

Midway City Planning Commission Regular Meeting November 12, 2019

Notice is hereby given that the Midway City Planning Commission will hold their regular meeting at 6:00 p.m., November 12, 2019, at the Midway City Community Center
160 West Main Street, Midway, Utah

6:00 P.M. Regular Meeting

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

Call to Order

- Welcome and Introductions; Opening Remarks or Invocation; Pledge of Allegiance

Regular Business

1. Brett Walker, agent for Probst Raspberry LLC, is requesting preliminary/final approval of The Willows at Midway, a rural preservation subdivision. The proposal is for a 5-lot subdivision on 36.72 acres. The property is located at about 100 South and 500 West and is in the RA-1-43 zone.
 - a. Discussion of the proposed subdivision
 - b. Possible recommendation to City Council

2. Midway City is proposing a code text amendment of Section 16.16.4 (A)(20)(a): Concept Plan/Master Plan. The proposed code will limit the number of phases and plats allowed in a master planned development based on the number of units in the master plan.
 - a. Discussion of the proposed code text amendment
 - b. Public hearing
 - c. Possible recommendation to City Council

3. Midway City is proposing a code text amendment of Section 16.2: Definitions. The proposed code will define One-Family Dwellings. Also, this proposal will define when a second kitchen is allowed in a one-family dwelling and will explain what constitutes a second kitchen.
 - a. Discussion of the proposed code text amendment
 - b. Public hearing
 - c. Possible recommendation to City Council

4. Midway City is proposing a code text amendment of Section 16.13.6: Accessory Buildings Prohibited as Living Quarters and Section 16.2: Definitions. The proposed code will better describe what is allowed in an accessory structure and define what is considered living quarters. The proposed amendment will also address breezeways and their relation to accessory structures.
 - a. Discussion of the proposed code text amendment
 - b. Public hearing
 - c. Possible recommendation to City Council

5. Adjournment

Brett Walker, agent for Probst Raspberry LLC, is requesting preliminary/final approval of The Willows at Midway, a rural preservation subdivision. The proposal is for a 5-lot subdivision on 36.72 acres. The property is located at about 100 South and 500 West and is in the RA-1-43 zone.



PLANNING COMMISSION MEETING STAFF REPORT

DATE OF MEETING: November 12, 2019

NAME OF PROJECT: The Willows at Midway –
A Rural Preservation Subdivision

AUTHORIZED REPRESENTATIVE: Brett Walker

NAME OF OWNER: Probst Raspberry LLC

AGENDA ITEM: Preliminary/Final Approval

LOCATION OF ITEM: 500 West Main

ZONING DESIGNATION: RA-1-43

ITEM: 1

Brett Walker, agent for Probst Raspberry LLC, is requesting preliminary/final approval of The Willows at Midway, a rural preservation subdivision. The proposal is for a 5-lot subdivision on 36.72 acres. The property is located at about 100 South and 500 West and is in the RA-1-43 zone.

BACKGROUND:

This request is for preliminary/final approval of a Rural Preservation Subdivision on 36.72 acres and will contain five lots. There are no existing structures on the property and the property is currently in agricultural production. The property will be deed restricted so no further subdividing of any kind will be allowed within the subdivision plat. The density of the 36.72-acres will never be more than five dwelling units. If the property were developed using the density for the RA-1-43 zone, then there could potentially be dozens of lots on the property. If the proposal is approved and recorded the density of five dwellings will remain in perpetuity.

The Rural Preservation subdivision was developed and approved by Midway to secure open space, lower potential density, and preserve the rural atmosphere of Midway. Basically, the City allows lots, at a base density of five acres per dwelling, to be created without requiring the construction of much of the cost prohibitive infrastructure that is normally required but in return, the lots are deed restricted so that they can never be resubdivided.

LAND USE SUMMARY:

- RA-1-43 zoning
- 36.72-acre parcel
- Proposal contains five lots
- Access from Main Street
- The lots will have septic tanks, connect to Midway City's culinary water line, and Midway Irrigation Company's secondary water line

ANALYSIS:

Access – The developer must submit an access plan, and potentially, documents that provides access. The code requires 30' of access that includes a 20' driveway with 5' clear areas on both sides of the driveway.

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

FEMA Floodplain – There is a FEMA floodplain in the west side of the property along Snake Creek. All future structures will need to comply with Section 16.14.8 that requires a 50' setback from the floodplain and all habitable floors in the future dwelling must be at least elevated 18" above the base flood elevation shown on the FEMA flood insurance rate maps. The required 50' setback will be drawn on the plat.

Water Connection – The lots will connect to a water line that will be built by the developer and connect to the City's water line in Main Street. A fire hydrant is required to be installed for fire protection of the future dwelling and any future accessory structures.

Sewer Service – The future lot owners will install septic tanks that will provide septic service for the lots. Percolation tests will be performed by the developer on each lot and approved by the Wasatch County Health Department before the plat is recorded to verify the area is suitable for septic drain fields.

Secondary Water Connection – The lots will connect to Midway Irrigation Company’s secondary which is already servicing the property. A secondary water meter will be installed to monitor secondary water use on the property.

Trails – The developer will construct trail T-022 per the Midway City Master Trails Plan along Snake Creek, which is planned as an 8’ wide paved trail along the eastern side of the property. A public trail easement will also be deeded to the public for the trail. The developer will also be responsible for paying for half of two pedestrian bridges that will cross Snake Creek just as what was required for the Ray Farm Rural Preservation Subdivision. It is possible that an existing bridge crossing will be used for the crossing at the north end of the property. If the bridge is used, then the developer will be responsible the cost of for only half of a pedestrian bridge that will connect to the Ray Farm subdivision. There is evidence that the City has a prescriptive public access easement from the intersection of 400 West and Main that runs west about 600’ and crosses onto Kem Gardner’s property and then runs south about another 600’ to the current concrete bridge that crosses Snake Creek. Staff has found documents from 1975 between Calvin Probst and the Midway City Council that an agreement was made for public access and maintenance. This access will be used as a public trail from the intersection of 400 West and Main to the trail T-022 that runs through the proposal along Snake Creek.

Deed Restriction – The 36.72 acres within the plat will be deed restricted so no further subdividing of any kind will be allowed within the subdivision plat. The density of the 36.72 acres will never be more than five dwelling units. A note will also be placed on the plat indicating the restriction. The deed restrictions will contain the following language:

The deed restriction prohibiting further subdivision of the lots within the development is created for the benefit of all of the lots within the development, all of the neighboring lots to the development, and Midway City. This deed restriction cannot be altered in any way without written consent from all of the above. This deed restriction is a covenant that runs in perpetuity with the land, and it shall inure to the benefit of the owners of each lot within the development, the owners of neighboring lots of the development, and Midway City, including all parties’ heirs, successors or assigns.

The aforementioned language requires all the lot owners in the subdivision, all the contiguous landowners, and the City to all consent before a deed restriction can be altered or removed. This language has been tailored specifically to make it very difficult for any change to take place.

WATER BOARD RECOMMENDATION:

The Water Board has not made a water requirement recommendation. This proposal is scheduled for the January 6th Water Board meeting.

POSSIBLE FINDINGS:

- The proposal does meet the intent of the General Plan for the RA-1-43 zone
- The proposal does comply with the land use requirements of the RA-1-43 zone
- The proposal does comply with the requirements for the Rural Preservation Subdivision code
- There are questions regarding access that need to be resolved

ALTERNATIVE ACTIONS:

1. Recommendation of Approval (conditional). This action can be taken if the Planning Commission finds 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 finds 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 finds that the request does not meet the intent of the ordinance.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

PROPOSED CONDITIONS:

- Access is finalized before plat is recorded
- Details to the public trail and easement with pedestrian bridge are finalized before the plat is recorded
- An access plan and or documents are submitted to the City for review and approval that provides the required 30' for the driveway.

September 20, 2019

Midway City
Attn: Michael Henke
75 North 100 West
Midway, Utah 84049

**Subject: The Willows at Midway A Rural Preservation Subdivision, Preliminary /
Final Review**

Dear Michael:

Horrocks Engineers recently reviewed The Willows at Midway A Rural Preservation Subdivision plans for Preliminary / Final Approval. The following issues should be addressed.

General Comments

- The proposed plans is a rural preservation subdivision. The plan proposes five lots on 36.7 acres. All red-line comments will be addressed and turned into the City Engineer.

Water

- Midway City encourages The Willows at Midway and Walker Farm subdivisions to work together to connect to the existing culinary water system at Main Street and 400 West. An 8" line will need to be installed from that point to each subdivision and will be served from Gerber Mahogany pressure zone.
- A fire hydrant should be installed within 250 feet of the proposed structures.

Irrigation

- The proposed development should meet with the water board to determine the outside water requirements and the source of the outside water.

Roads

- No public road improvements will be required for the five lots within the proposed rural preservation subdivision.
- The proposed plan does show an upgrade to the existing 14' gravel road to a 24' paved access driveway from 400 West and Main Street heading west to the subdivision. Again, Midway City encourages The Willows at Midway and Walker Farm subdivisions to work together on this private driveway.

Trails:

- Midway City Master Trail Plan requires a trail to be installed along Snake Creek. The proposed development will need to install a public trail and bridge as part of the development and provide a public trail easement.
- As the Ray Farm Rural subdivision received approval, a trail fund was paid to Midway City for the installation of 568' of trail and one-half the cost to install a bridge across Snake Creek. As part of this this development, they will receive this trail deposit and install the complete bridge and trail system within both the proposed subdivision and the Ray Farms subdivision.

Storm Drain

- It is not anticipated that this subdivision will generate any additional storm water above the historical amount.

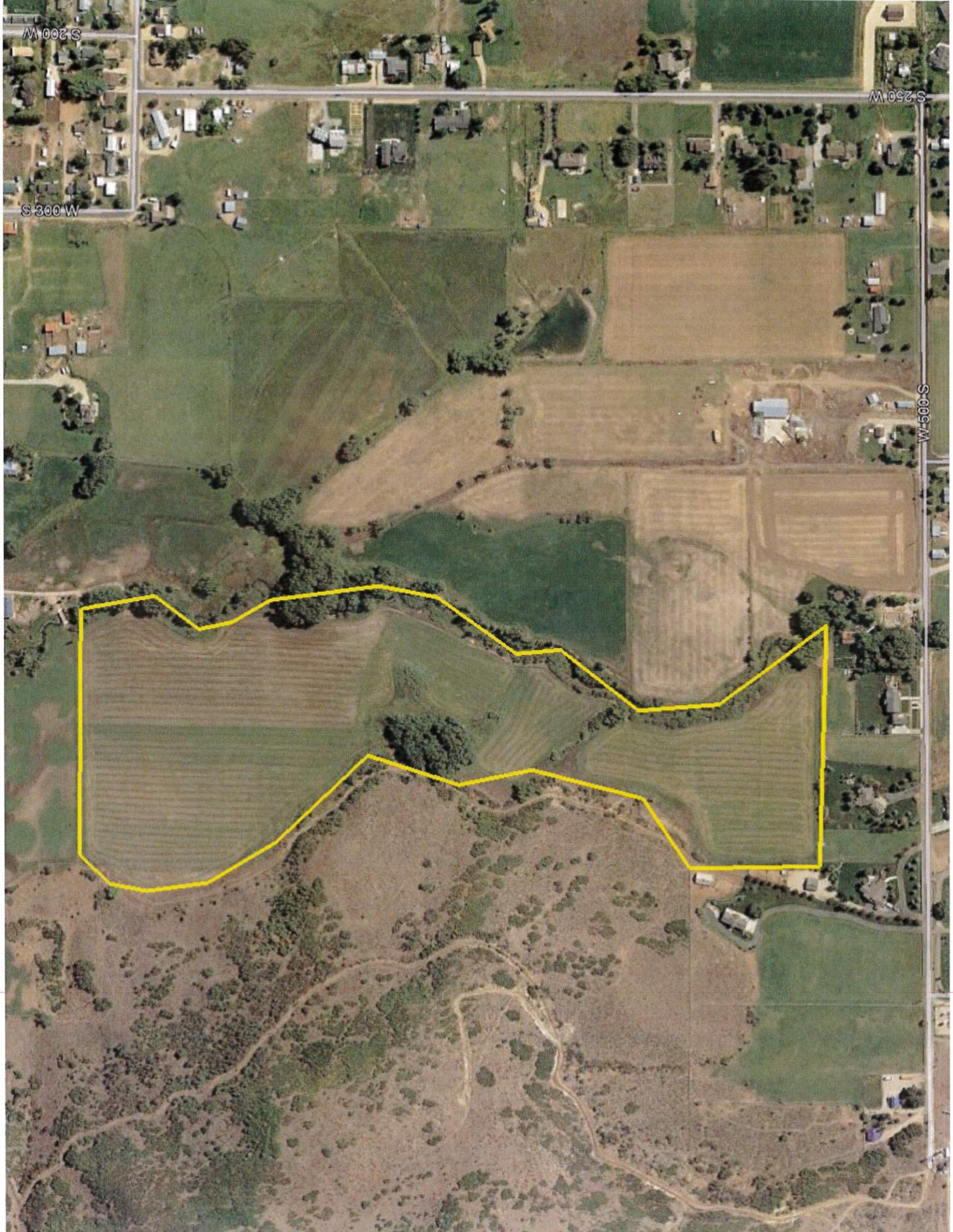
Please feel free to call our office with any questions.

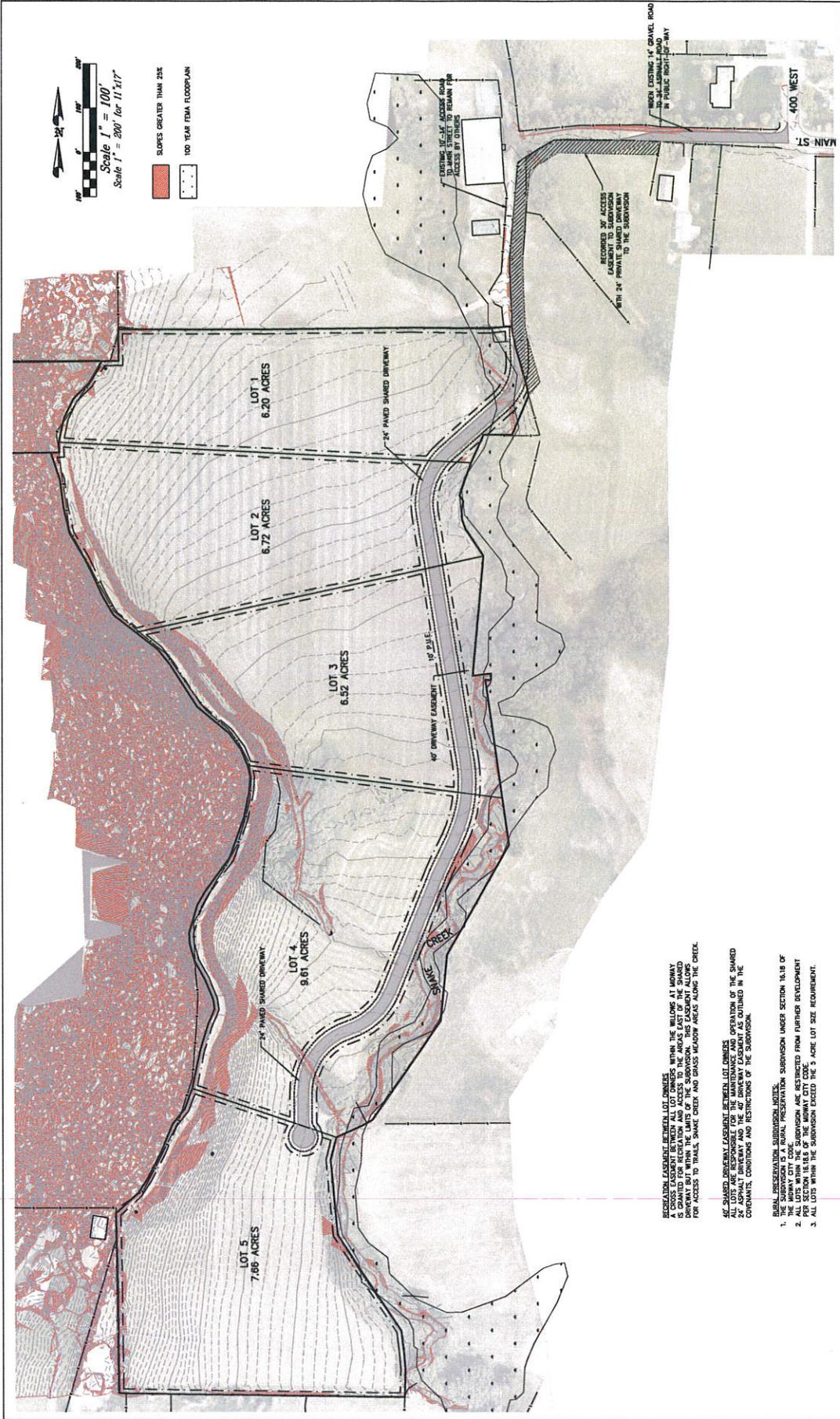
Sincerely,
HORROCKS ENGINEERS

A handwritten signature in blue ink, appearing to read "Wesley Johnson", is written over the typed name.

Wesley Johnson, P.E.
Midway City Engineer

cc: Paul Berg Berg Engineering, (sent by Email)





Scale 1" = 100'
Scale 1" = 200' for 11.517'

SLOPES GREATER THAN 2%
100 YEAR FEMA FLOODPLAIN

RESERVED EASEMENT BETWEEN LOT OWNERS
A CROSS EASEMENT BETWEEN ALL LOT OWNERS WITHIN THE WILLOWS AT MIDWAY
IS GRANTED FOR RECREATION AND ACCESS TO THE AREAS SET ASIDE FOR THE SHARED
USE OF THE WILLOWS AT MIDWAY. THIS EASEMENT IS TO BE MAINTAINED FOR THE
PURPOSE OF ACCESS TO TRAILS, SHAKE CREEK AND GRASS MEADOW AREAS ALONG THE CREEK.

SEE SHARED DRIVEWAY EASEMENT BETWEEN LOT OWNERS
ALL LOTS ARE RESPONSIBLE FOR THE MAINTENANCE AND OPERATION OF THE SHARED
DRIVEWAYS. THE SUBDIVISION IS TO BE MAINTAINED IN THE
CONDITIONS, CONDITIONS AND RESTRICTIONS OF THE SUBDIVISION.

- RURAL PRESERVATION SUBDIVISION NOTES:
1. THE SUBDIVISION IS A RURAL PRESERVATION SUBDIVISION UNDER SECTION 16.18 OF
THE WISCONSIN STATUTES.
 2. ALL LOTS WITHIN THE SUBDIVISION ARE RESTRICTED FROM FURTHER DEVELOPMENT
PER SECTION 16.18 OF THE WISCONSIN CITY CODE.
 3. ALL LOTS WITHIN THE SUBDIVISION EXCEED THE 5 ACRE LOT SIZE REQUIREMENT.

BERG ENGINEERING
REYNOLDS GROUP PC
1000 W. WISCONSIN ST.
MILWAUKEE, WI 53233
TEL: 414.224.2200
FAX: 414.224.2201
WWW.BERG-ENG.COM

THE WILLOWS AT MIDWAY
RURAL PRESERVATION
SUBDIVISION
SITE PLAN

THIS DOCUMENT IS RELEASED
FOR THE PURPOSE OF CONSTRUCTION
AND SHALL BE VALID FOR THE PROJECT
DATE: 31 SEPTEMBER 2019

BRETT WALKER
PAUL S. BERG

October 17, 2019

VIA FEDEX

Midway City Planning Commission
160 West Main Street
Midway, UT 84049

Re: *Kem C. Gardner Family Partnership LTD's Objection to Use of Private Land for Access to The Willows at Midway proposed Subdivision*

Dear Commissioners:

The law firm of Parr Brown Gee & Loveless represents the Kem C. Gardner Family Partnership LTD ("Gardner LTD") with respect to the matters set forth herein. The purpose of this letter is to inform you of Gardner LTD's objection to The Willows at Midway (the "Willows") proposed use of a private road and/or property owned by Gardner LTD for access to the Willows proposed subdivision. Gardner LTD, and its immediate predecessor, Kem C. Gardner Family Partnership, has owned the properties in question since 2000 and 2001.¹ A copy of an aerial photograph showing the existing private lane (the "Private Lane") and a recent survey of the relevant portion of Gardner LTD's property is attached. The Private Lane is a narrow, dirt two-track road used by Gardner LTD for access to its barn and agricultural fields. It has also been used historically by the Calvin Probst (and more recently Probst Raspberry, LLC) for access to his agricultural land – i.e., the same land that Probst Raspberry LLC proposes to subdivide into The Willows.

To Gardner LTD's knowledge, there is no easement of record in favor of Probst (or anyone else) or a public dedication of the Private Lane for use by the public.² Gardner LTD has

¹ The Gardner Family Partnership purchased a number of lots from different owners and assembled them into their current configuration.

² Gardner LTD understands that Calvin Probst is purported to have granted certain rights to Midway City in 1975. Gardner LTD has never seen a copy of any such document and none were referenced in the title reports when the properties were purchased from Verle Young (and others, including Mr. Probst) in 2001. Moreover, Mr. Probst did not own that portion of the property where the Private Lane extends from Main Street. It is axiomatic that one cannot grant an easement over property which he does not own, and in any event, we do not believe that any such grant was of record in 2000 or 2001. If Midway City believes that the public has a right of access over any portion of Gardner LTD's property, we would like to see the information so it can be thoroughly evaluated.

no objection to the continued use of the Private Lane for agricultural purposes by the owners of the adjacent property. Indeed, Gardner LTD recognizes that there has likely been established a prescriptive easement for use of the Private Lane for agricultural purposes. However, any use of the Private Lane has been limited to agricultural use.

Utah law is absolutely clear that a prescriptive easement may not be enlarged beyond its historic use. *See, e.g., McElpranger v. Jones*, 2007 UT App. 118 (“The general rule is that the extent of a prescriptive easement is measured and limited by its historic use during the prescriptive period. The right cannot be enlarged to place a greater burden or servitude on the property”; *Judd v. Bowen*, 397 P.3d 686 (Utah Ct. App. 2017) (“purpose for which the easement was acquired’ limits both the extent of the easement right granted as well as the physical boundaries of the easement itself.”) (citations omitted).

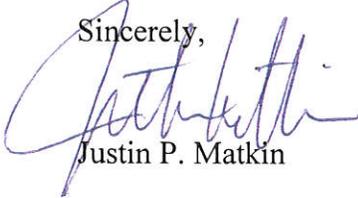
The Willows proposes, however, to use either portions of the Private Lane, or adjacent property owned by Gardner LTD for its 30’ access road for ingress and egress to 5 new residential lots. Use of the Private Lane for 5 residential lots would increase the burden on the Gardner LTD property exponentially and is a materially different type of use that the historical agricultural use. Moreover, the Private Lane is narrow and would need to be expanded and paved to accommodate the new proposed 30’ road. Alternatively, if the proposed new 30’ road is intended to run adjacent to the Private Lane, that land is also owned by Gardner LTD and it is not aware of a legal right The Willows would have to construct a new road on its property without its permission.³

Furthermore, to the extent The Willows plans to run utilities through Gardner LTD’s property, there is no easement (prescriptive or otherwise) that would permit this.

Gardner LTD was not aware of the Commission’s October 8, 2019 meeting, and therefore, did not attend. Gardner LTD learned of the issues related The Willow’s plan to use its Private Lane and/or other portions of its property only after the meeting. We understand that the decision was tabled while several issues (including access) were further investigated and discussed. While Gardner LTD does not wish to restrict the use and reasonable development of others’ private property, it is nevertheless compelled to protect its own property interests and rights. Therefore, Gardner LTD formally objects to the Planning Commission’s recommended approval of The Willows on the grounds that the proposed access road for ingress and egress and utilities appears to use Gardner LTD’s property without prior agreement or established rights-of-way.

³ A recent survey (attached) does show a small deed overlap between the Gardner LTD property and property owned by CJP Family II, LLC to the east. However, this deed overlap has never been resolved, and in any event, would not provide The Willows a legal basis to use or improve this area for its subdivision without Gardner LTD’s consent or resolution by a court.

If you have additional questions, please feel free to contact me at 801-532-7840.

Sincerely,

Justin P. Matkin

Attachments

cc: Kem C. Gardner

Planning Commission

500 W Main St - Google Maps

google.com/maps/place/500+W+Main+St,+Midway,+UT+84049/@40.5113921,-111.4836554,287m/data=!3m1!1e3!4m5!3m4!1s0x8752755193124a9b:0x915b0812ee1e46af1...

500 W Main St

Google Maps

Cancel

Print





00-0006-3391
PROBST

33' ACCESS
EASEMENT

33' ACCESS
EASEMENT

00-0006-3722
ATHAY
ENTRY No. 162969
BK 249 PG 291

GARDNER
DEED LINE
ENTRY No. 350216
BK 995 PG 1474

DIRT ROAD

00-0021-1964 CJP FAMILY II LC
ENTRY No. 427595 BK 1166 PG 959

30' ACCESS
EASEMENT

00-0006-3789
KEM GARDNER FAMILY
PARTNERSHIP LTD

00-0021-0098
WENGER
ENTRY No. 392890
BK 1088 PG 305

00-0012-08277
WENGER

GARDNER
DEED LINE
ENTRY No. 350216
BK 995 PG 1474

00-0006-3763
CJP FAMILY II LC

SUMMIT ENGINEERING
SURVEY LINE
(FOLLOWS FENCE LINE)

CJP FAMILY
DEED LINE
ENTRY No. 206146
BK 393 PG 245

00-0006-3797
PROBST TR



ENGINEERING AND SURVEYING, LLC
6949 S. HIGH TECH DRIVE SUITE 200
MIDVALE, UTAH 84047 PH: (801) 352-0075
www.focusutah.com

KEM C. GARDNER FAMILY PARTNERSHIP PRIVATE LANE EXHIBIT

Date Created:
09/27/19
Scale:
N.T.S.
Drawn:
BCD
Job:
19-0347
Sheet:

Z:\2019\19-0347\Gardner Private Lane Survey\Midway\design\19-0347.dwg\workbooks\Private Lane Exhibit.dwg

Michael Henke

From: Dennis Wenger <wenger.dr@gmail.com>
Sent: Thursday, October 10, 2019 12:20 AM
To: Michael Henke
Cc: Celeste Johnson
Subject: midway planning commission - "the Willows at Midway" proposal

hello mr jim kohler, mr mike henke and commission members,
(and please forward to all commission members, if appropriate)

We were happy that we could attend the 8 October 2019 planning commission meeting. We own the property at 425 West Main St with extensive frontage on the "extension" of West Main St. Accordingly, we have a strong interest in the nature and quality of the proposed rural preservation development. we support the new sub-division if important changes to their proposal can be made.

We first want to compliment the committee chair, mr jim kohler and you on the civility of last night's meeting--and appreciate your allowing attendees to provide input. small town government at its best.

Our concerns regarding the current proposal focus on what we believe the term "rural preservation subdivision" should mean.

In our thinking it should focus on several issues:

1. a sense of quiet and spaciousness
2. maintaining a rural appearance
3. encouraging "rural uses" (horses, hay baling, hiking etc)
5. benefit not only those who will live within the new sub-division but also those who live nearby (a key to good governance)

The current initial entry to the proposed subdivision is the extension of west main st. which classically illustrates rurality. The road is gravel and not very wide. There are nice wooden fences on either side at the initial entry and "farm fences" as you proceed westward. There is a nice horse pasture on the right and a hay field on the left (our property). In addition, there is a long established horse riding/hiking path across the north end of the proposed Willows at Midway acreage. These important rural features should be maintained if the so-called "rural preservation" land use term has validity in midway.

We understand the inevitability of development in our part of town and will support a proposal that maintains a rural sensibility.

The developers proposal should be modified so that this "western extension" of Midway maintains its rural sense. This includes:

- Keep west main street extension looking as it currently does
- Keep road at minimum required width with a gravel surface
- The gravel surface road should extend down to the crossing of Snake Creek (if the new homeowners in area west of snake creek desire asphalt roads, we would not dispute their choice)
- Maintain willow trees that currently overhang the road (as name of proposed subdivision implies)
- work with the developer to maintain the current established, intensely used horse trail/walking path along the north edge of the proposed subdivision.

(Personal note--we have a legal easement for entry to our hayfield which comprises much of the southern boundary of the current West Main St. extension. We will need assurance that the current gate entry for farm machinery will be maintained.)

Summary: We support the proposed subdivision under discussion. The developers/owners are requesting that it be a "rural preservation subdivision". because this is not a typical "in city" development where rules and regulations for multiple units on smaller spaces are followed, the planning commission and city council should set an example for this subdivision - and perhaps future similar proposals - by requiring the maintenance of rural features that benefit all citizens in the area of the new development. fortunately, last nights meeting, with extensive attendee participation, nicely clarified what these features are. we look forward to the city's response.

sincerely,
dennis and kathy wenger
425 w. main st midway, UT

Midway City is proposing a code text amendment of Section 16.16.4

(A)(20)(a): Concept Plan/Master Plan.

The proposed code will limit the number of phases and plats allowed in a master planned development based on the number of units in the master plan.



PLANNING COMMISSION MEETING STAFF REPORT

DATE OF MEETING: November 12, 2019

NAME OF APPLICANT: Midway City

AGENDA ITEM: Code Text Amendment of Title 16.16.4 (A)(20)(a):
Concept Plan/Master Plan

ITEM: 2

Midway City is proposing a code text amendment of Section 16.16.4 (A)(20)(a): Concept Plan/Master Plan. The proposed code will limit the number of phases and plats allowed in a master planned development based on the number of units in the master plan.

BACKGROUND:

Midway City Planning Commission and City Council have recently reviewed two proposals that dealt with phasing in master plans. The first proposal was a code text amendment which would have allowed for multiple plats to be recorded per each phase of an approved master plan. After careful review, the proposal was denied. The second proposal was a master plan amendment that petitioned the City to increase the number of phases in an approved master plan from three to eight. This proposal was approved but the number of phases was reduced to five. After reviewing both proposals the Planning Commission and the City Council asked staff to review the code and to propose potential amendments for consideration. It became apparent through the discussions by the Planning Commission and City Council that some additional standards should be established regarding phasing and, potentially, the number of units required per phase.

The process of approving and recording multiple plats requires much time and effort for the Planning Commission, City Council and for staff so the proposed amendments have been tailored to establish standards that are fair for the City and the developer. Per the current code, it is possible that a separate plat could be requested for each unit or lot in master plan. For this to happen, the developer would need to propose as many phases as units or lots in the proposal. It was concluded that this scenario is unlikely, but the City should amend that code to direct development in a manageable and orderly manner.

As mentioned previously, the City has some standards for master plans which include that a proposal must demonstrate that approval of the project in multiple phases can occur such that the project can still function autonomously if subsequent phases are not completed. Therefore, the Master Plan application must demonstrate that sufficient property, water rights, roads, sensitive lands protection, and open space are proposed with the first phase to allow the project to function without subsequent phases. The City will consider additional phasing requirements to this list.

Staff has developed three options for the City to consider which will be discussed below.

Option 1: Establish a minimum number of lots/units per plat.

The City may adopt code that requires a specific number of lots/units per plat. By requiring a minimum number, the City is assured that each plat has of enough units/lots to justify the time and effort spent for reviewing, processing and approving each phase. Staff has considered numbers from 5-15 as the minimum requirement. Potential code language that could be added to Section 16.16.4 (A)(20)(a) as follows:

A minimum of ten units/lots shall be included in each phase of the master plan.

Option 2: Establish a minimum number of lots/units per plat on a percentage basis.

The City may adopt code that requires a specific number of lots/units per plat based on a percentage of the overall number of units in the development. For example, the code could require that 20% of the units/lots are included in a plat. This approach would guarantee no more than five plats would be included in the master plan. A 40-lot development would require at least eight lots per plat. The disadvantage with this approach is that very large developments would have a relatively large number of units/lots in each plat while a smaller development could have a small number of units/lots per plat. Potential code language that could be added to Section 16.16.4 (A)(20)(a) could as follows:

A minimum of 20% of the units/lots of the master plan shall be included in each phase of the master plan.

Option 3: Establish the number of phases based on the number of units/lots in the development and allow the developer flexibility on the number of units/lots per plat.

The City may adopt code that establishes the number of plats based on the number of units in the development but still allows flexibility regarding the number of units/lots per plat. For example, the code would allow for one plat per development and another plat for every 15 units/lots. A 60-lot development would allow for five plats. The developer would then be able to determine how many units are in each of the five plats. This would assure the City that there would not be an excessive number of phases, but it would also allow flexibility for the developer regarding the number of units/lots per plat. Potential code language that could be added to Section 16.16.4 (A)(20)(a) could be as follows:

The number of phases in a development shall be determined by the number of lots/units. One plat is allowed per development and an additional plat is allowed for each additional 15 units/lots. Once the number of phases has been determined, the developer may choose the number of units/lots included in each phase. For example, a 60-lot development would allow for five plats. The developer could have 12 lots in the first phase, four lots in the second, 14 in the third, 22 in the fourth, and eight in the last phase.

POSSIBLE FINDINGS:

- The proposed amendments will establish standards for master plan phasing.
- The proposed amendments will assure that number of phases/plats in a development is manageable.
- The proposed amendments may save time for the Planning Commission, City Council, and staff.
- Option 3 allows the developer to have flexibility regarding the number of units that can be included in a phase/plat.
- The proposed amendments do not change the fact that all other master plan requirements (open space, water requirements, traffic circulation, etc.) are still required for each phase.

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 would like to continue exploring potential options for the amendment.
- 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 amendment is not an acceptable revision to the City's Municipal Code.
- a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

Midway City is proposing a code text amendment of Section 16.2: Definitions.

The proposed code will define One-Family Dwellings. Also, this proposal will define when a second kitchen is allowed in a one-family dwelling and will explain what constitutes a second kitchen.



PLANNING COMMISSION MEETING STAFF REPORT

DATE OF MEETING: November 12, 2019

NAME OF APPLICANT: Midway City

AGENDA ITEM: Code Text Amendment of Section 16.2: Definitions

ITEM: 3

Midway City is proposing a code text amendment of Section 16.2: Definitions. The proposed code will define One-Family Dwellings. Also, this proposal will define when a second kitchen is allowed in a one-family dwelling and will explain what constitutes a second kitchen.

BACKGROUND:

Midway City is proposing a code text amendment that would add language to the definitions section of the code that would define one-family dwellings. The reason for this proposal is staff is constantly discussing this issue with people interested in constructing in Midway and, though less frequently, with residents that would like to finish their basements or add additions to their homes. The code allows for one-family dwellings in all residential zones but there is not a definition of a one-family dwelling anywhere in the code which has required staff to use its best judgement on this issue.

Sometimes building permits are submitted to the City that are essentially duplexes. The permits include two kitchens and include doors that separate two living areas. Staff has been consistent on dealing with this issue and has required one kitchen to be removed or reduced to a wet bar, or the lockout to be removed. If a second kitchen has been allowed, after the determination has been made the dwelling is not a duplex, then a second kitchen

affidavit has required to be recorded on the lot, so any future owners also know that the dwelling is a one-family structure. It will be much easier for staff and for the public if there is a clear definition that can be shared with those interested in building in Midway or making additions or improvements to their existing dwelling. State code requires cities and counties to have clear and precise language in their land use codes which leaves little area for interpretation. The lack of definition that we currently have leaves the City in a vulnerable position if there is ever a legal issue that arises over this issue. There is also the bigger issue that should be considered regarding one-family dwellings that are illegally converted to duplexes. Structures that were approved as one-family dwellings but are built with everything required to house two families are easily converted to this situation and essentially double the density and use on a single-family lot. Doubling the density has a compounding effect on the community regarding demand on services, traffic, parking, number of students in the schools, etc. Also, without clarity of code, staff believes that the size of homes are larger because property owners build bigger structures with the idea of having more than one family in a dwelling. If it is clear that only one kitchen is allowed, then much of the discussion and debate can be avoided along with unintended consequences on a communal level.

Realtor.com defines a single-family home as the following: "a structure maintained and used as a single dwelling unit." The site goes on to explain that there should only be one kitchen as described in the following: "A single-family home has one kitchen. Adding a kitchen to an in-law suite or carriage house will alter a home's zoning classification."

Option 1:

Staff proposes that the following definition is added to the definitions section of the Land Use Code found in Section 16.2:

60. One-family dwelling. A building designed for use as a residence and includes only one kitchen and does not include basement suites, mother-in-law suites, or lockout units. Wet bars are allowed in one-family dwellings and may include a sink, microwave, and refrigerator but may not include a stove, oven, or dishwasher.

Option 2:

If the City would like to continue to allow two kitchens in a dwelling, then the circumstances when a second kitchen will be allowed need to be clearly stated. It is important that if a dwelling can have a second kitchen that the home functions as single-family dwelling and not as a duplex. This means that the second kitchen is integrated into the dwelling so that it does not function as a separate living space. The code could allow a second kitchen if the only access to the second kitchen is through the main part of the dwelling and there is no access from the garage or an outside entrance. Also, another option is to allow a second kitchen if

there is not a door between the two kitchens. Both options are manageable for staff regarding administering the City's code for one-family dwellings. If a second kitchen option is adopted by the City, then there should always be a second kitchen affidavit recorded on the property. Potential code language could be the following:

60. One-family dwelling. A building designed for use as a residence and does not include basement suites, mother-in-law suites, or lockout units. If a one-family dwelling includes more than one kitchen then one of the following options are required; 1. There is not a separate access to the second kitchen from outside the dwelling or from the garage, 2. There is not a door between the two kitchens. Wet bars are allowed in one-family dwellings and are not subject to the same restrictions as second kitchens and may include a sink, microwave, and refrigerator but may not include a stove, oven, or dishwasher.

Adopting one of the two options in this report will help and staff to administer the code and it will help the public to understand the options available when building in Midway.

POSSIBLE FINDINGS:

- The proposed amendment will define one-family dwellings
- The proposed code will define if and under what circumstances second kitchens are allowed
- The proposed amendment will help staff to better administer the City's code
- The proposed amendment will help the public to understand the options available when building in Midway

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 would like to continue exploring potential options for the amendment.
 - 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 amendment is not an acceptable revision to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

Midway City is proposing a code text amendment of Section 16.13.6: Accessory Buildings Prohibited as Living Quarters and Section 16.2: Definitions. The proposed code will better describe what is allowed in an accessory structure and define what is considered living quarters. The proposed amendment will also address breezeways and their relation to accessory structures.



PLANNING COMMISSION MEETING STAFF REPORT

DATE OF MEETING: November 12, 2019

NAME OF APPLICANT: Midway City

AGENDA ITEM: Code Text Amendment of Section 16.2: Definitions and Section 16.13.6: Accessory Buildings Prohibited as Living Quarters

ITEM: 4

Midway City is proposing a code text amendment of Section 16.13.6: Accessory Buildings Prohibited as Living Quarters and Section 16.2: Definitions. The proposed code will better describe what is allowed in an accessory structure and define what is considered living quarters. The proposed amendment will also address breezeways and their relation to accessory structures.

BACKGROUND:

Midway City is proposing a code text amendment that would add language to the definitions section of the code that would define accessory buildings. The proposed amendment also clearly states what is allowed in accessory structures and addresses lengths of breezeways and their relation to accessory structures. Staff has found that better defining these issues will make administering the code easier and the public will have better guidelines regarding accessory structures.

Staff has found that determining what is “living space” is problematic without a definition in the code. Generally, staff has described living space as bedrooms, kitchen

full bathroom, and laundry facilities. Rooms such as offices, hobby rooms, game rooms, music rooms, craft rooms, swimming pool areas, and such as nonliving space.

Staff has had many discussions, over the years, on this issue and feels that adopting the following definition will greatly help both the public and staff:

Section 16.2.7a Building, accessory

A subordinate building, located on the same Lot as the main building, the use of which is incidental to that of the main building. Accessory buildings are structures including, but not limited to: attached or detached garages, sheds, playhouses, treehouses, storage buildings, pergolas, garden structures, greenhouses, private studios, boathouses, pool houses (may include showers), cabanas, and other similar buildings. Accessory buildings may include rooms such as offices, hobby rooms, game rooms, music rooms, and craft rooms. An accessory building may not include any living space which includes rooms such as bedrooms, kitchens, full bathrooms, and laundry facilities. Accessory buildings are to be used exclusively by the owners or occupants of the main residential building and their temporary guests or invitees. Accessory buildings are not permitted to be used as sleeping quarters or as living space.

Staff is also proposing to amend Section 16.13.6: Accessory Buildings Prohibited as Living Quarters. The current code reads as follows:

Section 16.13.6 Accessory Buildings Prohibited as Living Quarters

Living and sleeping quarters in any building other than the main residential building is prohibited except as allowed for detached two family dwellings in the R-1-7 and R-1-9 zones.

Those who have wished to have living quarters in accessory structures have suggested that attaching the accessory structure to the main dwelling by connecting a breezeway makes the accessory structure part of the main structure. Some have even suggested building a breezeway of up to 200' to have living space in what staff has considered an accessory structure even with the breezeway connection. Staff would like to adopt a standard to the length of a breezeway that determines when a structure is part of the main structure or when its an accessory structure.

The proposed code for Section 16.13.6: Accessory Buildings Prohibited as Living Quarters is as follows:

Section 16.13.6 Accessory Buildings Prohibited as Living Quarters

A. It shall be a violation of the Midway City Code to use, or to allow the use of, an accessory building as sleeping or living quarters. Violations of this section of the Code shall be enforced as set forth in the Midway City Code for other violations.

B. Living and sleeping quarters in any building other than the main residential building are prohibited except as allowed for detached two family dwellings in the R-1-7 and R-1-9 zones.

C. "Living and sleeping quarters" in an accessory building shall be defined to include bedrooms, kitchens, laundry facilities, and/or full bathroom facilities.

D. It shall be a violation of this Code to rent, lease or otherwise allow for any person to use an accessory building for sleeping or living quarters.

E. Breezeways or covered awnings connecting an accessory building to the main residential building are limited to twenty (20') feet in length for the entire structure to be considered the main residential building which allows living space in the entire structure. If a breezeway is greater than 20' in length, then the structure connected to the main structure is an accessory building is not allowed to have any living space.

POSSIBLE FINDINGS:

- The proposed code will define living space and what is allowed in accessory structures
- Allowed and prohibited uses are clearly stated for accessory buildings
- The proposed amendment will help staff to better administer the City's code
- The proposed amendment will help the public to understand the options available when building in Midway

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 would like to continue exploring potential options for the amendment.
 - 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 amendment is not an acceptable revision to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial