

**Midway City Planning Commission Regular Meeting  
April 16, 2014**

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

**Attendance:**

Mickey Oksner – Chairman  
Stu Waldrip – Co-Chairman  
Chip Maxfield  
John Rather  
James Kohler  
Steve Nichols  
Natalie Streeter

**Staff:**

Michael Henke – City Planner  
Jennifer Sweat – Administrative Assistant

**Alternate:**

Nancy O'Toole

**6:45 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 Oksner opened the meeting and welcomed the commissioners, staff and public. Commissioner Waldrip, Midway City resident gave the invocation. Chairman Oksner led the Pledge of Allegiance.

**Regular Business**

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

Commissioner Streeter stated that she had noted that on page seven (7) her last name is misspelled, “Street” should be “Streeter”. Jennifer Sweat, Administrative Assistant stated she would make that change. Commissioner Waldrip stated that he had noted on page three (3) item # 1; it should state “swale” instead of “swell”. Jennifer Sweat, Administrative Assistant stated she would make that correction as well.

**Motion:** Commissioner Stu Waldrip made the motion to approve the Planning Commission minutes of December 18, 2013 with the correction as noted by Commissioner Streeter and Waldrip.

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

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

**Nays:** None

**Motion:** Passed

- 2. Brad Wilson, Midway City Recorder, will reappoint Mickey Oksner and James Kohler as Planning Commissioners, he will swear in Steve Nichols and Natalie Streeter as regular members of the Planning Commission and William Ream and Nancy O'Toole as alternate members of the Planning Commission.**

Brad Wilson, Midway City Recorder swore in Steve Nichols and Natalie Streeter as regular members of the Planning Commission. He also swore in Nancy O'Toole as an alternate member of the Planning Commission. William Ream did not attend the meeting, and will need to be sworn in at a later date.

- 3. Public Hearing for Code Text Amendment. Kraig Higginson is proposing an amendment to Chapter 16.2.33 in the Land Use section of the Midway City Municipal Code. The amendment would allow aquaculture and aquaponics in commercial greenhouses in the RA-1-43 zone.**

Planner Henke thanked Chairman Oksner and the Commissioners.

Planner Henke stated that the proposed code text amendment would change the definition of commercial greenhouses so that aquaculture and aquaponics would not be excluded as uses within those structures. Currently the definition specifically states that "aquaculture and aquaponics are not allowed." The applicant's proposed change would delete that sentence from the definition and would in turn allow those uses. Potentially the sentence could be changed to "aquaculture and aquaponics are allowed" and may be a better way to clarify the intent of the proposed amendment.

Planner Henke stated that the commercial greenhouse code has been an issue of debate in the City. It has been reviewed by the Planning Commission and the City Council on several occasions and many members of the community have been able to comment on the issue.

Planner Henke gave a brief history of the commercial greenhouse code:

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

screenings, the Commission expressed preferences and asked that the item be brought back for further consideration at the February 20, 2013 meeting. At that meeting the Planning Commission decided to add, as a conditional use, commercial greenhouses to the B & MP zone. They made several other changes to the ordinance and then made a motion to approve the proposed code text amendments to the City Council.

4. The City Council first heard this item on March 13, 2013 and also held a public hearing at that same meeting. The item was then continued to a work meeting that was held on March 28<sup>th</sup> and then another on April 24<sup>th</sup>.
5. In those two work meetings the City Council discussed the details to the ordinance at length. There were discussions regarding those details and were inserted into the proposed text. Overall the Planning Commission discussed the proposed changes in four separate meetings spanning from November 2012 to February 2013 and the City Council will also have spent four meetings (including the May meeting) spanning from March to May.
6. The commercial greenhouse code was then approved and adopted as code on May 8, 2013. In that meeting the City Council excluded aquaponics and aquaculture as uses allowed in commercial greenhouses. It was discussed in that meeting that they would consider a code text amendment in the future to again allow fish in commercial greenhouses if an application was made and the applicant could propose an acceptable plan.
7. This leads us to the current application by Kraig Higginson. The applicant received approval for a Conditional Use Permit for a commercial greenhouse on November 13, 2013. His greenhouse is currently under construction and he would like the ability to raise fish in the approved greenhouse. His proposed amendment would allow him to achieve that goal. The proposed change will also allow and future commercial greenhouses in the RA-1-43 and B & MP zones to also raise fish.

Planner Henke stated that though the applicant's goal is to allow the raising of fish in his particular facility, a change to the code will allow all future commercial greenhouses to have fish. This includes all the RA-1-43 and B & MP zones along with any property that is rezoned to these two zones and any areas annexed into the City with these two zoning classifications. Planner Henke explained that there is really not a way to single out this particular property without affecting the entire area of both zones and this should be a consideration with this request.

Planner Henke stated that as he mentioned earlier the City Council excluded aquaponics and aquaculture as uses allowed in commercial greenhouses. But it was discussed in that prior meeting that they would consider a code text amendment in the future to allow fish in commercial greenhouses if an application was made and the applicant could propose an acceptable plan.

Planner Henke stated that the applicant feels that his plan is acceptable. It is a much smaller operation than plans that were reviewed by the City over the past few years and he feels there are no negative impacts. Planner Henke stated that he does agree that the plan for the commercial greenhouse under construction does not seem to have any issues associated with it. It is on a relatively small scale. The structure is located near Snake Creek but, as per the submitted plans and per the applicant, there will be no water from the greenhouse that will enter Snake Creek.

The State's Department of Agriculture will also continually inspect the facility. Their website states the following:

“The UDAF Fish Health Program serves the aquaculture industry by providing fish health and culture information and by enforcing those rules that govern the operation of aquaculture facilities and the spread or introduction of disease. The program registers commercial aquaculture and fee fishing facilities, conducts fish health inspections for those operators wishing to sell live products, issues entry permits for all imports of live fish or eggs into Utah, performs export inspections of brine shrimp, maintains a current listing of those facilities determined to be fish health approved for movement of live fish or eggs, offers limited diagnostic services for operators, and provides advice and information on aquaculture and fish health.”

Planner Henke also cited Utah State Code which also encourages aquaculture as found in Title 4-37-102:

**4-37-102. Purpose statement -- Aquaculture considered a branch of agriculture.**

(1) The Legislature declares that it is in the interest of the people of the state to encourage the practice of aquaculture, while protecting the public fishery resource, in order to augment food production, expand employment, promote economic development, and protect and better utilize the land and water resources of the state.

(2) The Legislature further declares that aquaculture is considered a branch of the agricultural industry of the state for purposes of any laws that apply to or provide for the advancement, benefit, or protection of the agricultural industry within the state.

Planner Henke stated that again, this particular greenhouse does not seem to have any relevant issues but the proposal must be analyzed by considering the impacts on a community level because of the potential impact on the RA-1-43 and B & MP zones and the areas that surround these zones.

Planner Henke stated that the current code is:

**Title 16.2.33: Definitions**

*33. Greenhouse, Commercial. A structure or portion of a structure usually made of glass or other translucent material, for which the primary purpose is the cultivation or the production of wholesale: nursery stock, annual or perennial flowers, fruits, vegetables or landscaping plants. This could include hydroponics or plants grown in soil. Aquaculture and aquaponics are not allowed.*

Planner Henke stated that the proposed Code Text Amendment from the Applicants Proposal is:

## **Applicant's Proposal**

*33. Greenhouse, Commercial. A structure or portion of a structure usually made of glass or other translucent material, for which the primary purpose is the cultivation or the production of wholesale: nursery stock, annual or perennial flowers, fruits, vegetables or landscaping plants. This could include hydroponics or plants grown in soil. ~~Aquaculture and aquaponics are not allowed.~~*

However Planner Henke stated that he also presented an alternative option:

## **Staff's Alternative Option**

*33. Greenhouse, Commercial. A structure or portion of a structure usually made of glass or other translucent material, for which the primary purpose is the cultivation or the production of wholesale: nursery stock, annual or perennial flowers, fruits, vegetables or landscaping plants. This could include hydroponics or plants grown in soil. Aquaculture and aquaponics are **not** allowed.*

Planner Henke stated that the proposed findings were as follows:

- Commercial greenhouses would allow aquaculture and aquaponics in the Residential Agricultural Zone (RA-1-43) and the Business and Manufacturing Park Zone (B & MP) that the City has established.
- State Code promotes aquaculture in Utah.
- Commercial greenhouse regulations have been sufficiently developed and this use will only be allowed through the approval of a Conditional Use Permit.
- Sufficient potential impacts and mitigations for commercial greenhouses have been identified to protect neighboring property owners and the City residents in general.
- Personal greenhouses will not be allowed to have aquaculture or aquaponics.

Planner Henke asked if the Commissioners had any questions before opening the Public Hearing.

Commissioner Nichols asked if the commission was to recommend the approval of aquaculture and aquaponics in commercial greenhouses would the commission need to come up with guidelines.

Planner Henke stated no they would not because they already had guidelines included in the code.

Commissioner Nancy O'Toole asked if the water would come out of the greenhouse or would it be looped?

Kraig Higginson, the applicant, stated that the water basically is being reused, and would not leave the greenhouse.

*Chairman Oksner asked if there are any other regulations besides those of the City.*

Kraig Higginson, the applicants stated that State regulations are very strict, in fact more so than the cities, and that they will conduct inspections etc.

Chairman Oksner opened the meeting for Public Comments @ 7:31 p.m.

**Tammy Paxton – 362 West 1150 North, Midway**

- She is a permanent resident of Midway City.
- Is appalled that this is being allowed to happen again after all that happened last year.
- It was her understanding that the greenhouse was a family greenhouse, not a commercial greenhouse.
- If the code text amendment is granted then it would allow them to sell produce and possibly bring in trucks coming and going.
- Concerned that it opens the door for the RA-1-43 zones to start doing aquaponics on their property, and possibly tap into the geo thermal capability which would be above Dutch Fields and Valais.
- Concerned that other property will try to rezone their properties.
- Feels that this is going through very fast considering the process that the community went through last year.

Planner Henke stated that it was approved as a Commercial Greenhouse by City Council. The application stated that and it also was noticed in the paper as a commercial greenhouse. If you were to review the minutes, it was always presented as a Commercial Greenhouse. Planner Henke also stated that the only geothermal he is aware of is north of Burgi Lane and west of Valais, and it is currently not in the City. Also there was mention of a property on Pine Canyon and Warm Springs Road, and it also is not in the city limits. Planner Henke also stated that rezoning your property isn't something that is easily done, nor is it something people want to do because it decreases the value of the property. Planner Henke also stated that the process is following the code, and nothing is being moved quickly. Planning Commission is a recommending body, and it will go to City Council, and there will be another public hearing.

Chairman Oksner stated that when this was before the planning commission a year ago, they took great pains so setup restrictions, and guidelines so that if anything was to come in, it would need to meet all the standards the City felt was needed. When it went to City Council they also made it even more restrictive. When this particular project came, it was substantially smaller than any of the other projects discussed. He feels that if anything this is a very good standard for what the City wants to see as a commercial greenhouse, because it really is much smaller than what it could be, and the impact on the City would be minimal.

**Paul Berg – 1465 North Dutch Canyon Court**

Does the current ordinance or proposed text amendment have a minimum size of the property?

Planner Henke stated that yes it is five (5) acres minimum for a commercial greenhouse.

Chairman Oksner closed the public comments at 7:39 p.m.

Commissioners had a discussion on the proposal and made the following points:

- When the commission made their recommendation to City Council, it included Aquaponics and Aquaculture. The City Council decided to restrict that use.
- The commissioners felt that using the Conditional Use Permit process would help control the effect of the neighboring properties.
- The Conditional Use Permit process would help police the usage, and make sure it would not affect the neighbors.
- Commissioners felt that adopting the staff recommendation of removing the word “not” is the best idea in this case.
- Commissioners did wonder why when they received the original application for the greenhouse, why this change wasn’t requested then.
- Discussion about removing the B&MP zone from allowing the aquaponics/hydroponics in the RA-1-43 zone. Or does the Conditional Use Permit process address this concern; it was decided that yes the CUP process addresses the concerns regarding the B&MP zone.

Commissioner Kohler wanted to clarify that tonight we are proposing a change in the text amendment to change the language to allow consideration of these uses, but we aren’t speaking specifically to this application that was discussed?

Planner Henke stated that was correct, it would apply to the RA-1-43 zone and B&MP zone. But because it wasn’t discussed in the original Conditional Use Permit, the applicant would have to come back to the commission to speak of the specifics of the aquaponics, and the CUP would need to be amended to include fish.

The commissioners had a discussion on whether staff could make that amendment or if it should come back to the commission and City Council. They all felt along with Planner Henke that it would need to come back through the process because the original application didn’t have that use on the original CUP.

Kraig Higginson, the applicant stated that it was an error on their part, that it should have been included in the original application. He would prefer to not have to go back through the process as he feels he is creating more work for the commissioners. However he understood that if that is what needed to be done, he would submit to that. The commissioners were in agreement that the applicant should come back before the Planning Commission and City Council to make the amendment to his CUP.

**Motion:** Commissioner Maxfield made a motion to approve the amendment to Chapter 16.2.33 in the Land Use section of the Midway City Municipal Code, and accept the Staff’s alternate option, which is to remove the word “not” from the definition. The amendment will allow

aquaculture and aquaponics in commercial greenhouses in the RA-1-43 zone and the Business and Manufacturing zone. They also moved to accept the staff findings and recommendations.

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

**Votes: Ayes:** Commissioner Rather, Commissioner Waldrip, Commissioner Kohler, Commissioner Nichols.

**Nays: None**

Motion: Passed

- 4. Paul Berg, agent for Aliya Development is requesting a Concept Plan for the High Valley Ranch PUD-Plat Amendment. The proposed PUD consists of 37 lots on 22.16 acres. The property is located at 700 South Center Street and is located in the R-1-22 zone. This item is a discussion item only, and no action will be taken.**

Planner Henke reviewed the concept plan for Aliya Development for High Valley Ranch PUD, and the changes they would like to make to the original master plan.

The commissioners along with Planner Henke and Paul Berg discussed the property and the changes that were shown on the concept plan. They discussed the road, the dwelling units, the deletion of the barns, landscaping, berms, and retention ponds.

- 5. Paul Berg, agent for Richard Peery, will be reviewing a proposed annexation into Midway City for 44.88 acres. This item is a discussion item only, and no action will be taken.**

Planner Henke stated that this property has been before the Planning Commission and City Council in 2005 and again in 2011. It is located across the street from Fox Den Estates, and next to the Heber Valley Special Services, the sewer plant.

Planner Henke and Wes Johnson, City Engineer, reviewed with the commissioners the past concept plans, which was for the area to be residential, although as it is right now, the property is zoned if annexed into Midway City as Business and Manufacturing Park Zone.

The commissioners decided to go on a field trip to look at the property and also to tour the sewer plant. It was decided that the tour would take place on Thursday, May 8<sup>th</sup> at 4:00 p.m. The commissioners, along with staff would meet at the Community Center and travel to the site. Planner Henke stated that we would notice the field trip as well, so that if the public would like to attend they could.

Chairman Oksner asked for a motion to adjourn.

Commissioner Maxfield moved for adjournment @ 9:45 p.m.

Motion Accepted.

  
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Michael "Mickey" Oksner, Chairman

  
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Jennifer Sweat, Administrative Assistant