary/Final approval of the Julian Subdivision. The proposal is a small-scale subdivision that is 0.8 acres in size and will contain two lots. The property is located at 125 North Center Street and is in the R-1-7 zone.

BACKGROUND:

This request is for preliminary/final approval of a small-scale subdivision on 0.8 of an acre and will contain two lots. The two lots proposed in the subdivision will obtain frontage along Center Street. The property is located in the R-1-7 zoning district and the lots do comply with the minimum requirements of frontage, width and acreage for a lot in this zone. The property has one dwelling on the property that will remain for the time being.

LAND USE SUMMARY:

- 0.8-acre parcel
- R-1-7 zoning
- Proposal contains two lots
- Center Street
- The lots will connect to the Midway Sanitation District sewer, Midway City's culinary water line, and Midway Irrigation Company's secondary water line

ANALYSIS:

Access – Access to both lots is from Center Street which is a collector road. Since Center Street is a collector road and traffic will only increase over time on this road, the City should consider requiring a turnaround or hammerhead for the driveway on the lot 2. Lot 1 currently does have a drive through driveway.

Water Connection – The lot will connect to the City's water line located under Center Street.

Sewer Connection – The lot will connect to Midway Sanitations District's line located in the area.

Secondary Water Connection – The lots will connect to Midway Irrigation Company’s secondary which is already servicing the property. A lateral will be created for both lots.

Center Street Bike Lane – The master trail plan shows an attached 8’ attached asphalt bike trail along Center Street. This will need to be addressed in the construction drawings for the subdivision.

Potential duplex – Both lots meet the current code requirements for the R-1-9 zone for single-family dwellings but only lot 1 meets the requirements for a duplex to be constructed. If a future lot owner would like to construct a duplex, and the code still allows duplexes, then the required water must be turned over to the City for the extra dwelling unit.

WATER BOARD RECOMMENDATION:

The Water Board has recommended that 1.3 acre feet are tendered to the City before the recording of the subdivision plat. The developer was credited 1.3-acre feet for the existing dwelling and landscaping for one lot. If a duplex is proposed on lot 1, and the code still allows duplexes, then the required water must be turned over to the City for the extra dwelling unit. Secondary water meters are required for both lots.

POSSIBLE FINDINGS:

- The proposed lot meets the minimum requirements for the R-1-7 zoning district
- The proposal does meet the intent of the General Plan for the R-1-7 zoning district
- The subdivision will construct an attached 8’ attached asphalt bike trail to help us complete the trail in the area which will make bikers safer by allowing them a place to walk off the road

ALTERNATIVE ACTIONS:

1. Recommendation for Approval (conditional). This action can be taken if the Planning Commission feels that conditions placed on the approval can resolve any outstanding issues.
 - a. Accept staff report
 - b. List accepted findings
 - c. Place condition(s)
2. Continuance. This action can be taken if the Planning Commission feels that there are unresolved issues.
 - Accept staff report
 - a. List accepted findings

- b. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - c. Date when the item will be heard again
3. Recommendation for Denial. This action can be taken if the Planning Commission feels that the request does not meet the intent of the ordinance.
- a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

POSSIBLE CONDITIONS:

None recommended.

Commissioner O'Toole: Off Center Street, do we regulate whether they have a driveway that goes out into the road or do they have to have something so they can just pull out?

Planner Henke: Usually what we have done is require a hammer head turn around when the frontage is on a collector road, and this is classified as a collector. So, staff would recommend that we have a turnaround or some type of drive through or a hammer head turn around so nobody has to pull out onto the road.

Commissioner Streeter: Do we have any driveway placement limitations, because there is a driveway across the street?

Planner Henke: We don't have anything in our construction standards regarding driveways across the street, we do if it's on a corner but not in the center of the block.

Commission Waldrip: Is there anywhere else in the city where a sidewalk ties into a trail where we have that sort of mixed use so to speak?

City Engineer; Wes Johnson: It's my opinion that long term in the future as we obtain a bike lane to the north it would be wise to continue that bike lane down through this area. However, today where we don't have a trail to the north, it's not on the Master Plan. It's my opinion that the sidewalk would suffice as a pedestrian pathway for today, but potentially as the city does some sort of a street wide bike trail at that point we would install a trail on this frontage.

Commissioner Streeter: Do we have sufficient room for that, or do we need to ask the property owner for an easement?

Planner Henke: It appears that we do have sufficient room. This is in the original platted area of Midway so really, we'd own to the back of the sidewalk. In between the sidewalk and the paved area, I measured about eight (8) feet.

City Engineer; Wes Johnson: The ultimate plan is that would be an attached bike lane. It would simply abut to the road way. We've talked in the trail committee; would that simply be a stripe that separates it or would it be a rumble strip of some sort that separates the pedestrian from vehicle use? In the long term the sidewalk is not going to be adequate, but for today until we come up with a better alternative to the north.

Commissioner J. Kohler: Are there any thoughts of upgrading the sidewalk curb to match the sidewalk to the north?

City Engineer; Wes Johnson: I ultimately don't see curb and gutter on Center Street. I just don't see the value to the dollar of installing curb on there. Curb requires a storm water collection system which we don't have.

**Co-Chairman J. Kohler opened the meeting to public hearing
There was none, public comment was closed**

Motion: Commissioner Streeter: I move that we recommend approval of the Julian Subdivision located at 125 North Center Street. I move that we accept the staff report include the finding that it meets the minimum requirements for the R-1-7 zoning district and also meets the General Plan for the R-1-7 zoning district. I would move that we do not require them to build the asphalt trail now, that we simply accept the fact that we have enough room in the easement for the future

Seconded: Commissioner O'Toole

Co-Chairman J. Kohler: Any discussion on the motion?

There was none

Ayes: Commissioners Streeter, Waldrip, Nicholas, O'Toole and Ream

Nays: None

Motion: Passed

ITEM: 3

Berg Engineering, agent for Probst Higley Developers LLC, is requesting Final Approval for Phase 2 and Phase 3 of the Scotch Fields PUD a large-scale planned unit development. The proposal is for 24 units located on 8.12 acres. The proposal is located west of Valais and is in the RA-1-43 zone.

BACKGROUND:

Probst Enterprises and Dennis Higley are proposing final approval of phases II and III of Scotch Fields PUD (throughout this report phase II and phase III are referred to because the application includes both phases as approved in the revised master plan but the applicant has combined them together under the title of phase II). Phase II and III is 16.31 acres and contains 24 units. The property will be developed as a Planned Unit Development (PUD) and will be similar to the Valais PUD to the east. The property will contain 8.12 acres of open space. This phase will contain all public roads except for the cul-de-sac on the east side of Canyon View Road. There will also be a mix of public and private trails throughout phases II and III. There are sensitive lands in this phase that contain wetlands, pot rock outcroppings, and a stream/ditch corridor.

LAND USE SUMMARY:

- 16.31 acres
- RA-1-43 zoning

- Proposal contains 24 building pads
- Project is a Planned Unit Development
- Public roads will be the responsibility of the City
- Private roads will be the responsibility of the HOA
- HOA will be formed and all future phases will also become part of this same organization and subject to the same CCRs
- The lots will connect to the Midway Sanitation District sewer and to the City's water line.
- 8' paved public trail is planned along Canyon View Road and 1300 North to Pine Canyon and will be built by the developer.
- Sensitive land of the property includes wetlands, stream corridor, and pot rock outcroppings

ANALYSIS:

Open Space –Below is the open space table for all four phases:

Phase	Units	Total Area	Open Space	Total project Open Space
I	1-17	18.10 acres	11.85 acres	69.42%
II	18-41	16.31 acres	8.12 acres	58.67%
III	42-51	4.09 acres	1.65 acres	56.18%
IV	52-89	<u>16.74 acres</u>	<u>5.88 acres</u>	<u>50.00%</u>
Total		55.01 acres	27.50 acres	50.00%

As shown in the chart above, the open space requirements are met for each phase and as a whole for the entire subdivision.

Access/roads – Phase II will have two access points and will comply with the requirements of the code. Both roads in this phase are shown on the City's Master Road Plan and therefore will be public roads maintained by the City. The right-of-way will be 56' with 30' of pavement. On the areas with sidewalks there will be a 5' park strip and the width of the sidewalk will also be 5'.

Water – the developers met with the Water Board on June 1, 2015 and received a recommendation regarding water requirements. The recommended water requirement for

phase II and III is 36.54 acre feet. This calculation will supply the 24 culinary connections and the irrigated areas of phases II and III.

Unit setbacks - All units along public roads must have a 30' setback from the edge of the right-of-way. All units will also have a 30' setback from all peripheral property lines of the PUD. Unit setbacks from private roads is a minimum of 25'.

Sensitive lands – The property does contain some wetlands that will not be disturbed through the development process. The wetlands will become part of the open space for the development and will be preserved. There also is a stream/ditch that runs through the property. It will be impacted by the roads crossing the development because of the culverts that will cover the ditch. Midway Irrigation Company owns an easement to the ditch area and will need to approve modifications made to the current ditch.

Midway Sanitation District - the developers have met with the Sewer Board to determine the requirements regarding sewer connection to Midway Sanitation District's lines.

Geotechnical report - Staff has received two geotechnical reports for the property.

Trail alignment - The developer is required to build a public trail through phase II that will connect the public trail from phase I to Pine Canyon Road. This requirement is part of the annexation agreement. Normally, petitioners for annexations are required to pay a park annexation fee but for the Canyon View Annexation the City Council required the developer to build the public trail that was not on the City's Master Trail Plan.

Density determination – The developer is has received approval for 89 units in the development, though the maximum allowed density would have been 96 units. For a PUD, a developer receives 1.5 units for every acre based on gross acreage (no subtraction of property in roads). The total for this calculation is 82.52 units. They have also asked for a density bonus based on using architectural elements described in the code. The maximum density that could be received is .25 of a unit for every acre of ground which equals 13.75 units. The developer has asked for bonus of 6.48 units based on architecture. The Visual and Architectural Committee has reviewed the proposal and recommends the developer receive the density bonus for a total of 89 units in the PUD. They did recommend some conditions regarding driveway widths and landscaping that will be administered by staff through the building permit process.

Height of structures – The height of all structures in the development will comply with Section 16.13.10 of the City Code. Some fill has been deposited on some localized areas of the property but height is measured from natural grade and not from the elevation of the fill that has been deposited. The applicant has submitted contour and elevation information of the property with the preliminary and final plan submittals. All future elevation certificates will need to be based on that information and not on existing grade on site.

Midway Irrigation Company easement – Midway irrigation Company would like an easement placed on the plat for the ditch that runs through the property from the Brick Kiln

Spring and the Milk House Spring. Staff will continue to work with Midway Irrigation Company and the applicants so that this easement will be placed on the plat.

MIDWAY WATER ADVISORY BOARD RECOMMENDATION:

The recommended water requirement for phases II and III is 36.54 acre feet. This calculation will supply the 24 culinary connections and the irrigated areas of phases II and III.

PROPOSED FINDINGS:

- The proposal appears to meet the requirements of the code for PUDs.
- The proposal does meet the vision of the area as described in the General Plan for the RA-1-43 zone.
- A public Trail will be built by the developer that will be an amenity to the entire community.

ALTERNATIVE ACTIONS:

4. Recommendation of Approval (conditional). This action can be taken if the Planning Commission feels the application meets the requirements of the code and the approved master plan.
 - a. Accept staff report
 - b. List accepted findings
 - c. Place condition(s) if needed
5. Continuance. This action can be taken if the Planning Commission feels that there are unresolved issues.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again
6. Recommendation of Denial. This action can be taken if the Planning Commission feels that the request does not meet the intent of the ordinance.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

Commissioner Payne: Which roads are public?

Planner Henke: The old Canyon View Road and then the new 1300 North Road are public.

Commissioner Waldrip: What about the continuation of the Canyon View Road? The

Planner Henke: The public road ended where it almost touched Valais. It is going to be up to the city to decide if they are going to take on that road or not as it continues north. That road does access other properties. There is the Wilson ten (10) acre property just to the north and then the Zenger property to the north of that. This is a private road that ends up being probably a shared agreement between those property owners to maintain it or it becomes a public road if the city decides to take on that road which then we would maintain. It hasn't been decided yet if we'll extend public maintenance beyond this intersection. That is for future debate when future phases come before us.

Commissioner Waldrip: The portion of the road heading north from the bulb remain a road base road? Do you know if it is going to be improved?

Planner Henke: As of right now it would not be improved beyond this intersection. There would be a connector to the existing gravel road that's up here. There has got to be connectivity still.

Paul Berg: We will not be cutting off access to those properties. Eventually it will be a paved road. We are waiting for the city to decide whether they are going to take that on or if that will be a private section. We will maintain access to those properties.

Commissioner Nicholas: I back up to phase 1. The retention pond that is required that is built there now. What are the plans for getting that finished, landscaped and so forth so the residents in Valais that back up to that aren't just looking out at a gravel place with weeds starting to grow out of it?

Paul Berg: They've approved plans for Phase 1 which calls for the whole pond to be landscaped down into the bottom and around it. I'm not sure what the schedule is for that, but before they close out their bonding with the city that will be taken care of. It will happen when phase 1 gets closed out which will likely be this summer.

Paul Berg: The only thing that I would note is that this is complying with the Master Plan you have already approved. Phase 2 is just a continuation of that plan.

Commissioner Ream: The references of Midway Irrigation and an easement for the ditch area. Any motion that is made, do we need to include that?

Planner Henke: They have a prescriptive easement across the property for the existing ditch. To my understanding, I don't think that there is any controversy about that.

Paul Berg: We are fine with doing it in phase 2 as well.

Co-Chairman J. Kohler asked if there were any further questions

There was none

Co-Chairman J. Kohler asked for a motion

Motion: Commissioner O'Toole: I make a motion that we recommend to the City Council final approval of phase 2 and phase 3 of the Scotch Fields PUD. It's located on 16.31 acres and the property is located west of Valais. We accept the staff findings and the proposed findings. We also want to include the Midway Irrigation Company

easement, that Midway Irrigation Company would like an easement placed on the plat for the ditch that runs through their property from Brick Kiln Spring and the Milk House Spring and that will be done with phase 2.

Seconded: Commissioner Waldrip

Co-Chairman J. Kohler asked if there was any discussion on the motion-there was none

Ayes: Commissioners Streeter, Waldrip, Nicholas, O'Toole and Ream

Nays: None

Motion: Passed

ITEM: 4

Berg Engineering, agent for Kent Buie, is requesting Preliminary approval of Saint-Prex Estates. The proposal is a large-scale subdivision that is 11.54 acres in size and will contain 16 lots. The property is located at 800 West Swiss Alpine Road and is in the R-1-22 zone.

BACKGROUND:

This request is for preliminary approval of a large-scale subdivision on 11.54 acres and will contain 16 lots. The 16 lots proposed in the subdivision will obtain frontage along new roads built within the subdivision. The property is in the R-1-22 zones and all the lots in the subdivision do comply with the requirements of the code. The code requires 15% open space and the proposal currently has 15.16% open space at 1.75 acres. The density of lots in the proposal is 1.4 units per acre. The City code promotes that open space is located along collector roads wherever possible and the applicant has complied with this request (Swiss Alpine is not categorized as a collector road but it does act as a collector for this area). The property has historically and is currently being cultivated.

LAND USE SUMMARY:

- 11.54-acre parcel
- R-1-22 zoning
- Proposal contains 16 lots
- Developer is providing 1.75 acres of open space (115%).
- Access from Swiss Alpine Road
- The lots will connect to the Midway Sanitation District sewer, Midway City's culinary water line, and Midway Irrigation Company's secondary water line

ANALYSIS:

Access – Access will be from Swiss Alpine Road. A second access is required as part of the City's adopted standards specification and drawings. Currently, there are hundreds of units that only have one access which is Swiss Alpine Road. This development will add 16 more lots on a large cul-de-sac. Staff feels this is not sound planning and it is a safety issue to extend the road system in this situation. The City's Master Transportation Plan does plan for Bigler Lane to connect to Olympic Way in the future but there is no time table for when this connection will be made. The connecting of these two roads will create a second access for all the lots located in the City that access on Swiss Alpine Road. The developer could build another access to the proposal along Kohler Lane but that connection has proved to be problematic for the developer to acquire the necessary access.

Geotechnical Study – A Geotechnical Study has not yet been submitted to the City.

Sensitive lands – No sensitive lands have been identified on the property.

Water Connection – The lots will connect to water lines that will be built by the developer and connect to the City's water lines under Kohler Lane.

Sewer Connection – The lot will connect to Midway Sanitations District's sewer lines located in the area.

Secondary Water Connection – The lots will connect to Midway Irrigation Company's secondary which is already servicing the property. Laterals will be created for all 27 lots. Secondary water meters are required for each lateral. The irrigation company has a major 36" diameter water line that crosses along the eastern boundary of the subdivision. They are asking that the easement area of the line is part of the open space not included in any lots. This is based on the reasoning that if the line is in back yards then the lot owners will landscape and make improvements that might damage the line and fixing this size of a line will be problematic if located in a back yard.

Trails – The developer plans to construct a public trail along the north and west sides of the development. This will help pedestrians, especially school children, to travel more safely along Swiss Alpine Road.

Open Space – The Land Use Code requires a minimum of 15% open space for the development and the proposal currently does comply with that requirement.

WATER BOARD RECOMMENDATION:

The Water Board has recommended that 30.55-acre feet are tendered to the City before the recording of the plat. 13 of the lots require 1.3-acre feet each for a total of 16.9 acre feet. The three lots that are greater than half an acre in size require 2.8 acre feet each for a total of 8.4-acre feet. The 1.75 acres of open space requires 5.25-acre feet. The Water Board also recommended secondary water meters are installed on each lot.

POSSIBLE FINDINGS:

- The proposal does meet the intent of the General Plan for the R-1-22 zone
- The proposal does comply with the land use requirements of the R-1-22 zone
- The development does not have two points of access
- The trails crossing the property will benefit the community by creating a walking separated from Swiss Alpine Road which will help with pedestrian safety

ALTERNATIVE ACTIONS:

7. Recommendation of Approval (conditional). This action can be taken if the Planning Commission feels that conditions placed on the approval can resolve any outstanding issues.
 - a. Accept staff report
 - b. List accepted findings
 - c. Place condition(s)

8. Continuance. This action can be taken if the Planning Commission feels that there are unresolved issues.

Accept staff report

 - a. List accepted findings
 - b. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - c. Date when the item will be heard again

9. Recommendation of Denial. This action can be taken if the Planning Commission feels that the request does not meet the intent of the ordinance.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

POSSIBLE CONDITION:

1. A second point of access is required before preliminary approval is recommended

City Engineer; Wes Johnson: The way that we define two (2) points of access is we put an obstacle at each intersection. If you put an obstacle at either of Saint-Prex intersections whether it be an accident or whatever you have stopped transportation movement. It's my opinion that this proposed development does not have two (2) points of access without an access to Bigler Lane or an access down to Homestead Drive.

Planner Henke: Also, the annexation petition that I mentioned earlier during our liaison report, that has the same issue. Staff is proposing as a condition a second point of access be acquired and part of the plan before this moves before the City Council.

Commissioner O'Toole: Paul, this came to us last month. We talked about this needing a second egress and that we needed the adjustment on the corner and to take out that "S" curve? I'm surprised that the items that we discussed last month are not on this plan since we discussed these issues just last month.

Paul Berg: The trail is set so that the curve can be redesigned. This is the ninth (9th) concept version of this development. The property owner that is selling the property to my client is restricting access to Kohler Lane, they do not want it to be a road.

Commissioner O'Toole: The engineering report also said that this development would widen, redo or do some improvements to the Swiss Alpine Road.

Paul Berg: We've had discussions with staff and we are still deciding, do we pay for half of the width and the city does the other half? Do we do a ribbon curb do we do a full curb and gutter?

Commissioner O'Toole: You still have the problem with another egress.

City Engineer; Wes Johnson: There are some other issues that we need to resolve, but they are a moot point if this is denied because of access. We can discuss the other concerns now or we can say let's address the second egress and if the commission feels that it does not meet the requirements of the code the others are a moot point.

Paul Berg: We have made attempts to gain a second access and we feel like as per city code that we comply with the two (2) points of access to our subdivision. We've exhausted what we feel like what we can do.

Commissioner Streeter: If you are in a position to where you can talk to the land owner that controls the access of Kohler Lane, I think that you've got to apply a fair amount of pressure to them, because as I look at this it's kind of a useless piece of ground without that second access.

Paul Berg: We have been talking to them. In the real estate purchase contract, it prohibits the use of Kohler Lane. We sought another option going through Big M and they chose not to sell it.

Commissioner Ream: Who owns Kohler Lane?

City Engineer; Wes Johnson: It is a little bit unknown, but it is the opinion of the applicant that the owner of Kohler Lane is also the owner of the property they are purchasing.

Commissioner Ream: Is Kohler Lane a public road or not?

City Engineer; Wes Johnson: In my opinion it is most likely public. It's my opinion that our decision is that you connect to Kohler Lane and it will be public when you're done. Why exhaust the funds of the city's money? It's just a bonus that the owner of this land claims to be the owner of Kohler Lane too. It's my opinion if this development is successful that will be a public road end of discussion.

Paul Berg: The county records do not show that the City owns that property. It shows

that somebody else does.

City Engineer; Wes Johnson: My point is whether it is private or public today, if there is a development there, tomorrow it will be public.

Commissioner Ream: Are you saying that if they build this, that is automatically a public road?

Planner Henke: It would be part of their development plan so in the process they would need to deed that property to the City, so yes it would be public.

Paul Berg: The people who are selling to Mr. Buie the ground for this 16-lot development have said that you will not use Kohler Lane or develop Kohler Lane as an access for your property. Now we have the City saying that we've got to have another access, and I understand why. The City is pointing us to use Kohler Lane, yet by real estate contract the person who owns the property and that road says you're not using it.

Commissioner S. Kohler: Paul, who's problem is this?

Commissioners: The developer.

Commissioner S. Kohler: I have some knowledge on Swiss Alpine Road. My husband's parents once lived on that road in that very last far west trailer in that trailer court. That road is very narrow and I remember driving up there many a times. This is going to put 16 more homes there and a potential of six (6) more homes across the street and that's a big problem for that one road. So, my question is, who's problem is this then? Why would this land be purchased for this purpose knowing that there needs to be two (2) points of access?

Paul Berg: We feel like with these two (2) points on a City road we meet your code. The other thing is Kohler Lane does not appear on the City Master Plan, if it was on the Master Plan we wouldn't be having this argument. We sought to build a road there, but the person who owns it said no. There is nothing in our mind for the City to back that up because it is not on the Master Plan.

Commissioner S. Kohler: Is there a reason why the answer is no for the use of Kohler Lane?

Paul Berg: From what I understand and I have not spoken to them they have plans for something of a personal use on what's left of their property and I think that they don't want to see a public street come through that area.

Co-Chairman J. Kohler: There are two (2) homes on that lower stretch of Kohler Lane. How do they have access to that?

Paul Berg: Maybe they have a prescriptive easement, maybe they have agreements with the property owner. I'm just saying that the underlying property owner is saying you cannot build a road here, they won't dedicate the property to the City, and they won't allow us to purchase it.

Commissioner Streeter: If you give the irrigation company an easement for their line, what does that do for your square footage? Are you still within square footage requirements?

Paul Berg: If we give them an easement we would be fine, if we now make that common area similar to over here and take it out of the lots these lots wouldn't work. So, the option would be to take this open space and flip it to that side and move everything to the west. We think that is a detriment not only to this plan but that it is a benefit to the surrounding community gets by having the open space near the road.

Commissioner Streeter: It also doesn't work. There is no point in asking the developer

to landscape common area so that someone can dig it up when there is a problem with the pipe.

Paul Berg: We like this because it gives a buffer to the neighbors, it keeps the west bench ditch even though it's abandoned somewhat open, because it is still used for storm water that comes off Swiss Alpine Road so it allows us to maintain that. It puts this trail where more people can use it. If we slide lots to there, the trail is gone the open space landscaping is gone. One proposal that we discussed in the Development Review Committee yesterday was leave half of this open space and put the other half over here. In subdivisions, you have a requirement that says open space has to be at least 50 feet in width. That would make us have open areas, but not open space as you define it on either side, so that puts us out of compliance with the ordinance although it helps solve both of the problems. We didn't find that as a very good solution from a code standpoint, but it would put open areas on both sides. I think the best solution for us is to dedicate a 30-foot easement, the rear setbacks for homes are 30 feet anyway.

Applicant, Kent Buie: I think that we have a little bit of difference of opinion with respect to the interpretation of the code. We view this as providing the access that is required within the code. If you read the code it's brief with respect to this particular issue, it is only a few lines. It basically just states that if a cul-de-sac road exceeds the permitted length which is 500 feet you are required to provide two (2) access points. It's speaking specifically that is the property that is the subject here. It is not speaking too much outside the scope of the subdivision where do you access onto the next what is termed development road which would be Swiss Alpine Road. Once we learned that this is a serious issue with respect of gaining a different type of secondary access. We've tried everything that we could do to try to accomplish that. I think that in the end a lot is being brought together on this little 11 acres to solve historic problems. Other bodies, people who have sat in your chairs have gone through the process for decades and have approved quite a few units up the road with the idea it is what it is, it's a dead-end road it doesn't go anywhere. These projects have complied with the ordinance at the time which I think likely faced this similar issue that describes secondary access and if you go up the road you will see the same lay-out played out over and over again. I don't disagree with the city engineer that a secondary access for this Alpenhof area needs to be brought into the scheme of things. It's good public safety, it's good policy and it's what should happen here. The question I have is does these 11 acres have to bare the entire burden of what historically has been an oversight? I will say this though. We're not just throwing this at the community without it having some inherent benefits to the question of bringing in a secondary access for the Alpenhof region. We are probably the other development that's proposing bringing in another road beyond and a part of Swiss Alpine Road as is currently designed to ultimately conclude with a secondary access. We just can't bring the final leg of that into reality, because we don't control those properties that takes us from where we are on the east to Homestead road. What we are doing is we are bringing a parallel road to Swiss Alpine Road and we are advancing the idea of a secondary access by putting in this road and even further agreeing to do a stub road to that point. This represents a development and improvement or a construction of approximately 800 acres and 50 linear feet of secondary access ultimately for the benefit beyond our development.

Commissioner Waldrip: Your design doesn't show that stub road.

Applicant, Kent Buie: It doesn't because as Paul mentioned this was submitted almost a month ago, and we have been refining our plan. In meeting with staff and the city engineer we've agreed to stub that road in.

Commissioner Waldrip: Doesn't your stub road run head long right into the house that is located along Homestead Drive?

Applicant; Kent Buie: Yes, it does. In talking to one of the owners this home might be removed from that property.

Commissioner Streeter: We have to look at this as it is. We've gotten to the point where safety is an issue. Sunburst Ranch Master Plan was approved years ago. We've already seen fire come in and flatten this area. We are looking at this from a very practical and safety stand point. If we get another fire that comes in on that area there are a lot of people that will have to get out of there and get out of there in a hurry. If we approve this we are just adding cars to a very narrow road. You are in a great spot because you are the buyer. If we are your excuse we are glad to be it, but we have to look at the larger community here and keep the safety of the larger community in mind when we look at your project.

Applicant; Kent Buie: I can't argue with that. Public safety is extremely important, it is an ultimate decision that a body like this has to deal with. If you can't keep your population safe then what's the point? The problem that I see with the position that we are in right now is that there is no global solution at the moment, there is no one silver bullet that is going to solve this problem. Often times these types of solution are created incrementally. They don't all come down in one fell swoop. We actually are advancing what I'd like to call the solution, we don't get this to the finish line, but we take it most of the way. If we can't do as you suggest which has actually been done and going back to the family and trying to compel them to try to do something they don't want to do. If we are not successful and they are not willing to cooperate, then we are in a good position in one sense, because we can walk away from this. But when we walk away we take this plan with us and 800 feet of improved access. It still sits as it is with all the risk you just pointed out still before you with no improvement what so ever. Are we going to be better off with a substantial improvement resolving part of the problem or do we kick this out and decide we'll just wait for that silver bullet to show up?

Commissioner Nicholas: Without a complete solution, you've added 16 more families to the problem, is the way I see it.

Applicant; Kent Buie: That's probably a tradeoff for taking it to the distance that it has.

City Engineer; Wes Johnson: I don't think transportation engineering wise is wise to stub a road out here with the potential to connect to Homestead Drive, because the land owner of this lane is also the land owner of this which could very likely in the future come and say this isn't my dream location I thought it would be. I'm going to develop this and now I'm wanting to put a road here. Now we all know where the accidents on the road way happen, they're at the intersections. Now we end up with three (3) intersections on Homestead Drive where we could end up with only two (2). That would be my concern, I don't think that it would be wise to say let's stub right here and plan for the future.

Applicant; Kent Buie: From our point of view we are not that concerned of where the stub may be. If the stub needs to be down more towards Kohler Lane to preserve that

option, so be it.

Commissioner Ream: If we are concerned about an accident happening and being able to get out. If the accident happened further up Swiss Alpine Road after this development. They still can't get out, right?

Planner Henke: That's why the city shows on the Master Plan Bigler Lane being all the way through. That's high enough up the canyon that's two (2) points of access for many more people. The long-term solution is Bigler Lane.

Applicant; Kent Buie: I think that if we are able to pursue what we presented providing a stub wherever the city engineer would like us to put it and also working with others there's a possibility that ultimately the city could end up with more than two (2) secondary accesses. You can ultimately find a way to get multiple secondary access into this area.

Co-Chairman J. Kohler thanked the applicant and asked the commissioners if they had any further questions for the applicant. They did not.

Commissioner Ream: Are there building permits that are being issued further up the road?

Planner Henke: Any lot that has been recorded we have to issue those building permits since we've approved those lots. So, yes there are building permits that would be issued not only by the city, but also by the county for the lots up in Swiss Mountain Estates.

Commissioner Waldrip: It seems to me just looking at the overall situation if Bigler Lane could go further up and join Swiss Mountain Estates Road or whatever that is, way up there on the west that would be the optimum solution.

City Engineer; Wes Johnson: In the Master Plan of phase 3 of Sunburst Ranch there is a stub road that is ultimately planned to go north with the ultimate goal of tying into Bigler Lane.

Commissioner Streeter: Michael, if they put a stub road SE cul-de-sac; one (1) what does that do for our lot size are we still within the zoning and two (2) what does that do for our cul-de-sac- calculation, does that put us over 500 feet?

Planner Henke: It depends on how you interpret the code. Right now, staff is saying the entire subdivision is over 500 feet on cul-de-sac. So that would be an extension of what is already existing. You could look at it from the perspective that the proposed road could continue down and be a part of the solution for a second access and so it really depends on how you look at it. Regarding the lot size. This is a half-acre zone, if we require 15% for open space these lots can reduce in size by 15%. Twenty-two thousand square feet is roughly a half-acre you can see some of these are less than that. So, 18,513 is really the minimum, if you only have 15% open space. Now if the open space was to be increased the lots themselves could decrease in size. That is one way you can make up the difference by decreasing the lot size and that would leave some room for the road to connect and still meet the code requirements. City Council can approve a road that is over 500 feet, that's just the regulation in the code. There is some room for movement there if warranted and City Council agrees with that.

Commissioner J. Kohler: There was discussion last month about potential improvements along Swiss Alpine Road in conjunction with this. Was anything done

along that line?

Planner Henke: We have had discussions with the developer. We've required half the width of the road to be redeveloped possibly the city would partner and redevelop the other half of the road, but there would also need to be drainage and pedestrian improvements.

Commissioner Waldrip: It's my view that we are not far enough along with the unknowns for this project to feel confident with moving it forward. I'd be really concerned that the City Council would have a negative view of any of the proposals that we've talked about here tonight. It pains me to say that, because I hate to see a development process stifled by what turns out to be at least an arguably vague interpretation of the code and the requirement of the secondary access. When the code provision requires two (2) access points for a development like this, the reason is to provide safety for the community not just for the particular development that we are talking about. I think that you have to look at the bigger picture and the reason that there is a provision in the code for two (2) access points, to interpret it so it only applies to this subdivision is I think look at it too narrowly. I just feel like we need a little bit more history and I also think that there is a possibility, if we turn down the proposed subdivision plan it may just be that the seller may already be counting his shekles and maybe could be persuaded to change his and her minds about whether or not that road could be dedicated for public use. We may give Mr. Buie leverage that he needs to accomplish that. Although I know that's a presumption on my part. I think from an overall land use and planning point of view it is too early in the process to sort of plug this in with the hope that it will fit and workout somehow in the future.

Commissioner Streeter: I agree with Stu and one of the unknowns that we do have an annexation in the pipeline and that annexation may help you, but may is a terrible word. You are in a spot right now where it is not yours yet, you haven't bought it. I think if we approve this with all sorts of nebulous ideas floating out in the ether we're not doing you any favors. I think you'd do a lot better to see what happens in a very concrete way and then if we had some answers we'd all feel a lot more comfortable with this.

Commissioner Ream: I am deeply troubled by the fact that we're rejecting this when we are allowing much bigger development much further up the hill. They're in much greater predicament if there is a closure to the road and that is happening now. This is not going to add that much more risk, it's much closer to Homestead so the problem would have to occur within a few hundred yards. Whereas anything further up is going to imperil a lot more people and we're allowing it to happen at this point. So, I'm troubled by that and I don't think that we should even consider an annexation, because what's the point? The condition of the annexation is they provide a second access. Other than that, I would not support any annexation.

Co-Chairman J. Kohler asked if there were any further questions or comments. There was none.

Co-Chairman J. Kohler asked for a motion

Motion: Commissioner O'Toole: I recommend to the City Council of denial. The reason is specifically they need a second point of access is required before preliminary

approval is recommended. I accept the staff report and engineering report.

Seconded: Commissioner Streeter

Co-Chairman J. Kohler: Asked if there were any discussion on the motion

Commissioner Waldrip: I think Bill (Commissioner Ream) makes a good point. That's why it's painful to me to think about turning this application away. We can't control what happens with the properties up stream, if we could I would surely want to do that. We are stuck with phase 2 and phase 3, aren't we?

Planner Henke: That is correct they are vested under their application in the early 90's. There is a possibility of continuing the item with a condition that they come back once they find a second access. The other options are recommending approval, recommend denial to the City Council or you could continue the item until items are resolved and you hear the item again in the future.

Paul Berg: We would rather you continue it and we will take the minutes from this meeting and go and talk to the surrounding property owners.

Commissioner O'Toole: I'll leave the motion at denial.

Co-Chairman J. Kohler: Asked if there were any discussion on the motion

Ayes: Commissioners Streeter, O'Toole

Nays: Waldrip, Nicholas and Ream

Motion: Did not pass

City Engineer; Wes Johnson: I'd like to give the applicant some direction regarding a new intersection. It would be best to have this new intersection placed as far south as possible. The current land owner needs to be aware that we have a 300-foot requirement between intersections and with this being a UDOT road if the intersection does not come off Kohler Lane and it goes in more to the north then they will lose the access down to Homestead Drive. If the applicant would be aware of that.

Commissioner Waldrip: I move that we continue this matter indefinitely subject to being put back on the calendar by the applicant at such time as the applicant feels that's appropriate.

Seconded: Commissioner Ream

Commissioner J. Kohler: Would you like to list the reasons for the continuance in the motion?

Commissioner Waldrip: I will amend my motion with the permission of the second. The amendment would be that the matter be continued and that we note as a part of the motion the reason for the continuance is we would like to see an access point that involves Kohler Lane as opposed to something further to the north. There are other items that can be resolved with respect to the "S" curve and the type of development that would be undertaken on Swiss Alpine Road and that sort of thing, but for the purposes of this motion I believe the only thing that is really critical is that we would be anxious to see access on the southerly portion of the proposed development that connects to Kohler Lane.

Amendment seconded: Commissioner Ream: I'll second that.

Co-Chairman J. Kohler: Any discussion on the motion?

Ayes: Commissioners Streeter, Waldrip, Nicholas and Ream

Nays: O'Toole

Motion: Passed

ITEM: 5

Midway City is considering a Code Text Amendment of Section 16.5.2: Permitted and Conditional Uses in the Commercial C-2 and C-3 Zones. The Planning Commission will consider reducing the density allowed for mixed-use projects in the C-2 and C-3 zones from the current amount of 20 units per acre.

BACKGROUND:

The purpose of this item is to review the allowed density for mixed use projects in the C-2 and C-3 zones. The code allows 20 units per acre for mixed use projects that are over an acre in size. Staff feels that this number should be reconsidered for reasons which will be discussed on the following pages in this report.

Currently there are two categories of mixed use. Properties that are over an acre are allowed up to 20 units per acre. Properties that are less than an acre are limited to one dwelling unit. Parcels smaller than an acre can be combined to former a parcel larger than an acre to increase the density to the 20 units per acre.

Section 16.5.3 (I) states the following:

1. Lots less than one acre:

a. Frontage: 70 feet

b. One single-family dwelling (above, behind or detached)

c. A minimum of 20 percent of the gross square feet of all structures on the lot must be deed restricted as commercial.

2. Lots greater than one acre:

a. Frontage: 200 feet

b. Up to 20 residential units per acre

c. A minimum of 20 percent of the gross square feet of all structures on the lot must be deed restricted as commercial.

As mentioned earlier, there are some reasons why staff feels this number should be reconsidered. Below is a list of those reasons:

- **Allowing 20 units per acre could dramatically impact the look and feel of Midway's Main Street.** Many residents and visitors of Midway love Main Street for the openness and feel that it has. By allowing 20 units per acre there is pressure to develop and not use the existing structures but to build new larger structures on vacant land or to demolish existing structures. By reducing the number of units allowed the City will help preserve Main Street in its current form. Main Street will continue to develop commercially but with a more limited number of residential units.

- **The proposed C-4 zone will allow for larger scale mixed-use development so it will not be necessary in the C-2 and C-3 zones on the same scale.** One of the main ideas behind the development of the C-4 zones is to allow mixed use development in an undeveloped area along Main Street that will be developed but in turn the rest of Main Street will hopefully be preserved. Any new larger mixed use development will be focused in the area designated for and designed for that use. Smaller mixed use would be allowed in the C-2 and C-3 zones similar to what is already located in those zones such as Rebook, Café Galleria, Sentry West Insurance and the Midway Mercantile that all have one dwelling unit each.
- **Potential traffic in Midway will be less if density is decreased in the C-2 and C-3 zones.** Each dwelling unit on average generates 9.6 trips per day. By lowering the density then there will comparably be less potential trips per day then if the density is not decreased.

Staff is proposing that all mixed-use development in the C-2 and C-3 zones is lowered to one unit but retain the same frontage and commercial square feet ration as currently described in the code.

Staff is proposing the code text be amended to the following:

1. Lots less than one acre: Mixed-use development requirements:

a. Frontage: 70 feet

b. One single-family dwelling (above, behind or detached)

c. A minimum of 20 percent of the gross square feet of all structures on the lot must be deed restricted as commercial.

2. Lots greater than one acre:

a. Frontage: 200 feet

b. Up to 20 residential units per acre

c. A minimum of 20 percent of the gross square feet of all structures on the lot must be deed restricted as commercial.

POSSIBLE FINDINGS:

- The proposed amendments to the C-2 and C-3 zones will be harmonious with the City's vision of Main Street as a commercial and mixed use district as described in the General Plan
- Allowing 20 units per acre could dramatically impact the look and feel of Midway Main Street.
- Lowering the density will decrease potential traffic for Main Street and the community

ALTERNATIVE ACTIONS:

1. Recommendation of Approval. This action can be taken if the Planning Commission feels that the proposed language is an acceptable addition to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings

2. Continuance. This action can be taken if the Planning Commission feels that there are unresolved issues.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again

3. Recommendation of Denial. This action can be taken if the Planning Commission feels that the proposed language is not an acceptable addition to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

City Attorney; Joshua Jewkes: The Utah Constitution also contains a taking clause in addition to the Federal Constitution and it's in the fifth amendment. The Utah Constitution language is slightly different than the Federal and some view it as more restrictive, but on this issue the regulatory takings is called an inverse condemnation. It's called that way because typically, in your normal takings scenarios the government that occupies the land and they institute the proceedings and take the land. An inverse condemnation, it's the land owner that typically institutes the proceeding. The current state of the law is that the Utah courts typically follows the Federal precedent despite what the Utah Constitution says. That area of the laws are a little unsettled, but appears to be what it is today. I would agree with the analysis of Michael that basically the law currently is that all of the economic value in the property must be taken in order for there to be an action. I think that provides protection for this body and for the Council as well.

Commissioner Waldrip: For what it's worth I agree. The fact that the commercial use of the property which is the primary target of the ordinance is still there and is not diminished by this change in the potential residential density on the property. There may be a case out there somewhere, I don't know if you've undertaken a research project on this, but I don't know of a case where a change in the mixed-use density on a piece of

property is been held to be a taking on an inverse basis. I don't think that there is any significant danger of walking into a litigation nightmare by downgrading the residential density that can be gained on a commercial use in a commercial zone.

Commissioner Ream: Are there any buildings or mixed-use projects currently in Midway that would not be allowed under this?

Planner Henke: I am not aware of any that would be impacted by this.

Commissioner Ream: My question is, are there any that are already built that if they were coming to us and this proposal was in place would be rejected?

Planner Henke: No. Anybody who hands in an application they are vested if the code does change they become a legal non-conforming use. They would be able to continue that activity they just wouldn't be able to expand that activity.

Commissioner J. Kohler: I think the question was, are there some that have been approved that if they were coming before us now we would have said no to them that have already been approved under this proposal?

Planner Henke: Yes, under this proposal there are two (2) that have been approved in the C-2 zone, they have multi-family more than one unit. The first would be Mountain Goat Apartments that's less than an acre, it has multi-family. So that one if it were to apply under this code could only have one (1) residential unit instead of four (4). The other one is the Granary project that's under construction on the east side of Main Street, just east of Midway Automotive. That one has 14 units and that one would only be allowed one (1) residential unit if this code were approved.

Planner Henke: The City Council they have a public hearing next Wednesday regarding the C-4 zone. They'll need to make a determination on which density they feel is appropriate for that property, it may be less than what was recommend by the Planning Commission, and it may be the same density that is allowed on that property. They'll need to go through and make that analysis, so we're not sure what the end result of density for that area.

Commissioner Nicholas: Is this proposal independent of the outcome of the C-4 discussion?

Planner Henke: As we look at the C-4 zone it's a good time to look at all of our Main Street. As we went through our General Plan one thing that was brought out is trying to preserve what we have on Main Street and our entire community. That is another reason to take a look at what is currently allowed in C-2 and C-3 zones. There are multiple reasons to take a look at this code at this moment. So, yes, it is independent of the proposed C-4 zone. The C-4 zone could be denied, but this could still happen.

Commissioner Waldrip: In some ways, it seems like they should be joined at the hip. A little back ground. The economic development committee that studied this whole concept of what to do with Main Street back before the revisions to the General Plan were adopted considered this concept of finding a place we identified the property on east Main Street as the only logical place where we could do something that would fit the character of Midway and attract tourism and enhance the retail sales tax base for the City and accomplish some good things. In connection with that that committee considered what impact that could have on the remaining part of Main Street the sort of traditional downtown Main Street feel of Midway that we all like. Part of the consideration of how to treat the economic development segment of the General Plan was the relationship of these two (2) concepts to focus a little bit more density in a place

and do it in a fashion that would be cool out there on the east end of town and then reduce the density on the westerly part of town to preserve the more rural character of this part of the city. So that is the reason I suggest Mr. Chairman that maybe these two (2) concepts the C-4 concept for that part of town and the reduction of density in the remaining C-2 and C-3 zones should be considered together and recommended to the City Council they kind of go hand in hand. I think that it would be a mistake to limit what could be done in the C-2 and C-3 zones if the C-4 concept runs the ground for some reason.

Commissioner O'Toole: I agree with you on that.

Co-Chairman J. Kohler opened the meeting for public hearing

Jared Simonsen: My opinion of one of Midway's growth issues is traffic. I think Utah is going to see tremendous growth everywhere. Midway is a jewel and is kind of undiscovered, but it is going to be very much discovered because it is right between Provo and Salt Lake. I see a lot of growth here and I see it coming fast. I've lived in Utah my whole life, I've seen the way of all the Utah cities and they are all grid and you can get anywhere any way you want. Midway breaks that rule. There's almost one road through Midway. Up Main Street, up Homestead Drive and back the other way and there are a couple other cross sections, but that's it. When I see construction done in Midway it shuts down a portion of town. It turns a two (2) minute drive into a twenty-minute drive. Looking at traffic from Midway I think is one of the biggest issues, and of course what drives traffic is density. That to me is one of my bigger concerns. So, anything that would reduce density I think is really wise and forward thinking. Looking at what is inevitable, but managing it. Looking at Main Street in general it doesn't have all the big facade that some of the other places have, but it's got a real charm, and I think that's worth preserving. So, I think that you are on the right track. There is very little that is there right now that would balk at this change I don't know what would be proposed but you're looking at change. If you allow what is in the code right now luckily it hasn't happened yet, but it could. I think that would be wise to take a look of what you have.

Katie Noble: We are clustering density in one part of Midway I'm wondering if it makes sense to not have this imbalance between the rest of Main Street and C-4. It's something worth considering, because what you are doing is you're basically creating one area with almost no density and another area with a big clump of density. It's just worth thinking about.

Mickey Oksner: The open space that we do have on Main Street in this section of town it is very important I think to keep the mules and horses on one acre lots here. I think keeping this here rather than reducing the density at the C-4 zone would be more appropriate for what we have downtown to preserve it.

Launa Neilson: I appreciate your comments that your trying to down size very much and that you're doing this, but you're saying you want to keep the rural look of Midway and then dump 30 units per acre over on the east end is not keeping the rural look of Midway. That's not fair to the rest of us who live there, just because none of you do doesn't mean we don't. Please remember the rest of us.

Co-Chairman J. Kohler closed the meeting to public comment

Commissioner Streeter: I think that we all agree that 20 units per acre is too high, but pulling the rug out from underneath people and telling them that they can only have one (1) unit per acre is too far the other way.

Commissioner Ream: Actually, I don't think that it's one (1) per acre, it's one (1) total. If you had five (5) acres you'd still only have one (1) unit.

Commissioner Streeter: If you put units on Midway Main street, the units that we've been looking at; Mountain Goat Apartments, the Granary. We are looking at a location that is appropriate for walking. We in our vision statement have encouraged in pretty much in every land use title that we have. I'm not saying that I have a great answer and the perfect number. We don't want that super dense look in the older part of Main Street, but we also don't want to go too far the other way and create something that doesn't give the land owners enough creativity that we could actually look at projects that were perfectly good and that people genuinely supported. It seems to me that there is a balance here and maybe that is more of what the discussion should be is as much as we can all agree that 20 units per acre is too much I think that we need to take a really good look at what we think will actually work.

Commissioner O'Toole: Until we figure out the C-4 it's really hard to come on the C-2 and C-3 I think they should belong together. Maybe do a continuance on it and see what happens with the C-4 and then come back and revisit this, because I think it really does depend on what we do with the C-4.

Commissioner Waldrip: I think that the one single-family dwelling unit per commercial property is the right standard for trying to accomplish what the vision of the economic development committee was and what I think the General Plan is designed to accomplish. Reasonable minds can differ on that.

Motion: Commissioner Waldrip: I propose that we recommend to the City Council the changes in the code text for section 16.5.2, subsection I. That it be amended in the form that is presented by the staff recommendation. We find that we accept the recommendation of the staff, we find that the proposed amendments to the C-2 and C-3 zones will be harmonious with the City's vision of Main Street as a commercial and mixed-use district as described in the General Plan. That allowing 20 units per acre could dramatically impact the look and feel of Midway Main Street and that lowering the density in the westerly portion of Main Street will decrease potential traffic on Main Street and in the community generally and will be harmonious with proposed C-4 zone change on the easterly side of Main Street. Further that we recommend to the City Council that this proposal be considered jointly with the new proposed C-4 zone and that the two (2) be consider together.

Seconded: Commissioner O'Toole

Co-Chairman J. Kohler asked if there were any comments on the motion

Commissioner Streeter: I have a question. I like the idea of putting the two (2) together, because that's how they are designed essentially, but can the City Council say no to one and yes to the other.

Commissioner Waldrip: Yes, they can do anything they want.

Planner Henke: This is just a recommendation so they will hear your recommendation, but they can choose to do what they would like to do there. They're not bound by it.

Commissioner Streeter: I'm just wondering if we are better off recommending approval or continuing it for a month, hear what City Council has to say about C-4 and then vote on this?

Planner Henke: It's up to the Planning Commission if they'd like to take that route.

Commissioner Waldrip: The likely hood that the C-4 issue is going to be resolved finally in the next City Council meeting is pretty remote so I think it would be better if the City Council could see that we consider these two (2) issue as a package and that they go along together rather than waiting one (1) element to be passed and then working on the other one. That would be my view.

Commissioner Nicholas: If the C-4 plan doesn't succeed, why wouldn't we want to go ahead and reduce the density in the C-2 and C-3 anyway to preserve the character of Main Street?

Commissioner O'Toole: We could.

Commissioner Nicholas: If they are linked together it makes it sound like if C-4 doesn't pass we're going to keep the density of C-2 and C-3 the same and that would seem to violate what we are trying to do in terms of preserving the character of Main Street. I don't see why they should be linked.

Planner Henke: I do agree with that, 20 units per acre is very high density. Look at the Granary project for instance. It is exactly one (1) acre, 14 units on there with the required parking and setbacks is all they can fit. So, 20 units per acre is really more density than one (1) acre can handle. I think that we need to review it no matter what happens.

Co-Chairman J. Kohler ask if there were any further comments or questions?

There was none

Ayes: Commissioners Streeter, Waldrip, O'Toole

Nays: Nicholas and Ream

Motion: Passed

ITEM: 6

Midway City is considering a Code Text Amendment of Section 16.8: R-1-9 Residential Zone. The Planning Commission will consider removing duplexes as a permitted use in the R-1-9 zone. Currently, duplexes are allowed if the lot complies with the acreage and frontage requirements of the zone.

BACKGROUND:

The purpose of this item is to review the R-1-9 zone and the ability to construct duplexes if acreage and frontage requirements are met. Two zones in the City allow duplexes. They are the R-1-7 zone and the R-1-9 zones. These zones are the two zones that allow the smallest lot sizes and they are located near the center and commercial areas of Midway where most services are located. There are several duplexes located in these zones that were constructed decades ago and then recently there has been new activity in interest about building new duplexes. First, a duplex was constructed on a lot-of-record in the R-1-9 zone next to Memorial Hill. Second, the Alder Meadows subdivision was approved for 11 duplexes in the R-1-7 zone. In the public hearings for the Alder Meadows subdivision there were residents that voiced their concerns about duplexes.

There was enough concern raised that the City is has decided to visit this issue and have a dialogue to explore amending the code. What is presented in this agenda item is reviewing at the R-1-9 zone, which is generally located farther from City services than the R-1-7 zone, to explore if duplexes are still an option that the community would like to continue. There is more development potential in the R-1-9 zone for duplexes and now is the time to explore if changing the code before any new applications are submitted. Once a complete application is submitted to the City then the applicant is vested under the code that is in place at the time of submittal.

The following are some issues to consider when regarding this issue:

- **Duplexes can potentially serve a moderate-income housing need.** It is important to have a variety of housing types in a community because not everybody is in the same stages in life or in the same circumstances. Duplexes can offer some options as moderate income housing but only if the rent is low enough to qualify. Just because a duplex is constructed does not mean it will qualify as moderate-income housing. This issue was discussed during the Alder Meadows approval process. It seems unlikely that the units in the Alder Meadows subdivision will be will qualify as moderate-income housing because of the size and design of the units. The City cannot control if units are affordable or not, the rent is market driven.
- **Duplexes provide rental opportunities.** Almost always one unit in a duplex is rented while the other half is owner occupied. In many cases both units are rented so they provide rental opportunities in a community. Single-family homes also may be rented but usually they would command higher rents than a duplex.
- **Duplexes provide investment opportunities.** As we saw with the Alder Meadows proposal, duplexes create an opportunity for an investment for the owner of the units. In this case, the owner was using the units to fund his retirement. Even someone owns only one duplex and lives in one of the units there is potential for income on the second unit. It is something to consider that properties in the R-1-9 zone may have been purchased with the intent constructing a duplex but the by eliminating the duplex potential that value of that investment would be reduced.
- **Duplexes create more traffic than single-family dwelling neighborhoods.** This statement is true when you compare the frontage requirements for a single-family neighborhood and a duplex neighborhood in the R-1-9 zone. If a street is 1,000 feet in length and there are single-family homes on each side of the street then 22 homes can be located along that street which would generate 211 trips per day. Under the same circumstances 20 duplexes can be located on the same street but that is equal to 40 dwelling units which would generate 384 trips per day.
- **Duplexes raise concerns about the transient nature of the units.** One of the main concerns raised during the approval of the Alder Meadows subdivision was that that duplex occupants are transient in nature. This may be a true statement in many cases. If someone is constructing a home then they usually need somewhere to stay during the construction and rental units cover that need. Duplexes are rented and people rent a unit

for many reasons so there are many situations where the occupants are only in the units for a limited amount of time.

- **Duplexes raise concerns about their impacts on property values.** This was probably the issue that is raised the most when discussing duplexes. It is difficult to pinpoint the facts with this issue and staff did review some articles and studies and did find one common thread. Generally, it is not the number of units in the neighborhood that are rented that impact the property values but is the upkeep on the homes in the neighborhood that impact the values. In other words, you may have many owner-occupied homes in an area that are not upkeep well and that would have a negative impact on the value of the homes but you might have many rental units in a neighborhood that are well kept and that might increase the value of the homes in that area. The owner of the dwellings and the level of upkeep have more to do with property values than the renters have.

If the code were to be amended to eliminate duplexes then here how the code could be amended:

Section 16.8.2 Permitted Uses

~~D. Attached two family dwellings. Attached two family dwellings must meet the following:~~

- ~~1. Have a separate kitchen and bathroom facilities for each dwelling unit.~~
- ~~2. Have adequate off street parking for each dwelling unit.~~
- ~~3. Have separate utilities to each dwelling unit.~~
- ~~4. Each dwelling unit is built to residential building codes.~~
- ~~5. No temporary structures are allowed as a dwelling unit.~~
- ~~6. Both dwelling units are under one ownership.~~
- ~~7. Each dwelling unit will have its own address.~~
- ~~8. Each dwelling unit will meet emergency and fire code access standards.~~
- ~~9. A hard surface driveway (concrete, asphalt, or brick) must be installed for both dwellings before the Certificate of Occupancy is approved.~~

Section 16.8.4 Area Requirements

- ~~A. A minimum lot or parcel size of 9,000 square feet shall be provided for one-family dwellings.~~
- ~~B. A minimum lot or parcel size of 12,000 square feet shall be provided for attached two-family dwelling such as a duplex or twin home, child day care centers and foster family care homes.~~
- ~~C. A minimum lot or parcel size of 33,000 square feet shall be provided for detached two-family dwellings.~~

Section 16.8.5 Width and Frontage Requirements

~~The minimum width and frontage of any building site in the R-1-9 zone shall be 90 feet. A minimum width and frontage of 100 feet shall be required for attached two-family dwellings. A minimum width and frontage of 110 feet shall be required for all detached two-family dwellings.~~

POSSIBLE FINDINGS:

- Eliminating duplexes would reduce housing options in the R-19 zone
- Removing duplexes as an option in the R-19 zone could potentially reduce moderate income housing
- Not allowing duplexes will decrease potential trips per day by lowering density as compared to potential trips per day for single-family neighborhoods covering the same area

ALTERNATIVE ACTIONS:

1. Recommendation of Approval. This action can be taken if the Planning Commission feels that the proposed language is an acceptable amendment to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
2. Continuance. This action can be taken if the Planning Commission feels that there are unresolved issues.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again
3. Recommendation of Denial. This action can be taken if the Planning Commission feels that the proposed language is not an acceptable amendment to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

Commissioners discussed

- Detached two-family dwelling and possibly changing the language in the code
- Increased traffic with duplexes versus single-family homes

Co-Chairman J. Kohler asked if there were any further questions or comments from the Commissioners

There was none

Co-Chairman J. Kohler opened the meeting for public comment

Nathan Lord: I appreciate the spirit of this code text change. Essentially forcing single family homes that probably bumps it up in the not affordable housing category, and that is one of the things I like about duplexes it would keep our City a little more real and not these crazy home prices we're all seeing going on. Like you said Mike this is because of Alder Meadows. I would be in more favor of seeing rather than more prescriptive code text changes giving the Planning Commissioner or the City Council more liberty to be more subjective. This is like we are going to win on a technicality when Alder Meadows, I don't think that it was about duplexes it was commercial development. It was clearly the nature of the development not the fact that it was a duplex. It's not low income it's right next to the school and it caused all of these issues, and it was like well we don't have anything to hang our hat on so we'll go ahead and approve it. In speaking of the spirit of the law and the letter of the law this is moving towards the letter of the law. I'm wondering if there is anything we can do in the code that would give us more subjectivity or something less technical and give us more of a broader tool set to say that doesn't fit with the General Plan of the city and what we are trying to accomplish in this area of the city.

Commissioner Waldrip: What would happen if in the R-1-9 zone duplexes became a conditional use?

Planner Henke: They are a permitted use in the R-1-9 zone. I appreciate your comments very much, but it really is opposite of what they teach us in zoning law. If there is a lot of subjectivity and discretion in a code then that really opens the door for litigation for us. As we are trained on law regarding land use we can have discretion when it's in the General Plan, but when it actually reaches the code we need to have it defined otherwise we leave ourselves open for denying something that really should be approved. A Conditional Use Permit is looked at as a Permitted Use with conditions and just so something is conditional it's very difficult to deny a conditional use. It can be done, but it is very difficult if it is litigated there's a high bar that needs to be met by the city to show why it was denied. So, really, we need to decide if we want them or not or what the requirements are. Such as Commissioner Ream mentioned as adjusting the frontage and acreage and define that.

Commissioner Waldrip: That's the reason the code cannot accommodate the kinds of things that this gentleman was talking about.

Jamie Jespersen: I know that Alder Meadows is going in and I live right there so I know the traffic and with the new Bowden Fields it has gotten pretty heavy with kids crossing there. I think looking at that map it looked like there's more R-1-9 right in that area and 200 East is the bus route and all the kids run out to the bus right through there and there are no sidewalks on that road. I don't have a problem with duplexes, but if that is going to be duplexes I think it would be wise to look at safety issues for kids.

There is a school right there and I think that if you are going to max out the density there then I think there needs to be sidewalks and some safety measures put into place there.

Heather Rasband: I was here for several of the discussions about the Alder Meadows development. I'm really glad to see that you are listening to the public voices and that you brought this up and put this on the agenda, because that really validates us being here and speaking and knowing that you are listening to us and so thank you for that. One thing that may work and I'm not a professional of any of this you know the law and zones of all of this. I know that one of the reasons that they were very opposed to so many units going in on that was the density and it had been discussed of allowing the duplexes intermingled with single-family homes so it wasn't so dense. We had a nice little neighborhood with some single-family homes and some duplexes if you could put that in the text amendment, however many duplexes you want to build there also has to be a certain amount of single-family homes within that development and of course that would apply only to your larger lots that would accommodate a development of that size. I'm as vocal as they come, it's sad to see all of the fields go, but I also understand that Midway is an awesome place. Who wouldn't want to live here? I think that duplexes are a great way to allow people who can't afford a 600k plus home to take part in our great community. There are school teachers, policeman and fireman, there are public servants who go out of their way to save our lives and what not who can't afford to live in their own town. The duplexes, something like that, that would be more of affordable housing allows for us to have a community with all kinds of people here which enriches all of our lives. I think duplexes in of themselves are a great thing to have. There are one of the Kohler kids who works at the Cheese Factory who commented on one of the meetings with Alder Meadows he can't afford to live in Midway and he was raised on the Kohler farm and works here and he luckily found a Hamlet Condo that went up for sale that they could afford, but stuff like that we really want to consider. We really want to open our doors to people's children who have grown up here and want to move back and can't afford to buy a million-dollar home yet or ever. I just don't want to see in the R-1-9 zones, and that one right there that is in with all of the other yellow R-1-11 zones kind of seems out of place, because you've got larger areas of the R-1-9 around farther around the perimeter and I know that one has already been approved, so you can't change the Alder Meadows. What is the R-1-11 zone?

Planner Henke: R-1-11 is quarter acre lots and only single-family is allowed.

Heather Rasband: It seems to me it should go to the R-1-11 zone, because there are so many single-family homes in that area, then you could move the duplexes up to where there is a lot more of that together.

Co-Chairman J. Kohler asked if there were any further comments from the public. There was none therefore he closed the public comment.

Commissioner Payne: Are duplexes allowed in the R-1-7 zone?

Planner Henke: Yes, they are.

Commissioner Payne: So, this doesn't affect the R-1-7 zone, correct?

Planner Henke: Yes, what is being proposed tonight wouldn't impact the R-1-7 zone.

Commissioner Streeter: How close to build out are we close in the R-1-9 zone?

Planner Henke: There are a number of parcels that haven't been developed in the R-1-

9 zone. The biggest parcels are north of the school, then there is a rather large area south of Main Street that is west of 300 west; it's really just an open field there with just a few homes there. That has quite a bit of development potential in the R-1-9. Beyond that there are some properties around an acre, but there are not multiple acre properties besides those two (2).

Commissioner Ream: I really enjoyed the last persons comments. I think the issue is not so much the duplexes, but the clustering of the duplexes. So, if there is a way in code that we could limit that. Something like you can't have ten (10) duplexes together only a couple at a time.

Planner Henke: I think we could write a code to accommodate that if that is the direction that the Planning Commission would like to go.

Commissioner Streeter: Duplexes are not inherently bad, they have some benefits to them.

Commissioner Waldrip: I want to side with those who are in favor of the salt and pepper idea. I think that it also provides in the spirit of buffering, like zoning the Euclidean zoning concept kind of buffers one zone against another as they increase or decrease in density. If the R-1-9 duplex concept mixed duplexes with single-family residence it would sort of buffer that concept between R-1-7 and R-1-9 and R-1-11 where it's only single-family residences. So, that kind of appeals to me and I think we need to be mindful, I know that there's a strong sentiment about duplexes in general I think they get a bad rap in many respects and we really do need to provide relatively moderate housing for people who work and want to live here and can't afford the kind of homes Midway is known for these days.

Co-Chairman J. Kohler: Are you suggesting instead of going after the current proposal, perhaps change the acres and frontage requirements to create a more limited use, but still allow duplexes?

Commissioner Waldrip: Mixed with single-family residences would be the concept that I would support. I think what that would result in is to go back to staff and if we have a consensus on the Planning Commission and see if we can create a code text amendment that would accomplish that by mixing duplexes and single-family residences in some fashion if the acreage is large enough to accommodate that.

Commissioner Nicholas: Is there anything in code or city regulations that would force a property owner to maintain their property if it falls into disrepair or if the yard is overgrown or junk cars around?

Planner Henke: Yes, we do have a nuisance ordinance and it does cover the height of weeds for instance or if there are junk and debris around a property. That is something that we do watch. We do send out a couple hundred letters on weeds.

Co-Chairman J. Kohler: What I seem to be hearing is that we are leaning towards a continuance to come up with some language that hits some middle ground, so is there anyone wanting to put forth a motion?

Motion: Commissioner Ream: I propose that staff come back to the next meeting with a revised proposal that takes into account the idea of not allowing too many duplexes to be clustered together that there be some mixture of duplexes and single-family and maybe also some options in regard to changing the side requirement and other things to

also limit density and traffic.

Seconded: Commissioner O'Toole

Co-Chairman J. Kohler ask if there are any discussion on the motion

Ayes: Commissioners Streeter, Waldrip, Nicholas, O'Toole and Ream

Nays: None

Motion: Passed

ITEM: 7

The Midway City Planning Commission will discuss potentially enacting a six-month Moratorium for new subdivision applications. The discussion is based on the need to update the Land Use Code based on changes that were enacted to the recently adopted Midway City General Plan.

BACKGROUND:

The purpose of this item is to discuss a six-month moratorium of all new subdivision applications. The reason why this is being discussed is because of the newly revised Midway City General Plan and the changes that were made to the General Plan. The City has not had enough time to enact all the changes that were planned with the General Plan because new development and other issues have left little time for the proposed changes. A six-month moratorium would allow staff the time necessary to proposed the code text changes discussed and written into the General Plan. Some of these proposed changes include the following:

- Review the animal rights code
- Review density for PUDs in the RA-1-43 zone
- Potentially eliminate proportion size lot and frontage requirements when open space is required
- Increase setbacks along collector roads
- Review open space requirements
- Amend the Trail Committee to become the Parks and Trail Committee
- Create an Economic Development Committee
- Review allowing duplexes in the R-1-9 zone
- Reduce density for mixed use projects in the C-2 and C-3 zones
- Amend the outside water requirements for all subdivisions

- Review the noticing requirements

If a six-month moratorium is enacted, hopefully staff and the Planning Commission will be able to review all the aforementioned items. In the least, several of the items will be reviewed by the City.

A moratorium would only affect new preliminary subdivision applications. A final application for a subdivision that has received preliminary approval would still be accepted by the City. Building permit application would not be affected by the moratorium.

POSSIBLE FINDINGS:

- The City recently adopted a revised General plan and some of the proposed changes to the General Plan have not been enacted into code
- A moratorium would allow staff more time to pursue preparing potential code text amendment for Planning Commission review
- Submittal of building permits would not be affected by a moratorium

ALTERNATIVE ACTIONS:

4. Recommendation of Approval. This action can be taken if the Planning Commission feels that the proposed moratorium is in the community's best interest
 - a. Accept staff report
 - b. List accepted findings
5. Continuance. This action can be taken if the Planning Commission feels that there are unresolved issues.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again
6. Recommendation of Denial. This action can be taken if the Planning Commission feels that the proposed moratorium is not in the community's best interest
 - a. Accept staff report
 - b. List accepted findings

Commissioner discussed the following:

- Having a continued preliminary approval being able to come back before this body. It would be allowed in the six (6) month moratorium because they would be vested under their initial application.
- C-2 and C-3 zones would not be affected, however the Planning Commission could include those zones. Although it would have to be defined just exactly what that means i.e. mixed-use project would that be impacted by the moratorium or just the commercial development, if someone wants to develop a restaurant would that be impacted?
- Is the six (6) month a definitive or is this a maximum? In other words, if you finish the work in four (4) months would the moratorium end?
- It could end in less than six (6) months, but that would have to be described in the resolution that would have to be adopted.
- Staff will need to work with Chairman Nichols and the Mayor to decide how to prioritize the items/issues that are in the moratorium. Based off the General Plan survey it is very apparent open space and reducing density was a great concern.
- The six (6) month period is a hard deadline and cannot go beyond that.
- We have a capitals facility plan that needs to be updated based off of the General Plan which impacts the impact fees. Right now, we are probably not collecting the correct amount of impact fees, because of what has been added to the General Plan. This is very important to get reviewed and updated.
- This is simply a freeze and when the thaw comes whatever is done is done and whatever is not is not.

City Attorney; Joshua Jewkes: I know that when people hear the term moratorium it's kind of a scary word and sounds very drastic. We'll say that this is something that occurs all over the country all the time. This is not uncommon and it is very wise planning strategy for a body like this and in fact it has been done in this city before. Last time as far as we can tell it was 2006 and you remember what was going on back in 2006. I think these findings that Michael is recommending are very important, because the statute that allows the moratorium to go into effect requires a specific finding with a compelling countervailing public interest. So, this body and eventually the City Council have to delineate and describe exactly what that is. So, one reason you may not want to include all the different zones is for each of those you would have to find a compelling countervailing interest and describe what that is. I think most of these changes relate to the R zone. It is very wise to narrowly tailor the moratorium so it's not a complete moratorium. I think that is a wise legal strategy to reduce the legal exposure. Michael's recommendations to go about this in the right way in my opinion appears to be consistent with the language of the statute that enables this body and the council to make this decision.

Commissioner S. Kohler: I know that I cannot vote on this as I am an alternate on this body. My husband who you all know is a City Councilman was excited to see this, because he looked back in July in 2016 he talked about this and had noticed back then

that maybe we're getting a little ahead of ourselves and things are coming in very quickly. I know that I cannot vote on this tonight, but I think this is a good thing for our City and for staff to be able to put some things in place to help all of our citizens here in Midway.

Commissioner Waldrip: Perhaps to give some guidance to public comment that will come in a minute. I doubt that there are any of us who are opposed to this concept. We need to give our staff time to take a deep breath and get some of this stuff off the desk that needs to be moved forward to that we can implement the General Plan. There is no other real solution, this has just got to be done.

With no further questions from the Commission we'll open the meeting to public hearing

Robyn Stone: I'm so appreciative that there's been some attention given not only to the staff for this busy city in being swamped with many ideas and also accepting requests and hopes as this place becomes beloved to everybody that has a moment to spend time here and let the feel come through. I first want to make a comment first regarding your ingress/egress. I was living here when the fire swept the mountain that very particular road was the one that was closed and the fire engines couldn't get up, and they had to go up through the fields and cut fences. People were carrying shovels and doing all they could to fight the fire that the wind had blew right across the mountain. I'm sorry that there are more at danger, because of the one (1) road. I would really appreciate a future look at protecting them instead of the sorry that we feel when somebody becomes trapped because of the one (1) road there. Opportunities comes when development comes, everybody gets a chance at one point or another. I appreciate the opportunity to come tonight and to let me speak about a moratorium. I don't know if it was ten (10) years ago but there was a moment where a moratorium was called for and they wanted to update the code. Well this codification took more than 12 months by the time they had gone through all of the codes to put the right words into and there are 11 or 12 subjects that can be dealt with and very carefully done so. Some of the items that were listed tonight, were the C-2 and the C-3 they thought were in affect last year they are still under conversation and so even with the conversation "Oh way we got it done we really like this" until it gets into the law then it can't be affected. Then what ever is in the law is what the builders or developments can do. You really gave the developer today all your heart. Every possible opportunity that he may be successful in developing the ground. We've got benefits all over the sweet valley of improvements and opportunities to enjoy everything that we didn't use to have. If you would please consider that same valor, the citizen, the person who lives here, the reason we all come and have the courage to also say we respect your safety. Yes, we'll redo it this way with the duplexes and the other ideas you were coming up with. The commercial zoning invites lots of people to have an opportunity to live at home and work. Stretched out so far, they also have to have another job so they can do that and serve our community. Working together and being able to interact and listen to these ideas and find the best way then that's what Midway is about, and that you care about one another. Thank you for your service.

Nora Lundin: I'm not against the moratorium. As some of you may know we're trying to annex into Midway a small acreage and then eventually build a subdivision so that my brother and I can have homes there, is the big reason. We'll have to sell some of those lots to pay for the subdivision and that's the only reason we are contemplating doing six (6) lots. We've had lots of setbacks. I never thought in a million years that it would take up this long to get to the point we are, but we still haven't been able to put in our application for the subdivision. I just read about this just last week that there was this proposed moratorium. So, again I'm not opposed to the moratorium I understand that it takes time to put these new laws and everything into place, but I would suggest a postponement of the moratorium for people that are at the very edge of getting it done have a little bit more time perhaps into mid-July or mid-August meeting to get those applications that are just barely getting started to get them in and get them done.

Mickey Oksner: The exemption was for the rural preservation zones. I would ask that we liberalize that a little a bit and if somebody comes in with a two (2) or three (3) acre rural offer that we also permit that during this period of moratorium. If somebody were to come in and offer us a three (3) to five (5) acre horse property during this period that, that would be considered as not as R-22 or R-1-43 zones as opposed to the rural preservation.

Katie Noble: One of the questions that I have and one of the things that I think is the elephant in the room is the C-4 zone. I wasn't sure how this was going to impact C-4. It seems to me that we need some time to really get C-4 absolutely right and so that would be a compelling reason not to allow development or to have a moratorium in C-2 and C-3. I guess it's a question more than a comment. I'd like to see the moratorium because of C-4 apply to C-2, C-3 and C-4.

Paul Berg: A few observations I've had about moratoriums. This will be the third one that I've been involved with in Midway. The first one was with Mayor Probst specifically with PUDs, Mayor Tatton right after she was sworn in she enacted a moratorium. First of all so nobody thinks that this is self-serving, it doesn't hurt my business, it doesn't hurt me financially, in fact it seems like everybody is wanting to know what is going on with the moratorium the project just lasts longer instead of waiting six (6) months. What I have found with cities locally or in other areas is that unfortunately the staff doesn't get that much of a break. They are still reviewing building permits, they are still reviewing the applications that are already in. They are doing all of that work, by the time they are done they are kind of burnt out then they see this long line of applications ready to come in. I remember here when Mayor Tatton's moratorium ended I think that I was representing eight (8) developments at every Planning Commission meeting for several months after. There is a big load while you're doing this and there is a big load after. Some cities have gone through a little more successfully because they hired out outside consultants to help the planning staff during the moratorium. That may be something you want to think about or otherwise Michael might be burnt out a year from now. The other thing that you need to consider is a lot of unintended consequences. Yes, there is a break, yes, you get a breather, yes, we make better laws hopefully to guide the development with the General Plan. The unintended consequences are during that six (6) months new inventory disappears current inventory is bought up and then there is this period where we see prices really spike. That happened in 2006, up to that point Dutch Fields had gone through two (2) phases in roughly four (4) years. Right after the

moratorium ended they did three (3) phases in one year, they were the only game in town. Not that that's a bad thing for the people who are already in, but then what I then found was everybody on the outside looked at how fast prices were escalating in Midway that it attracted everybody here to develop. If we have a similar thing happen you may find it worse than before then prices sky rocket. A moratorium is not a bad thing, it helps staff and helps get the rules better. Those are some other observations that I've had and I think that you need to be aware of them, because that is the other side of moratoriums.

Holly Bodily: After hearing Paul mention, some of the repercussions. It's 10:15pm and it has taken this long to get to seven (7) items. You guys do need a break you are overloaded. Is it possible to limit the number agenda items that are on the monthly agenda? I'm sorry if this sounds rude, but if a developer has to wait a few months to get his time, because there are only so many of you and only one (1) Mike Henke maybe the developers will have to wait a little bit. I don't say that in a rude way, I just say that in a realistic way. I do agree with the moratorium there has been so many changes and instead of having to be reactive to everything to everything that is coming in it will give the city a chance to pull it all together and to put everything in place to deal with all of the growth and changes and see how we want that to go down the road and in the future. Even still limit the number of agenda items so you are not so over worked and we do appreciate what you do on behalf of everybody and we'd love to keep it that way.

Brian Larney: I've observed what's going on and enjoy that you are being proactive looking towards the future the time to put up a fence is not after the dog ran away. I look on the wall here there has been those in the past that have kicked the can down the road and I'm sure as you've examined the different statues and the different parts of what you are responsible for, but you've seen that there have been those that have not done their duty in the past. Right now, you may be paying the penalty for it just by all of this that you're having to do. I commend you for stepping forward and also realizing that it's not time to kick the can down the road it's time for action.

Heather Rasband: Some of my thoughts especially after listening to Paul. It's interesting to get his perspective on the slow down and then the boom afterwards. Rather than a complete moratorium for plans for developments could you implement something that just slows down, and say that we will only accept a certain number per year? Is that legal Mr. Jewkes?

City Attorney; Joshua Jewkes: It likely would be, the statute is not that specific.

Heather Rasband: In that regard, you could still allow new homes to be coming up, but just slowly instead of really fast and can't get your feet under you. I like the idea of what you are trying to do whether it ends up being a moratorium or slowing the flow a little bit by being proactive rather than reactive. I think to along with some of the other people who commented that the commercial zones should be included either in your slowing down process or the moratorium until you've decided what you're going to do to solidify that. If you are going to enact a new zone you should probably get that all set before you keep allowing things to happen in those zones that you are trying to rezone. The open space requirements, I have kids and we like to go to the park, but there are a lot of parks in Midway and sometimes that is not the best use of open space. I don't know if you can require subdivisions or new developments to do something or look at other avenues other than putting in a park, because sometimes those parks sit there and they

go unused when there is something maybe the people that build there would rather have trees and grass or something.

Jared Simonsen: There is stuff that has got to get done and there is a lot of overloading. It's time to address those things and also the public is showing great interest right now. I think that is a great thing and to be able to harness their interest would be awesome as far as the process it would validate the public's presence and feelings as far as being members of the community. There are some great ideas that come out of the wood work. I think that is one huge benefit that can't be overlooked.

Inez Wilde: I've been attending these meetings for quite a while I don't think that a lot of the people realize how many subdivisions are going in right now. I know of at least seven (7) and I really think that a moratorium is a good idea to take time to step back make sure that there will be enough services for everybody that the city of Midway can expand the way that it should. Also, the idea that one end should have all of the development and that the other should have all of the open space is a little frustrating to me.

Ellen Collette: I think that it would be wiser to just go ahead and have a full out moratorium, not because I don't want development. I think trying to make a soft moratorium is just not going to work. I think it puts you in a position where there is not a solid definition of what is allowed and what is not. I think that it would take you more time than six (6) months to get it done and have it done right. I'm not against development, I'm pro smart development and have Midway the place we want it to be.

Jerry Miller: How come we are not including the C-2 and C-3 zone this C-4 zone is part of the residential thing that we are talking about so I'm confused as why we are not including that. I feel like this question got blown over.

Planner Henke: It could be included in the moratorium that is a possibility. I think we need to define what development in the C-2, if a restaurant is proposed on a property do we want to stop that for instance or just a retail store? We could say mixed-use as a part of the moratorium and that is a possibility, but I don't think that we want to stop just commercial. I don't think any of the code text that we are talking about affects just the pure commercial development.

Jerry Miller: The C-2 and C-3 zones are mixed-use, are they not?

Planner Henke: Like I mentioned we could say mixed-use.

Jerry Miller: Does that not include the whole C-2 and C-3 zones?

Planner Henke: You can have development in the commercial zone that is not mixed use. Mixed-use is when you have a residential component that is part of the development. So, the City Council would have to decide if they want to include all commercial development or just mixed-use commercial development as a part of the moratorium.

Jerry Miller: That is my question. This involves the upcoming C-4 which is a mixed-use. So why are we not including that? If we are trying to slow down residential growth out here, what about right here in the heart of the town?

Planner Henke: Again, we had a couple of items on our agenda tonight to discuss that exact issue.

Commissioner Nicholas: C-4 isn't even enacted yet, it's just something that is being considered.

Randy Lundin: Many years ago, I was before a body like this in 1976 when we built the mobile home park on Homestead Drive. The biggest problem that everybody gripped about was too much impact on Homestead Drive. That was in 1976. I think that you need to step back a little bit and not get so fired up on this stuff. I know you've got to have changes, but it is the same story as it was in 1976. Nobody changes how many people move in here not matter how many moratoriums you put in to slow down the development. My question to you is why can't you do this on an ongoing basis? Like why do you have to put a moratorium in to change rules? Why can't that be done during your normal business?

Co-Chairman J. Kohler: Thank you I appreciate the question. I do not have an answer to it.

Randy Lundin: I don't like the timing.

Co-Chairman J. Kohler asked for any further comments from the public, there was none therefore he closed the public comment.

Motion: Commissioner Waldrip: I move that we recommend to the City Council that they adopt a resolution for a six (6) month moratorium as requested by the staff on all subdivision applications. We accept the staff report, we find that the city recently adopted revised General Plan with many proposed changes that have not been enacted into code yet, most of which have to do with the residential aspects of the zoning structure of the city. We find that a moratorium would allow the staff more time to pursue the preparation of the potential code text amendments for the Planning Commission to review and recommend on to the City Council that pertain to the changes in the General Plan and the review of the impact fees that relate to the development in the city that the submittal of building permits would not be affected by the moratorium nor would the applications that have already been made before the moratorium is enacted. If there is a second to that motion I will speak to it.

Seconded: Commissioner Nicholas

Commissioner Waldrip: There has been a lot of different suggestions as what we should do regarding the moratorium, but I think the most compelling thing is what Michael has asked for. He has asked for a moratorium on the submission of subdivision applications, he best knows what he needs in terms of being able to step back a little bit to continue with the work that is necessary but to postpone the work that would be necessary with the future subdivision applications and I think that we should honor his request and not try to mess with it.

Commissioner Ream: Can I ask one question? Someone brought up hiring contractors. What are you really asking for, would that help?

Planner Henke: Well I do know a bit about our budget and that is not being written in the budget for right now. I've got a good grasp of what happened with the General Plan and how we can move forward on those code text amendments. The current staff can handle it, but that could be recommended to the City Council, but I think that we can handle it ourselves.

Co-Chairman J. Kohler asked if there were any further discussion on the motion.

Commissioner Streeter: Clarification. This applies only to subdivision application in the R zones it does not apply to any of the C zones and it does not apply to an annexation application?

Planner Henke: That is correct.

Commissioner Payne: I just had one comment/suggestion to include only within the C-2 and C-3 zones projects that are mixed use they are one acre or greater which would address the issue that we've been discussing and voting on today addressing any increased density that could happen within the C-2 and C-3 zone until that is taken care of and enacted.

Commissioner Waldrip: That's not part of my motion.

Co-Chairman J. Kohler: Would you like to amend it?

Commissioner Waldrip: No.

Co-Chairman J. Kohler asked if there were any further discussion on the motion, there was none

Ayes: Commissioners Streeter, Waldrip, Nicholas, O'Toole and Ream

Nays: None

Motion: Passed

Co-Chairman J. Kohler: We wish to thank the members of the public for being here we appreciate your diligence staying with us through the late hours, and we'll entertain a motion to adjourn.

ITEM: 8

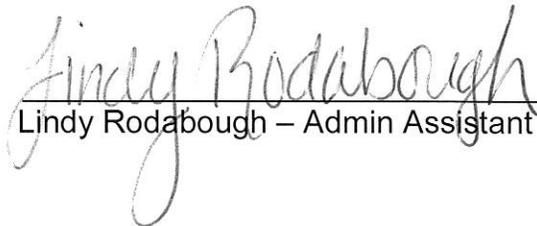
Adjournment

Motion: Commissioner Streeter: I move to adjourn.

Time: 10:35 pm



Steve Nichols – Chairman



Lindy Rodabough – Admin Assistant

