

## Midway City Planning Commission Regular Meeting Minutes July 9, 2019

Notice is hereby given that the Midway City Planning Commission will hold their regular meeting at 6:00 p.m., July 9, 2019, at the Midway City Community Center  
160 West Main Street, Midway, Utah

### Attendance

Jim Kohler – Chairman  
Kevin Payne– Vice Chairman  
Jeff Nicholas  
Bill Ream  
Rob Bouwhuis  
Jon McKeon

### Staff

Michael Henke – City Planner  
Melannie Egan – Admin. Assistant  
Wes Johnson – City Engineer  
Corbin Gordon – City Attorney

### Excused

Nancy O’Toole  
Natalie Streeter  
Heather Whitney

### 6:00 P.M. Regular Meeting

#### Call to Order

- Welcome and Introductions; Opening Remarks or Invocation; Pledge of Allegiance
  - Invocation was given by Commissioner Bouwhuis
  - Chairman Kohler led the Pledge of Allegiance
- Liaison Meeting

#### Item 1:

Review and possibly approve the Planning Commission Meeting of May 14, 2019 and June 11, 2019.

**Motion:** Commissioner McKeon: I make a motion to approve the planning commission minutes of May 14, 2019 and June 11, 2019.

**Seconded:** Commissioner Nicholas

**Chairman Kohler:** Any discussion the motion?

**There was none**

**Chairman Kohler:** All in favor.

**Ayes:** Commissioners: Payne, Nicholas, Ream, Bouwhuis, McKeon

**Nays:** None

**Motion: Passed**

## **Item 2:**

Berg Engineering, agent for Johnsons Landing LLC, is requesting preliminary approval of Bonner Landing. The proposal is for a 4-lot subdivision that is 1.22 acres and is in the R-1-9 zone. The property is located at approximately 100 East 100 South.

### **Planner Henke gave a presentation**

#### **Land Use Summary**

- 1.22 acres
- R-1-9 zoning
- Proposal contains 4 lots
  - Single-family dwellings
- Standard subdivision
- Public roads
- The lots will connect to the Midway Sanitation District sewer, Midway City's culinary water line, and Midway Irrigation Company's secondary water line

#### **Items of Discussion**

- Single-family dwellings
  - Duplexes will not be allowed because of a lack of frontage, width, and water rights
- Access will be from 100 South which will be built as part of Bonner Meadows

#### **Water Board Recommendation**

- This item is scheduled on the Water Board's agenda for August 5th

#### **Possible Findings**

- The proposal does meet the intent of the General Plan for the R-1-9 zoning district
- The proposal does comply with the land use requirements of the R-1-9 zoning district
- The sidewalks crossing the property and connecting to neighboring roads and existing sidewalks will benefit the community by allowing safe pedestrian access.

#### **Proposed Conditions**

- A note is included on the plat advising future lots owners that only single-family dwellings are allowed on the lots.

#### **Comments and Questions**

None

**Motion:** Commissioner Nicholas: I make a motion to recommend preliminary approval of Bonner Landing. The proposal is for a 4-lot subdivision that is 1.22 acres and is in the R-1-9 zone. The

property is located at approximately 100 East 100 South. We accept staff report and findings and also accept the condition that a note will be included on the plat advising future lots owners that only single-family dwellings are allowed on the lots.

**Seconded:** Commissioner Bouwhuis

**Chairman Kohler:** Any discussion the motion?

**There was none**

**Chairman Kohler:** All in favor.

**Ayes:** Commissioners: Payne, Nicholas, Ream, Bouwhuis, McKeon

**Nays:** None

**Motion: Passed**

### **Item 3:**

Berg Engineering, agent for Eric Raynor, is requesting preliminary/final approval a one lot subdivision 0.99 acres to be known as Raynor Subdivision. The property is located at 565 North River Road and is in the R-1-15 zone.

### **Planner Henke gave a presentation**

### **Land Use Summary**

- 0.99 acres
- R-1-15 zoning
- Proposal contains 1 lot
- Standard subdivision
- Public roads
- Sensitive land
- The lot will connect to the Midway Sanitation District sewer, Midway City's culinary water line, and Midway Irrigation Company's secondary water line

### **Items of Discussion**

- Sensitive land
  - Wetlands
    - 25' buffer for structures from wetlands
  - US Army Corps of Engineers' approval
- 50' setback
- River Road Bike Lane

### **Water Board Recommendation**

- This item is scheduled on the Water Board's agenda for August 5th

### **Possible Findings**

- The proposed lot meets the minimum requirements for the R1-1-15 zoning district
- The proposal does meet the intent of the General Plan for the R-1-15 zoning district
- The subdivision will contribute to the master trails plan by either building the bike lane along the frontage of the project or adding funds the general trails fund that will be used to help complete the master trails plan

- Wetlands that are present on the property are subject the sensitive lands code

### **Proposed Conditions**

- Funds to build the bike lane along River Road are added to the general trails fund. Those funds will be used as part of a larger improvement project that will complete the trails and bike lane as shown on the City's master trail plan.
- A 50' setback is shown on the plat parallel River Road.
- The submitted wetlands delineation is approved by the US Army Corps of Engineers before the preliminary approval is granted by the City Council.

### **Comments and Questions**

There was a conversation about the lot of record vs creating a subdivision. Michael Henke stated it is not known if it is a lot of record, however when creating a subdivision, it is not necessary to know if it is a lot of record and creating a subdivision is the preferred route to create this buildable lot.

It was also recommended that a hammerhead or circular driveway be built so there would be no backing out of the driveway onto River Road.

**Motion:** Commissioner Payne: I make a motion to recommend to City Council preliminary/final approval a one lot subdivision 0.99 acres to be known as Raynor Subdivision. The property is located at 565 North River Road and is in the R-1-15 zone. We accept the staff report and findings and staff proposed conditions as follows. Funds to build the bike lane along River Road are added to the general trails fund. Those funds will be used as part of a larger improvement project that will complete the trails and bike lane as shown on the City's master trail plan. A 50' setback is shown on the plat parallel River Road, the submitted wetlands delineation is approved by the US Army Corps of Engineers before the preliminary approval is granted by the City Council. Encroachment approval from the US Army Corps of Engineers. And to include a hammerhead or circular driveway.

**Seconded:** Commissioner Nicholas

**Chairman Kohler:** Any discussion the motion?

**There was none**

**Chairman Kohler:** All in favor.

**Ayes:** Commissioners: Payne, Nicholas, Ream, Bouwhuis, McKeon

**Nays:** None

**Motion: Passed**

### **Item 4:**

Berg Engineering, agent for Probst Higley Developers LLC, is proposing a code text amendment of Midway City's Land Use Code. The proposed amendment would allow a developer to record multiple plats in a phase of a development.

**Planner Henke gave a presentation**

### **Code Text Amendment**

- Proposed amendment would allow multiple plats to be recorded per a phase of development
- Section 16.16.20
  - Proposal would not modify any existing language
  - Proposal would add more language

### **Proposed Language**

- B. Plats for a subdivision or planned unit development shall match the phasing plan approved by the City Council during the master plan unless the conditions in Item C are met.
- C. Multiple plats may be recorded for a phase within a large-scale subdivision or a planned unit development if:
  - iii. All utilities associated with the phase are bonded and constructed with the first plat within the phase.
  - iv. The water rights for the entire phase are turned over to the city with the recording of the first plat within the phase. This requirement includes units that are planned within the phase but are not included in the first plat.
  - v. Since the first plat for a phase contains the open space, roads and easements needed for utilities, the remaining plats for the phase will generally be building pads and small amounts of common area between or around building pads.
  - vi. Once a developer has received final approval from the City Council for a phase, a separate final approval is not required for each plat if multiple plats are recorded.

### **Code Text Amendment**

- All infrastructure is built for the entire phase as part of the first plat per phase
  - Roads, off-site improvements, storm drain, open space landscaping, etc.
- All water rights for the entire phase is tendered with the recording of the first plat per phase
- All open space for the entire phase is dedicated with the recording of the first plat per phase
- All bonding for the entire phase is established before the recording of the first plat per phase
- Allows flexibility for the developer
- Tax savings
- Reduces development risk

### **Items to Consider**

- Administrative time
  - Planning department
  - City recorder
  - County surveyor
  - County recorder
  - Required signatures
    - 12+ signatures
  - Time is of short supply
  - Application fee should reflect the amount of time required
- Loss of property tax

- Minimum number of units should be required
  - Minimum of five units per plat
- Currently there is not a limit on the number of phases for a development

### **Possible Findings**

- The proposed amendment would allow flexibility for the developer to record multiple plats per phase.
- The proposal would save property taxes for the developer.
- The proposal would reduce developer risk.
- The proposed amendment would increase administrative work for staff.
- An application fee could be adopted to the City's fee schedule to cover the City's costs.
- The City and other entities could potentially lose some potential property taxes because of the proposal.
- The developer would have the ability to propose as many phases as desired with the current code.

### **Comments and Questions**

There was a conversation regarding the pros and cons for staying with phases and the flexibility of recording a few at a time.

There was a discussion about what if a PUD only records a few lots, but the roads are created, who will be responsible for the cost of maintenance.

It was stated that the cost really is the cost of time to the city. This could be overwhelming for staff. And the unintended consequences could be detrimental to the school district and other impacts that are not seen at this time.

There was a discussion regarding the landscaping and bond and what the possible impacts would be by approving this.

Heber has done this for Red Ledges and so far, it has worked out just fine. They have just worked with the developers and have gone back to City Council if they needed to. Heber City does not have a code written.

Cascade of Soldier Hollow would be an example of a subdivision having hardships. There are many benefits for the developer, reducing their risks but what is the benefit for the city. Concerned about the impact?

Once the plat is recorder that is when you start paying taxes and that is state and county law.

### **Public Comment Opened**

**None**

### **Public Comment Closed**

**Motion:** Commissioner Bouwhuis: I make a motion of recommendation for denial for the proposed code text amendment of Midway City's Land Use Code. The proposed amendment would allow a developer to record multiple plats in a phase of a development. Accept the staff findings and recognize that there is no benefit to the city.

**Seconded:** Commissioner McKeon

**Chairman Kohler:** Any discussion the motion?

**There was none**

**Chairman Kohler:** All in favor.

**Ayes:** Commissioners: Payne, Nicholas, Ream, Bouwhuis, McKeon

**Nays:** None

**Motion: Passed**

**Item 5:**

Midway City is proposing a code text amendment of the Midway City Land Use Code Section 16.22: Wireless Telecommunications. The proposed code will regulate installation, maintenance, operations and use of small wireless facilities and related improvements within the City.

**Planner Henke gave a presentation**

**Code Text Amendment**

- Federal Communications Commission - FCC 18-133
  - September 26, 2018 approval
  - FCC removes barriers to wireless infrastructure deployment by clarifying scope of Sections 253 and 332 and establishing shot clocks for small wireless facilities
- Utah State Legislature passed Senate Bill 189
  - Small wireless facilities are now a permitted use in public right of ways.
  - The City does have the ability to establish reasonable design standards.
  - The supporting equipment to the antennas may be required to be placed underground.
  - A statewide fee schedule has been adopted for application fees and leasing fees
  - A statewide approval schedule has been adopted.

**What Can We Regulate**

- Design
  - Streetlight poles design standards
  - Freestanding poles
  - Utility poles
  - Support equipment
- Development Standards
  - Burial of support equipment
  - Location of support equipment
- Process
  - Staff or committee approval
- Approval time limits are required

**Proposed Code**

- Franchise agreement required
- Co-locate

- Install, operate, modify, maintain or replace
  - Restrictions apply adjacent to residential uses
- Allowed in any zone
- Have minimal visual impact
- Support equipment must be buried or covered with a bench
- 20' height limit along local streets
- 25' height limit along collector and arterial streets
- 30-day review period for application completeness
- Colocation - 60-day review for approval or denial
- New, modified, or replacement poles – 105-day review for approval or denial
- If the City does not approve or deny in the allowed time the application is deemed approved

### **Possible Findings**

- Federal and State requirements require the City to adopt a code if the City wishes to regulate small cell communication facilities
- The General Plan promotes careful consideration of improvements along Main Street and in the entire community
- The City can establish reasonable design standards
- Small cell communications will benefit residents, tourists and businesses in Midway

**Motion:** Commissioner Nicholas: I make a motion that we recommend approval, that staff modify the code as per tonight's discussion code text amendment of the Midway City Land Use Code Section 16.22: Wireless Telecommunications. The proposed code will regulate installation, maintenance, operations and use of small wireless facilities and related improvements within the City.

**Seconded:** Commissioner McKeon

**Chairman Kohler:** Any discussion the motion?

**There was none**

**Chairman Kohler:** All in favor.

**Ayes:** Commissioners: Payne, Nicholas, Ream, Bouwhuis, McKeon

**Nays:** None

**Motion: Passed**

### **Item 6:**

Midway City is proposing a code text amendment of Section 16.13.39 (A) (11): Off-Street Parking and Loading. The proposed code will possibly require parking for outside dining at cafes and restaurants.

## **Planner Henke gave a presentation**

### **Outside Dining Parking**

- City Council wants to review and possibly adopt parking requirements for outside dining
- Outside dining has never required parking stalls



- Inside dining
  - Previous code – 1 stall per 250 sq. ft. of dining area
  - PC recommendation – 1 stall per 200 sq. ft. of dining area
  - Current code - 1 stall per 150 sq. ft. of dining area
    - 66% increase
- General Plan promotes a vibrant commercial district which outside dining creates
- Planning Commission discussed that increasing the inside dining requirement would help cover the outside dining parking needs
- Outside dining is seasonal
- Requiring outside dining parking would make it more expensive for a business to locate in Midway
- Cities deal with outside dining parking in 4 ways
  - Outside dining parking is not required
  - Outside dining parking is not required until a threshold is met such as the area is larger than a specified number or the seating is greater than a specified number
  - Outside dining parking is calculated at the same rate as inside dining
  - Outside dining parking is determined as part of a CUP
- Westminster, WA Municipal Code
  - No additional parking is required for outdoor dining area (open-air dining) no greater than 25% of the gross floor area of the enclosed restaurant or 1,000 square feet, whichever is smaller. In cases where the outdoor seating area is more than 25% of the gross floor (or 1,000 square feet, whichever is smaller) area of the enclosed restaurant area, the portion of outdoor seating area exceeding 25% (or 1,000 square feet, whichever is smaller) of the gross floor area of the enclosed restaurant shall be calculated at one parking space per 100 square feet of the gross outdoor dining floor area. The allowance for outdoor dining shall not be applicable to any establishment offering a total of 12 or fewer seats, inclusive of all seating located indoors and within an outdoor dining/seating area
- San Diego, CA Municipal Code
  - Eating and Drinking Establishments. The minimum parking ratios apply to eating and drinking establishments that do not have a common parking area with any other uses. There is no minimum parking requirement or maximum permitted parking for outdoor dining. Within the Coastal Overlay Zone, outdoor dining areas such as decks, patios, terraces, etc., are considered part of the eating and drinking establishment's gross floor area and are included in calculating parking requirements.
  - Coastal Overlay Zone parking requirement ranged from 2.1-5 stalls per 1,000 sq. ft. gross floor area
- San Jose, CA Municipal Code
  - For outdoor dining areas incidental to a public eating establishment, the city requires that business owners provide one space per 2.5 dining seats if the outdoor area has more than 25 seats. If the outdoor dining area has less than 25 dining seats, no additional parking spaces are required beyond those required by the number of seats or square footage of the indoor dining area.
- Newport Beach, CA Municipal Code
  - Food Service - 1 per 175 sq. ft. of gross area, including outdoor dining areas, but excluding the first 25% or 1,000 sq. ft of outdoor dining area, whichever is less.
  - Fast Food Service - 1 per 50 sq. ft., and 1 per 100 sq. ft. for outdoor dining areas
- Park City, UT Municipal Code

- Restaurant, Outdoor Dining - Based on Site specific review at the time of CUP
- Santa Monica, CA Municipal Code
  - Outdoor dining areas of less than 200 sq. ft. may be approved administratively and shall not require additional parking. Outdoor dining areas that exceed 200 sq. ft. shall comply with parking requirements established by Santa Monica Municipal Code Section 9.04.10.08.040.
  - 1 space per 300 sq. ft. of support area, 1 space per 75 sq. ft. of service and seating area open to customers, and 1 space per 50 sq. ft. of separate bar area.

### **Possible Findings**

- Increasing parking for outside dining at restaurants and cafes may help alleviate potential parking problems for future restaurants
- Increasing parking for outside dining at restaurants and cafes will make it more expensive for eating establishments to locate in Midway
- Increased parking requirements will require more area in the commercial zones to be paved which may distract from the vision of Main Street as described in the General Plan
- The General Plan promotes a pedestrian experience along Main Street and increased parking requirements might detract from that experience

### **Comments and Questions**

Commissioner McKeon believes that we have achieved what we wanted. The perception on main street is that it is busy, robust, lively and not overwhelming. He believes that if a business desires more outdoor dining, maybe look at charging with that extra capacity. Could we lease the parking around the square after hours and allow a restaurant to create a valet service?

Commissioner Payne suggest that we look at the demands for the needs. Is the demand enough due to the new 66% increase? We want to encourage outdoor seating and not discourage new businesses. We need to see if the new increase takes care of the problem, we need to see how the increase works. Act with caution before making new requirements for outdoor dining.

Commissioner Ream stated that three (3) of the examples don't apply here. They are year-round summertime communities, that does not happen in Midway. He could see doing something, like calculating if a business has more outdoor seating than indoor seating. Then that might need to be addressed.

Commissioner Bouwhuis stated that should consider making a new restaurant contribute for a part of a communal parking that could be built in the future. This needs to be our future. Seeing people walking creates a more vibrant community. This need to be a priority and done soon.

### **Open Public Hearing**

Bill Probst doesn't think that there is a huge parking problem. There is a lot of parking around town square, but people don't know it yet. We need to educate, use signage, we have the parking.

## **Close Public Hearing**

**Motion:** Commissioner Payne: I make a motion to continue this issue and that we direct staff to contact Westminster as part of the study and to do further analyze the parking spaces of the three main restaurants and what they currently provide and compare that to what that would be with our current code and our parking needs and direct staff come back with a code amendment that would allow any applicant to provide a percentage of their parking spaces by paying a fee or lease for all commercial establishments continue a code text amendment of Section 16.13.39 (A) (11): Off-Street Parking and Loading. The proposed code will possibly require parking for outside dining at cafes and restaurants.

**Seconded:** Commissioner Bouwhuis

**Chairman Kohler:** Any discussion the motion?

**There was none**

**Chairman Kohler:** All in favor.

**Ayes:** Commissioners: Payne, Nicholas, Ream, Bouwhuis, McKeon

## **Item 7:**

Closed Meeting to Discuss Pending or Reasonably Imminent Litigation

## **Closed Session**

**Motion:** Commissioner Ream: I motion to move into closed session

**Second:** Commissioner Bouwhuis

## **Adjournment:**

**Motion:** Commissioner Nicholas: I motion to come out of closed session and adjourn

**Second:** Commissioner Ream

11:45 pm

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Chairman – Jim Kohler

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Admin. Assistant – Melannie Egan

Approved