

Midway City Council
11 April 2018
Regular Meeting

Ordinance 2018-14 /
Master Plan Water Rights



PLANNING COMMISSION MEETING STAFF REPORT

DATE OF MEETING: March 21, 2018
NAME OF APPLICANT: Midway City
AGENDA ITEM: Code Text Amendment of Title 16

ITEM: 6

Midway City is proposing a Code Text Amendment of Midway City's Land Use Code of Title 16.16.4: Concept/Master Plan. The City would like to review the current code and potentially amend the regulations to require that water rights for the master plan are tendered to the City when the master plan is approved.

BACKGROUND:

Staff is proposing an amendment to the Land Use Code that would require that water rights for master planned developments (multi-phase) are tendered to the city at the time of approval of the master plan instead of the current code requirement that the water rights are given to the City per phase. The proposed amendment would require that the developer provide all the water rights for the entire development before the master plan agreement is recorded. Currently, the developer receives a calculation of the required quantity of water for the entire development before the master plan is approved but is not required to give the water to the City until the recording of each phase. The water that is given to the City for each phase is only the amount of water required for that particular phase. The current states the following in section 16.16.4(A)(20)(a):

a. Phases that implement Master Plans shall prepare applications for Preliminary and Final Approvals as otherwise required under this Chapter for PUDs and Standard Subdivisions for each phase prior to

implementation. The Master Plan request must show each of the proposed different phases and their construction sequence relative to each other.

b. In addition to the utility requirements for Concept Plans, the Master Plan application must be prepared in sufficient additional detail to receive preliminary approval from the Midway City Water Board and the Midway Sanitation District, provide for the scheduling of all necessary water rights, water mains, sewer service interceptor capacity and laterals for the entire Master Plan along with a schedule that matches the phasing plan.

c. A Master Plan request must demonstrate that approval of the project in multiple phases can occur such that the project can still function autonomously if subsequent phases are not completed. Therefore the Master Plan application must demonstrate that sufficient property, water rights, roads, sensitive lands protection, and open space are proposed with the first phase to allow the project to function without subsequent phases.

Staff is proposing the following language:

a. Phases that implement Master Plans shall prepare applications for Preliminary and Final Approvals as otherwise required under this Chapter for PUDs and Standard Subdivisions for each phase prior to implementation. The Master Plan request must show each of the proposed different phases and their construction sequence relative to each other.

b. In addition to the utility requirements for Concept Plans, the Master Plan application must be prepared in sufficient additional detail to receive preliminary approval from the Midway City Water Board and the Midway Sanitation District, provide for the scheduling of all necessary ~~water rights,~~ water mains, sewer service interceptor capacity and laterals for the entire Master Plan along with a schedule that matches the phasing plan.

c. Water rights required for all phases of the master plan shall be turned over to the City and held jointly by the City and the developer prior to the recording of the Master Plan Development Agreement. This is to ensure that the water rights are not sold off the property after the City has granted development entitlement. If the master plan agreement expires or the developer, in writing, abandons the entitlement and no phases of the development have been recorded, then the water rights will be returned to the current land owner when the expiration or abandonment of the master plan takes place. In the situation where an amendment to the master plan is approved and an unrecorded phase requires less water because of the amendment, the extra water rights will be returned to the current land owner. If there is an amendment to a recorded plat of a phased development which reduces the amount of required water, those water rights will not be returned to the developer. The developer's remaining joint interest in the water rights for each phase shall be deeded in its entirety to the City prior to the recording of the final plat of each phase.

Following such transfer of interest, the developer shall no long hold any right, title or interest in the water rights so transferred. In no event shall a final plat for any development, subdivision, or phase thereof, be recorded prior to the transfer of all the right, title and interest in the required water rights to the City.

e.d. A Master Plan request must demonstrate that approval of the project in multiple phases can occur such that the project can still function autonomously if subsequent phases are not completed. Therefore, the Master Plan application must demonstrate that sufficient property, ~~water rights~~, roads, sensitive lands protection, and open space are proposed with the first phase to allow the project to function without subsequent phases.

The City is proposing this change because there have been situations in the City and Wasatch County that developers have sold the water rights that are required for a development before the development is finished. An example of this is Soldier Mountain PUD that was approved in the field next to the LDS church on south center street. That project received approval just before the recession began in 2008. The developer was going to lose the property to the lender, so the developer proceeded to sell off some of the water rights before foreclosure took place. Another example is the Triple Crown subdivision located in Wasatch County. That development was approved and recorded but the water was never turned over to the County. The recession began, and the developer lost the development to a lender but before the lender gained control of the property the developer sold the water rights and left the subdivision dry. The proposed code text amendment will require the water rights to be turned over to the City at the initial stage of the approval process, so we can avoid the situations like those described above.

The Water Board has discussed this issue and recommends approval of the proposed amendment.

This item has been noticed in the local newspaper for two weeks, posted in three locations in town, on the City's website, and on the State's website for the Planning Commission meeting.

POSSIBLE FINDINGS:

- Water rights for the entire master plan will be tendered to the City earlier in the approval process to assure that the developer owns sufficient water rights for the entire project
- A developer will not be able to sell water off a property after the master plan agreement has been recorded

ALTERNATIVE ACTIONS:

1. Recommendation for approval. This action can be taken if the Planning Commission feels that the proposed language is an acceptable amendment to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings

2. Continuance. This action can be taken if the Planning Commission would like to continue exploring potential options for the amendment.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again

3. Recommendation of Denial. This action can be taken if the Planning Commission feels that the proposed amendment is not an acceptable revision to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial



ORDINANCE 2018-14

AN ORDINANCE AMENDING SECTION 16.16.4 OF THE MIDWAY CITY LAND USE CODE REGARDING WATER RIGHTS REQUIREMENTS FOR DEVELOPMENTS WITHIN THE BOUNDARIES OF MIDWAY CITY, INCLUDING MASTER PLANNED DEVELOPMENTS, AND RELATED MATTERS.

WHEREAS, Midway City has adopted rules and regulations regarding the development of land in the boundaries of Midway City; and

WHEREAS, Midway City requires the developer of a proposed subdivision or other development to provide water rights sufficient to allow the City to deliver culinary and/or irrigation water to the proposed subdivision or other development; and

WHEREAS, where Master Plan approval is granted, and then the project is developed in phases, the City is concerned that there is a risk that some or all of the water rights for future phases may be transferred away prior to the actual development of the phase; and

WHEREAS, it is in the best interest of the City to ensure that adequate water rights are deeded to the City for all phases of a proposed subdivision or other development; and

WHEREAS, the proposed Code amendment contained herein was presented to the Midway City Planning Commission who voted to recommend the Code amendment to the City Council; and

WHEREAS, notice regarding this proposed ordinance has given as provided by law; and

WHEREAS, the City Council accepts the recommendation of the Midway City Planning Commission, and agrees that it is in the best interest of the citizens of Midway that the Midway City Code be amended as contained herein:

NOW THEREFORE, for the reasons stated above, the City Council of the City of Midway, Wasatch County, Utah, hereby adopts, passes and publishes the following:

BE IT ORDAINED, by the City Council of Midway City, Wasatch County, State of Utah:

Section 16.16.4(A)(20)(a)- (h) of the Midway City Code is hereby amended, and shall hereafter read as follows:

a. Phases that implement Master Plans shall prepare applications for Preliminary and Final Approvals as otherwise required under this Chapter for PUDs and Standard Subdivisions for each phase prior to implementation. The Master Plan request must show each of the proposed different phases and their construction sequence relative to each other.

b. In addition to the utility requirements for Concept Plans, the Master Plan application must be prepared in sufficient additional detail to receive preliminary approval from the Midway City Water Board and the Midway Sanitation District, provide for the scheduling of all necessary water mains, sewer service interceptor capacity and laterals for the entire Master Plan along with a schedule that matches the phasing plan.

c. Water rights required for all phases of the master plan shall be turned over to the City and held jointly by the City and the developer prior to the recording of the Master Plan Development Agreement. This is to ensure that the water rights are not sold off the property after the City has granted development entitlement. If the master plan agreement expires or the developer, in writing, abandons the entitlement and no phases of the development have been recorded, then the water rights will be returned to the current land owner when the expiration or abandonment of the master plan takes place. In the situation where an amendment to the master plan is approved and an unrecorded phase requires less water because of the amendment, the extra water rights will be returned to the current land owner. If there is an amendment to a recorded plat of a phased development which reduces the amount of required water, those water rights will not be returned to the developer. The developer's remaining joint interest in the water rights for each phase shall be deeded in its entirety to the City prior to the recording of the final plat of each phase. Following such transfer of interest, the developer shall no long hold any right, title or interest in the water rights so transferred. In no event shall a final plat for any development, subdivision, or phase thereof, be recorded prior to the transfer of all the right, title and interest in the required water rights to the City.

d. A Master Plan request must demonstrate that approval of the project in multiple phases can occur such that the project can still function autonomously if subsequent phases are not completed. Therefore, the Master Plan application must demonstrate that sufficient property, roads, sensitive lands protection, and open space are proposed with the first phase to allow the project to function without subsequent phases.

e. Special information must also be prepared for Master Plan applications to demonstrate that all facilities necessary to implement all life safety codes in effect at the time of application will be constructed and be maintained at the time the first phase is requested of the City.

- f. Master Plan applications must be reviewed by the Planning Commission and approved by the City Council.*
- g. No City Council approval may be considered until after a public hearing has been held to consider the recommendation of the Planning Commission with regard to the Master Plan.*
- h. The Planning Commission and City Council may schedule such public hearings and extra meetings as they deem necessary to find the information necessary to make a recommendation to the City Council for a Master Plan.*
- i. After approval of the Master Plan by the City Council, a Master Plan Development Agreement must be prepared and executed by the applicant and the City, sufficient to describe the entitlement granted to implement the Master Plan. The Agreement must be signed by the applicant within 45 days of Final Approval of the Master Plan by the City Council. If the Agreement is not fully executed within 45 days of Final Approval, then all Master Plan approvals shall become null and void.*

This item has been noticed in the local newspaper for two weeks, posted in three locations in town, on the City’s website, and on the State’s website for the Planning Commission meeting.

This ordinance shall be effective immediately upon passage. A copy of this ordinance shall be posted at each of three (3) public places within the corporate limits of Midway City and a summary published in a paper of local circulation.

PASSED AND ADOPTED by the City Council of Midway City, Wasatch County, Utah
 this day of , 20 .

| | AYE | NAY |
|--------------------------------|-------|-------|
| Council Member Lisa Christen | _____ | _____ |
| Council Member Jeff Drury | _____ | _____ |
| Council Member Bob Probst | _____ | _____ |
| Council Member JC Simonsen | _____ | _____ |
| Council Member Ken Van Wagoner | _____ | _____ |

APPROVED:

 Celeste Johnson, Mayor

ATTEST:

APPROVED AS TO FORM:

Brad Wilson, City Recorder

Corbin Gordon, City Attorney

(SEAL)

DRAFT

Master Plan Water Rights
Planning Commission Motion

Midway City is proposing a Code Text Amendment of Midway City's Land Use Code of Title 16.16.4: Concept/Master Plan. The City would like to review the current code and potentially amend the regulations to require that water rights for the master plan are tendered to the City when the master plan is approved.

Motion: Commissioner Bouwhuis: I move that we proposed the following language not as stated in the original staff report, but that the water rights be held jointly, all of this would be subject to staffs wording correctly, but that their wording meet these following criteria. That the water rights will be jointly held in the name of the property owner and the City at the time of Master Plan approval. At the time the Master Plan approval expires, or the developer abandons their right to the Master Plan or the future phases that the remaining shares will go back at that time solely to the property owner. The intent of that is that they could abandon at any phase that they want then those would be able to go back.

Planner Henke: Once there is one phase built it's not as simple as just abandoning.

Commissioner Bouwhuis: Could they not abandon the Master Plan?

Planner Henke: They could before they record phase one, but after phase one we would allow them to amend the Master Plan, but we wouldn't allow them to abandon it once phase one goes through.

Motion: Commissioner Streeter: I move that we approve the Code Text Amendment of Midway's Land Use Code Title 16.16.4: Concept/Master Plan. We accept the findings of staff. We allow staff to wordsmith the wording understanding that it will not affect the substance of the proposal, and we add the provision about returning the water rights if the Master Plan is either abandoned or expires.

Seconded: Commissioner Nicholas

Chairman Kohler: Any discussion on the motion?

Commissioner Bouwhuis: Are you stating the proposed code from what's in the plan or what has been presented on the screen, because they are totally different.

Commissioner Streeter: I was referring to what is up on the screen when I was making my motion.

Commissioner Bouwhuis: Is there a time sensitive nature to this?

Planner Henke: No.

City Engineer; Wes Johnson: I think that your concern is addressed. Let's say Remund Farms, they've got Master Plan approval for phase one, two and three. If they got to phase two and said that we don't want to finish. They would come back to the City and we would amend the Master Plan and we would make sure that it is a complete working subdivision. If for some reason we said we are going to amend the Master Plan, we couldn't abandon, because we've got phase one and two. But if we amended it then yes, we would give back the water rights that aren't being used. It could never be abandoned, but it could easily be amended.

Planner Henke: So, if they needed forty-acre feet for phase two and they amended that where it only needed thirty-five then yes that five would be returned if the plat has never been recorded. Once the plat has been recorded then we can never give the water rights back. Per state code we cannot give those water rights back.

Commissioner Waldrip: In a phased development those plats are recorded separately for each phase, so the water rights attach to each phase.

Commissioner Bouwhuis: I think there is enough in this that is not defined, that I would recommend that this isn't passed until it is looked into further.

Chairman Kohler: Any discussion on the motion?

There was none.

Chairman Kohler: All in favor.

Ayes: Commissioners Streeter, Waldrip, Nicholas, Payne, and Ream

Nays: Bouwhuis

Motion: Passed