

Minutes of the Midway City Planning Commission

**Wednesday, 16 October, 2013 7:00 p.m.
Midway Community Center
160 West Main Street, Midway, Utah**

Note: Notices/agendas were posted at 7-Eleven, The Store Express, the Midway City Office Building, and the Midway Community Center. The public notice/agenda was published on the Utah State Public Notice Website and a copy sent to The Wasatch Wave.

Attendance:

Kent Kohler – Chairman
Mickey Oksner – Vice Chairman
Jim Kohler
Steve Nichols
Karl Dodge
Stuart Waldrip
Chip Maxfield

Staff:

Michael Henke – City Planner
Jennifer Sweat – Administrative Assistant

Excused:

John Rather

6:56 P.M. Work/Briefing Meeting

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

7:00 P.M. Regular Meeting

Call to Order

Chairman Kohler opened the meeting and welcomed the commissioners, staff and public. Commissioner Chip Maxfield gave the invocation. Chairman Kohler led the Pledge of Allegiance.

By way of information Commissioner Rather is excused from tonight's meeting.

Regular Business

1. Review and possibly approve the Planning Commission Minutes of September 18, 2013

Motion: Commissioner Maxfield made the motion to approve the Planning Commission Minutes of September 18, 2013 with the correction on Page five (5) to state that Commissioner Dodge and Commissioner J. Kohler voted nay. Jennifer Sweat stated she would make the correct

in the meeting minutes.

Chairman Kohler asked if there were any other discussions on the motion?

No further discussion were needed

Seconded: Commissioner Dodge seconded the motion.

Votes: Ayes: Commissioner Waldrip, Commissioner Oksner, Commissioner J. Kohler and Commissioner Nichols.

Nays: None

Motion: Passed

- 2. Paul Berg, agent for Homestead Legacy LLC is requesting a Preliminary/Final approval for a large-scale subdivision, Homestead Villas. The proposal is for four (4) lots located at Bayhill Drive and Fairway Drive. The area of the property is 1.81 acres, and is in the R-1-15 zone.**

Planner Henke thanked Chairman Kohler and Commissioners.

Planner Henke stated that this is an item that long term members of the Planning Commission may remember because it has been approved two times in the past. The approval and entitlements have lapsed. When we have a project that has received a prior approval, and the approvals have lapsed but the design has not changed the process can be reduced to two meetings.

The applicant is proposing two phases, Plat A lots one (1), two (2), and three (3) and Plat B (lot four (4)).

Access to lots one (1), two (2), and three (3) will be from a private drive which is an extension of Fairway Drive, a private street. The private drive will be terminated in a turnaround access easement to the northwest of lot three (3). An existing maintenance path, part of the Homestead Legacy LLC, continues to the northeast of the private drive fronting lots one (1), two (2) and three (3). Access to lot four (4) will be from Mountain Springs Drive and requires a driveway easement through Swiss Creek PUD Plat "A"

Planner Henke presented a power point presentation of the property.

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

Planner Henke reviewed the Golf Shot Hazard Map, which shows the locations of the lots and the typical golf shot spray. The proposed lots are located by hole #10 of Crater Springs Golf Course. In other areas of the golf course we have required netting, with this section we are proposing using landscaping, as well as making sure the right material is used to build the project. Planner Henke reviewed the landscaping plan.

Commissioners Dodge and Waldrip mentioned they have or currently do live on a golf course,

and both feel that trees do nothing to protect the home.

The commissioners discussed the location of the lots, and the typical golf shot spray. Paul Berg, the agent for the applicant discussed the Golf Shot Hazard Map, and how the golf shot may play out.

Commissioner Dodge stated he didn't feel that the commission had to worry about the possible damage, as long as the City didn't have liability. He didn't know they could be required to have something in the closing documents to release the City of any liability. If that was something we could do we should look at it.

Commissioner Waldrip stated that if the golf course is there first, and then the house comes in second, there is an assumption of risk because when you purchase your home, you know it's next to the golf course. The developer is always going to have a disclosure stating you are likely to be hit by golf balls. Unless the golfers intentionally aim at a house, the assumption of risk usually protects the golfers as well.

Commissioner Waldrip stated that legally speaking, if the Golf Course is in place prior to the building of the home, the homeowner takes on the responsibility of possible damages to the home. Also the Planning Commission, City Council and the City in general have a design immunity. If you are acting in the normal course of approvals and take appropriate things into consideration it is pretty hard to get through that immunity and put the liability upon the City.

Planner Henke stated he thought it would be possible to require the owner to provide a disclosure of appropriate warning on the type of building material. The Homestead is not planning on building the homes, but would be selling the lots. It would be nice to have a required disclosure.

Commissioner Waldrip stated that it would be in the best interest of the developer to disclose this in the documents to use building materials that weren't fragile.

Planner Henke stated that this had been previously approved with a hammer head turnaround which meets the fire district requirements. It is being presented the same way as it was approved four years ago. It is actually a standard driveway type.

Planner Henke stated that possible findings would be as followed:

- *The Homestead Trail will be built concurrently with the driveways in the subdivision*
- *The Homestead Trail will be public and is a key component of the City's Master Trail Plan.*
- *The driveway will be private.*

Planner Henke stated that possible conditions:

- *The Homestead frontage trail will be built concurrently with the driveway in the Homestead Villas Phase one (plat one)*

Commissioners discussed the trails, trail locations, driveway type, and road standard.

Commissioner Dodge asked what the requirement or code is that allows a private driveway with three homes on it. Is this something we still do?

Planner Henke stated there is some language in the code that does allow up to four homes on a driveway if there is some topographical issue. This one was originally approved this way.

Chairman Kohler asked if there were any other questions?

No further questions were needed.

Motion: Commissioner Maxfield made a motion to approve Homestead Legacy LLC for Preliminary/Final for a large scale subdivision, Homestead Villas, Plat A & Plat B. It was also moved to accept staff findings and any conditions as written in the staff report.

Chairman Kohler asked if there were any other discussions on the motion?

No further discussion was needed.

Seconded: Commissioner J. Kohler

Votes: Ayes: Commissioner Dodge, Commissioner Oksner, Commissioner Nichols, Chairman Kohler.

Nays: None

Motion: Passed

Commissioner Waldrip stated he would be abstaining from voting on this item.

3. Steve Davies, agent for Kraig Higginson, is requesting a Conditional Use Permit for a Commercial Greenhouse that will be about 17,000 sq. ft. The proposal is located at 1200 South Center and is in the RA-1-43 zone.

Planner Henke thanked Chairman Kohler and Commissioners.

Planner Henke stated that Kraig Higginson is petitioning for approval of a large agricultural building (17,000 sq. ft.) of which part will be used to grow agricultural products (11,000 sq. ft.) mostly for personal use but they would like to have the ability to sell some of the produce. This proposal requires that a conditional use permit (CUP) be approved by the City because it exceeds 1,000 sq. ft. and because there will be commercial component to the structure.

Planner Henke stated that the building will contain an office/storage area, garage, bedding and planting area, fruit tree garden and three greenhouse areas. There is also an aquaponics area listed on the plan that will not be allowed unless a code text amendment is approved by the City Council.

Planner Henke presented a power point presentation of the property.

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

Planner Henke stated that though this is a proposed commercial greenhouse it is much smaller than the previous proposals that have been reviewed by the City. The Higginsons are interested in creating a sustainable farm where they can grow produce and food and where they will be able to create electricity through solar panels they plan to place on the property. There is currently one dwelling on the property and the Higginsons may apply to subdivide the 70-acre parcel into possibly 6-10 lots where they and their children will build homes. They will keep the vast majority of the property in agriculture. This agricultural area will surround the lots that will be created near the center of the property.

Planner Henke stated that the building itself will look agricultural in form and not industrial unlike previous proposals. It will be constructed to have the form of a barn/agriculture building but walls will mostly be glass. The roof will be made of polycarbonates which will allow 80% of sunlight to filter into the building in the greenhouse areas. The majority of the building will be used to grow agricultural products for the families living on site but they would like the ability to sell any extra produce to retail establishments in the area. They see this as a way to be more self-sufficient but also as a way for the family to work together. It is possible in the future that some employees may work at the facility but initially it will be a family operation.

Planner Henke stated the specific requirements for commercial greenhouses, as well as how the applicant complies with the ordinance.

- *Five-acre minimum* – currently the property is about 70 acres in size, though it possible the property will be subdivided in the future. If the property is subdivided then the commercial greenhouse will need to remain on a five-acre lot.
- *Greenhouse will not exceed 35% of parcel area* – the proposed structure at 17,000 sq. ft. is less than 1% of the entire parcel area.
- *100' setback from all property lines* – the proposed structure is 250' from the closest property line to the north and the next closest boundary is the west property line at a distance of 400'.
- *Screening, berming, and landscaping* – the applicant has not proposed any specific landscaping.

Planner Henke also stated the items that Section 16.26.120 requires specifically the Planning Commission to take into consideration along with Planning Staff's comments on each item:

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. The use is*

agricultural in nature and the building is relatively small compared to the size of the property. The building is set back from the property lines hundreds of feet more than the code requires. What is unknown is the impact of sunlight reflection from the glass windows that will cover most the building.

2. The proposed use is consistent with the General Plan; *the use is agricultural in nature and does comply with the vision of the RA-1-43 zone.*
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; *if the applicant decides to sell produce and the greenhouse functions like a business then a business license will need to be approved by the City. The applicant will also be subject to any State requirements for business and agricultural production.*
4. There will be no potential, significant negative effects upon the environmental quality and natural resources that could not be properly mitigated and monitored; *the applicant has stated that there will be no chemicals used in the greenhouse. No liquids or other material from within the greenhouse will be stored outside the building. Snake Creek is located about 60' from the location of the existing foundation where the structure will be built. Water quality of Snake Creek is important for the local area and for the region as the creek feeds into Deer Creek reservoir, a major water supply for both culinary and irrigation uses along the Wasatch Front. Also it appears that the structure is located outside of the FEMA flood zone for Snake Creek.*
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 proposed building has the form of other agricultural buildings located in the valley. The look will be quite different though because of the heavy use of glass and polycarbonates on the structure. The applicant anticipates very few traffic trips will be generated because of the greenhouse. It is estimated there may be only a few trips per week that are generated from smaller trucks.*
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.*

Planner Henke stated that possible findings and conditions for the CUP would be:

- 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.
- Any expansion will require further review and approval as an amended Conditional Use Permit.

Commissioner Dodge asked for clarification that the Conditional Use Permit does not include the aquaponics portion at all?

Planner Henke stated that was correct, he specifically states that in the staff report. The applicant would have to apply for a Code Text Amendment for the aquaponics and the solar panels. They had indicated that they would be doing this at a later date.

Steve Davies representative of the applicant was present and introduced himself. He discussed the project and reviewed the items that Planner Henke discussed in his presentation.

Commissioners had questions regarding material used for the roofing, the glass reflection impact and the material used for building.

Mr. Davies stated that the roof structure over the greenhouse area was a polycarbonate material. It is an Optec material and shouldn't have any reflection issues at all. The actual building will be metal with corrugated siding. The glass being used will be standard glass so that the heat can go through it, and the heat can be used in the greenhouse. The building will be green, with brown soffits. Regarding reflections, the building may have reflect light early in the morning, and perhaps in the evening but because of the distance, they feel it shouldn't be an issue.

Commissioner Waldrip felt that we may have a problem with the reflections on the windows. Commissioner Oksner stated that the sun would be moving. It might be a bigger issue in the winter. Commissioner Maxfield stated he thought that perhaps with the distance of the greenhouse from the roads it might not be an issue

Commissioner Maxfield wanted to know if it was possible to place a condition that if the reflective light becomes an issue that the City Planner can address this with the owner, and the owner will rectify this situation.

Planner Henke stated that was possible, and would be an appropriate condition.

Mr. Davies stated that they wouldn't be opposed to perhaps putting a film over the windows if there were complaints regarding the reflectivity. They would certainly address the issue if it did come up.

Commissioner Dodge felt that also berming and landscaping might also correct the problem of reflective lights.

Chairman Kohler asked if there were any other questions?

No further questions were needed.

Motion: Commissioner Oksner made a motion to approve the Conditional Use Permit for an Agricultural Barn/Commercial Greenhouse that will be about 17,000 sq. ft. The proposal is located at 1200 South Center and is in the RA-1-43, accepting the staff findings and conditions, with the addition that after construction if reflectivity becomes an issue with complaints that the City Planner addresses those issues with owner and the owner will rectify those concerns.

Chairman Kohler asked if there were any other discussions on the motion?

Commissioner J. Kohler felt that a study could be done to look at the reflectivity issue prior to going to City Council.

Commissioner Oksner and Commissioner Waldrip felt the motion as stated would be adequate to mitigate any issues.

Seconded: Commissioner Waldrip

Votes: Ayes: Commissioners Dodge, Commissioner Nichols, Commissioner Maxfield, Commissioner J. Kohler.

Nays: None

Motion: Passed

4. Public Hearing for a potential Code Text Amendment of open space requirements for large-scale subdivisions. The Planning Commission will review the current ordinance and make a recommendation to the City Council regarding any recommended modifications.

Planner Henke thanked Chairman Kohler and Commissioners.

Planner Henke stated that for the past four months, under the direction of the City Council, staff has reviewed the code requirements for open space for large-scale standard subdivisions. The reason for this review was based on concerns of the long term feasibility of maintenance of the required open space, especially in relatively small standard subdivisions. During the review staff looked specifically at several items that included the following; examine the current ordinance, identify potential issues with the current ordinance, and identify potential amendments to that ordinance. Open space for Planned Unit Developments (PUDs) was not reviewed at this time because the minimum requirement of 40 units in a PUD is perceived to have enough owners paying HOA dues so that long term maintenance is feasible. Furthermore, none of the large-scale PUDS in the City have had any issues with maintenance of their open space.

Planner Henke presented a power point presentation of the property

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

Basically the code requires that all standard subdivisions greater than six acres in size and located in the R-1-11, R-1-15, R-1-22, and RA-1-43 zones have a 15% open space requirement.

Also lots that are greater than two acres in size may have designated non-buildable areas of open space within the lots. The current requirement for open space is found in Section 16.16.10: Open Space General Requirements and Section 16.16.12: Open Space Requirements Specific to Standard Subdivisions. The code text for standard subdivisions is as follows:

Section 16.16.12 Open Space Requirements Specific to Standard Subdivisions

A. All standard subdivisions six or more acres in size located in the R-1-11, R-1-15, R-1-22, and RA-1-43 zones shall reserve a minimum of 15 per cent of the total acreage of the subdivision in open space. To prevent circumvention of this requirement, a subdivision less than six acres shall not be approved without complying with the 15 percent open space requirements of this section if there is a reasonable basis to believe that;

- 1. both the land comprising the subdivision and the land comprising a contiguous subdivision of less than 6 acres that did not reserve open space and that was approved less than five years earlier was owned by the same or a related individual, person, entity or group as the current applicant or owner at the time the earlier subdivision was approved, or*
- 2. a contiguous parcel of less than 6 acres owned by the same or a related individual, person, entity or group as the current applicant or owner is simultaneously under a pending standard subdivision application and is not proposing to meet the open space requirements of this section. This provision shall have prospective application only, and shall not take into account any approvals granted prior to the enactment of this section.*

B. Areas with a width less than 50 feet in any direction shall not be counted as open space.

C. Due to the open space requirements imposed herein, lot size in standard subdivisions subject to the open space requirements of this section may be reduced to 50 percent of the minimum lot size required in the zone in which the subdivision is located. This provision therefore explicitly allows for the creation of building lots smaller than the minimum lot size required in the zone in which the subdivision subject to open space requirements is located. The permitted reduction in lot size shall be directly proportional to the total amount of non-developable open space reserved in the subdivision. For example, a subdivision that reserves the minimum 15 percent open space required by this section shall be allowed to reduce any of its lots to 85 percent of the size required in the zone. A subdivision that reserves 30 percent of its total acreage for open space shall be allowed to reduce any of its lots to 70 percent of the required size in the zone. Frontage requirements will also be reduced by the same percent as explained above.

The purpose for the ordinance is to preserve open space in the City. It is preferred that open space is located near areas where the public will be able to see and enjoy the openness. This open space should not be located in the center of a development where only those living in the subdivision will be able to see it but it should be located along the edge of a subdivision next to public roads and especially next to collector roads. If they are next to public roads and collector

roads then a greater number of residents will see the open space and the road will have greater appeal that will enhance the community. The open space will be private and will be privately maintained. Only those that live in the subdivision will have right to use the open space though, hopefully, the public in general will be able to enjoy the feeling of openness provided by this requirement.

One identified potential problem is that a relatively small development will not maintain the required open space. This is based on two reasons. One is that there may be a very small pool of owners paying for the maintenance. There may be as few as four or five owners in a pool. If a few do not pay their dues then the open space might not be maintained. It is questionable if 15 owners are enough to maintain the open space and there isn't a clear answer to this question. Unlike a PUD where all the open areas are maintained by the residents in general, open space in a standard development can be a small amount of space. For example, the open space requirement for a six-acre development in the RA-1-43 zone would be 0.9 of an acre and would be maintained by potentially four or five lot owners. This is a worst case scenario but it is a fact based on what is possible with the current code. Also the requirement of open space forces a development to have an HOA because of the required maintenance of the open space. Again, with a PUD there is a difference. All the open land is maintained by the property owners and there are no privately maintained areas. There are usually private roads and amenities in PUDs that also require maintenance to further justify the HOA and required dues. In a small-scale development the roads are almost always public and the only reason to form an HOA is to gather dues to maintain the open space. The fear is that because the HOA is established for this one specific reason the HOA will cease to function in the long run. The property owners in a standard development have their own lots to maintain, and may see the commonly owned open space as a burden.

Planner Henke stated that we have identified three courses of action that could be taken. They are the following:

1. One option is to leave the code the way it is. At this point the City does not have a recorded subdivision that needed to meet the open space requirements. We will not know how successful this requirement is until a subdivision is built and time will tell if the open space is properly maintained. Currently it is only a fear that these open spaces would become a burden to the City. It is possible that they will all be maintained and the City will be left with great pockets of open space for all to enjoy.
2. Another option is to extend the setbacks from public roads so that there is open space along those roads, though the property would be part of a lot. This option has advantages and disadvantages. One advantage is the property owner will be responsible for the maintenance of that area and no HOAs will need to be created. A disadvantage is if the property owner tries to fence or somehow create a barrier so the open space is not visible. Property owners will want to maximize their yard area especially if it's a backyard and fencing is the easiest way to do this. If the yard is fenced off with a 6' tall privacy fence then the open space will not meet its intended purpose. Regulating fencing and use of the open space property would be a difficult situation to administer from the City's perspective.

3. Another option is to raise the number of acres required to trigger the open space requirement. Instead of the threshold being six acres it could be raised to a higher number. It is ambiguous at best to decide that correct number but if we were to establish 20 acres as the requirement then we can look at the following scenarios. In the RA-1-43 zone there would be three acres as open space and the density supporting that open space would be about 15 lots. In the R-1-11 zone the open space would also be three acres but most likely the density supporting the open space would be about 60 lots. Staff feels that if there are a larger the number of lots in the subdivision there is a better chance the open space will be maintained.

Planner Henke stated that after reviewing the different available options and discussing them with commissioners over the past couple of months, he is recommending to the Planning Commission that the ordinance not be changed. We don't know if there will be any problems with the current ordinance once it is used but if there are problems it can be amended in the future.

Planner Henke stated that possible findings for this item would be:

- Midway's General Plan promotes open space in the community and the current code provides for that need
- The General Plan promotes that "open spaces will be accessible, visible, and appropriately landscaped (depending on the open space purpose and use) and will be aesthetically pleasing"

Commissioner had discussion on open space requirements, possibly adding a fee in lieu, or even an impact fee. It was determined those options would not be feasible through the discussion. They discussed the staff report and staff findings in the staff report.

Commissioner Waldrip left the meeting at 8:31 p.m.

Chairman Kohler opened the meeting to the Public for any comments:

No comments were given

Chairman Kohler asked if there were any further questions?

No further discussions were needed.

Motion: Commissioner J. Kohler made a motion to leave the current code as it is written and accept staff's findings: Midway's General Plan promotes open space in the community and the current code provides for that need, and the General Plan promotes "open space will be accessible, visible, and appropriately landscaped (depending on the open space purpose and use) and will be aesthetically pleasing".

Chairman Kohler asked if there were any other discussions on the motion?

Seconded: Commissioner Dodge

Votes: Ayes: Chairman Kohler, Commissioner Nichols.

Nays: Commissioner Oksner, Commissioner Maxfield

Motion: Passed

There was a discussion on whether or not to continue the remaining two items until next month's meeting due to the time and the desire to give adequate time to each item. A brief break was decided upon at 9:09 p.m.

Meeting was reconvened at 9:14 p.m.

5. Public Hearing for a potential Code Text Amendment of required Affordable Housing for a large-scale subdivisions. The Planning Commission will review the current ordinance and make a recommendation to the City Council regarding any recommended modifications.

Planner Henke thanked Chairman Kohler and commissioners..

Planner Henke stated that for the past four months, under the direction of the City Council, staff has reviewed the code requirements for affordable housing for large-scale subdivisions. The reason for this review is based on several reasons. The law is in a state of flux regarding affordable housing in Utah and even around the country. There are legal issues that exist and because of this, several cities have changed or are considering amending their ordinances. Locally both Heber City and Wasatch County have been actively reviewing and changing or considering changes to their codes. Heber City recently changed their mandatory requirement to a voluntary performance based code. Wasatch County is currently considering an amendment that would most likely reduce the amount of affordable housing required. Currently the State Code only requires that an affordable housing plan is established for each county and city. This plan is usually found in the general plan of each county and city. The State also requires that this plan is reviewed every two years. There are no other specific requirements regarding anything more than just having a plan. Currently Midway has an affordable housing plan chapter in the General Plan and Chapter 16.20 of the Midway City Municipal Code is a specific ordinance that establishes the amount of affordable housing required for a development.

Planner Henke presented a power point presentation of the property.

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

Basically the code requires that all standard subdivisions and planned unit developments that contain five lots or more have affordable housing for 10% of those lots. There are several options available for how to meet this requirement. The preferred method is inclusionary zoning which is the practice of including the affordable lots or units in the subdivision itself. There is also an option to create affordable housing off-site. This allows a developer to create a subdivision and have no affordable units in the subdivision but develop lots in the City limits that comply with the affordable housing requirements. The third option is to pay a fees-in lieu to the Wasatch

the affordable housing requirements. The third option is to pay a fees-in lieu to the Wasatch County Housing Authority. This is only an option for units that are a percent of a whole unit. For example if a developer needs 3.2 units then three units would be included in the subdivision and 0.2 would be converted to a dollar amount and paid to the Wasatch County Housing Authority. This money could be used in several ways for those who qualify which include: providing low interest loans, buying or building apartments that are rented at a lower rate, and partnering with other affordable housing organizations to build affordable housing.

The purpose for the City's ordinance is to help assure that affordable housing is available within the City. Affordable housing is defined as housing for those who earn 80% of the area medium income (AMI) or less. For the year 2000 the median income for a household in the City was \$51,071, and the median income for a family was \$55,809. Males had a median income of \$40,870 versus \$25,682 for females. About 3.4% of families and 5.2% of the population were below the poverty line, including 6.4% of those under age 18 and 4.9% of those that are age 65 or over. The purpose of the ordinance is to help those households making \$40,857 or less (80% of \$51,071). The standard acceptable housing expense ratio is 28%. For a family making \$40,857 this equals a \$11,440 housing allowance per year with a maximum mortgage or rent payment of \$953.00 per month. This leads us to a few questions: Can a Midway resident rent or purchase a dwelling or apartment in Midway for \$953 or less? And if so, what percent of apartments or dwellings in the City fall into this category? This is a difficult question to answer. There are options that clearly fall into this category and include the apartments located in town, trailer park, some of the smaller homes on smaller lots in town, and most of the Hamlet condominiums. Recently the City purchased the home located at 30 N 100 W. The appraised value on the tax roll is \$177,000 which equals a mortgage payment at 4.75% interest of \$923 per month. This falls within the affordable housing criteria according to the ordinance. The dwelling at 30 N 100 W is similar to other smaller homes in the City on smaller lots. Also 113 of the 143 dwellings in the Hamlet fall in the \$140,000 range to \$166,000 range according to the tax roll. It seems safe to assume that once the total of the smaller homes is added to the 113 Hamlet condominiums, apartments, and trailers available then there are at least 10% of the existing units in the City that fall into the affordable housing category.

Planner Henke stated that he has identified four courses of action that could be taken. They are the following:

1. One option is to leave the code the way it is. We could continue to enforce the current ordinance even though there are potential legal issues that may need to be addressed in the future.
2. Another option is to only require affordable housing with resort developments. This option does seem logical because resorts require service industry employment that is lower on the wage scale which lends to the need of affordable housing. The other side of the issue is if we require affordable housing for resorts then we make it difficult for the existing resorts to expand and it is difficult for any new resorts to be built. Does the City want to impede the resorts from growing when many of the taxes (transient, resort,

property, and sales) that benefit the entire City are generated from these businesses? Should we not try to make it easier for the resorts to prosper if they benefit the City and its residents through taxes and providing employment? Also the aforementioned question of the potential legal issues also applies if resorts are required to provide affordable housing.

3. Another available option is to amend the Code so that any affordable housing created by a developer is in a voluntary basis as inclusionary zoning. The City could make it an option for the developer to create lots which would be accomplished through a performance based code. Basically the developer would be able to add a percentage (possibly 5-10%) of affordable units into the development above the maximum allowed by the zoning code. These added lots would be smaller in size and smaller dwellings would be built on them. It would be important that these dwellings look similar to others in the subdivision but the only difference would be the size. In order for these extra affordable lots to be included in the subdivision all the other lots in the subdivision would be approved as proportionally smaller in area and frontage to make room for the affordable lots. There would be no deed restriction or City control over the pricing of the lots but they would hopefully remain affordable in the future based on the smaller size of the lots and smaller size of the dwellings. This option would require amending the Code which could be accomplished for next month's meeting if staff is so directed.
4. The last identified course of action is to remove the affordable housing ordinance (Chapter 16.20) from the Code completely. This would be based off the evidence that the City is has a supply of affordable housing and more affordable housing will be built in the future based on the smaller lot sizes in the R-1-7 and R-1-9 zones of 7,000 sq. ft. and 9,000 sq., ft. lots. Because the lots are smaller and only smaller homes can be built on those lots then they will most likely be cottage type homes that are affordable. The City also allows mixed use commercial and housing in the C2 zones which also will most likely fall in the affordable housing category if built. The City would still meet State requirements by having an affordable housing plan in the General Plan that bases the current zoning as the mechanism that helps affordable housing to be built in the City.

Planner Henke stated that after reviewing the different available options and discussing these with the Commissioners over the past couple of months, he is recommending to the Planning Commission that option four is chosen and affordable housing ordinance is removed from the Code. Along with that the General Plan will need to be amended in December or January. Option three is also very viable and would allow an extra option for the developer because it would be on a completely voluntary basis. Planner Henke also recommends close consideration of this option.

Planner Henke stated that possible findings for this item are:

- Midway's Land Use Map promotes the construction of affordable housing within the City

- The Affordable Housing chapter in the General Plan complies with State affordable housing requirements.

Commissioners discussed the current Affordable Housing code and the different options given in the staff report. Commissioners felt they would like to have a memo from the City Attorney stating his legal standpoint on this code and the possible amendment or change.

Planner Henke stated that he had spoken with Kraig Powell, City Attorney, and he agreed with the findings of the staff report, but he felt that he could provide that for City Council to review when it goes to them.

The majority of the commissioners felt that the City promotes affordable housing in our zoning ordinance and that it seems the best option is the zoning and its working because we already have 10% affordable housing in Midway.

Chairman Kohler opened the meeting to the Public for any comments:

No comments were given

Chairman Kohler asked if there were any questions?

No further questions were needed.

Motion: Commissioner Maxfield made the motion to remove the affordable housing ordinance, Chapter 16.20 from the code completely, and use the General Plan that bases current zoning as the mechanism that helps affordable housing to be built in the City. And a legal opinion provided to City Council and emailed to the Planning Commission from the City Attorney.

Chairman Kohler asked if there were any other discussions on the motion?

No further discussion was needed.

Seconded: Commissioner Dodge

Votes: Ayes: Chairman Kohler, Commissioner Oksner, Commissioner J. Kohler, Commissioner Maxfield

Nays: Commissioner Nichols

Motion: Passed

Planner Henke reiterated that he would have the City Attorney draft a legal opinion and make sure that the Planning Commission received a copy of the document.

- 5. Public Hearing for a potential Code Text Amendment of required improvements of utility lines. The Planning Commission will review the current ordinance and make a recommendation to the City Council regarding any recommended modifications.**

Planner Henke thanked Chairman Kohler and commissioners.

Planner Henke stated that for the past four months, under the direction of the City Council, staff has reviewed the code requirements for required improvements of utility lines, specifically power lines. The reason for this review is based on several reasons. One reason is the Code language is vague and could be amended to more completely describe what is required. Also the required improvements can be viewed as being inequitable based on the circumstance of each developer.

Planner Henke presented a power point presentation of the property.

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

Basically the code requires that all utility lines “within” a development are buried: Section 16.16.7 (2) states the following (bold added for emphasis):

*2. All dwelling units shall be served by a public sewer and a City-approved water supply. **All utilities within the development shall be placed underground, including telephone, power and television.** All dwelling units shall have separate utility connections and metering.*

Planner Henke stated that the problem lies in the word “within.” Depending on the interpretation of “within” could describe the utilities placed along new roads constructed for that development and not the existing distribution or transmission lines along the frontage of the development that are located in the public right-of-way. Or the interpretation could be that within does include the existing lines along the existing roads because, in most cases, the developers own the land to the center of the road until it is dedicated to the City. Staff has found by discussing with other planners around the state and by reviewing other city’s codes that in most cases the power lines are not buried along the public roads but only along the new roads in the developments. Orem is an example of this philosophy. Many codes leave the discretion to the land use authority, which in the case of Midway is the City Council. Examples of this are Heber and Herriman. Midway has required some lines to be buried but not others. Deer Ridge Estates, along Burgi Lane, is an example of when the new roads within the subdivision have all the utilities buried while the distribution lines along Burgi Lane were not. Valais, also along Burgi Lane, has the lines in front of the units buried and along the inner roads but the area in front of the park has not.

Planner Henke stated that one of the main reasons for reviewing the ordinance lies in the equity of who buries and who benefits. There are properties that have large distances of frontage in the City that have power lines and there are others that are across the road that have no power lines. If one develops then hundreds of thousands of dollars would be spent burying those lines while the property across the street develops and does not have any of the cost even though they benefit. It seems reasonable to create a system so that both would pay because they both benefit but in reality it is difficult to create this type of a system. Staff was unable to find any cities or counties that had implemented this type of plan. It seems that development falls on the luck of the draw. The new lots in the development where power lines are buried absorb the cost and those lots are higher priced while the newly created lots across street do not have that extra cost.

Planner Henke stated that he has also investigated creating an impact fee fund for burying power lines and found that it would not meet the State requirements of uses for impact fees. Also if it were possible the cost would be much higher than any of the current impact fees that are charged when a building permit is issued. Burying lines is expensive especially in Midway that has two main obstacles. The first is the pot rock that is expensive to excavate and covers the majority of Midway. Second is the high water table that is a result of the pot rock layer. These two items together make it much more difficult to bury lines in Midway than in other areas of the State and even in the valley. Another issue is the actual connection from the buried transmission line to the existing dwellings. Many of the older homes in Midway use about 60 amps but if they are upgraded they will most likely be upgraded to 100 amps. Those homes would need to be upgraded along with the line being buried to the home and Heber Power and Light would also charge an impact fee based on the greater amount of amps. If the older homes were not upgraded the poles would still be along the streets. This is because even though the transmission line is buried in order to get to the dwelling and the existing facilities the line would have to come off of a pole. This is what is seen along the north side of Main Street where the lines are buried under Main Street from the south side transmission line but then emerge on poles on the north side and connect to the homes. All of these issues combined make it difficult to establish a different system regarding the burying of utilities.

Planner Henke identified three courses of action that could be taken. They are the following:

1. One option is to leave the code the way it is. We could continue to enforce the current ordinance and require only new poles along new streets to be buried. It would be up to the developer to bury lines along the existing roads if they voluntarily choose to take that action. Some poles would need to be moved by the developer if the existing road needs to be widened. This is case along 970 S where the developers will need to move the poles that will allow the road to be widened to the required width. A determination will need to be made through the approval process if this is the case.
2. Another option is to require developers to bury all lines within the subdivision and any transmission lines along the collector roads. This is expensive for some property owners based on the amount of frontage they have and this will raise the price of the lots in that specific subdivision. This also raises the question of equity for those developers who have to bury as compared to those who do not happen to have existing lines along their frontage.
3. The last identified course of action is to continue to investigate the issue to see if there are any other options available.

Planner Henke stated that after reviewing the different available options and discussing these with the Commissioners over the past couple of months, he is recommending to the Planning Commission that option one is chosen based off of the added cost required to bury the lines because of pot rock and the high water table. New power lines seem to bother residents in general but existing lines do not. Many do not even remember, when asked directly, if a

particular street has them or not. Others have stated the existing power lines add to the “rural” feel of Midway especially along the older roads.

Planner Henke stated that possible findings for this item are:

- Midway’s particular geology and associated high water table cause the burying of existing lines to be more expensive than in other areas
- New power lines installed in new subdivisions will continue to be buried

Commissioners and staff had a discussion regarding the Utility Lines and reviewed the staff report and staff findings.

Chairman Kohler opened the meeting to the Public for any comments:

No comments were given

Chairman Kohler asked if there were any questions?

No further questions were needed.

Motion: Commissioner Maxfield made the motion to leave the code as it currently is.

Chairman Kohler asked if there were any other discussions on the motion?

No further discussion was needed.

Seconded: Commissioner Nichols

Votes: Ayes: Commissioner Dodge, Commissioner J. Kohler, Commissioner Oksner, Chairman Kohler.

Nays: None

Motion: Passed

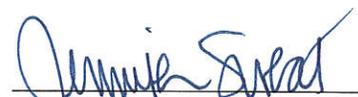
Chairman Kohler asked for motion to adjourn.

Commissioner Nichols moved for adjournment @ 9:59 p.m.

Motion Accepted, Meeting Adjourned.



Kent Kohler, Chairman



Jennifer Sweat, Admin Assistant