

**Midway City Planning Commission Regular Meeting
April 15, 2015**

Notice is hereby given that the Midway City Planning Commission will hold their regular meeting at 7:00 p.m., April 15, 2015, at the Midway City Community Center
160 West Main Street, Midway, Utah

Attendance:

Mickey Oksner – Chairman
Steve Nichols
Bill Ream
Natalie Streeter

Staff:

Michael Henke – City Planner
Lindy Rodabough – Admin Assistant

Excused

Stu Waldrip – Co-Chair
Chip Maxfield
John Rather
Jim Kohler
Nancy O’Toole

6:45 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
There was no Opening Remarks or Invocation. Chairman Oksner led the Pledge of Allegiance.

Regular Business

1. Review and possibly approve the Planning Commission Minutes of March 18, 2015.

Chairman Oksner asked if there were any discussion on the motion

There was none

Motion: Commissioner Nichols; I move that the minutes be adopted in substance subject only to typographical changes that will be made.

Seconded: Commissioner Streeter

Ayes: Commissioner Streeter, Ream, Oksner and Nichols

Nays: None

Motion: Passed

ITEM: 2

Kraig and Jeanette Higginson are requesting a Code Text Amendment that would add a new section of code that would govern agricultural greenhouses. The sections of code that they propose to add and modify are located in Chapter 16.2 and Chapter 16.13.46

BACKGROUND:

The proposed code text amendment would change several areas of the City's Municipal Code. It would also add a section of code to Supplementary Requirements in Zones. Here is a brief synopsis of the proposed changes; each will be explored in more detail further in this report. First, the definition of agriculture would now include animals. Second, a new category of greenhouse would be added to the code that would be called an "Agricultural Greenhouse." Third, the RA-1-43 section of code would be modified to include the word "agriculture", replacing the word "livestock", and add Agricultural Greenhouse as a conditional use. Fourth, a new section of code would be added to Supplementary Requirements in Zones that would state the requirements for an Agricultural Greenhouse. Below is an explanation of the process that the City experienced regarding the code that is now in place. This history is important because much time and effort by the Planning Commission, City Council, and staff was expended to create the current code. The public also endured many hours of public hearings and their public comment helped shape the current code. This time and effort should be considered before any further changes are made to the code.

The personal and commercial greenhouse code has been an issue of debate in the City. It has been reviewed by the Planning Commission and the City Council on several occasions and many members of the community have been able to comment on the issue. Here is a brief history of the greenhouse code.

The original greenhouse code text was presented to the Planning Commission on November 28, 2012. After much discussion and public comment, the Planning Commission decided to consider commercial greenhouses as a conditional use in the RA-1-43 residential zone. They requested a work meeting to continue the discussion and further develop proposed regulations. That work meeting was held during the regularly scheduled Planning Commission meeting of December 19, 2012. During that meeting the Commission agreed to retain the current definition of agriculture and separate the discussion of agriculture from commercial greenhouses. They also agreed to utilize a tiered approach in making decisions about whether to consider plants in the soil, hydroponics, or aquaculture. The Commission gave staff direction, requested examples, and asked to have the item back on the January 16, 2013 meeting for further discussion. At the January 16, 2013 meeting, the Commission agreed to move forward with commercial greenhouses as a conditional use. After considering numerous examples of acreage, land acreage/greenhouse area ratio, size and scale, height, setbacks and screenings, the Commission expressed preferences and asked that the item be brought back for further consideration at the February 20, 2013 meeting. At that meeting the Planning Commission decided to add, as a conditional use, commercial greenhouses to the B & MP zone. They made several other changes

to the ordinance and then made a motion to approve the proposed code text amendments to the City Council.

The City Council first heard the proposed personal and commercial greenhouse ordinance on March 13, 2013 and also held a public hearing at that same meeting. The item was then continued to a work meeting that was held on March 28th and then another on April 24th. In those two work meetings the City Council discussed the details of the ordinance at length. There were discussions regarding those details that were inserted into the proposed text. Overall, the Planning Commission discussed the proposed changes in four separate meetings spanning from November 2012 to February 2013 and the City Council also spent four meetings (including the May meeting) spanning from March to May. The commercial greenhouse code was then approved and adopted as code on May 8, 2013. In that meeting the City Council excluded aquaponics and aquaculture as uses allowed in commercial greenhouses. It was discussed in that meeting that they would consider a code text amendment in the future to again allow fish in commercial greenhouses if an application was made and the applicant could propose and acceptable plan. In 2014 Kraig Higginson applied for a code text amendment that would allow aquaculture and aquaponics in commercial greenhouses. The City Council did approve that amendment on June 28, 2014.

The applicant received approval for two separate conditional use permits for greenhouses. The first was for a commercial greenhouse and approval was received on November 13, 2013. Mr. Higginson then applied for a Conditional Use Permit for a personal greenhouse, thus voiding the approval for the commercial greenhouse, and received approval on April 8, 2015.

This leads us to the current application by Kraig Higginson which, if approved, will create a third category of greenhouse. In the "Analysis" section of this report the proposed changes will be reviewed in detail.

ANALYSIS:

The first proposed change to the code is in Section 16.2: Definitions. Currently the definition of agriculture is the following:

Agriculture. The growing of soil crops in the customary manner in the open. It shall not include livestock-raising activities nor shall it include retailing of products on the premises.

The applicant would like to change that definition for the following:

Agriculture. The science and art of the production of plants and animals useful to man, including the preparation of plants and animals for human use and includes storage and disposal by marketing or otherwise.

It is staff's understanding that the applicant has used the definition out of State Code for agriculture. The issue that staff has identified with amending the definition for agriculture is the inclusion of animals in that definition. The way that the Municipal Code was written specifically

excluded animals in the definition. This is because in the RA-1-43 zone agriculture is listed as a permitted use but also livestock is listed separately as a permitted use. There are specific regulations regarding the number of animals a property owner may have on a property based on the size of the property and the type of animals they have. The code was tailored to not include animals in the definition of agriculture because otherwise there would be no limit to the amount of animals a property owner could have, that is why it was listed separately.

The second proposed change would add a new category of greenhouse that would be called an "Agricultural Greenhouse." This would be added also to Section 16.2. The definition would be the following:

Greenhouse, Agricultural. A structure or portion of a structure usually made of glass or other translucent material, for which the primary purpose is for the science and art of the production of wholesale agricultural products including customary food that is proper for human consumption. This could include hydroponics, aquaponics and plants grown in the soil.

Currently the Code has a definition for a personal greenhouse and a commercial greenhouse. This proposal would add a third category. The applicant is proposing to add text in the Supplementary Requirements of Zones that would list the regulations for this new type of greenhouse. The details of these regulations will be described later in this report.

The third proposed change is to the RA-1-43 section of code. This section would be modified to include the word "agriculture", replacing the word "livestock", and add Agricultural Greenhouse as a conditional use. Staff feels that the change of the word "livestock" to "agriculture" could create problems with the Code for the aforementioned reasons. It is staff's opinion that this specific change is not necessary to meet the applicant's goals of creating a new category of greenhouse. The second part of the change to this section is to Agricultural Greenhouse as a conditional use in the RA-1-43 zone.

Fourth, a new section of code would be added to Supplementary Requirements in Zones that would state the requirements for an Agricultural Greenhouse. This section's text is similar to the Section 16.13.45: Commercial Greenhouses with one main difference. The difference is that the buildings could not exceed more than 15% of the total parcel acreage. This is compared to 35% for commercial greenhouses. There are some other differences, such as the section on grow lights has been removed and the drainage plan requirements have been taken out of the Potential Impacts and Mitigation section of the code (the applicant feels that section is redundant). Otherwise the only major difference is the maximum size of the buildings has been reduced from 35% to 15% of the parcel area. This means on a 70 acre parcel the maximum size of an "Agricultural Greenhouse" would be 457,380 square feet or 10.5 acres. A commercial greenhouse on a 70 acre parcel could be 1,067,220 square feet or 24.5 acres in size. Basically the proposed change would limit the size of the structures further from the current commercial requirements but all the other benefits of a commercial greenhouse would still be present including aquaculture and aquaponics and the ability to wholesale any agricultural products. The building in essence would be similar in every way to commercial greenhouses except for the maximum size those buildings would be reduced from 35% to 15% of the parcel area.

This leaves the City with the following questions; Are these proposed amendments and additions to the Code beneficial to the community? Does this use help the City to create the vision the community has for the area? Does the City already have a section of code that accomplishes these goals?

NOTICING:

As required by State and local ordinance this item was noticed for two weeks in the Wasatch Wave and on the State website. Notice was also posted in three public locations in the City.

PROPOSED FINDINGS:

- Agricultural greenhouses would allow aquaculture and aquaponics and the wholesaling of produce in the Residential Agricultural Zone (RA-1-43).
- Agricultural greenhouses would be limited to 15% of the entire parcel area.
- Sufficient potential impacts and mitigations for agricultural greenhouses have been identified to protect neighboring property owners and the City residents in general.
- Agricultural greenhouses to meet the vision as described in the General Plan for the RA-1-43 zone.

ALTERNATIVE ACTIONS:

1. Recommendation for 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 for 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

Chairman Oksner: What is considered as livestock?

Planner Henke: It doesn't include dogs, cats or household domestic animals. What it does include is:

- Chickens, pigeons, pheasants and other similar birds; those are worth two (2) points.
- Geese, ducks, peafowl, turkey and other birds; those are worth ten (10) points.
- Sheep, llamas, calves, foals, and other similar sized animals; those are worth 25 points.
- Horses, cattle, and other similar sized animals; those are worth 40 points.

Animals may total 50 points per ½ acre. This stops someone creating a stockyard in that particular zone in the City.

Commissioner Ream: In reading this, it is unclear to me. What is the fundamental problem that is trying to be addressed by this change? What is the issue we are trying to address?

Commissioner Nichols: The only difference between a commercial and the agricultural greenhouse is the amount of property that can be covered by the greenhouse; 35% versus 15%?

Planner Henke: There are a couple of main things. First, is the name, we would be adding agricultural to the name instead of commercial. Second, the area, it is changing from 35% to 15% and the other few items are some details in the code. For instance, a drainage plan and grow lights. Those are the main changes.

Commissioner Nichols: Is the 35% a maximum?

Planner Henke: Yes. If you have a 100 acre property you could have 35% of it used for greenhouses.

Commissioner Nichols: If you only wanted to cover 15% would that be permitted as a commercial greenhouse?

Planner Henke: It could be permitted as a commercial greenhouse

Commissioner Nichols: I don't see a difference between the two definitions.

Planner Henke: If you apply for an agricultural greenhouse you can have 20%, if that were the case you would have to make it a commercial greenhouse. Yes, there are only minor changes here.

Commissioner Nichols: Why would someone apply for an agricultural greenhouse as opposed to a commercial greenhouse?

Chairman Oksner invited applicants to approach the podium to introduce themselves: and to answer questions from the commissioners.

Applicants Kraig and Jeannette Higginson introduced themselves at the podium.

Chairman Oksner: Why would you want to change from commercial to the agricultural, what is the motivation?

Applicant Kraig Higginson: The primary motivation for this is a couple of things. One is that the unattended consequences of the City putting in the term either personal or commercial left a void for what we are trying to do. By going to a commercial greenhouse that triggers all kinds of commercial international codes for a building. Suddenly what we wanted to build the cost of the structure goes up by several hundred thousand dollars to meet ADA and all these other things that you have to do if it is designated as commercial. It's a word challenge. We voluntarily said ok to avoid all these things, we are going to call ourselves a personal greenhouse. The issue with that is it can only be 1,000 square feet and I'd have to get a Conditional Use Permit to be larger. When I go from a commercial greenhouse to a personal greenhouse I would no longer be able to sell the produce I grow to the local restaurants or to grocery stores, or even to my neighbors or friends. I have no interest in being a commercialized operation, because of what I just described. I can be a personal greenhouse and grow ten times the amount of produce my family can consume and then I'd literally have put the excess in a dumpster because the code does not allow us to sell. We bought an agriculture farm that was approved for 100 homes prior to us buying it. We want to keep it agricultural.

Commissioner Ream: If I understand you correctly, if we eliminate the word commercial even though you would still be selling your produce you will not be hit with all these commercial regulations?

Applicant Kraig Higginson: Farming is considered agricultural operations even though farmers sell their product they grow. For example if my neighbor grows hay on his farm and I came and paid him for a pick up load of hay; one could argue that what just happened is commercial. It isn't though it is agricultural, and agriculture is exempt from those commercial codes in most places in the country; because if not the farms would be considered commercial not agricultural.

Chairman Oksner: It is the buildings that determine the codes not the produce that you are producing. If you are growing stuff indoors then you are introducing something that is not present in most agricultural circumstances.

Applicant Kraig Higginson: On my farm under the current code I could put up 40,000 square foot buildings side by side by side by side, 28 acres worth of those. They could be made of thin skinny aluminum and translucent material and I would qualify for exactly what your code requires. Instead what I did was I put up a very substantial building that is far more cosmetically appealing and structurally sound. I'm penalized for that in being called a commercial building. We do not want it to occupy 35% of the landmass, we are saying 15% and we are only occupying a single digit. We do not want the word commercial entered in it because it creates all kinds of building code challenges.

Concerning livestock we attempted to go with what is a standard definition of agriculture almost everywhere across the country. We are not trying to invent anything.

Chairman Oksner: Given staff discussion you would not have a problem with it if livestock was taken out of it?

Applicant Kraig Higginson: I think the City's code concerning livestock is a good code.

Chairman Oksner: So that's not an objection at this point?

Applicant Kraig Higginson: No.

Chairman Oksner: The building you do have is seventeen thousand square feet. Eleven thousand feet of it is agriculture and seven to eight thousand square feet of living area.

Applicant Kraig Higginson: Let me define it how it is. It is about eight thousand square

feet of greenhouse, and the balance of it would be storage and there is about eleven hundred square feet of what we call a gathering room. It has a sink, kitchen area and there is an open space adjacent to that is designed to be future greenhouse, which is included in the eight thousand square foot number.

Commissioner Streeter: I'm all for agriculture, livestock and what you've done. I look right at your greenhouse every single day and I really like it. You have raised some questions. We all know that the ADA is a pain for most business owners and I think that is something that we could all understand. We do not want to put anyone at a disadvantage or at an advantage, we want to make sure that the regulations mean that you go through the same process for something that you are going to sell and I say that from a food safety standpoint. Outside of that we also have to look at how this would apply outside of your particular situation. I commend you for what you have done, I want to make sure, and I think that my fellow commissioners would agree, we don't look specifically at you and create a mess down the road. My biggest question is; why does agriculture have to be redefined?

Applicant Kraig Higginson: From our perspective the concept of growing and selling a tomato is agriculture. When you add a definition to that and you grow a tomato inside a building instead of outside your building and within two (2) feet of each other then it will be redefined what that tomato is.

Commissioner Streeter: Your issue is that the fact of your existing code says the growing of soil crops in the customary manner in the open.

Applicant Kraig Higginson: Yes, that's one of the challenges

Commissioner Streeter: You're really looking at the first sentence and thinking this is a problem. You're not so much looking at the second sentence, correct?

Applicant Kraig Higginson: Yes, that is correct.

Applicant Jeannette Higginson: Livestock is not so much an issue. It has more to do with the agriculture zone definition. The thing that we are looking at for us particularly is it shall not include retailing, wholesaling or marketing your product and the fact that it has to be grown in the open or it would not fit in this definition.

Commissioner Streeter: That I understand. I read this and ask, what is your problem with livestock? You're telling me that you don't have a problem with livestock.

Applicant Jeannette: No we personally do not have a problem with livestock. Kraig and I find the code on livestock to be contradictory.

Chairman Oksner: You're permitted to grow anything indoors in a hydroponic environment.

Applicant Kraig Higginson: Yes, under the commercial greenhouse code we could function pretty much like we would want to other than putting that word commercial in creates all kinds of requirements.

Chairman Oksner: Have you already spent the additional money for sprinklers and anything else ADA and what have you would require of you being a commercial greenhouse?

Applicant Kraig: No. This is why we are here to try to get the word commercial replaced with agriculture.

Commissioner Ream: What would happen if we removed the word commercial from commercial greenhouse? Can we remove the word commercial?

Applicant Kraig Higginson: That would be a good solution here and if that's possible as

being a conditional use to remove that word in our application I'd love that to be the solution.

Planner Henke: One thought would be to not add a third category, but just change the name of commercial greenhouse to agricultural greenhouse. That may change all of these requirements.

Chairman Oksner: Natalie, do you have a legal opinion on this?

Commissioner Streeter: I worry that if we take the word commercial out we'd be kicking a wasp's nest because this was a really contentious item.

Chairman Oksner: Yes it was contentious and it got heated many times. Higginsons you have been the poster children in almost all of this. The hydroponic greenhouse that you first applied for set the bar exactly where it should be. I've said that before to you. When you came back and wanted to go personal it was a shoe in. How many more months are you going to come back?

Applicant Kraig Higginson: I want to point out that the first time that I came in and the word commercial entered into it, I never wanted to be commercial. I've never come to this body and said that I want to be commercial. The City code was dictating what I had to be because my building is over one thousand square feet.

Chairman Oksner: You've always stated that you are going to produce more than you and your kin can consume.

Applicant Kraig Higginson: As I do on my hay farms as I do in any of my agricultural operations I'm running.

Chairman Oksner: You would be commercial if you did that.

Applicant Kraig Higginson: In this City under its current definition it would be. I don't know of any other place where that is the case.

Planner Henke: One thought is if the name were changed from commercial to agricultural all of the safe guards would still be in place and that is what we took so long to create here in the City making sure those safe guards were in place. In that manner I don't think that it would have that much of an impact on us as a City.

Chairman Oksner: I'm not sure that the 35% would make a big difference either.

Commissioner Ream: Why don't we leave it the way it is? Mr. Higginson, do you have a problem with us leaving it the way it is at the 35%?

Applicant Kraig Higginson: No. We would never use that much, but someone else coming in might.

Commissioner Nichols: Michael has staff done any analysis on this idea of just having the word commercial, would trigger all of these building and ADA requirements; and by dropping the word commercial would be enough to not have those provisions triggered?

Planner Henke: I've worked with Jeannette on this and in our discussion I've advised Jeannette to talk to the City's building inspector, Wendy Johnson. Jeannette after you talked to Wendy I went and talked to her as well. When I spoke with her she told me that she would have to think about it. So I do not have a direct answer regarding what the changes would be exactly.

Applicant Kraig Higginson: I've talked to the City inspector on numerous occasions trying to figure out how to get around being commercial. Wendy's position is; you are a commercial greenhouse you are a commercial building. You are no longer an agricultural building you are a commercial building. I think her hands are tied based on just that word in your code. I don't know that she has options.

Commissioner Ream: I don't have a problem as long as we have the safe guards of changing one word, because from the City's point of view I don't think that it makes any difference. There is no sense in doing it if we don't have a legal opinion that that would then solve the problem.

Planner Henke: I don't know that's it is so much of a legal opinion I think that it's a matter of the different departments in the City be it engineering or building taking a look at this particular situation and really stating what the requirements would be, that's really what we are missing.

Chairman Oksner: Has Wendy weighed in on this? If the name was changed would it make a difference?

Planner Henke: I did pose that question and I didn't get a real good answer. I don't have an answer to that. I don't know what would change with technicalities regarding the building code. I'm very well educated in land use, but not in the building code.

Applicant Jeannette Higginson: If this wasn't considered commercial our barn and greenhouse could be declared an accessory building.

Applicant Kraig Higginson: Which is what it would normally be on a farm.

Applicant Kraig Higginson: In our case if you look at our plans and what we've done and what we are doing in that facility, it's safe to say it is overdone; it's over done for a greenhouse. The beauty in that in my opinion for this body and the City Council is that it sets the bar really high. In the future if someone wants to put in PVC pipe with plastic spread over it had have it cover 35% over some ground, I think that there has been a bar that is set a lot higher than that and it might give you some room to have that conversation.

Commissioner Nichols: Let me make sure that I understand at the risk of over simplifying the issue. You would like to be able to sell the excess product that you raise; but in order to do that you have to be a commercial greenhouse under the code as that is not permitted under a personal greenhouse? However if you are a commercial greenhouse it triggers all this additional expense of complying with international building codes.

Applicant Kraig Higginson: Simply put that is at least half of the battle. The other issue is the aquaculture and aquaponics and those are only allowed in a commercial greenhouse. I have an educational video that I'd like to show you tonight to show you what we are doing. We've set up a laboratory test facility down in Utah County and we've replicated four (4) units of what we're doing.

❖ Six minute educational aquapontic video was shown.

Chairman Oksner: How long would it take to grow alfalfa?

Applicant Kraig Higginson: Alfalfa is not a practical greenhouse crop. From our perspective as to why we are doing it. We have seven (7) children and their spouses and thirty grandchildren. We bought this farm originally to leave it as a farm and to put ourselves into a position to feed our family and others if we ever needed to.

Chairman Oksner thanked applicants Kraig and Jeannette Higginson. He then invited any public comment.

Member of the public, Grant Kohler: I'm a dairy farmer out on River Road. I'm in agriculture I grow and sell a lot of product. If I grow a field of corn and I put my kids out on the corner to sell that corn the state allows me to do that by law, I don't think that you guys can stop me. I'm not trying to say that you can or can't I'm just saying that's agriculture. Agriculture is agriculture, I understand if someone wants to do it on a huge

scale that's a little bit different. I just wanted to mention that I have some real concerns. The Higginsons have come in on an existing farm in fact they have built their greenhouse on the existing barn foundation that use to be there, and I think that they've done an incredible job. I would a lot sooner have the farm there than I would have 100 new homes. I struggle with the idea that by pushing too many regulations on some of these things that it will force people to take that home option because they can't afford the other option. We need to be very careful on the decisions we make. I've lived here all my life; I am the fourth generation here in Midway. I would like Midway to stay as rural as we can keep it. I don't mean stop people from building homes, but I think when people come in and want to do things like this we should really cater to them to try and keep our lifestyle the way it is now. I think this is an opportunity to do that.

Member of the public, Jay Price: My family was the previous owners of the farm that the Higginson's have purchased. We had built a barn there where the Higginson's greenhouse now sits. When my family owned that farm we had around two hundred and fifty cows, if we still had them today based on today's prices the farm would have produced about \$5,000 a day in milk. Is that commercial? I don't think that it is; I think it was an agricultural operation. I appreciate what the Higginsons are doing. The Higginson's intent is good and I have no objections to their proposal. I would urge the Planning Commission to consider leaving the commercial and adding this in as an agriculture business. I absolutely commend them and think we should be accommodating to the Higginsons and I'm here to speak in their support.

Member of the public, Renee Green: Listening to the Higginsons tonight has really reinvigorated my hope in America, in American dreams, freedom the blessings of life liberty and property. I've been inspired by their desire to be self-reliant to take care of their family. Something that hasn't really been address very much is that we don't really know what's ahead economically or the future of our nation. We don't know how hard of times we might be facing. My caution as a citizen of this valley and as an American would be to be very careful in having too many laws. The more laws we get the more difficult it will be for people to provide for themselves.

Chairman Oksner: Is this an endorsement for the Higginson's?

Member of the public, Renee Green: Very much so.

Member of the public, Seth Plotter: I am one of the six (6) sons in laws. My wife and I along with our seven (7) children live in the house next to the greenhouse. We've been here for a little over two (2) years now. I've taken some time this week to read a little bit in these three (3) books, you may recognize some of them. Many of you have added to these books over the years that have to do with Midway's first settlement, Midway Memories and a Portrait of a town. Midway is a wonderful place to be, we love it here. The heritage and legacy that we find in these books is quite amazing. Today marks 156 years of the settlement of that farm and the agriculture that was produced there for decades. I am in full support of this. If you read the Mission and Vision statement in the Mission statement there is a phrase that says honoring our heritage and preparing for the future. What's been discussed tonight is just that, is to honor the heritage and prepare for the future. There are seven (7) core values in Midway City, one is honor to respect and preserve our heritage, and the other one which I find very applicable is innovation demonstrating a civic entrepreneurial spirit by generating new ideas and better ways of doing things and engaging in reasonable risk. I think this project that the Higginson's has

proposed is just that. It has everything to do with innovation and still respecting our heritage and the legacy that has been associated with this farm.

Member of the public, Jody Klotovich: I'm a resident of Midway. I was privy to the presentation that was made by the Jagati Farms on the original Remund property. The citizens' issue at that point was not so much with the Remunds, it was with the Jagati Farms who did not come in with the approach as the Higginsons family is intending to do, so I do not put them in the same category. My concern would be that it caused a lot of hard feelings back then and there are still some sore feelings and concerns. I'm worried that the City may just roll over on anything without really giving it full consideration and impact to the rest of the community. The approach and intent of the Higginson family is honorable, but what about those who may not have the same value system? My concern is; are we protecting our community in the long term and the bigger picture and not just this one issue. Personally I'm confused on what is and what is not commercial. To me if you are selling something there is some commercial aspect to that. On the other hand with Grant Kohler's case he can sell milk its commercial, but it's also agriculture. I'm not here to argue that. I would just ask the Planning Commission to really take a look at whatever is decided with the Higginson proposal that it will satisfy the rest of the community, not just this particular body. I support Jay Price's proposal that we keep commercial as a safeguard so if in the future we find ourselves in a different situation that the Higginsons then we would have some controls if that's the case.

Chairman Oksner: I'm having trouble with the distinction between the proposed agriculture change and the existing commercial. In regards to commercial only, in both cases it's all about wholesaling or selling. The only difference that I see here is the word livestock is going to come out. The commercial aspect is relatively if not exactly the same in both terminology in commercial and agriculture.

Member of the public, Jody Klotovich: I'm suggesting that perhaps maybe a third code would protect the commercial definition if someone comes in that does not understand what that means. So the Higginsons can accomplish what they are trying to accomplish but also protecting the City from commercial entities. Let's see what makes sense so both parties can accomplish their goals.

Applicant Jeannette Higginson: One of the main differences that we put in the agricultural definition is the size.

Planner Henke: One thing that I've thought about and I did talk to Jeannette about this initially is instead of having a 15% total parcel acreage actually just describing a square footage limitation on a parcel of land. In this case you are building seventeen thousand square feet the actual greenhouse area is about eight thousand square feet at the most. This could be changed to a maximum of ten thousand square feet in a building and one greenhouse per parcel, something along those lines instead of a percentage base.

Commissioner Ream: Or a combination. What I'm taking away from this is a lot of this has to do with scale. What I'm hearing is people are for a relatively small scale operation versus a large industrial scale operation.

Planner Henke: I think the square footage limitation would keep it on that small scale a percentage plus a square footage limitation. Anything above that would push them into the commercial requirements, which is actually very similar.

Applicant Kraig Higginson: Changing the word from commercial to agricultural likely would solve our problem and that would allow us to do everything you can do in the

commercial and agricultural so long as it is included in our conditional use permit. Also it is a valid concern that Jody has concerning the future; it's a concern of ours as well. We'd like to see as much stay agricultural as possible. If you change that one (1) word in the code from commercial to agricultural it does solve our problem I think all of the balancing of the wording in that code still requires any applicant to go through the full conditional use permit process to get anything approved in any case. So I don't believe the City would be giving up any of the right to pretty tightly manage what they decide they want to have go in here under the greenhouse provision be it agriculture or personal. I think the code would still completely protect the City.
Chairman Oksner closed comments at this point.

Chairman Oksner asked if there were any discussion on the motion

There was none

Motion: Commissioner Nichols; Mr. Chairman I will make the following motion. I think that it was not an intended consequence that our use of the term commercial in the code would trigger onerous building code requirements and other provisions and I think that is an issue we need to study and potentially address. I would move that we table this for further consideration after we've had some analysis from staff and I'd like to task the staff to take a look at two (2) issues we've discussed. First of all an analysis of what the ramifications would be of simply changing or removing the word commercial from the commercial greenhouse part of our code, then second, the possibility of adding this third category of proposed agricultural greenhouse. I think that can be done without changing our definition of agriculture and I'd like the staff to take a look at how that might be possible and present at least those two options to us and their analysis at our next meeting.

Amendment to the motion

Chairman Oksner: The livestock point system would remain?

Commissioner Nichols: Yes.

Seconded: Commissioner Ream

Ayes: Commissioner Streeter, Ream, Oksner and Nichols

Nays: None

Motion: The motion to table this item passed

ITEM: 3

Midway City is considering an amendment to the Land Use Map that would add a Festival Market Overlay District. The purpose of the overlay district is to establish the area where Festival Market Business Licenses may be issued.

BACKGROUND:

Over the past four months the City Council has reviewed the Festival Market Business License ordinance that is located in Section 7.05 of the Municipal Code. The City Council as reviewed

this code because of the safety issues that are a result of this event. The purpose for this proposed zone map amendment is to decide the area where businesses must be located to apply for a Festival Market Business License. The City Council would like all the businesses that participate in this type of business activity to be located fairly close to the Town Square. The idea is that in order for a business to apply for a Festival Market Business License that business must be located in the overlay district. This will help the City to keep Swiss Days safe by having all the activities centered in one location instead of pockets of activity scattered around the City. It is the task of the Planning Commission to make a recommendation of where to establish the overlay district.

Swiss Days is a great community event that brings our community together as it draws in tens of thousands of visitors to our City. It has been very successful over the past few years and each year the crowds continue to grow. Though we do not have an accurate number of how many visitors come to Midway for the event it is estimated that we have 70,000-90,000 visitors to Midway for the festivities. Accommodating and assuring the safety of this many visitors are top priorities for the City and for the Wasatch County Sheriff's Office. The County Sheriff's Office was unable to provide deputies to help pedestrians cross Main Street this past year unlike in years past. Staff, Sheriff Bonner, and members of the Swiss Days Committee observed the situation during Swiss Days and have decided that some safety issues must be addressed. Of particular concern are the multitudes of people crossing Main Street and 200 West. The growth in the number of off square booths has continued over the past few years and this is partially the reason that there are many pedestrians crossing the streets during Swiss Days which is causing the safety concern.

Below is a list of the changes that the City Council made to the ordinance recently. A complete copy of the ordinance is attached to this report.

- Festival Market Licenses holders will no longer be required to have four different vendor events during the year. Staff feels that this requirement is unnecessary and is a burden to the business owners and it is difficult for staff to administer.
- The amount of time that a business must be opened during the year will increase from 130 days to 180 days. This will assure that the business truly is vested in the community and open for a large amount of time during the year, not just during the busiest times of the year. The original ordinance development committee felt that permanent businesses should be able to take advantage of the Swiss Days crowds but not businesses that would only open temporarily during busy times. This proposed change helps assure that this is the case.
- Festival Business License holders will now be limited on the amount of booths they have during Swiss Days. Currently there is no limit so potentially a business owner's property could contain as many booths as can be accommodated within the setbacks. This past Swiss Days there were 90 booths located off the square which is a reason why so many pedestrians were crossing City streets. Potentially this number could keep growing each year creating more safety concerns. For year 2015, each business would be able to have five booths and then they would also have one booth for every 200 square feet of retail

space. In 2016 the each business could have five booths but the calculation for retail square feet would change to 250 and a maximum of 15 booths would be allowed. This sliding scale would allow larger businesses to have more booths while smaller businesses could still take advantage of Swiss Days but would be limited to a lesser amount of booths.

- Each booth is defined as an area of no more than 150 square feet.
- Setbacks for booths from sidewalks now require a five foot setback instead of the previous three foot setback. Staff has found that the three foot setback was not enough space. This is because people stopped at the booths and congregated on the sidewalks which forced others to walk in the park strip or on the road to get by. Adding a few more feet of setback will help alleviate some of this congestion. In areas where there is no sidewalk the setback will be ten feet from the edge of pavement.

Attached to this report is a proposed outline of the overlay district. This map was drawn to encompass all of the C-3 zone and parts of the C-2 zone. It also encompasses all of the five businesses that applied for the Festival Market Business License last year. Those businesses were Midway Country Corner, Nature Becomes Art, Race Horse Lane, Seasons of Home, and Spoiled Rotten Boutique.

Chairman Oksner: Who determines what the off square vendors pay?

Planner Henke: The business owners, it's not something that the City controls. We require them to apply for a license with the City. With that license they have to give us a site plan showing us where the booths are located and a list of the vendors and the types of the products they will be selling. They are required by the code to sell items that are substantially related to what they normally sell. For instance if they normally sell craft goods they couldn't sell tires. They are not allowed to have food unless it is an item they sell year round.

Chairman Oksner: Lost revenue from these rentals would be offset somewhat because the cost of each booth would probably go up, it becomes more competitive.

Planner Henke: The thought is that if the booths are limited from 90 to 60 then the demand goes up. Most likely the businesses would be able to recover that loss in revenue by charging more money. That also will weed out some booths and the more popular booths will be the ones that will be around during Swiss Days. On the square the Swiss Days Committee goes through a selection process and they choose hand crafted items for instance something that is original. One of the fears that was discussed at City Council meetings is that booths off the square wouldn't have that type of quality. The businesses owners contented otherwise; but by making it more competitive then hopefully those products that are more distinct would be the ones being sold here during Swiss Days.

Commissioner Streeter: Michael, what did the Sheriff's department say?

Planner Henke: I've worked pretty close with them throughout this process they are concerned about safety. They also had some concerns about closing the road and accessibility to the businesses that do remain open during Swiss Days. Even the Post

Office is a concern if we shut down Main Street, that's a problem. Regarding this overlay district just from my discussions with them they do want to keep it tightly contained in the center of town.

Chairman Oksner: What's the problem of not allowing parking between first east and second west and having those as walking lanes? Keep the road open, but allow an extended sidewalk.

Planner Henke: That is a City Council decision. We did talk about closing roads down during Swiss Days and 100 west is shut down and also 100 north. One issue that we have is the lack of east and west connections. There has been a lot of discussion on this. We've talked about a local's parking pass much like you'd see if you went to a University Utah football game. The locals have a parking pass and only those can park in the residential neighborhood, Park City does a local parking pass for their festivals. This is something that the City could adopt and that would force everybody to use the shuttle system which is very efficient and that would keep the congestion down in town. This was only discussed, it did not end up being a part of the ordinance.

Chairman Oksner: We are just talking about a map does anybody have any objections to what you see?

Planner Henke: The idea is that after Swiss Days if we see any outstanding issues with the new code we will then look at it again, probably in October right after Swiss Days. This year will be our trial run and then we will revisit this topic again.

Chairman Oksner: Any questions for Michael regarding the map?

Commissioners: No.

Chairman Oksner asked if there were any discussion on the motion

There was none

Motion: Commissioner Nichols; Mr. Chairman I'd like to move that the Planning Commission recommend to the City Council approval of the Festival Market Overlay District as explained with the findings that it will promote safety during Swiss Days.

Seconded: Commissioner Ream

Ayes: Commissioner Streeter, Ream, Oksner and Nichols

Nays: None

Motion: Passed

ITEM: 4

Midway City is considering a Code Text Amendment of Section 16.5.2: Permitted and Conditional Uses. The Planning Commission will consider all permitted and conditional uses in the C-2 and C-3 zones and could possibly remove and add some uses. Furthermore, regulations may be added to some uses.

USES	C-2	C-3
Retail, grocery, and service stores (up to 25,000 sq. ft.)	P	P
Professional offices and clinics	P	P
Auto detailing and service stations	C	N

car washes	C	N
Alcohol dispensing establishments	C	C
Residential Facilities for Elderly Persons (maximum 14 units per acre)	C	C
Rest Homes/Nursing/Convalescent Facilities (maximum 14 units per acre)	C	C
Day Care	C	N
Art Studios (paint and metal)	C	C
Engraving, publishing, and printing	P	P
Fraternity buildings, clubs, and lodges	C	C
Mortuaries and wedding chapels	P	P
New and used vehicle sales (excludes RV sales)	C	N
Hospitals	P	P
Hotels/motels, bed and breakfast establishments	C	C
Cafes and restaurants	P	P
Public and quasi-public buildings (police/fire stations)	P	P
Recreational activity businesses	P	C
RV, ATV, motorcycle, side by side UTV, OHV sales	C	N
Barber, beauty shops, and massage therapy clinics)	P	P
Vehicle parking	P	P
Repair shops (other than auto)	C	C
Veterinarian and pet grooming services	C	C
Walk-in theaters	C	C
R-1-7 Residential	P	P
Mixed Use (20% minimum commercial, up to five residential units per acre)	C	C
Commercial PUDs and commercial condominium projects	C	C
Private academies/studios (education, art, dance, sports, etc.)	C	C
Carpentry and woodworking shops (no outside storage)	C	C
Electrician shops (no outside storage)	C	C
Plumbing shops (no outside storage)	C	C

Planner Henke: 35 feet is the maximum height limit, and they can be two (2) stories.

Commissioner Ream: Seven (7) units, is that if you have one (1) commercial and one (1) residential? Define unit.

Planner Henke: My thought would be that it doesn't matter if they have five (5) office spaces that wouldn't count as a unit. We just want to make sure that they at least have 20% commercial area.

Commissioner Ream: I'd prefer not to have it smaller and the reason being is I'm a proponent of tiny spaces so if you had 700 square foot units and you're only allowing five (5) on an acre that isn't very many.

Commissioner Streeter: Michael, building on that, you're working on development rights transfer, correct?

Planner Henke: That's correct, that's the next item I was going to jump into and this kind of falls into that. The County, Heber City and Midway started a discussion on creating a transfer of development rights here within the county. The idea is to create sending and receiving zones. The idea between the sending zones is you want to choose which areas you want to preserve in the County; move those development rights from those areas into the areas where density is more appropriate; for instance the center of Heber. Heber is looking into redeveloping their downtown area the thought is there they'd set a density limitation fairly low and if somebody wants to add density to that area they'd have to buy it out of let's say the North Fields and move it into Heber's Main Street and we'd do the same thing. That's one reason why I want to move this somewhat low. The Council has indicated that they want to pursue the idea of transfer development rights. We don't have a code before us right now, it's probably going to take a year to do that, but if we set this fairly low then we can say if you do purchase transfer development rights then we can preserve open space either in the City or the North Fields or where ever we deem appropriate. With those transfer development rights you could actually buy up to 10 or 14 units per acre.

Chairman Oksner: This is conditional use for both C-2 and C-3, correct?

Planner Henke: Yes, that's correct.

Chairman Oksner: If we had no number there at all couldn't we weigh in on each one?

Planner Henke: Yes, you could actually take that all the way down to zero and in order to do a mixed use project you'd have to buy a transfer development rights in order for that to happen. We will still have the R-1-7 residential which would still allow for a single family home development or a duplex that would still exist. To do a mixed use project if you mark that down to zero you would have to buy a transfer development right to do the at project.

Commissioner Streeter: If this is a year away it seems a little nonsensical to allow something and say zero without having a mechanism to change it yet.

Planner Henke: We could always amend this code to at that point in time.

Commissioner Streeter: That would be a very good idea. I don't see why we would do it now and set it at zero without having a mechanism to make it denser.

Chairman Oksner: Is that the only reason we have this item mixed use?

Planner Henke: No, we've always had mixed use in the code.

Chairman Oksner: Supposing you are limiting everything after the comma up to seven (7) units per acre, what is conditional?

Planner Henke: Conditional would not allow you to control how many units.

Chairman Oksner: Is that right?

Planner Henke: That's my opinion.

Chairman Oksner: That would make a difference.

Planner Henke: I do believe that we do have to set some type of limitations. Otherwise I worry that the City could be taken advantage of regarding a very high density type use that would come in on Main Street. I have received phone calls regarding mixed use

projects, I'm not against that. It is something that we promote along our Main Street to have a vibrant active Main Street. If we do allow a 14 unit per acre density what is the mass of the structure going to look like? It may be something that we are not real keen on and if we don't have a limit there then we may not be able to stop it.

Chairman Oksner: There are no limits on a condominium project.

Planner Henke: That is correct. We may want to add the word commercial to that.

Chairman Oksner: So we are talking about dental and law offices when you say that?

Planner Henke: Yes, that is correct.

Commissioner Ream: I think in our discussion we had commercial condominium project there just to make sure everyone understood it was commercial only.

Planner Henke: Yes, you are correct on that.

Paul Berg: There is one thing you may want to look at as you try to set the number of units. A long time ago Midway's Planned Unit Development (PUD) ordinance allowed PUD's on something as small as two (2) acres. That was envisioned so that here in the middle of town you could have a PUD and have higher density. Every zone including the R-1-7 had a PUD density. I can't remember what it was, but I don't think that it was up to seven (7) units per acre, you may want to refer back to that and see what the vision was back then. That may guide you to help you set a number of units in a commercial zone. The R-1-7 and commercial kind of had the same density. You'd probably have to refer back to 2002/2003 code.

Planner Henke: We could go visit some projects and get an idea of how many units per acre. I could try to get some pictures of different densities and show the Planning Commission. There really can't be a residential PUD in the City right now unless you have at least ten (10) acres and 40 units. This is the only way of getting around that. Let's say we adopt something now. We're going to go through a General Plan and revision this coming year and with that we will go through a vision survey of Main Street and we will get an idea of what people want on Main Street in the future. Depending on that survey if they want it to be more of a dense Main Street then we could come back and adjust this at that point of time.

Chairman Oksner: The General Plan talks about Main Street being Swissy, pot rocky, red bricky. Some of these things are going to be all glass or whatever it is. What I'm going to suggest again is that some of these items and I've got only three (3) checked, but from 500 East going west that we try to stick to the downtown that looks swissy, colonial, pot rocky whatever you want to call it. Conforming to the General Plan that Main Street becomes relatively older swissy, red brick, and pot rocky. Again there is only three (3); the first one has to do with item #3 new and used vehicles and auto RV, AVT sales that should go east of 500 East.

Planner Henke: So really create a new category. We would have C-2, C-3 and add a C-4 and those uses that you're talking about would be allowed as either permitted or conditional uses

Chairman Oksner: If you have pedestrian traffic between 500 East and 200 West those are the kind of commercial district I envision the General Plan seeking.

Planner Henke: So we segregate those more is what you're saying?

Chairman Oksner: Yes.

Planner Henke: I can see some value in that. I also struggle with that I want all of Main Street to look really nice no matter where it is.

Chairman Oksner: I don't care what it is as long as it looks like it belongs downtown. There are some of these things that are not downtown items.

Chairman Oksner: The architectural committee has a certain design criteria that they try to adhere to and I'm suggesting that we maintain that area, but redefine downtown more restrictively. In other words it doesn't go all the way down to the City Park or the Hamlet.

Commissioner Streeter: How you could do that without creating another zone I'm not sure.

Chairman Oksner: If you're looking for some pedestrian traffic to walk through a commercial area, wining and dining and shopping I don't see automobile dealership in that area.

Planner Henke: There are some people in town who would like to create a tourist district down town, meaning you'd only allow boutiques and restaurants within a two (2) block area of Main Street so you'd pick a certain location of Main Street and say ok only boutiques and restaurants can only be located in this certain area. When you go to a lot of tourism towns you'll see a two (2) or three (3) block area like in Moab for instance where there is just these tourist retail stores and maybe some restaurants. I get worried about restricting the uses too much in one area that it almost degrades property value because only very few things can go in that area. That's the other side of it and I get that quite often and comments from the public that they want just a boutique area, but I also worry about the property rights aspect of it of really pigeon holing one area to one type of use. Another zone is something to consider and actually choosing which uses on this list would work well in that other zone and actually defining where that's located, that would be the task at hand if we chose that route.

Chairman Oksner: Now that we know closer to what the actual size of Ridley's is which is about 21,600 square feet; I'm wondering if we should make it a maximum of 22,000 square feet instead of 25,000 square feet.

Commissioner Streeter: I sent an email to Chip Maxfield because I regard Chip as a Las Vegas guy and Las Vegas has everything you can imagine and a few things that you probably couldn't. I haven't heard back from him so I'd like to throw this out to all of you. Is there anything we can think of that we would want to have here? That would need a bigger space than that, like a recreational store or a recreational space that would need a bigger space that we would want to have in Midway? Everything I could think of was like why would you have it here? Like the indoor beaches and stuff like that.

Commissioner Ream: That wouldn't come here. Midway wouldn't get a Cabela's. Midway wouldn't get anything like that.

Commissioner Streeter: I like the size, but I don't want to do something that we didn't intend.

Planner Henke: The resort zone is probably were we'd get some of that, some uses that would be larger and that zone doesn't have this limitation on it. It's hard to imagine a use anything larger than 25,000 square feet for Midway. I think that if Midway were to get something along the lines of a water park for instance in would be in the resort zone. I personally feel that 25,000 would be fine. If we left it at 25,000 that would leave a little bit of room for Ridley's to expand if they ever wanted to for some reason.

Chairman Oksner: What about open space in conjunction with something that large?

Planner Henke: Currently our code requires some setback, but it does not require any of these uses to have a percentage of open space. The argument with open spaced is that it separates those uses even more and a lot of times you'd want them close together so it's walkable. In our other zones we require open space for PUD's, for standard subdivisions above six (6) acres in size. We do require it in other zones, but not in the commercial zones.

Commissioner Streeter: What do we require for landscaping?

Planner Henke: We do have a section of the code that talks about landscaping. On our commercial zones we do have some setbacks, the expectations is that there will be landscaping in those setbacks. It's really not clearly defined. Paul, do you have any comments about this?

Paul Berg: Most cities are very strict on landscaping. They will only allow so many parking spaces before you have to have some sort of landscaping. Some even get so specific that you have to have a tree every 30 feet on the frontage of your property and that you would have to have at least a 20 foot landscape area. That's how they can make the commercial zones look good is because they have pretty tight landscaping.

Commissioner Streeter: I like the idea that if you are going to have a large building then have a certain amount of landscaped space.

Planner Henke: I have worked for other municipalities that have strict landscaping rules. My fear in Midway is that would just separate businesses and if we do want to have a walkable area by requiring 15% landscaping that creates more space in between businesses. It's really a preference item. I could see where that comes into play, I'm just not sure that resort towns has that type of rule in place. If you look at Moab or Park City they do not have that, at least in their downtown area.

Paul Berg: Michael, I think that goes back to Mickey's recommendation. Maybe from second west to River Road you'd have a different code. East of that where you have large commercial tracks, probably where you're only going to have a big development; that would make sense.

Planner Henke: I agree with that. We'd need to decide where we would want things to be tight and where we'd want things to be separated.

Paul Berg: I think that it's really hard to come up with a plan for Main Street in Midway. From second west to fourth east it's going to be quite difficult to redevelop. If it gets redeveloped it's going to require tearing down houses and putting in businesses. They would be on small narrow tracts, so maybe smaller businesses, restaurants, boutiques and small offices. Commercial and mixed use development will happen on the east side of town.

Chairman Oksner: Do we have a number of historic buildings that can't be torn down?

Planner Henke: They can be torn down. We haven't gotten to the point where we say that something that's on the historic register can't be torn down. It's up to the owner. We do go through a noticing process; if the owner really wanted to tear a building down we would notice it in the paper and put a sign out in front of the house. Even if people protest it, it really falls back to the owner if they want to demolish that home or not. So really any building in town could be demolished. Now, chances are that a lot of these nicer historic homes wouldn't be torn down. The Hardy Foundation owns quite a few of those and their goal is to keep the structures the way they are.

Paul Berg: I don't think the historical ones would be torn down.

Planner Henke: I don't think so either. Those historic homes are what really create this spacing on Main Street that Paul is talking about. It's really hard to redevelop the core of Midway into a tourism town because we aren't going to tear down those homes. We don't want to. They are real difficult to move and some of them probably wouldn't be able to be moved at all, they'd fall apart. I think Paul is correct you are going to see the redevelopment and mixed use on the east side of town.

Chairman Oksner: Should we require that? I've listed three (3) of them that I would recommend be in this area. Should they be required to be in a less dense area, east of 400 or 500 East?

Planner Henke: Which items have you marked down?

Chairman Oksner: Auto, detailing service stations, RV sales I would put that out there, new and used vehicle sales. Electrician and plumbing shops I put out there. Now, a Sears might be ok in town, it's not exactly electrician and plumbing but it's a hardware store.

Planner Henke: I think the electrician or a plumbing shop could look pretty nice.

Chairman Oksner: As long as you stipulated no outside storage.

Commissioner Ream: I was thinking about having car washes down in that area too.

Chairman Oksner: Conforming to the General Plan we need to make sure that all of the items can in fact adhere to those overriding design features and still perform their function.

Planner Henke: I think that if we do create a new zone we do that after the General Plan amendment. This is kind of a band aid; we'd go through and make these changes now and then go through the General Plan amendment because we have a chapter specifically on Main Street. We then could come back and create this new zone and segregate these uses, add in the landscaping requirements those types of things.

Commissioner Streeter: It seems that we will be having a bunch of things that we will be looking at in about a year. I'm wondering, do we want to look at this for now, approve this for now, and then revisit it once those other items are in place.

Planner Henke: That is my preference. I want to make some changes now, because I feel like we are at vulnerable spot on a couple of these things; and by at least adopting what we've done so far we can shore up some of the holes we've got here.

Chairman Oksner: At this point we are not going to make a C-4 zone.

Planner Henke: We'll get a committee together with some members of the Planning Commission and members of the public. I think Main Street is probably going to be the chapter that we're going to work on the most this revision. That's where I'm getting most of the comments from members of the public anyways.

Commissioner Ream: For mixed use, do you want to clarify that and have it say residential units?

Planner Henke: Yes. I definitely want to add residential after the number that's beside it. What is the preference from the Planning Commission; would it be five (5) or seven (7) units or some other number?

Commissioner Streeter: I say five (5) for now and be more restrictive and then when we have different things to drive it differently we can revisit it.

Chairman Oksner: Other than that, residential under mixed use we would accept it?

Commissioner Streeter: Weren't we adding commercial under the PUD's and condominiums?

Planner Henke: Yes.

Commissioner Ream: What if some company wants to come in and build their office building, would that fall under any of these?

Planner Henke: That would fall under professional office and clinics.

Commissioner Ream: So if an REI or some other back country business wanted to come in and have an office here and they've got 100 employees. That would fall under professional offices?

Planner Henke: Yes

Chairman Oksner: Is that permitted up to 25,000 square feet?

Planner Henke: It would not be tied to any square footage limitation.

Chairman Oksner: The very first item we have the 25,000 square foot maximum, I thought that we'd adopted that for all future construction.

Planner Henke: That is specifically for retail, grocery and service stores. It is more of a retail requirement.

Chairman Oksner: So they could fill up an acre lot?

Planner Henke: Yes. They would still have to meet all of the requirements

Paul Berg: Offices are generally nicer looking buildings verses retail.

Planner Henke: We've wanted more diversity that is why we have broken it down to 25,000 square feet.

Chairman Oksner: If an investor was to buy two (2) lots it could be two (2) stories although they would be limited on height; they could cover most of the lot except for setbacks?

Planner Henke: Setbacks and parking. Our code requires any parking to be on the side of any of the uses.

Planner Henke: I'd like to go over the setbacks in the C-2 zone. I added some text in there from last time because of the recommendation from the Planning Commission giving a little bit of leeway for the front setback. There is a ten (10) foot minimum and 30 foot maximum from the property line from the front so that gives a little bit of a space from the sidewalk. I added in there that the City Council may approve a setback different than listed in this section based on specific circumstances of site and building orientation of the proposal. Do we want that to only cover front setbacks or are there possibilities on the side and rear that we'd want to cover with that language also?

Chairman Oksner: I could see sidewalk dining and a restaurant would require more than that.

Planner Henke: Yes potentially.

Commissioner Streeter: How far off the side walk is Café Galleria?

Planner Henke: I have not measured that. I'd guess though that if you measured from the back of the sidewalk to the store it's probably somewhere between 20 and 25 feet. The one thing that I wanted to look at is this line here, setback from residential zones or existing residential uses - 15 feet. Now as I go up and down Main Street I can see that the City has not followed this guideline. There are a lot of businesses that are right up to the edge of the property next to residential uses. I didn't realize there was so many of them until just the other day. The grocery store is an obvious one it's really close to the house just west of it. This has been in the code and maybe other planners or the City interpreted it differently than I do. Maybe they're saying existing residential uses is maybe the distance actually from building to building if you have a commercial building from a

residential home, maybe the minimum is 15 feet but not necessarily to the property line. I think that is maybe a reasonable way in interpret that.

Commissioner Streeter: Shouldn't we actually have in the code what that is whether or not it's from the building or property line?

Planner Henke: We should define that.

Commissioner Streeter: We could have bagged storage units if we had said it's from the property line.

Planner Henke: Let's look into the future a little bit here. Let's say you've got a commercial building going in between two (2) residential uses. If you look at that code you could interpret it to say there's a 15 foot setback from this line and from this line for the new structure. Let's say that both homes get torn down in the future and we have businesses that come in on both of those lots, they now can be right up to the property line at that point because it is butting up next to a commercial use. The existing commercial property in the middle would have had 15 foot setbacks on both sides. Then we'd have these gaps as we go down Main Street. Is that something that is acceptable, does that put someone at a disadvantage because of these required setbacks just because of the timing of when things developed? I don't know these are some questions to look at. Is it something we give a little bit of flexibility to depending on the use?

Commissioner Streeter: I would make two (2) points on that. First, the code should be clarified as to what it is, whatever we decide; and secondly, if someone is looking into putting any kind of a building in they should do their due diligence and you know what the code is. If the code is clear and it says that you'd have a 15 foot setback well, you'd have a 15 foot setback. You'd know that and you'd judge your purchase on the existing code. It doesn't disadvantage anybody to clarify the code and say that's a 15 foot setback from the property line. I personally think we should say that it is a 15 foot setback from the property line. Regarding the storage units we've passed recently I think a lot of people feel like we've screwed the Kohlers over because their house is right on the property line and we put access to a driveway to a commercial space right next to their house. If we had said there is a 15 foot setback for driveways, maybe things would look different. If it gets clarified then everybody knows what it is going in. Also I think that if you put a setback from the property line for your commercial people it is a lot nicer on your residences that happen to be right next door.

Planner Henke: Is 15 feet a good number then?

Commissioner Streeter: I think that a larger setback on commercial building is a fair restriction because there is potential for a commercial building to be more offensive in the sense of it may generate more noise or it may generate a less appealing view.

Paul Berg: That is great if you are trying to protect residences, but is Midway City trying to have a healthy commercial zone or have a nice place to live for people on Main Street. Most cities do not protect residences in commercial zones, because it kills the commercial zone. That's why we have residential zones.

Chairman Oksner: What about a setback for an easement? For example, in the future a sidewalk or high speed internet or something like that, do we have to have some kind of an easement for the public utilities to have access to buildings that are going in later or that are currently in?

Planner Henke: When we do have subdivisions for residential we have a public utility easement that's required along all boundary lines.

Chairman Oksner: If you put all these commercial buildings up side by side how do you access utility improvements?

Paul Berg: From the front or back not the side.

Planner Henke: Usually the side public utility easements on a residential lot are never used. I'm not aware of any circumstances of when they are used.

Paul Berg: That's mostly so your power line can get from the street to your power meter on the side of your house. Commercial are usually done from the front or the back of the property line.

Planner Henke: I did write this in as the Council may approve a different setback as listed in this section based on some specific circumstances of site building orientation of the proposal. My thought is to give it a little bit more leeway and add that up into this area where it covers all of those just depending on the circumstance, because not every circumstance is the same and a little bit of leeway might be good in some situations. It could be useful, that's my thought.

Commissioner Ream: Is that going to be difficult for someone who is considering a purchase of a piece of property not knowing what their setbacks are going to be?

Planner Henke: For that person I would suggest that they go to City Council before they buy and lay out their case. I would say that they shouldn't purchase until they go to Council and find out what their setback is going to be. Different uses on Main Street should require a different setback.

Commissioner Streeter: Paul, what's your thought? I get what you are saying about not wanting to kill your commercial zone. Obviously, we want to promote commercial and we don't want to make it too difficult, but at the same time you've got to remember that there are people living right next to this.

Paul Berg: Maybe there are other ways to mitigate this besides the 15 foot setback.

Generally in the past a lot of these buildings that Michael reviewed, or whomever it was at the time, thought this is in a commercial zone and they are allowed to build right up to the property line, because what if next year the residential house converts into a commercial use. Was that fair that they had a 15 foot setback because this year they had a residential use next to them and next year they are gone. The setback between residential and commercial zones makes sense because you try to protect residential zones same way you try to protect commercial zones. Residences in commercial zones typically get converted so they are usually not given those protects with setbacks because it is detrimental to the commercial zone. You could do other things to mitigate it, fences, landscaping etc.

Planner Henke: We do have a number of homes that are mixed use right now. There is Café Galleria, the book store and Spoiled Rotten boutique just to name a few. When I get building permits do I consider that a commercial use so there is a zero lot line or do I consider that as a residential use for the person that wants to build next door to it? There are a lot of different gray areas that come into play with all of this. I agree with what Paul is saying setbacks from residential zones should be 15 feet, but not necessarily residential uses. We've got residential zones, R-1-9, R-1-11. We want to have 15 foot setback from those zones, but within the C-2 zone is 15 feet too much? I understand what Commissioner Streeter is saying that we do have people living there, but what we are seeing are those homes converting into businesses.

Commissioner Streeter: I use to live in old town Park City and I've seen the commercial, residential war that has not ended well for the residential side. That's also compounded by bad surveying which we have a problem with here too.

Chairman Oksner: All these items that are listed as conditional, can we consider each one of these as they come through?

Planner Henke: If there is something put in there where there is some discretion, then I think you could.

Chairman Oksner: What about permitted. Do we have the same discretion with permitted?

Planner Henke: If it's permitted and somebody wants a different setback than what's listed in the code and we have this provision here then yes it can potentially go before the Planning Commission and the City Council if that's the way we write the code.

Chairman Oksner: Do we want that kind of latitude to decide?

Commissioners discussed that they do like the idea of some flexibility.

Planner Henke: Do you want it to come to the Planning Commission also, because the way that it is written right now it only goes before the City Council. I can change that so it reads after recommendation from the Planning Commission they would then go before the City Council.

Commissioner Streeter: That seems like that is more appropriate.

Planner Henke: I will go ahead and change that language then. Do we want to keep the setbacks from residential zones or existing residential uses? I definitely like the setback from residential zones I'm not completely convinced on residential uses. It really depends on what our vision is for Main Street.

Commissioner Ream: Let's face it, ten (10) years probably half of those residences will be commercial anyway. I'm fine with eliminating that setback.

Commissioner Streeter: I think the zone setback is really good.

Planner Henke: Take out existing residential uses we'll just leave the setback on residential zones at 15 feet.

Chairman Oksner: The property lines remain the same if one of those houses becomes a dental office or a real estate office. The 15 foot setback is from the property line not from the dwelling.

Planner Henke: Yes, it would be from the property line to the foundation of the structure. Is there any way to define the setbacks from residential zones more clearly? If we look at the definition of setback it talks about the property line to foundation or any supporting member of a roof is what it says so I think it's probably covered then.

Chairman Oksner asked if there were any discussion

There was none

Motion: Commissioner Streeter; I move that we approve the code text amendments as presented by staff with a few suggested changes of the mixed use item and on the commercial PUD item. I further move that we approve staff's language that the City Council may approve a different setback under the overall heading and that the language be included in that it comes to Planning Commission first. Existing (residential uses) residential zones have a setback of 15 feet.

Seconded: Commissioner Nichols

Ayes: Commissioner Streeter, Ream, Oksner and Nichols
Nays: None
Motion: Passed

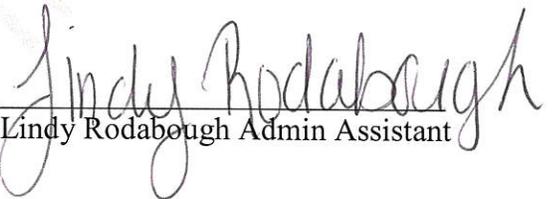
Chairman Oksner asked for a motion to adjourn

ADJOURNMENT

Motion: Commissioner Nichols; Chairman I move that we adjourn.
Seconded: Commissioner Ream
Ayes: Commissioner Streeter, Ream, Oksner and Nichols
Nays: None
Motion: Passed
Adjourn: 9:45pm



Mickey Oksner Chairman



Lindy Rodabough Admin Assistant

