

## Midway City Planning Commission Regular Meeting July 16, 2014

Notice is hereby given that the Midway City Planning Commission will hold their regular meeting at 7:00 p.m., July 16, 2014, at the Midway City Community Center  
160 West Main Street, Midway, Utah

### Attendance:

Mickey Oksner – Chairman  
Natalie Streeter  
John Rather  
William Ream  
Nancy O’Toole  
James Kohler  
Steve Nichols

### Staff:

Michael Henke – City Planner  
Wes Johnson – City Engineer  
Jennifer Sweat – Admin Assistant

### Excused

Stu Waldrip  
Chip Maxfield

### 6:52 P.M. Work/Briefing Meeting

Planner Henke gave the City Council Liaison Report. No action was taken and the public was welcomed to attend.

### 7:00 P.M. Regular Meeting

#### Call to Order

Chairman Oksner welcomed commissioners, staff and public. Chairman Oksner led the Pledge of Allegiance.

#### Regular Business

##### **1. Review and possibly approve the Planning Commission Minutes of June 18, 2014**

**Motion:** Commissioner Kohler made a motion to accept the Planning Commission Minutes of June 18, 2014 as written.

**Seconded:** Commissioner O’Toole seconded the motion.

**Votes: Ayes:** Commissioner Streeter, Commissioner Rather, Commissioner Ream

**Nays:** None

**Motion:** Passed

Commissioner Steve Nichols arrive at 7:02 p.m.

- 2. Paul Berg, agent for Midway Highlands (formerly known as Scandia Subdivision) is requesting Final Approval for a large-scale subdivision. The proposal is for nine (9) lots located at Cari Lane and Homestead Drive. The area of the property is 5.18 acres and is in the R-1-15 zone.**

Planner Henke thanked the Chairman Oksner, Planning Commissioners, and welcomed the public and staff in attendance.

Planner Henke state that this request is for final approval of a subdivision on 5.18 acres that will consist of nine lots. This property was annexed into the City on June 25, 2010. There was annexation agreement negotiated and approved by the City that does list the developer's responsibilities and the City's responsibilities regarding this parcel and future development. Currently there is one dwelling located on the property. Lots 1-6 will obtain frontage from State Route 222 (Homestead Drive) and lots 8 and 9 will obtain frontage from Cari Lane. Lot 7 is a corner lot and obtains frontage from both of the aforementioned roads. The lots range in size from 17,000 sq. ft. to 42,000 sq. ft. and all meet the requirements for acreage, width and frontage in the R-1-15 zone. Also a 14.5 wide strip of land along Cari Lane will be dedicated to the City.

Planner Henke gave a power point presentation of the property:

**LAND USE SUMMARY:**

- 5.18-acre parcel
- R-1-15 zoning
- Proposal contains 9 lots (ranging from 17,000 sq. ft. to 42,000 sq. ft.)
- 14.5 foot strip of land will be dedicated to the City for Cari Lane
- The lots will connect to the Midway Sanitation District sewer and the City's water line.
- 8' paved public trail is planned for the area and will be constructed at a future date. The developer will grant a trail easement of 20' along the frontage of Homestead Drive.

**(Note: a copy of the presentation is available in the supplemental file)**

Planner Henke stated that the following was his analysis of the property:

*Roads* – The proposal is to dedicate the property located in the right-of-way of Cari Lane to the City. Please see the attached letter from Wes Johnson, Midway City Engineer, regarding road improvements.

*Trails* – The City's master trail plan does have an 8' paved public trail planned for Homestead Drive. The trail will be located in a 20' wide public trail easement. The developer will be responsible for the dedication of the easement for that trail and the City will build the

trail at a future date using trail impact fee funds or other funds secured by the City. A note will also be placed on the plat that will inform future lot owners of the future trail and the possibility that landscaping and other improvements may need to be removed when that trail is constructed.

*Water Connection* – The lots will connect to the City’s water line located in Homestead Drive and Cari Lane.

*Sewer Connection* – The lots will connect to Midway Sanitations District’s line located under Homestead Drive and Cari lane.

*Driveway Access* – Staff is proposing that the number of driveway access points to Homestead Drive and Cari Lane is as minimal is possible. This is based on the Road System Mater Plan that states Homestead Drive is classified as a Minor Arterial and that Cari Lane is classified as a Collector. For these classifications of roads the City Council must specifically approve the driveway access because of the safety issues regarding accessing streets with higher traffic counts. UDOT must also approve the access plan for the driveways accessing State Route 222. Also safety for the existing and proposed trails must be considered. Trails are safer with fewer crossings. Another consideration is the distance from the driveways to the Homestead Drive and Cari Lane intersections. If the driveways are combined then the distance from those driveways to the intersection is increased. Staff is proposing that lots 1-3 access from a shared driveway, lots 4 and 5 accesses from a shared driveway, lots 6-7 accesses from a shared driveway from Homestead Drive and lot 7 has no access from Cari Lane, and finally lots 8 and 9 accesses from a shared driveway from Cari Lane. Lot 6 will need to abandon the current driveway and relocate that driveway to the area designated on the plat.

Planner Henke stated that the City Council in their June 11, 2014 meeting granted preliminary approval in a 5-0 vote. They did place conditions on their recommendation that included the follow:

1. UDOT must approve of the driveway access plan for State Route 222.
2. A Development Agreement must be recorded with the plat.
3. The developer will build the hard-surface 20’ wide shared driveway access points and those accesses will comply with the fire district’s driveway standards. Lots recommended for shared driveways include lots 1-7 and will be built by the developer. The Planning Commission did not recommend that lots 8 and 9 have a shared driveway and the developer would not build these two driveways.

Planning Henke stated that the following were findings staff had determined:

- The proposed lot meets the minimum requirements for the R-1-15 zoning district
- The proposal does meet the intent of the General Plan for the R-1-15 zoning district

Planner Henke stated that the following was Conditions that staff had determined:

- UDOT must approve of the driveway access plan for State Route 222 before application is made for final approval.
- A Development Agreement must be recorded with the plat.
- The developer will build the hard-surface 20' wide shared driveway access points and those accesses will comply with the fire district's driveway standards.
- The developer will build the shared driveways for lots 1-7.

Commissioner had a discussion regarding the driveways of the different lots. They discussed that exit of the lots eight (8) and nine (9) be exit by front only. Planner Henke stated that would be added to the plat, and could be added as a condition.

Wes Johnson, City Engineer stated that he had some minor things to discuss with Paul Berg prior to the item being sent to City Council, but they would work on those items at a separate time.

Paul Berg stated that they had received approval from Water Board and the Sewer district. They had meet with UDOT to discuss the road, and were actually meeting with them again on July 29<sup>th</sup>. The plans they submitted had the shared driveways, and Wes has reviewed those designs, and they have meet all the conditions from the preliminary approval.

**Chairman Oksner asked if there was any other questions regarding this item?**

No other discussion was needed.

**Motion:** Commissioner James Kohler made a motion for Final Approval for a large-scale subdivision, Midway Highland Subdivision. This is for nine (9) lots and is located at Cari Lane and Homestead Drive. Commissioner Kohler also accepted staff findings and conditions, with the additional condition that lots eight (8) and nine (9) driveways be exited by front only, and be noted on the plat map.

**Seconded:** Commissioner Ream seconded the motion.

**Chairman Oksner asked if there were further discussion regarding the motion?**

There was no further discussion.

**Votes: Ayes:** Commissioner Streeter, Commissioner O'Toole, Commissioner Nichols and Commission Rather

**Nays:** None

**Motion:** Passed

Commissioner Nichols made the suggestion to switch item number three (3) with item number four (4). Chairman Oksner stated that he had discussed this with staff, and there is a reason why

they are put in the order they have, because they are similar, and so in that case we will be leaving the order as it was.

**3. Paul Berg, agent for Richard Peery Trust, is requesting an amendment to the General Plan to change the Land Use Map from Business and Manufacturing Park (BMP) to residential. The property is located at 600 East Michie Lane and is currently in Wasatch County but is located in Midway's Annexation Declaration boundary.**

Planner Henke stated that the City has received an application to amend the General Plan that would eventually allow residential development on a parcel of land located south of Michie Lane and east of Fox Den Road. The property is not located in the City and does not have property rights in the City but does have property rights in the County where the parcel is zoned Industrial. The parcel is located in the City's annexation declaration boundary and could potentially be annexed into the City if the City Council approves of the petition. Currently the General Plan that the City adopted in 2011 does not support residential development in this area. The land uses that are envisioned in this area are offices, research and development institutions, and light manufacturing establishments. The applicant would like to change the land use maps on pages 17 and 19 so that residential development would be part of the plan for the specific area mentioned above. If the applicant is successful with his petition then the next step would be to apply for annexation of the property. The final step would be to apply for approval of the subdivision using the City's Land Use code.

Planner Henke stated that the property itself is 43 acres and is located between the sewer treatment plant and residential uses to the north and west. The property is not located in any plat and currently is not entitled with any land use approvals in the County. The property has been used for agriculture and to the east of the property is the location of the old County landfill.

Planner Henke explained that Paul Berg, agent for Richard Peery, has suggested the parcel is not the best location for the B & MP and that other area in the City should be considered for this use. He has also stated that is the desire of the owner of the property that it be labeled on the Land Use Map as residential so that when the property is annexed it can be developed as residential.

Planner Henke stated that there are many issues to consider with this application that include nuisance issues, community vision and preference, and tax revenue. When creating or amending the General Plan the City Council acts as a legislative body as opposed to an administrative body. When the Council acts administratively, such as reviewing a subdivision proposal, then they review the subdivision to make sure it complies with the City's land use code. If the subdivision meets the requirements then it will be approved. With the current petition to amend the General Plan the City Council acts legislatively which means that they have much broader discretion regarding approving a proposal (especially regarding an annexation). They are not bound by the same rules as when they act administratively. What this means is the Council must be convinced that the proposal is good for the City in order to approve the petition. If the Council feels the proposal is not in the best interest of the City and its residents then the proposal should not be approved.

Planner Henke also pointed out that this site is currently not located in the City limits but it is located in the annexation declaration of the City. Currently the property owner has no property rights in the City, his rights are based on County zoning. The City has no obligation to annex the property or amend the Land Use map in the General Plan. State Code requires that in order for a parcel to be annexed into a City it must first be located in the annexation declaration. Midway City has designated future land uses for parcels in the annexation declaration. This allows parcel

owners and community residents to know what potential uses will be allowed on parcels once they are annexed.

Planner Henke stated that currently the parcel in question is listed B & MP on the General Plan Land Use Map. It has been planned with this use for several years. There are a number of reasons why this parcel has been planned as B&MP and why it should continue to remain the same.

Planner Henke presented the following analysis via powerpoint of the property as to why it should remain the same:

- First, it creates a buffer between residential and the Heber Valley Special Service District (HVSSD) waste water treatment facility. Occasionally there are unpleasant odors that neighbors may find unsettling. For this reason the City and the County both have this parcel planned for B&MP and industrial, respectively. In a worst case scenario the City would allow residential development on the property and the new residents of that development complain to the City and the Heber Sanitation District Board regarding the odor. The Sanitation District is then forced to spend money to address the issues which in turn raises the sewer rates that everyone in the valley pays. The end result would be the land owner profited from the development and that every user of the sanitation plant paid a price for that development.
- Second, taxes must be considered. Generally residential developments do not pay for themselves. It costs the City more money to maintain the streets and infrastructure and provide services than residential development produce (Midway City General Plan page 25). The City must have commercial and resort development to offset the cost of maintaining residential development. If property is not already in the City and zoned residential then there is no obligation on the City's part to add more residential to property that may create financial hardship for the City. Again any property already in the City and zoned residential has property rights and may be developed, but the property in question does not have said rights. It is not the City's obligation to make the property more profitable for the owner at the City's resident's expense.
- Third, the City's resort tax will be lost if more residential lots are added and if the City's number of hotel rooms and transient rental dwellings do not increase. Currently a significant percentage of the City's budget is from the special resort tax that very few Cities in the State are able to impose. The State allows Midway to receive this special tax because the ratio of hotel rooms and short-term rental properties is a high enough ratio to warrant the tax. This is a huge benefit to the residents of Midway because the City is able to provide more services to its residents with this money and those residents pay fewer taxes. The amount is roughly \$350,000 and it could grow to over \$400,000 by 2020. Every census the State reviews each City to make sure that the Cities still qualify. It is very likely that Midway will lose this extra tax revenue if our residential growth is greater than our resort growth. As mentioned earlier, properties in the City limits that are zoned residential are able to develop as residential but why would the City annex property into the City as residential that has the potential of negatively impacting the City and its residents? Property in the City's annexation area that is planned to be residential has a much stronger argument of being annexed as residential than property that is not currently planned to be residential.

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Planner Henke presented the following analysis via powerpoint of the property as to why it should remain the same:

- First, it creates a buffer between residential and the Heber Valley Special Service District (HVSSD) waste water treatment facility. Occasionally there are unpleasant odors that neighbors may find unsettling. For this reason the City and the County both have this parcel planned for B&MP and industrial, respectively. In a worst case scenario the City would allow residential on the property and the new residents of that development complain to the City and the Heber Sanitation District Board regarding the odor. The Sanitation District is then forced to spend money to address the issues which in turn raises the sewer rates that everyone in the valley pays. The end result would be the land owner profited from the development and that every user of the sanitation plant paid a price for that development.
- Second, taxes must be considered. Generally residential developments do not pay for themselves. It costs the City more money to maintain the streets and infrastructure and provide services than residential development produce (Midway City General Plan page 25). The City must have commercial and resort development to offset the cost of maintaining residential development. If property is not already in the City and zoned residential then there is no obligation on the City's part to add more residential to property that may create financial hardship for the City. Again any property already in the City and zoned residential has property rights and may be developed, but the property in question does not have said rights. It is not the City's obligation to make the property more profitable for the owner at the City's resident's expense.
- Third, the City's resort tax will be lost if more residential lots are added and if the City's number of hotel rooms and transient rental dwellings do not increase. Currently a significant percentage of the City's budget is from the special resort tax that very few Cities in the State are able to impose. The State allows Midway to receive this special tax because the ratio of hotel rooms and short-term rental properties is a high enough ratio to warrant the tax. This is a huge benefit to the residents of Midway because the City is able to provide more services to its residents with this money and those residents pay fewer taxes. The amount is roughly \$350,000 and it could grow to over \$400,000 by 2020. Every census the State reviews each City to make sure that the Cities still qualify. It is very likely that Midway will lose this extra tax revenue if our residential growth is greater than our resort growth. As mentioned earlier, properties in the City limits that are zoned residential are able to develop as residential but why would the City annex property into the City as residential that has the potential of negatively impacting the City and its residents? Property in the City's annexation area that is planned to be residential has a much stronger argument of being annexed as residential than property that is not currently planned to be residential.

- Fourth, Michie Lane is a major collector road and has been planned to be capable of handling the traffic that will be produced by this use and the surrounding land uses. Michie Lane will be a bypass for Main Street and will connect Hwy 113 south to Hwy 113 east. This will allow through traffic to avoid Main Street which in turn will allow Main Street to be walkable.
- Fifth, the City has already invested time, planning and money in infrastructure to support the future use of this road to, in part, accommodate the B & MP. Michie Lane that runs along the north side of this parcel has about 43' of pavement at this point. The road is not complete but the City is actively pursuing and obtaining the right-of-way needed to construct the road.
- Sixth, though the property is not completely buildable, there is enough area for building pads along the north and west ends of the property. Business and manufacturing facilities are needed in many different sizes and several businesses could be located on this site.
- Seventh, all the subdivisions surrounding this parcel were developed with the knowledge that the plan was for this property to be B & MP. If this zone is moved to another location it will be a new use to the area and could make existing residents and property owners concerned.
- Eighth, the General Plan committee over Land Use in 2011 recommended that this B & MP continue on this site.
- Ninth, Scott Wright, manager of the Heber Valley Sewer Treatment Plant, has submitted several letters over the past several years in opposition of any change to the City's General Plan that would change the status of the property. He feels any change would negatively impact the Sewer Treatment plant and users
- Finally, the County has had this property zoned industrial since at least 2002 and the City has had this designation since at least 2006.

Planner Henke also stated that there are also some reasons that this site is not the best option for a B & MP. These include the following:

- Only part of the parcel is developable but this will remain the case for any use of the property.
- There are residential uses that now surround the property. Any traffic to the B & MP will need to pass some residential areas.

**(Note: a copy of the presentation is available in the supplemental file)**

Planner Henke stated that there may be some alternative options that the City could consider regarding this property. The City has broad discretion regarding annexations and can create conditions of approval that are specific to the property. The City wants to maintain a buffer between the sewer treatment plant and residential uses. Therefore the City could require a large buffer on the property and limit the number of homes on the property. For example, the City could limit the number of lots to six and require each lot to be six acres or more in size. This would allow the lots to have pasture area for horses and they could remain on greenbelt for taxes. The lots themselves would have a limited building envelope where a dwelling could be built far from the sewer treatment plant. The City would not want any driveways to connect to Michie Lane so an interior road would be constructed for access. This is one example of an alternative option the City could consider.

Planner Henke stated the following were the findings that staff had determined:

- The property currently has no property rights in Midway City, its current rights reside in Wasatch County.
- The City is not obligated to make any General Plan amendment or to annex the property.
- The City's special resort tax its collects will negatively be impacted by annexing more residential development into the City.
- B & MP development would most likely create more taxes than what is used and a residential development does not produce enough taxes on its own to pay for the services provided by the City.
- This is a recommendation to the City Council.

Paul Berg, agent for the applicant reviewed the history of the property, and the application history. This is actually the first time the applicant has submitted an official application to begin the process of annexation. They have had other presentations to the City regarding this property. Mr. Berg reviewed the different locations that could work for Business and/or Manufacturing.

Commissioner Nichols made the statement that when we talk about a change to the General Plan that is something that we should approach very cautiously, and he doesn't think we should be in the habit of making changes to the General Plan unless there is a compelling interest in the majority of the community to make that change, and he isn't sure that he sees that compelling need here. The other commissioners also felt this way as well.

**Chairman Oksner asked if there were further questions for Mr. Berg?**

There was not

Chairman Oksner opened the Public Hearing:

**Garr Jensen**

**902 Michie Lane Midway**

- Very familiar with the property as he rides his bicycle almost daily by it.
- Feels there are two choices for this property, to leave it as it is in the County as industrial or to annex it into Midway to become residential.
- Feels that it should be residential because of the surrounding area already is residential.
- Enjoys the wildlife that he continually sees on the property.
- If it is a Commercial or Business zone it will be an island.
- Feels that the top half of the property should be used as residential, but not the bottom section. That would leave adequate spacing between the residents and the sewer plant.
- He has lived in the home for three (3) years, and owned the home for eight (8) and has never smelt the sewer plant in all that time.
- You would be unable to distinguish between the smell from the sewer to living next to an agriculture area.

**Karen Schleiffarth**

**1232 North Dutch Fields Parkway**

- Is there room to expand the plant if we keep adding additional homes?
  - Wes Johnson, City Engineer stated there is adequate room to expand, and that the plant recently did expand, but it was more mechanical than anything else. He felt that if there was a need for an additional expansion, it would again be more mechanical and there would be space for it.
- She moved to Midway for its Beauty, the trees and nature, and feels there is nothing wrong with leaving the fox and deer there exactly as they are right now, and not being disturbed.

**Sheri Omans**

**725 North Homestead Drive**

- She was on the Planning Commission a few years ago, and they looked at this property at that time, along with the Hamlet, which at the time, they didn't want.
- Feels that it isn't the best location for residential, but it would be great for a commercial park. They can be beautiful if handled correctly and berms could be put in place which would be conducive to the sewer plant.
- If it was commercial it would pull from the businesses downtown.
- Feels that the impact of residential doesn't bring in money for the town.
- Another idea would be to use it for a parking lot for Swiss Days, if the owner would like to donate it.

**Chairman Oksner asked if there were any other public comments for this item?**

There were no more comments.

Public Hearing was closed on this item.

Commissioners had a discussion on the items that were presented to them by Planner Henke and discussed all items of the analysis. It was discussed why the property owner hadn't gone to the County to try to change the zoning through them, since the property is in the County. Paul Berg

stated that because Midway City has the property in the Annexation Declaration the County would refer them back to Midway regardless.

The commissioners had a discussion on the property among themselves reviewing items discussed.

**Chairman Oksner asked if there was any other questions regarding this item?**

No other discussion was needed.

**Motion:** Commissioner Nichols made the motion to recommend denial to City Council, to accept the staff findings, with the additional finding that residential doesn't serve the need as a buffer between the town and the special services district.

**Seconded:** Commissioner O'Toole seconded the motion.

**Chairman Oksner asked if there were further discussion regarding the motion?**

There was no further discussion.

**Votes: Ayes:** Commissioner Streeter, Commissioner Ream, and Commissioner Kohler.

**Nays:** Commissioner Rather

**Motion:** Passed

**4. Paul Berg, agent for Watts Dutch Fields LLC, is requesting an amendment to the General Plan to rezone a small area near the roundabout on River Road from RA-1-43 to the Commercial C-2 zone to allow for a service station and convenience store.**

Planner Henke stated that the City has received an application to amend the General Plan that would eventually allow limited commercial development on a parcel of land located north east of the River Road roundabout. Currently the General Plan that the City adopted in 2011 does not support commercial development in this area. The land uses that are envisioned in this area are low-density residential and agricultural uses. The applicant would like to change the land use maps on pages 17 and 18 so that commercial development would be part of the plan for the specific area mentioned above. If the applicant is successful with his petition then the next step would be to apply for a zone map amendment to rezone the specific parcel from RA-1-43 to C-2. The final step would be to apply for a Conditional Use Permit that would allow for a retail store and gas pumps to be located on the property.

Planner Henke gave a power point presentation of the property;

Planner Henke explained that the property itself is 0.47 of an acre and is located between 470 E and Burgi Lane. The property is not located in any plat and currently is not entitled with any land use approvals. The property has been used as the site of a construction trailer for several years. It is a remnant parcel that currently is not large enough to meet the minimum standards for the zoning district for residential development.

Planner Henke stated that there are many issues to consider with this application that range from safety to community vision and preference to tax revenue. When creating or amending the General Plan the City Council acts as a legislative body as opposed to an

administrative body.

Planner Henke explained that when the Council acts administratively, such as reviewing a subdivision proposal, then they review the subdivision to make sure it complies with the City's land use code. If the subdivision meets the requirements then it will be approved. With the current petition to amend the General Plan the City Council acts legislatively which means that they have much broader discretion regarding approving a proposal. They are not bound by the same rules as when they act administratively. What this means is the Council must be convinced that the proposal is good for the City in order to approve the petition. If the Council feels the proposal is not in the best interest of the City and its residents then the proposal should not be approved.

Planner Henke stated that with that in mind, Staff has identified a number of issues that should be considered with this proposal which include the following:

*Long-term zoning impacts* – a major concern that Staff has identified is the long-term impacts of rezoning the property to C-2. If the property is rezoned then any permitted or conditional uses allowed in the C-2 may be approved for the parcel. A possible scenario could be that the service station is closed at some future date and other commercial ventures would be pursued on the property. Some of the uses in the C-2 zone may be more appropriate for others in an area surrounding by residential developments. An auto body repair shop would not be appropriate but would be a possibility if the property is rezoned to C-2. The City must consider the long term impacts of the zone change on the surrounding area.

*Economic benefits* — If the property is rezoned C-2 and a convenience store is constructed on the property then the City and its residents would benefit from the expanded tax base. As the City gathers more money from taxes it is able to better serve its residents. Midway does not have many commercial businesses and this is partly due to the fact that most businesses establish themselves in Heber. For this reason it is important that the City considers expanding its tax base. The General Plan also promotes economic expansion in The Economic Development Vision which states: "Develop a sustainable base by retaining, recruiting and expanding businesses that provide an income-producing job base, enhance the quality of life, and are consistent with the Swiss/Alpine identity of Midway." The applicant has not submitted an economic analysis so it is unknown what impact the business will have on the City regarding taxes.

*Safety* – The City is concerned about the safety of its residents. Neighbors raised concerns regarding safety and pedestrians in the area around the roundabout. There is a trail system that connects to the parcel from the east but there is no connection to the Burgi Lane trail to the west. The trail system should be completed to make the area safer for pedestrians.

*Traffic circulation* – Staff has concerns regarding the proposed driveway access location to the proposed convenience store. Burgi Lane is categorized as a Collector road on the Road

System Master Plan. In that plan driveway spacing is listed for all types of roads in Midway and Minor Collectors should have 200 feet of spacing. Collector roads which are even busier should have more spacing than Minor Collectors and must be approved specifically by the City Council. The spacing on the submitted plan is in the range of 50- 70 feet. Vehicles traveling from River Road to Burgi Lane usually do not slow down the posted 10 mph speed limit so the safety of vehicles leaving the proposed driveway location is a concern. There are also clear view visibility issues that will need to be addressed if a commercial driveway is allowed from Burgi Lane.

*Aesthetics* -The applicant has submitted visual concept drawings that depict a store and canopy that seem to meet the requirement that all commercial structures have Swiss/alpine architectural elements incorporated into the structures. The Visual and Architectural Review Committee would need to review the structure but visually the structures are appealing. Also regarding scale, both the store and the canopy above the gas pumps are relatively small and appear to fit in a residential area. Also the developer has offered to landscape the area he currently owns on the southwest area of the roundabout as part of his proposal (see Paul Berg's letter included in this packet.)

*Surrounding land uses* – One issue that has been mentioned to staff on numerous occasions is that the proposed use is not compatible with the surrounding existing uses. Many have stated that the area is rural residential and any commercial will detract from the entire area. Some property owners in the area state they purchased because of this rural atmosphere and any addition of commercial to the area will diminish what they currently have.

*Community walkability* – Nationwide there are communities that are allowing neighborhood stores because they do add some benefits to the residents around them. This is a change in planning practice that has been common since the mid 1900's when most communities, including Midway, adopted Euclidean zoning, and created centralized business districts and segregated commercial and residential areas. Recently some communities have reverted back to the neighborhood store concept because it makes communities more walkable, reduces traffic and pollution, and is convenient for those who live near the store. There are varying opinions on this matter but generally neighborhood stores are becoming more acceptable around the country.

*Competition for Main Street* – Staff is concerned that a new convenience store and gas station will add more competition for the existing gas stations. Normally this would not be a concern the City would address if a gas station were proposed in a current commercial zone but in the case of a General Plan amendment it most certainly should be addressed. It is unknown what the impact will have for the businesses along Main Street but it will most likely impact them in some manner. The applicant feels that most of the business will be from through traffic that comes in to Midway from River Road. These are tourists to the community that are visiting the resorts and the State Park. The thought is that many tourists never make it down to Main Street but if there were an option to stop on Burgi Lane then many would. Basically the proposed business would capture existing through traffic and would not impact the current businesses on Main Street. This issue is debatable and again it is unknown what the impact would be.

*Spot zoning* - The City has tried to avoid creating "spot" or "island" zoning when considering land use issues. Basically the definition for this type of zoning would be rezoning a parcel to a different zone than all the contiguous parcels around it. This proposal would create this type of an issue.

Planner Henke stated that the staff's proposed findings were determined as:

- The rezone would create a zoning situation that is considered a "spot" or an "island".
- The project could connect to existing utilities and fire flow should not be an issue.
- A commercial development would most likely create more taxes than what is used and a residential development would most likely use more taxes than what is contributed.
- This is a recommendation to the City Council.

**(Note: a copy of the presentation is available in the Supplemental File)**

Wes Johnson, City Engineer discussed crosswalk with or without Burgi Lane access and is in his opinion unsafe as it is currently and really needs to be looked at and addressed

**Chairman Oksner asked if the commissioners had any further questions for Planner Henke or Staff?**

There were no other questions at this time

Paul Berg, stated he would be taking just a few minutes to speak and then would turn the time over to the applicant, Russ Watts. Originally this property submitted an annexation petition in 2001, with the vision that this intersection would have a commercial business located on it due to the traffic volume on it at the time. When they informally met with the mayor and council it was the City's desire to strengthen Main Street which was struggling, so they held off this idea. In 2004 Midway went through a process called "Envision Midway", which tried to identify key intersections which included this intersection, Center Street and Tate Lane which one day a small pocket of commercial could be allowed to obtain tax revenue. After that process was completed the committee made this suggestion, but again in trying to keep Main Street strong. It was decided to not include that in their plan. It has now been several years and Main Street is stronger and viable, and the applicant felt it was the right time to try to approach this concept again.

Commissioner Kohler was concerned that the parcel had been a remnant parcel, but Mr. Berg stated that this parcel of ground has never been included in open space for Dutch Fields, never been included in the subdivision; it has just always just been a parcel of land owned by Russ Watts.

Mr. Berg stated that the general plan amendment application has questions that apply to this

request and would like to review them with the commissioners; the information was also included in a letter that was provided in the planning packet each commissioner received.

**(Note: a copy of the letter is available in the supplemental file).**

Mr. Berg reviewed the Economical Benefits, Aesthetics, Protection of Urban Development, Energy Conservation and Renewable Energy Resources, Protection and Promotion of Air Quality, Historic Preservation and Available Services for the property.

**Chairman Oksner asked if there were any other questions for Mr. Berg?**

There were no further questions.

A member of the audience asked Mr. Berg if the parcel could have been included in a phase of Dutch Fields earlier when developing that area? Mr. Berg stated that yes it could have.

A member of the audience asked for clarification on the tax revenue that would actually be brought into the City. At the neighborhood meeting it was said it would be a substantial amount, however Planner Henke had stated it would be around 10,000 to 20,000. Planner Henke explained that was because the actual amount the city receives is 2.4%.

Russ Watts, the applicant thanked the Chairman and Commissioner for allowing him the opportunity to speak this evening. He explained that in 2004 they were heavily involved with the City in helping with the General Plan, and at the time they did mention maybe having a small country store at that intersection; however it wasn't the right time. Mr. Watts reviewed his history with the City, and the contributions that had been made during the time they have been in the City.

Mr. Watts stated that there is a big trend right now through America that is doing small community stores. It enhances values it doesn't distract value of the property. It brings tax base to the City that does need it, and there is a lot of traffic that goes that way that bypasses Midway Main Street. Mr. Watts stated that he lives in Dutch Fields, and he can see the site from his back window, and feels that it can help the community. They had a lot of suggestions at the open house, and they always try to listen and be smart to make the community better. They are here to submit the option, and listen to the ideas and suggestions.

Chairman Oksner opened the Public Hearing:

**Bill Goodall**

**255 Interlaken Drive**

- Wanted to know if Mr. Watts had considered just having a store at the location, and not including a gas station?
  - Mr. Watts stated that they hadn't thought of that, but it was brought up by several people the night of the open house, and that wasn't something they were opposed to looking at.

**Rolando Decardenas**

**1015 Martha Lane**

- He was speaking for the residents of the Lacy Lane Estates, many who were attending tonight's meetings.
- They had spoken to 30 of the 38 residence and there is an opposition to having this change.
- There concerns were the safety and for the zoning change from Residential to a C2 zone.
- The area was picked because it was a residential zone, and if it had been otherwise they may not have chosen to purchase in the area.
- He thanked Planner Henke for correcting the tax base percentage which was 2.4%
- He felt that there should be some type of studies done on the property to see if it really would be used by golfers.
- Conducted personal studies on gas stations, and explained some of his findings.
- Concerned about ingresses and outgresses
- Mentioned that the land was a joint venture with Russ Watts and the Kohler family that both owned property.
- With the land across the street being in the County, and if Midway City was to change the zoning, it opens the door for the Kohlers to bring in Commercial businesses because of that change.
- He stated that the other night at the Valais meeting the idea of crime was brought up, and he remembered Russ saying that of course there would be crime, you couldn't stop that, and it was something you just dealt with.
  - Russ stated he doesn't remember saying he would be ok with the crime, because he obviously would not be ok with it as he lives there too.

**Ken Mickelson**

**128 E Chatelle Cove**

- Safety Issues
- Long term implications
- Create a new zone such as C4, and what would happen if we did that?
  - Planner Henke stated that could be an option but then if we created a new code, then a new ordinance must be written for that zone. Planner Henke stated that it usually is not good policy to create new zones just for a specific use.
- Process is to change General Plan – once door is open makes it harder to stop.
- Disagrees with Mr. Berg that this is good for the General Plan.
- Commercial change in county area.
- Hurt the downtown main street.
- Is there compelling evidence to change the General Plan when it is only three (3) years old. He feels there is no compelling reason for this change.

**Ralph Carpenter**

**530 East Mission Drive**

- Concerned about the impact on downtown.
- Concerned that it would be drawing more traffic to an area that already has too much traffic.
- Concern with having 13 parking spaces on less than a half-acre lot.

**Loren Moyer**

**488 East Mission Drive**

- Background is in Fire Service, he is retired Fire Chief.
- He provided handouts showing fires and spills.
- The property slopes to Mission Drive and if something was to happen with a spill or fire, it will go right down on Mission Drive.
- Security Problems.
- This is not the right place for a gas station.
- Brought up fire flow issues for property.

**Debbie Harker**

**1670 North 450 East**

- She has only lived here in the area for a year.
- She moved here to smell the Kohler cows, she enjoys the smells.
- She came here a lot for vacation, and there was never a time that she didn't have to go to Main Street.
- Safety Concerns.

**Tana Biedel**

**440 East 1000 North**

- She has 14 grandchildren, and they walk all the time in this area.
- It already is very difficult to get across the street as it is now, it would be a nightmare to put this type of use in this area.

**Sheri Omans**

**725 North Homestead Drive**

- Has known Russ Watts for a number of years, and he has done wonders for Midway City
- He put in the Roundabout which is so beautiful as the entrance to Midway City.
- When she was on the Planning Commission that it was stressed to keep the corridors open, to protect them.
- This does not keep the open space, and we will lose the beauty of coming into Midway.

**Cheryl McCandless**

**880 East Hamlet Circle South**

- One of the reasons she moved from Salt Lake City to Midway was the light pollution and the noise pollution as well. She wondered what the idea was for lighting and hours.
  - Russ Watts stated that like their other subdivisions, the lighting would what they call dark sky light, and there would be no neon lighting. The hours would be 6:00 a.m. to 10:00 p.m.
- She also asked whether the lights would remain on at all times, or if at night they would go off, and also what type of sign would they have.
  - Russ Watts stated that they would be using the same lighting other stores in the town has, and they would follow the Midway City Sign Ordinance.

**Will Dardis**

**544 East Mission Drive**

- Russ wrote the CC&R's for the area.
- Lights aren't dark sky lighting in the subdivision.
- Doesn't believe any of this.

**Steve Biedel**

**440 East 1000 North**

- Concerns about Aesthetics.
- Walkability – already has the walkability there are tons of bikes etc. pointed out walking points on roundabouts.

**Robert Bouwhuis**

**230 East Deer Ridge Way**

- Building in Deer Creek Estates, Trained in Engineering.
- Safety
- Rural community with a charming downtown - if you piece meal commercial property then it takes away.
- Multiple lands that are commercial that isn't being use.
- Concern with site plan – site of access.
- Concerns with tanker blocking round about.
- Not a viable option.

**Scott Lewis**

**47 West Village Circle**

- Take gasoline off the table and just be a store. Russ mentioned at the neighborhood meeting that gasoline isn't a revenue maker; it's more of a convenience.
- Farmers Market, with fresh food from the community that people could actually walk to purchase.

**Bill Stern**

**1045 North Homestead Drive**

- Invited Inn owner
- When he made the decision to change the home to a Bed and Breakfast, he had to go through many things to make it work.
- If .47 acres doesn't work for residential, don't make it commercial.
- Very hard to make his business work.

Chairman Oksner after three (3) attempts closed the Public Hearing.

The commissioners had discussion regarding the property and the information they had heard and had been given. They asked Planner Henke what other uses for this property would there be as it was zoned now? Planner Henke stated that it was in the RA-1-43 zone, and the usage was limited. It could be possibly used as open space, trail head, park. The commissioners asked those in attendance what they would like to see the property be used for? Most of them would like it to be used for nothing, but would not be opposed to a house being on the property. However you would still need to rezone the property in order for a house to able to be there.

**Chairman Oksner asked if there was any other questions regarding this item?**

No other discussion was needed.

**Motion:** Commissioner Ream moved to recommend denial of the proposal. Commissioner Nichols proposed to add the following findings for the reason of the denial: that there are significant traffic and safety concerns associated with the proposal, there is a strong community feeling that commercial is incompatible with the nearby residential area, and there is no compelling reason to make a spot zone change, or a change to the General Plan.

**Seconded:** Commissioner O'Toole seconded the motion.

**Chairman Oksner asked if there were further discussion regarding the motion?**

There was no further discussion.

**Votes: Ayes: Commissioner Nichols, Commissioner Rather, Commissioner Kohler and Commissioner Streeter.**

**Nays:** None

**Motion:** Passed

**5. Midway City is applying for a Conditional Use Permit for two pavilions in the Valais Park on City Property. The proposal is located in the RA-1-43 zone.**

Planner Henke stated that Midway City is seeking approval to construct two pavilions in the Valais Park. The pavilions will each be 30' 4" x 16' 8" (503 sq. ft.) and will be 15-18' tall. The pavilions will be very similar to the existing pavilions in the Hamlet Park.

Planner Henke presented a power point presentation on the property:

Planner Henke stated that Section 16.26.120 requires specifically the Planning Commission to look at the following items: (comments in italicized represent Planning Staff's comments pertaining to compliance or lack of compliance with the findings the Planning Commission must make in considering this request).

1. The proposed use is conditionally permitted within the Land Use Title, and would not impair the integrity and character of the intended purpose of the subject zoning district and complies with all of the applicable provisions of this Code; *planning staff believes that the proposal will not have a significant impact on the neighborhood.*
2. The proposed use is consistent with the General Plan; *no issues have been identified.*
3. The approval of the conditional use or special exception permit for the proposed use is in compliance with the requirements of state, federal and Midway City or other local regulations; *the structures will need to be approved by the City's Building Department and comply with the current requirements of the International Uniform Building Code.*
4. There will be no potential, significant negative effects upon the environmental quality and natural resources that could not be properly mitigated and monitored; *no issues have been identified.*

5. The design, location, size, and operating characteristics of the proposed use are compatible with the existing and future land uses with the general area in which the proposed use is to be located and will not create significant noise, traffic, or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity or adverse to the public interest, health, safety, convenience, or welfare to the City; *the proposal matches the design and style of pavilions found in other City parks. The current proposal has a roof color that is red. This should be changed to a color that is more compatible with the area.*
6. The subject site is physically suitable for the type and density/intensity of the proposed use; *it appears that the proposal is suitable based on the proposed use.*
7. There are adequate provisions for public access, including internal and surrounding traffic flow, water, sanitation, and public utilities, and services to insure that the proposed use would not be detrimental to public health and safety; *no detrimental impacts have been identified.*

**(Note: a copy of the presentation is available in the supplemental file)**

Planner Henke stated that the following were possible findings staff had found:

- The proposed use is a conditional use in the RA-1-43
- The proposal does meet the vision for agricultural use in the RA-1-43 zone as described in the General Plan.

Commissioners discussed the proposal, location of the pavilions of where they would best be utilized; they discussed the type of material that could be used possibly such as a bronze metal, and to perhaps scale the columns. They felt as Planner Henke stated that the color of roof should fit in with the surrounding structures, and felt that staff would be able to determine the best locations for the pavilions.

**Chairman Oksner asked if there was any other questions regarding this item?**

No other discussion was needed.

**Motion:** Commissioner Streeter moved to approve the Conditional Use Permit for two pavilions in the Valais Park on City Property, with the condition that the color of the roof fit with the surrounding structures, and that the best location of the pavilions is determined by staff. She also moved to accept staff findings.

**Seconded:** Commissioner Ream seconded the motion.

**Chairman Oksner asked if there were further discussion regarding the motion?**

There was no further discussion.

**Votes: Ayes:** Commissioner Rather, Commissioner O’Toole, Commissioner Kohler and Commissioner Nichols.

**Nays:** None

**Motion:** Passed

- 6. Paul Berg, agent for Eldon Wright Trust, is requesting a Concept Plan review for a standard subdivision with a proposed name of Eldon's Landing. The proposal is for five (5) lots and is on 3.6 acres of land and is located in the R-1-22 zone. No action will be taken on this item: it is only a discussion item.**

Planner Henke reviewed the Concept Plan that was being presented tonight. It was for five (5) lots and is on 3.6 acres of land. There is an existing home which is not part of the subdivision.

Paul Berg, agent for the applicant stated that in addition to Michael's comments, there would be a 20 foot trail easement dedicated along Center Street, and all lots would come off the cul-de-sac off which would be a public street. The only other possibility you might see with this, is it's possible that the LDS Church and developer may work out an access easement because the church does need another entrance.

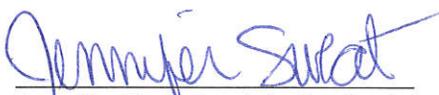
Commissioner Streeter discussed the power pole locations and who was responsible for those poles to be moved. Planner Henke stated that it was in the developers agreement, Commissioner Streeter didn't know if that was the case, she felt it was on the plat only. Planner Henke stated that he would review this prior to this application coming for preliminary. Wes Johnson, also stated that they would make sure to check on this item.

No further discussion was needed for this item.

Chairman Oksner asked for an adjournment

Commissioner Nichols moved for adjournment at 10:45 p.m.

  
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Michael "Mickey" Oksner – Chairman

  
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Jennifer Sweat – Admin. Assistant