

## **Midway City Planning Commission Regular Meeting October 16, 2013**

Notice is hereby given that the Midway City Planning Commission will hold their regular meeting at 7:00 p.m., October 16, 2013, at the Midway City Community Center  
160 West Main Street, Midway, Utah

### **6:45 P.M. Work/Briefing Meeting**

- City Council Liaison Report, no action will be taken and the public is welcome to attend.

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

#### **Call to Order**

- Welcome and Introductions; Opening Remarks or Invocation; Pledge of Allegiance

#### **Regular Business**

1. **Review and possibly approve the Planning Commission Minutes of September 18, 2013.**
  
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.**
  - a. Discussion of Preliminary/Final approval
  - b. Possible recommendation to City Council
  
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.**
  - a. Discussion of Conditional Use Permit
  - b. Possible recommendation to City Council
  
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.**
  - a. Discussion of Code Text Amendment
  - b. Possible recommendation to City Council

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

- a. Discussion of Code Text Amendment
- b. Possible recommendation to City Council

**6. 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.**

- a. Discussion of Code Text Amendment
- b. Possible recommendation to City Council

The order of individual items on this agenda is subject to change to accommodate the needs of the Commission and those in attendance. All times are approximate.  
Midway City is happy to provide reasonable accommodations for individuals with disabilities. For assistance, please call Michael Henke at 435-654-3223 X 05.

# Planning Commission Minutes

September 18, 2013

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**Minutes of the  
Midway City Planning Commission**

**Wednesday, 18 September 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  
Chip Maxfield  
James Kohler  
John Rather  
Karl Dodge

**Staff:**

Michael Henke  
Sandy Norskog  
Jennifer Sweat

**Excused:**

Mickey Oksner  
Stuart Waldrip

**6:53 P.M. Work/Briefing Meeting**

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

**7:10 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 Commissioners Oksner and Waldrip are excused from tonight's meeting.

**Regular Business**

**1. Review and possibly approve the Planning Commission Minutes of August 21, 2013**

**Motion:** Commissioner Chip Maxfield made the motion to approve the Planning Commission Minutes of August 21, 2013

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

No further discussion were needed

**Seconded:** Commissioner James Kohler seconded the motion.

**Votes: Ayes:** Commissioner Dodge, Commissioner Rather and Chairman Kohler

**Nays: None**

**Motion:** Passed

**2. Brad Wilson, Midway City Recorder, will swear in Chip Maxfield as a full member of the Planning Commission.**

City Recorder Wilson swore in Commissioner Maxfield making him a full member of the Planning Commission.

Chairman Kohler indicated that we would be moving item number five (5) to item number three (3) while we wait for the other applicants to arrive.

**3. Leslie Mascaro, agent for Henry Walker Homes, is requesting a Conditional Use Permit for the Kantons of Midway Planned Unit Development. The applicant is proposing that all units have the ability to be rented on a nightly basis. The development consists of 34 units and is located at the intersection of Homestead Drive and Augusta Drive in the R-1-15 zone within the Transient Rental Overlay District (TROD)**

Planner Henke thanked Chairman Kohler and Commissioners.

Planner Henke stated that The Kantons of Midway PUD is located in R-1-15 zone within the TROD but outside the Resort Zone. Therefore a CUP is required prior to applying for a Transient Rental Unit License. There are 34 units in the development and the applicant has indicated that the CUP will apply to the entire development and overnight rentals will be allowed for each unit. The applicant plans to disclose to each of the prospective buyers that overnight lodging is permitted thereby eliminating the Municipal Code requirement for approval from common wall or shared driveway neighbors.

Planner Henke stated that a notice will be recorded against each lot so any buyer will know, through their due diligence, that the units may be rented on a nightly basis if properly licensed.

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 also there are benefits that the City receives from transient rental units. One benefit is that all owners of transient rental units pay a transient rental tax. Another benefit is the resort tax the City collects. Few cities in Utah qualify to be able to gather this tax. If the ratio of nightly rental rooms and units compared to non-rental units remains high enough the City can continue to collect the resort tax. Currently this amounts to about \$350,000 each year and could easily be \$450,000 by 2020 when the State will review the figures to see if the City still qualifies.

If the majority of the units in The Kantons are transient rentals they will help Midway continue to qualify for the resort tax.

Planner Henke stated that possible findings would be as followed:

- The proposed use is a conditional use in the R-1-15 zone and is located in the Transient Rental Overlay Zone.
- The proposal does meet the vision for residential development the R-1-15 zone within the TROD in the General Plan.

Planner Henke stated that the proposed Conditions would be as followed:

- Record a Separate TRU disclosure document for each residential unit
- Each owner must obtain a TRU License
- Each Owner must have a City licensed TRU property manager
- Each Owner must comply with Chapters 7.06 and 16.19 of the Midway Municipal Code.

Leslie Mascaro, representing Henry Walker Homes, stated that Planner Henke did very well in presenting their request. In addition to recording the disclosure document against each unit, it will also be stated in their CC&R's. When the potential buyer does their due diligence, it will be reflected in the title report, as well as the CC&R's. Ms. Mascaro stated that they are currently in negotiations with a local property manager, so that when this process is finished they are able to comply with the conditions.

Leslie Mascaro also commented that the intent of Henry Walker Homes is to sell the homes as a primary residence for the buyers. However they would like the units to have the option for transient rentals, and that is why they decided to go through this process.

**Chairman Kohler asked if there were any other questions?**

No further questions were needed.

Prior to making his motion Commissioner Dodge commented that he felt this was something we should encourage in the City. Transient rental units help maintain the tax revenues we are currently enjoying.

**Motion:** Commissioner Karl Dodge made a motion to approve the Conditional Use Permit (CUP) for Henry Walker Homes to allow transient rental units in each of the units sold within the development, with the condition that the CUP allowing transient rentals be recorded so that each potential owner would be aware. Also additional findings and conditions in the staff report were also accepted.

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

No further discussion was needed.

**Seconded:** Commissioner Chip Maxfield seconded the motion.

**Votes: Ayes:** Commissioner J. Kohler, Chairman Kohler and Commission Rather

**Nays: None**

**Motion:** Passed

**4. Paul Berg, agent for Russ Watts, is requesting a Final Approval of Phase IX (9) of the Valais Planned Unit Development. This phase consists of 15 units. The proposal is located at Provence Way and is in the RA-1-43 zone.**

Planner Henke thanked Chairman Kohler and Commissioners.

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 this is a request for final approval of Phase IX of the Valais PUD. This phase is located in the northeast area of the development and is bordered by the Interlaken Road on the east and the Zenger property on the north. The proposal contains 15 units. The units in phase IX will be part of the Valais HOA and will have access to the amenities' provided by the HOA. The Planning Commission recommended approval of the preliminary plan on July 17, 2013 and the City Council approved the preliminary plan on August 14, 2013.

Planner Henke stated that a large retaining wall will be constructed between Friborg Lane and Interlaken Road. This is required because of the steepness of the slope between these two roads. All construction plans for this wall will need to comply with City construction standards and be approved by the City's engineer.

Planner Henke stated the roads in this phase will be private and maintained by the Valais HOA. The developer has proposed a 20' wide road for Burgendy Lane. Staff has determined that the road must meet the minimum street standards. Planner Henke also told the commissioners that he had provided a copy of a letter from Horrocks Engineers received after the packet was sent out, and asked the commissioners to review the letter as well which also recommends that the road be 30-feet which is the current City Standards.

Paul Berg, agent for Russ Watts, stated that they would like to keep the road if possible to 20' feet because the units for this phase have decks off the back of the units, and making the roads 30' feet would make it difficult to have the size of decks desired. They used the fire standard of 20' feet instead of 30' feet, or even 27' feet which is what the roads were in earlier phases. Mr. Berg stated that they had to make the decision to go with the fire standard or going with the City Standard, and they went with the fire standard.

The commissioners had a discussion regarding the road size, and what it would mean to have 20', 24' 27' or 30' road. Paul Berg stated that they would like the 20' however they would be happy with 24' or 27'. However he does know that in Phase 8, City Council required a 30' road. Mr. Watts is aware that is a possibility for Phase 9. They discussed whether the road would be used to exit the development. Most likely the other main road would be used.

Commissioner Maxfield and Commissioner Rather felt that having the road be 24' or 27' would

be adequate for the subdivision because there are other roads in the subdivision at 27' feet, and there are not any problems with access, traffic, snow removal etc.

Commissioner Dodge didn't feel that it made sense to go from a 27' foot road to a 20' foot road or for that matter a 30' foot road to a 20' foot road. Commissioner J. Kohler felt that 27' foot road might be the best thing to do in this case, as it was the City standard when the development started.

**Chairman Kohler asked if there were any further questions?**

No further discussions were needed.

**Motion:** Commissioner Chip Maxfield made a motion to approve Final Approval of Phase IX (9) of the Valais Planned Unit Development. It was also moved to accept the staff findings and any conditions as written in the staff report with the exception that the commissioners would recommend to city council that the road on Burgendy Lane road be 24' feet wide instead of 20' wide.

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

No further discussion was needed.

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

**Votes: Ayes:** Commissioner Dodge, Commissioner J. Kohler, and Chairman Kohler

**Nays: None**

**Motion:** Passed

Planner Henke stated that he would present this recommendation to City Council as moved.

**5. Robert Duncan, is requesting a Preliminary/Final approval for the Duncan Subdivision. The proposal consists of two (2) lots on 2.90 acres. The property is located at 375 East 600 North and is located in the R-1-22 zone.**

Planner Henke thanked Chairman Kohler and commissioners. Robert Duncan was not able to attend the meeting and Paul Berg would be the agent for the Duncan Subdivision.

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 the request is for a preliminary/final approval of a small-scale subdivision on 2.90 acres that will consist of two lots. The Duncan residence and (future) studio are currently located on Lot 2 (2.12 AC). This proposal will create Lot 1, a .50 acre lot at the southeast corner of the parcel. The new lot will be a corner lot with frontage along 600 North and River Road. The property is located in an R-1-22 zoning district and the lots comply with the minimum requirements of frontage, width and acreage in this zone.

Planner Henke stated that the proposal is to dedicate the 28 acres of property located in the right-of-way of 600 N to the City. Also a 10' easement for an 8' hard surface public trail along River Road and 600 N. will be dedicated with this subdivision. The fence in the northeast corner of lot two (2) will be relocated to accommodate the future trail that will be constructed in the 5K Ranch this fall.

Planner Henke also stated that the driveway access will be taken from 600 North, and no access will be allowed from River Road. Also a fifty (50) foot setback is required along River Road. A thirty (30) foot setback is required along 600 North.

Commissioners had a discussion regarding the trails in the subdivision, as well as if the fence would be required to be moved.

Planner Henke stated that in the past we have never moved a fence or taken down landscaping. The City just makes sure they receive the dedication so they would like to widen the road later or build a trail, then it's possible, but rarely is this done.

Paul Berg stated that he knows of two or three people who have elected to make the change themselves as soon as it was dedicated, but he is not aware of a time when the City has insisted the fence be removed.

**Chairman Kohler asked if there were any questions?**

No further questions were needed.

**Motion:** Commissioner Chip Maxfield made a motion to approve the Preliminary/Final approval for Duncan Subdivision. It was also moved to accept the staff findings and any conditions as written in the staff report, including that there be a 10' easement for an 8' hard surface public trail along River Road and 600 North, as well as the fifty (50) setbacks from River Road for lot one and two for any future buildings.

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

No further discussion was needed.

**Seconded:** Commissioner J. Kohler seconded the motion.

**Votes: Ayes:** Commissioner Dodge, Chairman Kohler and Commissioner Rather

**Nays: None**

**Motion:** Passed

## **6. Potential Code Text Amendments**

Planner Henke stated that he would again be discussing the same possible Code Text Amendments that were discussed last meeting. With that discussion Planner Henke feels that he has a better understanding of where the commissioners stood on those changes. Again these items are not action items.

In regards to open space requirements, it was the understanding of Planner Henke that the

commissioners would not elect to make any changes to the current code. The Commissioners agreed that they would not like to elect to make any changes.

In regards to affordable housing, Planner Henke and the commissioners discussed the current requirements and potential changes. Planner Henke suggested having a straw poll:

Commissioner Dodge, Chairman Kohler, Commissioner Maxfield, and Commissioner Rather voted to remove Affordable Housing completely from the Code.  
Commissioner J. Kohler wanted more information

Planner Henke and the commissioners discussed power lines, and discussed the current requirements and potential changes for power lines. It was also decided that the code would be left as is, with the interpretation being that unless it was on a collector road we leave the power pole as is.

Planner Henke stated that he would bring these three items next month as action items using this feedback.

Chairman Kohler asked for motion to adjourn.  
Commissioner Dodge moved for adjournment @ 8:54 p.m.  
Motion Accepted.

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Kent Kohler, Chairman

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Jennifer Sweat, Admin Assistant

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.

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## PLANNING COMMISSION MEETING STAFF REPORT

**DATE OF MEETING:** October 16, 2013

**NAME OF PROJECT:** Homestead Villas: Phase 1 of the Homestead Resort Master Plan

**NAME OF APPLICANT:** Homestead Legacy LLC

**AGENDA ITEM:** Preliminary and Final Approval Small Scale Subdivision

**LOCATION OF ITEM:** Bayhill Drive and Fairway Drive; Mountain Springs Drive

**ZONING DESIGNATION:** R-1-15 (regulated by the Resort Zone (RZ) through the Homestead Master Plan Development Agreement)

### **ITEM: 2**

The Homestead Legacy LLC is requesting **Preliminary/Final Approval** for a large-scale subdivision known as the Homestead Villas (Phase 1 of the Homestead Resort Master Plan) on 1.81 acres. The proposed development consists of four lots and is located near Bayhill Drive and Fairway Drive and near Mountain Springs Drive in the RZ zone.

### **BACKGROUND:**

The proposed large-scale subdivision has been previously considered but was never finalized and recorded. The current configuration is modified from the earlier applications. The applicant is proposing two phases, Plat A (lots 1, 2, and 3) and Plat B (lot 4).

Access to lots 1, 2, and 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 3. An existing maintenance path, part of the Homestead Legacy LLC, continues to the northeast of the private drive fronting lots 1, 2, and 3.

Access to lot 4 will be from Mountain Springs Drive and requires a driveway easement through Swiss Creek PUD Plat "A".

The Master Plan for the Homestead was previously amended by the developer and the City. These four lots, known as phase 1, were part of that Master Plan and were depicted on the Master Plan map as being part of a through road. The City Council granted final approval of the plans with the through road in November of 2008. The Home Owners Associations of the Links and Mountain Springs both objected to this configuration because of the through road. In December of 2008 the item was heard again by the City Council and lot 4 was reduced back to preliminary approval while the other three lots maintained their Final Approval status because of the issue of the through road. It was suggested by the city attorney in that meeting that if the two groups could not come to an agreement then two cul-de-sacs would be created to service the four lots with no through road. This application represents this configuration.

#### **LAND USE SUMMARY:**

- 1.81 acre site
- Proposal contains 4-lots in two plats; Lots 1, 2, and 3 in Plat A and Lot 4 in Plat B
- The parcels will be connected to the city's sewer and water
- Lots 1, 2, and 3 will accessed from a private shared driveway that is an extension of Fairway Drive, a private street. Lot 4 will be accessed from Mountain Springs Drive on a driveway easement through Swiss Creek PUD Plat "A".

#### **ANALYSIS:**

*Roads* – there are no roads in the proposal only a driveway as described in the Development agreement

*Driveways* – the driveways will be shared and they will be private. They will be 20' wide and will need to have the appropriate turnarounds as approved by the City Engineer and the Fire Chief. All required access easements will need to be recorded before the plat is recorded.

*Trails* – an 8’ paved trail is required to be built along the frontage of the Homestead on Homestead Drive. This will need to be built concurrently with the subdivision driveways.

**POSSIBLE FINDINGS:**

- 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

**ALTERNATIVE ACTIONS:**

1. Recommendation for Conditional approval. This action can be taken if the Planning Commission feels that conditions placed on the approval can resolve any outstanding issues.
  - a. Accept staff report
  - b. List accepted findings
  - c. Place condition(s)
2. Continuance. This action can be taken if the Planning Commission feels that there are unresolved issues.
  - 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 for Denial. This action can be taken if the Planning Commission feels that the request does not meet the intent of the ordinance.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for denial

**POSSIBLE CONDITIONS:**

1. The Homestead frontage trail will be built concurrently with the driveway in the Homestead Villas Phase 1 (plat one).



**SURVEYOR'S CERTIFICATE**

IN ACCORDANCE WITH THE UTAH LAND SURVEY ACT, I, BING CHRISTENSEN, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR HOLDING LICENSE NUMBER 145786 IN ACCORDANCE WITH TITLE 17, CHAPTER 2, PART 2, OF THE UTAH CODE ANNOTATED AND PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS LICENSING ACT.

I FURTHER CERTIFY THAT I HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED HEREON IN ACCORDANCE WITH THE REQUIREMENTS OF THE UTAH CODE AND HAVE VERIFIED ALL MEASUREMENTS, AND HAVE PLACED MONUMENTS AS REPRESENTED ON THE PLAT.

**BOUNDARY DESCRIPTION**

BEGINNING AT A POINT WHICH IS SOUTH 227.17 FEET AND WEST 343.04 FEET FROM THE FOUND SURVEY MONUMENT FOR THE NORTH QUARTER CORNER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE & MERIDIAN;

THENCE SOUTH 09°00'00" WEST 353.40 FEET;

THENCE NORTH 09°00'00" EAST 353.40 FEET;

THENCE SOUTH 81°00'00" WEST 140.73 FEET TO THE POINT OF BEGINNING.

CONTAINING: 1.19 ACRES

**OWNER'S DEDICATION**

KNOW ALL MEN BY THESE PRESENTS THAT, THE UNDERSIGNED OWNER(S) OF THE PROPERTY DESCRIBED HEREON, HAVE CAUSED THE SAME TO BE SURVEYED AND PLACED MONUMENTS THEREON IN ACCORDANCE WITH THE REQUIREMENTS OF THE UTAH CODE AND HAVE VERIFIED ALL MEASUREMENTS AND PLACED MONUMENTS AS REPRESENTED ON THE PLAT. THE DECLARATION HEREBY DEDICATE THESE AREAS LABELED AS PRIVATE STREETS AND DRIVEWAYS AND EASEMENTS FOR THE CONSTRUCTION AND MAINTENANCE OF PUBLIC UTILITIES AND EMERGENCY VEHICLE ACCESS.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_.

BY: \_\_\_\_\_ THE HOMESTEAD INC.

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_, PERSONALLY APPEARED \_\_\_\_\_ WHO DECLARES THE SAME IN THE CAPACITY INDICATED.

MY COMMISSION EXPIRES: \_\_\_\_\_ NOTARY PUBLIC

**ACCEPTANCE BY MIDWAY CITY**

THE CITY COUNCIL OF MIDWAY CITY, WASATCH COUNTY, STATE OF UTAH, HEREBY APPROVES THIS SUBDIVISION AND ACCEPTS THE DEDICATION OF THE PRIVATE STREETS, STREETS AND PUBLIC RIGHTS-OF-WAY HEREBY SHOWN.

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_.

APPROVED: \_\_\_\_\_ MAYOR

ATTEST: \_\_\_\_\_ CLERK-RECORDER (PER SEA BOOK)

APPROVED: \_\_\_\_\_ CITY ENGINEER

APPROVED: \_\_\_\_\_ CITY ATTORNEY

PLANNING COMMISSION APPROVAL

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_ BY THE \_\_\_\_\_ CITY PLANNING COMMISSION.

DIRECTOR - SECRETARY \_\_\_\_\_ CHAIRMAN, PLANNING COMMISSION

**HOMESTEAD VILLAS**

**PLAT "A"**

MIDWAY CITY, WASATCH COUNTY, STATE OF UTAH

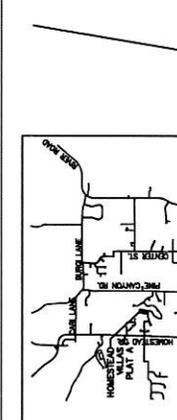
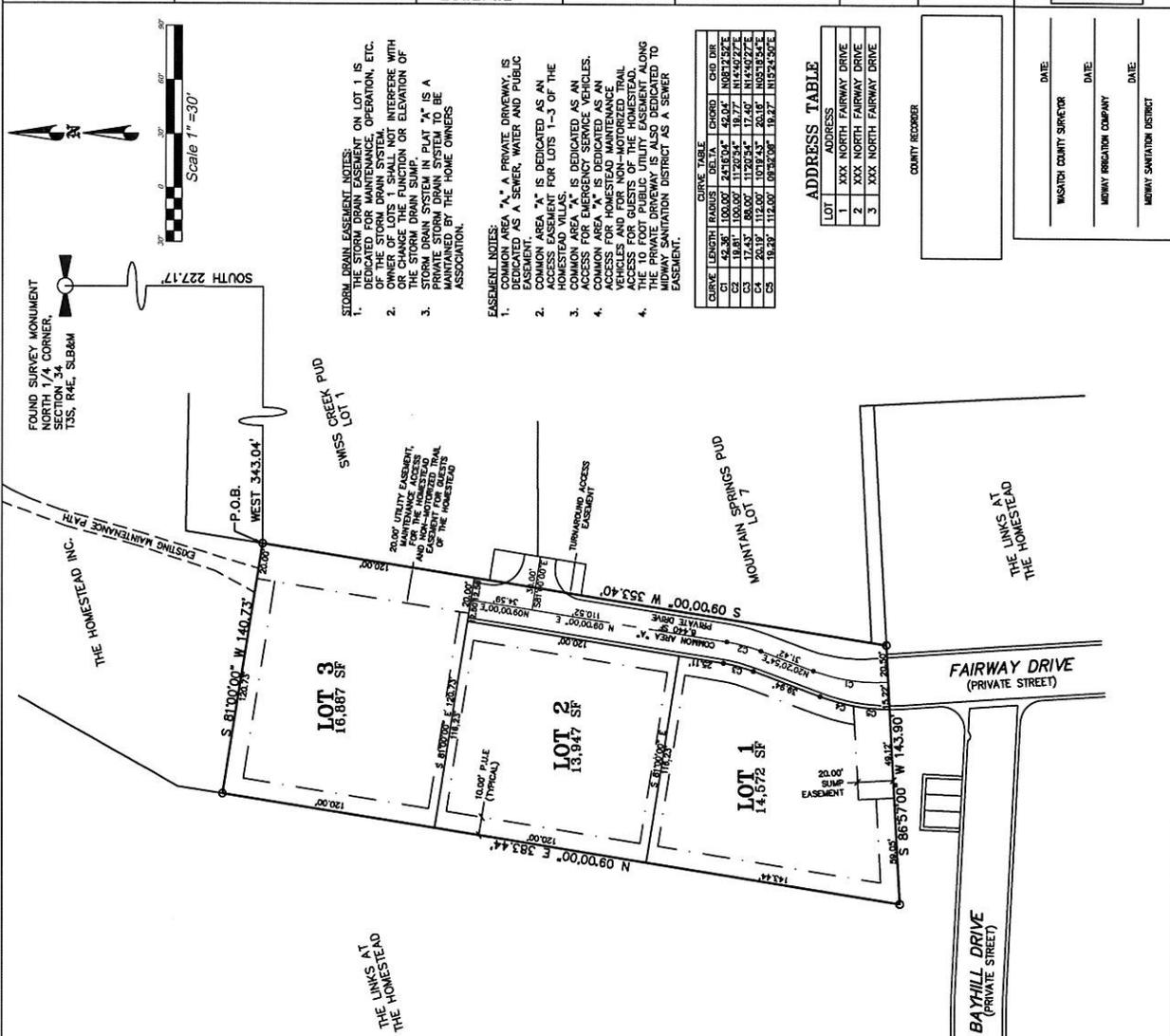
SCALE: 1" = 30' FEET

DATE: \_\_\_\_\_

WASATCH COUNTY SURVEYOR

MIDWAY IRRIGATION COMPANY

MIDWAY SANITATION DISTRICT



**STORM DRAIN EASEMENT NOTES:**

- THE STORM DRAIN SYSTEM ON LOT 1 IS DEDICATED FOR MAINTENANCE, OPERATION, ETC. OF THE STORM DRAIN SYSTEM.
- NO CHANGE OF ELEVATION SHALL NOT INTERFERE WITH THE FUNCTION OF THE STORM DRAIN SYSTEM.
- THE STORM DRAIN SYSTEM IN LOT "A" IS A PRIVATE STORM DRAIN SYSTEM TO BE MAINTAINED BY THE HOME OWNERS ASSOCIATION.

**EASEMENT NOTES:**

- COMMON AREA "A", A PRIVATE DRIVEWAY, IS DEDICATED AS A SEWER, WATER AND PUBLIC EASEMENT.
- ACCESS EASEMENT FOR LOTS 1-3 OF THE HOMESTEAD VILLAS.
- COMMON AREA "A" IS DEDICATED AS AN ACCESS EASEMENT FOR LOTS 1-3 OF THE HOMESTEAD VILLAS.
- COMMON AREA "B" IS DEDICATED AS AN ACCESS FOR HOMESTEAD MAINTENANCE VEHICLES AND FOR NON-MOTORIZED TRAIL VEHICLES.
- THE 10 FOOT PUBLIC UTILITY EASEMENT ALONG THE PRIVATE DRIVEWAY IS ALSO DEDICATED TO MIDWAY SANITATION DISTRICT AS A SEWER EASEMENT.

**SWISS CREEK PUD LOT 1 ACCESS EASEMENT DESCRIPTION**

BEGINNING AT A POINT WHICH IS SOUTH 227.17 FEET AND WEST 343.04 FEET FROM THE FOUND SURVEY MONUMENT FOR THE NORTH QUARTER CORNER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE & MERIDIAN,

AND RUNNING SOUTH 09°00'00" WEST 156.05 FEET ALONG THE EASTERLY PROPERTY BOUNDARY OF HOMESTEAD VILLAS PLAT "A" TO THE TRUE POINT OF BEGINNING.

THENCE NORTH 09°00'00" EAST 27.45 FEET;

THENCE SOUTH 81°00'00" EAST 17.50 FEET;

THENCE SOUTH 09°00'00" WEST 24.61 FEET;

THENCE NORTH 89°46'27" WEST 17.50 FEET TO THE POINT OF BEGINNING.

CONTAINING: 455 SF

**MOUNTAIN SPRINGS PUD LOT 7 ACCESS EASEMENT DESCRIPTION**

BEGINNING AT A POINT WHICH IS SOUTH 227.17 FEET AND WEST 343.04 FEET FROM THE FOUND SURVEY MONUMENT FOR THE NORTH QUARTER CORNER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE & MERIDIAN,

AND RUNNING SOUTH 09°00'00" WEST 156.05 FEET ALONG THE EASTERLY PROPERTY BOUNDARY OF HOMESTEAD VILLAS PLAT "A" TO THE TRUE POINT OF BEGINNING.

THENCE NORTH 89°46'27" EAST 17.50 FEET;

THENCE SOUTH 81°00'00" EAST 27.45 FEET;

THENCE NORTH 81°00'00" WEST 17.50 FEET;

THENCE NORTH 09°00'00" EAST 24.55 FEET TO THE POINT OF BEGINNING.

CONTAINING: 455 SF

**ADDRESS TABLE**

LOT	ADDRESS
1	XXX NORTH FAIRWAY DRIVE
2	XXX NORTH FAIRWAY DRIVE
3	XXX NORTH FAIRWAY DRIVE

COUNTY RECORDER

**CURVE TABLE**

CURVE	LENGTH	RADIUS	DELTA	CHD	CHD DIR
C1	54.36'	100.00'	24.5024°	49.04'	N08°12'32"E
C2	17.43'	34.86'	11.2624°	17.46'	N14°40'27"E
C3	17.43'	34.86'	11.2624°	17.46'	N14°40'27"E
C4	20.19'	112.00'	10°18'43"	20.19'	N05°18'43"E
C5	18.92'	112.00'	08°32'09"	18.92'	N15°24'50"E

**SURVEYOR'S CERTIFICATE**  
 IN ACCORDANCE WITH SECTION 34-2-10 OF THE UTAH CODE, I, BRING CHRISTENSEN, DO HEREBY CERTIFY THAT I AM A LICENSED SURVEYOR HOLDING LICENSE NUMBER 145788 IN ACCORDANCE WITH TITLE 34, CHAPTER 22 OF THE PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS ACT. I HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED ON THE PLAT IN ACCORDANCE WITH SECTION 34-2-10 OF THE UTAH CODE AND HAVE PLACED MONUMENTS AS REPRESENTED ON THE PLAT.

**BOUNDARY DESCRIPTION**  
 BEGINNING AT A POINT WHICH IS NORTH 39.91 FEET AND WEST 184.76 FEET FROM THE FOUND SURVEY MONUMENT FOR THE NORTH EAST, SALT LAKE BASE & MERIDIAN.  
 THENCE SOUTH 227.45 FEET;  
 THENCE NORTH 88°47'07" WEST 151.53 FEET;  
 THENCE NORTH 09°00'00" EAST 108.46 FEET;  
 THENCE NORTH 32°23'37" EAST 138.69 FEET;  
 THENCE EAST 60.23 FEET TO THE POINT OF BEGINNING.  
 CONTAINING: 0.62 ACRES

**OWNERS DEDICATION**  
 KNOW ALL MEN BY THESE PRESENTS, THAT THE UNDERSIGNED OWNERS OF THE PROPERTY DESCRIBED HEREON, HAVE CAUSED THE SAME TO BE SUBDIVIDED INTO LOTS, PRIVATE STREETS, AND DRIVEWAYS, AND HEREBY APPROVE AND ACCEPTS THE DEDICATION OF THE SAME TO THE PUBLIC. THE DEDICATION HEREBY DEDICATE THOSE AREAS LABELED AS PRIVATE STREETS AND DRIVEWAYS AND EASEMENTS FOR THE CONSTRUCTION AND MAINTENANCE OF PUBLIC UTILITIES AND EMERGENCY VEHICLE ACCESS.  
 DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_  
 BY: \_\_\_\_\_ THE HOMESTEAD INC.

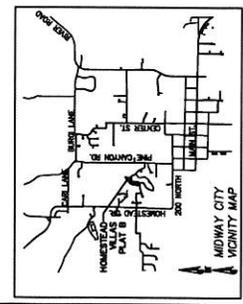
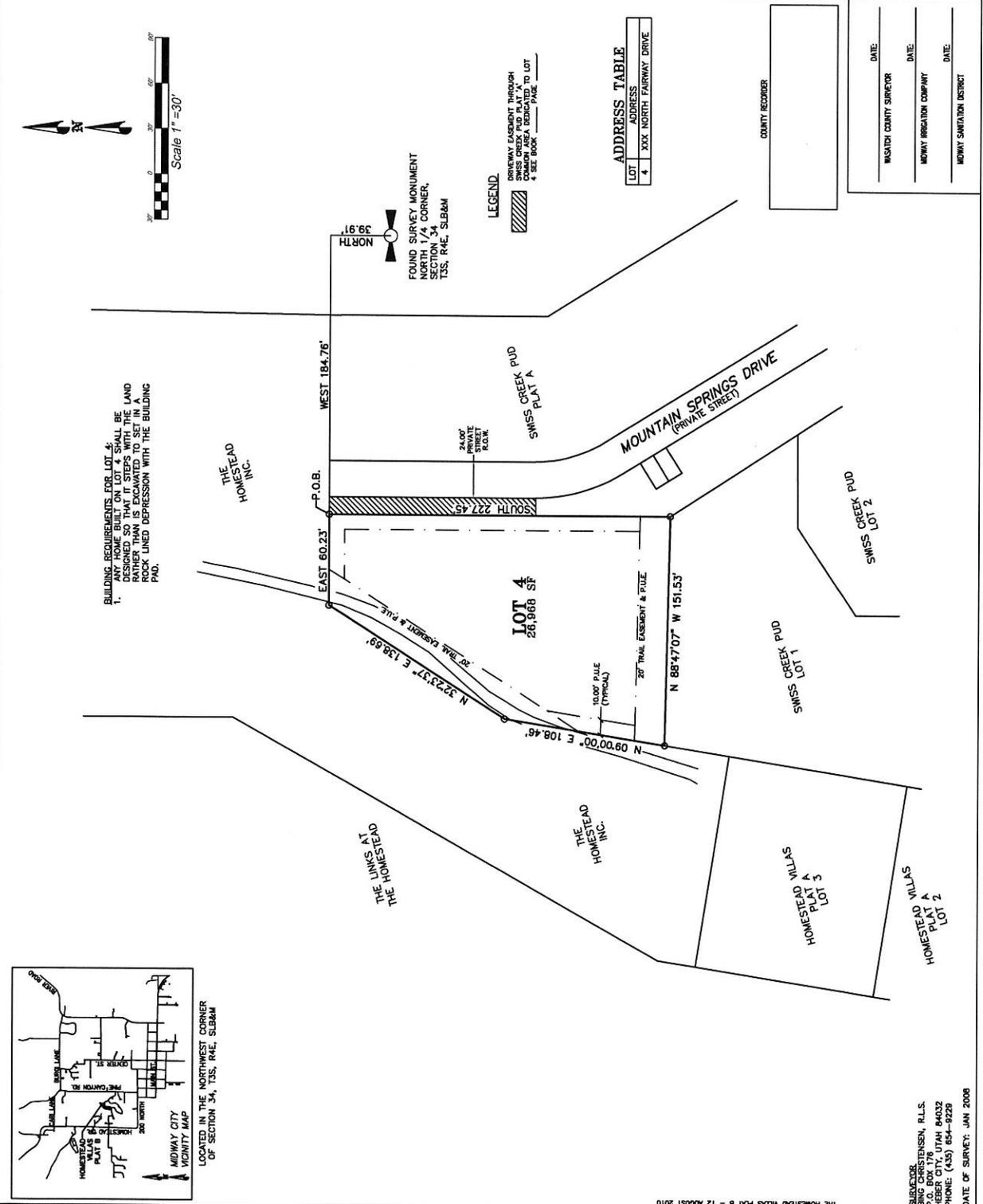
**ACKNOWLEDGMENT**  
 STATE OF \_\_\_\_\_ S.S.  
 COUNTY OF \_\_\_\_\_ A.D. 20\_\_\_\_  
 BEFORE ME, \_\_\_\_\_ A.D. 20\_\_\_\_ PERSONALLY APPEARED \_\_\_\_\_ WHO DULY ACKNOWLEDGED TO ME THAT HE/SHE DOES DESIRE THE SAME IN THE CAPACITY INDICATED.  
 MY COMMISSION EXPIRES \_\_\_\_\_ NOTARY PUBLIC

**ACCEPTANCE BY MIDWAY CITY**  
 THE CITY COUNCIL OF THE MIDWAY CITY, MOUNTAIN COUNTY, STATE OF UTAH, HEREBY APPROVES THIS SUBDIVISION AND ACCEPTS THE DEDICATION OF LOTS, EASEMENTS, STREETS AND PUBLIC RIGHTS-OF-WAY HEREOF SHOWN.  
 THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_  
 APPROVED \_\_\_\_\_ MAYOR \_\_\_\_\_ ATTEST \_\_\_\_\_ CLERK-RECORDER (SEE EXH. B) \_\_\_\_\_  
 APPROVED \_\_\_\_\_ CITY ENGINEER (SEE EXH. B) \_\_\_\_\_ CITY ATTORNEY \_\_\_\_\_

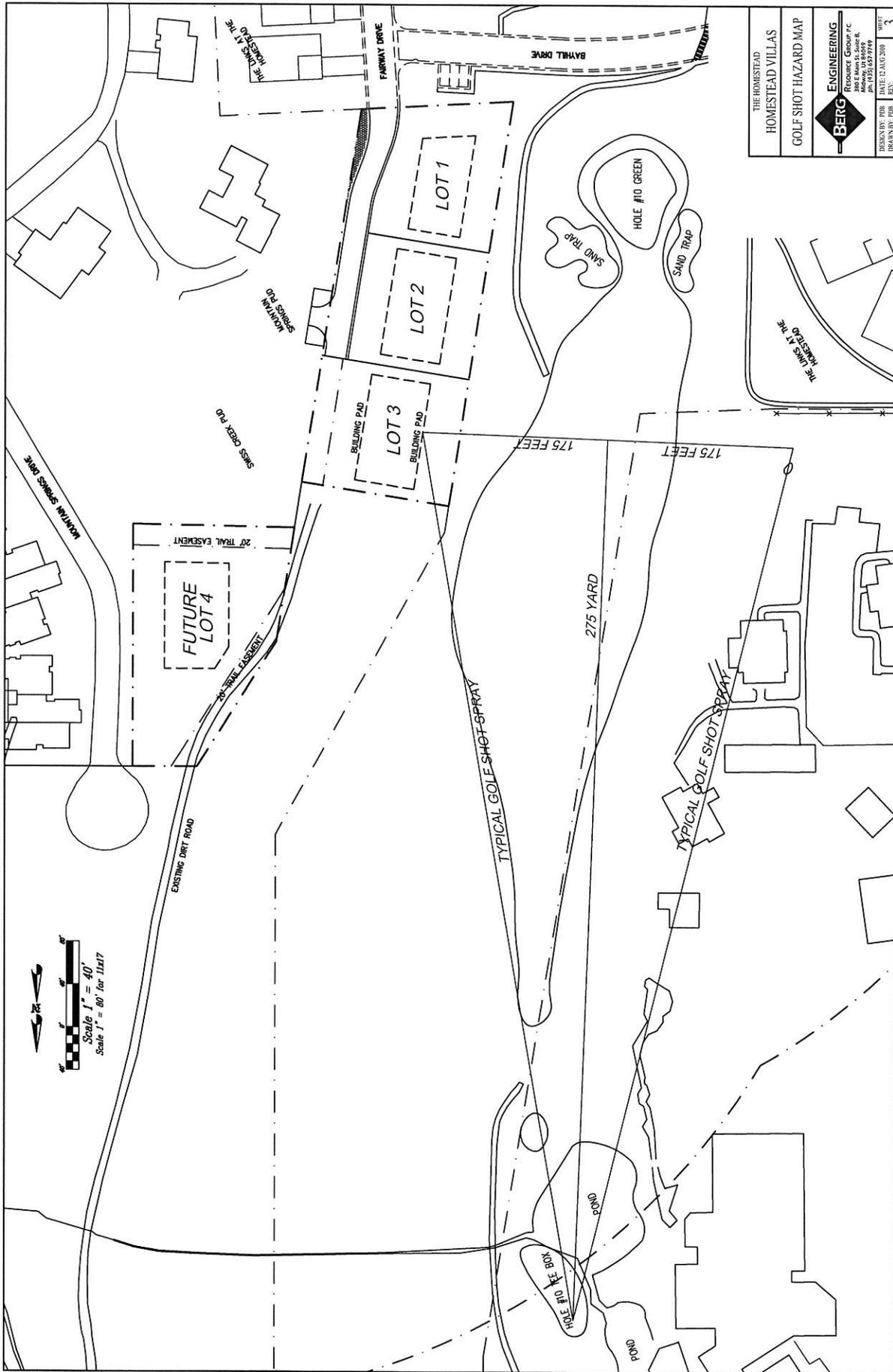
**PLANNING COMMISSION APPROVAL**  
 APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_ BY THE \_\_\_\_\_ CITY PLANNING COMMISSION  
 DIRECTOR - SECRETARY \_\_\_\_\_ CHAIRMAN, PLANNING COMMISSION \_\_\_\_\_

**HOMESTEAD VILLAS PLAT "B"**  
 MIDWAY CITY, MOUNTAIN COUNTY, STATE OF UTAH  
 SCALE: 1" = 30' FEET

SURVEYOR'S EX.	MOUNTAIN COUNTY EX.	CITY ENGINEER EX.	CLERK-RECORDER EX.
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SURVEYOR:  
 BRING CHRISTENSEN, R.L.S.  
 400 WEST 1000 SOUTH  
 MIDWAY CITY, UTAH 84032  
 PHONE: (435) 654-9228  
 DATE OF SURVEY: JAN 2008





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.

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## PLANNING COMMISSION STAFF REPORT

**DATE OF MEETING:** October 16, 2013

**NAME OF PROJECT:** Agricultural Barn/Commercial Greenhouse

**NAME OF APPLICANT:** Kraig Higginson

**AGENDA ITEM:** Conditional Use Permit

**LOCATION OF ITEM:** 1200 South Center Street

**ZONING DESIGNATION:** RA-1-43

### **ITEM: 3**

Steve Davies, agent for Kraig Higginson, is requesting a Conditional Use Permit for a 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 zone.

### **BACKGROUND:**

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 of the size (being over 1,000 sq. ft.) and because there will be a commercial component to the structure.

The building will be constructed on the foundation of the Price barn which was destroyed by fire. It 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 the will not be allowed unless a code text amendment is approved by the City Council.

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.

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 (see attached renderings) but walls will be mostly 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 agriculture for the families living on site but they would like the ability to sell any extra agriculture 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 that some employees may work at the facility in the future but initially it will be a family operation.

This item has been noticed in the local newspaper for two weeks and on the State's website for the Planning Commission meeting. Mailed notice will be sent out to all property owners within 600' before the public hearing before the City Council.

#### **ANALYSIS:**

Below are specific requirements for commercial greenhouses. First is listed in italicized text the requirements in the code and following is information on 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.

The comments in italicized represent Planning Staff's comments pertaining to compliance or lack of compliance with the findings the Planning Commission must make in considering this request. Section 16.26.120 requires specifically the Planning Commission to find that:

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, particularly, 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.*

**POSSIBLE FINDINGS:**

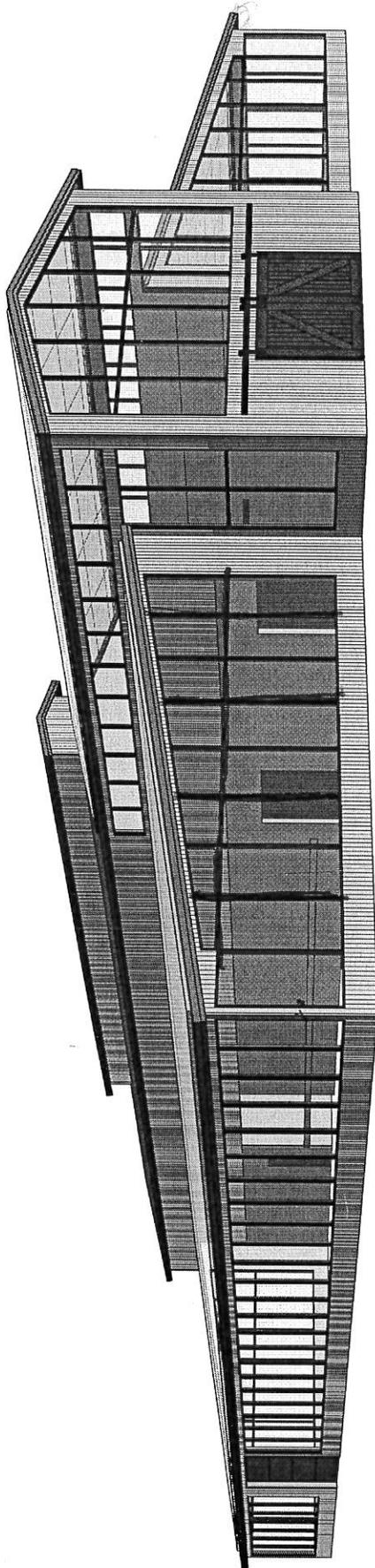
- The proposed use is a conditional use in the RA-1-43
- The proposal does meet the vision for agricultural use in the RA-1-43 zone as described in the General Plan.

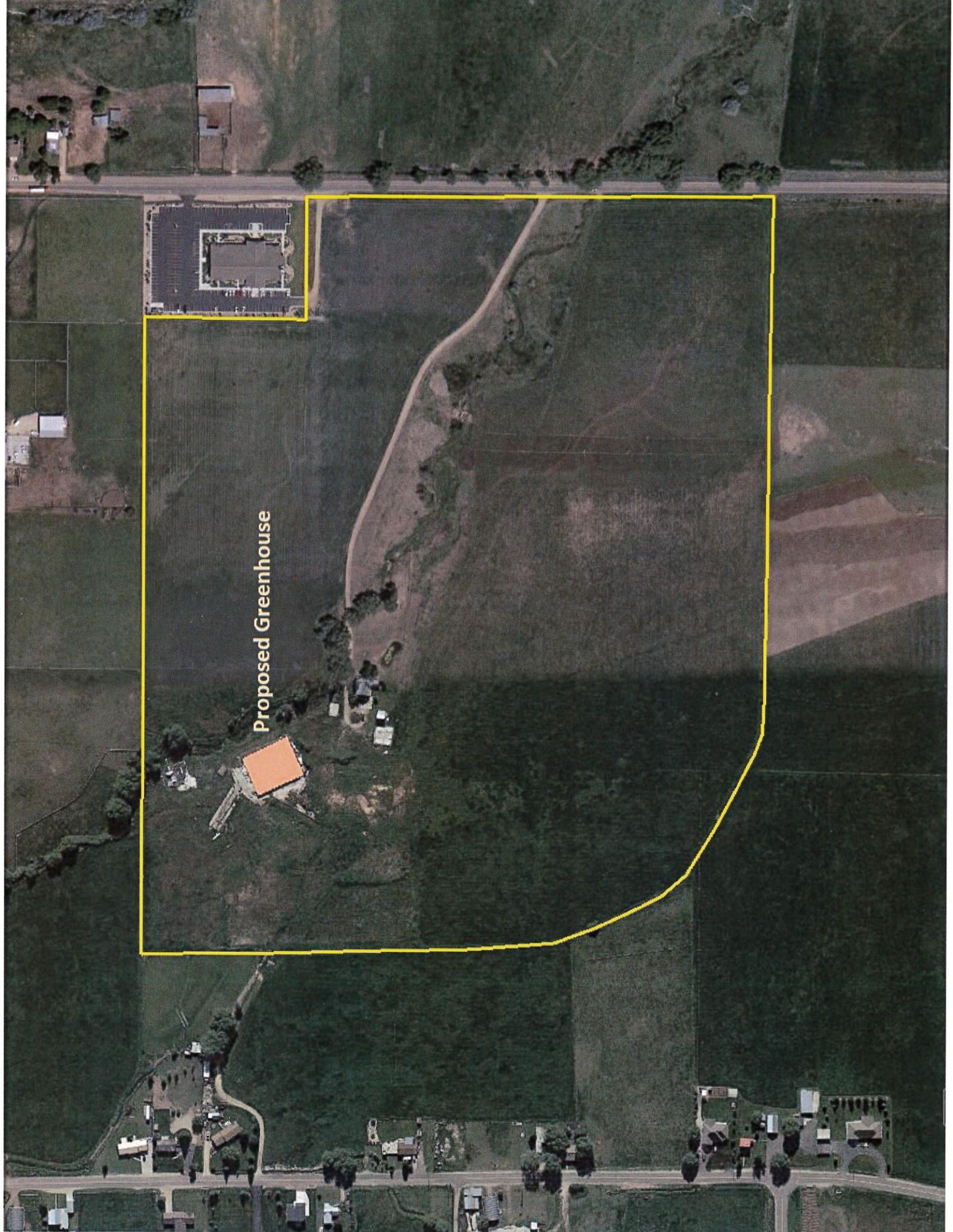
**ALTERNATIVE ACTIONS:**

1. Recommendation of Conditional Approval. This action can be taken if the Planning Commission feels that conditions placed on the approval can resolve any outstanding issues.
  - a. Accept staff report
  - b. List accepted findings
  - c. Place condition(s)
2. Recommendation of Continuance. This action can be taken if the Planning Commission feels that there are unresolved issues.
  - 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 request does not meet the intent of the ordinance.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for denial

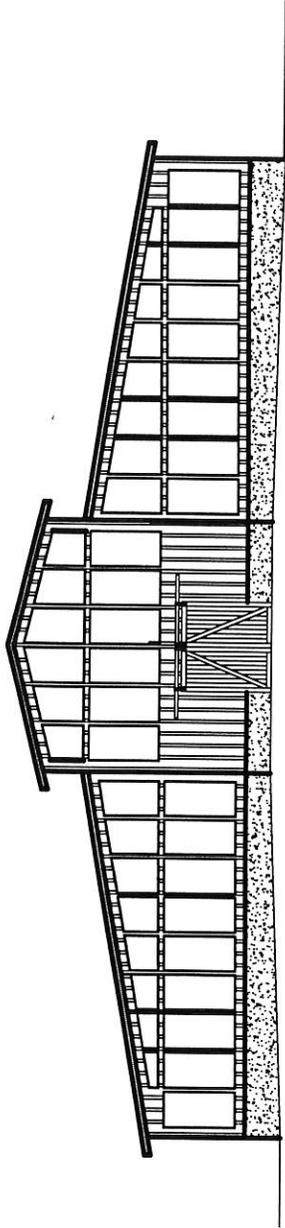
**PROPOSED CONDITION:**

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

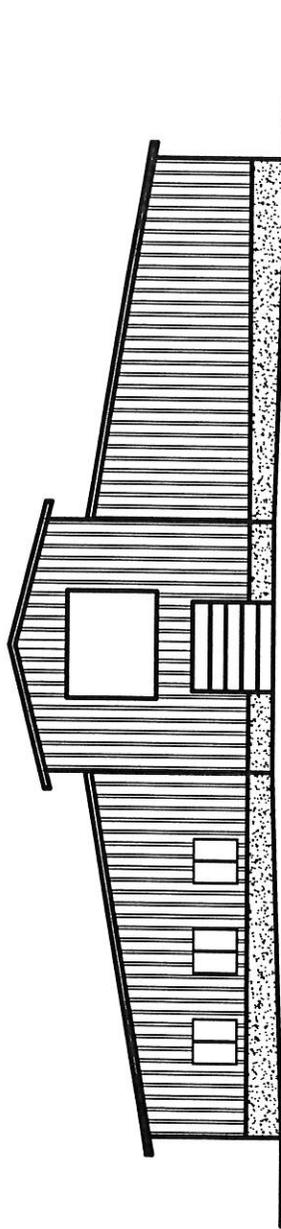




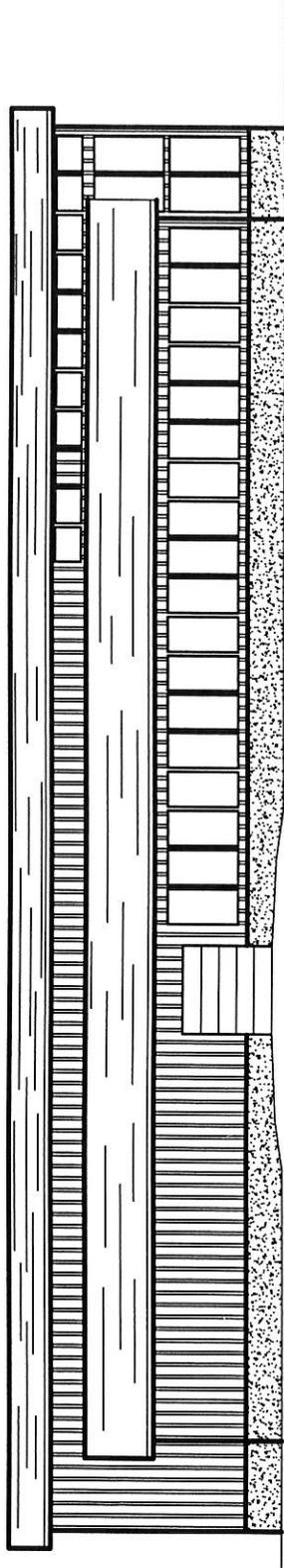
Proposed Greenhouse



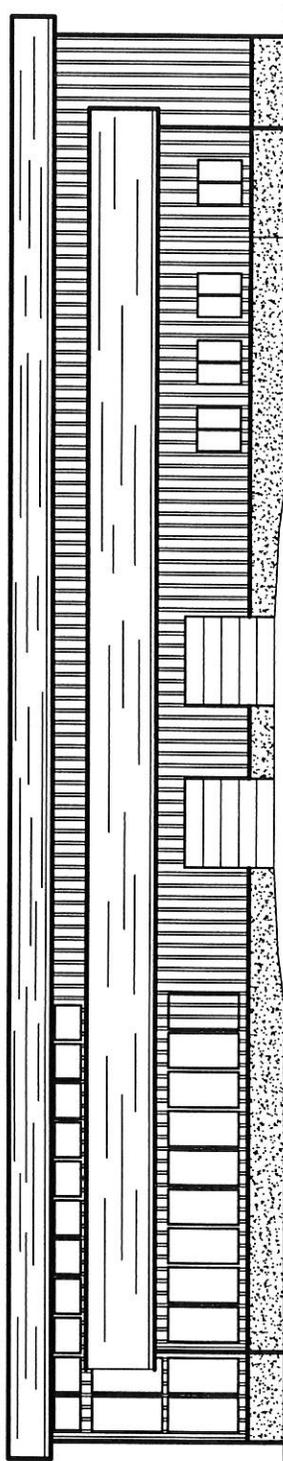
Southeast Elevation



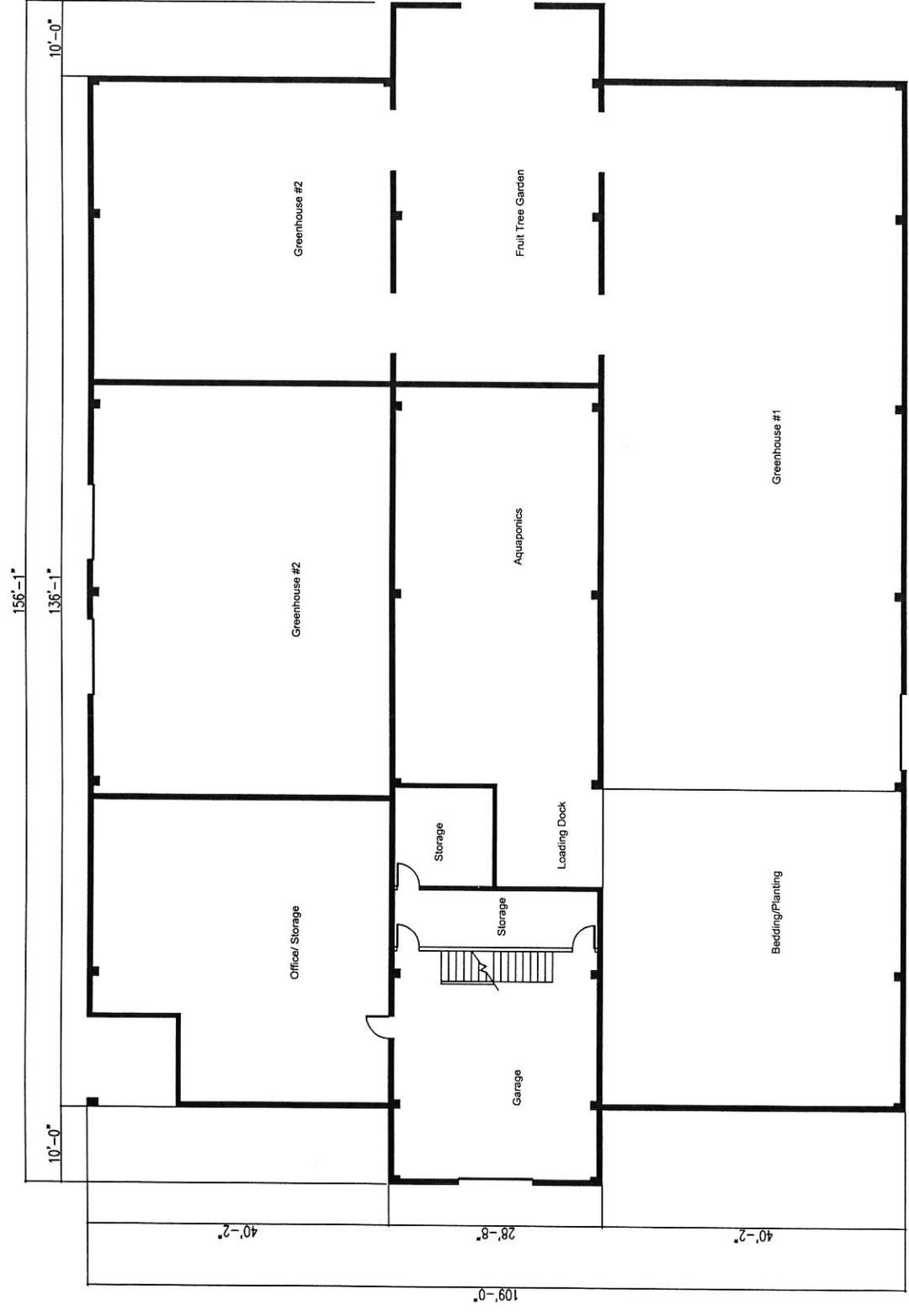
Northwest Elevation



Southwest Elevation



Northeast Elevation



A Proposed Agricultural Barn  
 Plan View

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.

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## PLANNING COMMISSION STAFF REPORT

**DATE OF MEETING:** October 16, 2013

**NAME OF APPLICANT:** Midway City

**AGENDA ITEM:** Code Text Amendment of Title 16 for Open Space Requirements for Large-scale Developments

### **ITEM: 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.**

### **BACKGROUND & ANALYSIS:**

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 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.

Basically the code requires that all standard subdivisions that are greater than six acres in size and are 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 included 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 percent 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 amount 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 openness provided because of this requirement.

One identified potential problem is that a relatively small subdivision will not maintain the required open space. This is based off of two reasons. One is 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 may 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 subdivision can be a small amount of space. For example, the open space requirement for a six-acre subdivision 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 the code. Also the requirement of open space forces a subdivision 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 that further justify the HOA and required dues. In a small-scale subdivision 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 because the HOA is established for this one specific reason and that it will cease to function in the long run. The property owners in a standard subdivision have their own lots to maintain, unlike in a PUD where there is no private open space, and may see the commonly owned open space as a burden.

Staff has 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. Also 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 amount of acres required that would need to meet 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 than 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 opens space would also be three acres but most likely the density supporting the open space would be about 60 lots. Staff feels the larger the number of lots in the subdivision there is a better chance the open space will be maintained.

After reviewing the different available options and discussing these with the Planning Commission over the past couple of months, staff 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.

#### **POSSIBLE FINDINGS:**

- 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"

#### **ALTERNATIVE ACTIONS:**

1. Recommendation of no change. This action can be taken if the Planning Commission feels that the current language is acceptable and meets the City's vision as established in the General Plan.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for recommendation

2. Recommendation to amend the number of acres needed to require open space. This action can be taken if the Planning Commission feels that the requirement is amended in order for open space to be required.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for recommendation
  
3. Continuance. This action can be taken if the Planning Commission feels that there are unresolved issues.
  - 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

**BOUNDARY DESCRIPTION**

BEGINNING AT A POINT WHICH IS EAST 465.65 FEET AND NORTH 15.03 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN;

THENCE SOUTH 89°54'47" WEST 80.96 FEET;

THENCE NORTH 89°19'20" WEST 172.05 FEET;

THENCE NORTH 00°39'38" EAST 619.80 FEET;

THENCE SOUTH 89°20'07" EAST 218.92 FEET;

THENCE SOUTH 88°55'34" EAST 117.84 FEET;

THENCE SOUTH 00°42'34" WEST 233.38 FEET;

THENCE SOUTH 87°59'39" EAST 42.19 FEET;

THENCE SOUTH 00°39'38" WEST 399.74 FEET

TO THE POINT OF BEGINNING.

CONTAINING: 7.85 ACRES

**RESERVATION OF COMMON AREA**

THE OWNERS HAS HEREBY RESERVED AND INTENDS TO RESERVE FOR THE USE BY THE OWNERS, THEIR GUESTS, AND INVITEES AND AREA HEREBY RESERVED FOR THEIR COMMON USE AND ENJOYMENT AS PROVIDED BY THE DECLARATION OF COVENANTS AND RESTRICTIONS, IF BOUNDEN RECORDS, BEGINNING AT PAGE [ ] OF THE [ ] DECLARATION [ ] IN BOOK [ ] BEGINNING AT PAGE [ ] OF THE [ ] DECLARATION [ ]

**OWNER'S DEDICATION**

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED OWNERS OF THE SUBDIVISION HEREBY DEDICATE TO THE PUBLIC, STREETS, EASEMENTS, AND COMMON AREA, AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE DECLARATION OF COVENANTS AND RESTRICTIONS, IF BOUNDEN RECORDS, STREETS, EASEMENTS, AND COMMON AREA FOR THE CONSTRUCTION AND MAINTENANCE OF PUBLIC UTILITIES AND EMERGENCY VEHICLE ACCESS.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20 \_\_\_\_\_

BY: BOWDEN LEADS INC.

SHARON YEUNG - MANAGER

**ACKNOWLEDGMENT**

STATE OF UTAH }  
 COUNTY OF WASHCUT } S.S.  
 ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20 \_\_\_\_\_, PERSONALLY APPEARED TO ME \_\_\_\_\_, A PUBLIC NOTARY PUBLIC, \_\_\_\_\_, WHO HAS BEEN DULY QUALIFIED TO ME THAT HE/SHE DID DECLARE THE SAME IN THE CAPACITY INDICATED.

BY COMMISSION EXPRES.

NOTARY PUBLIC

**ACCEPTANCE BY MIDWAY CITY**

THE CITY ENGINEER HAS REVIEWED THE SUBDIVISION AND ACCEPTS THE DEDICATION OF LOTS, EASEMENTS, STREETS AND PUBLIC RIGHTS-OF-WAY HEREON SHOWN.

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20 \_\_\_\_\_

APPROVED \_\_\_\_\_ ATTEST \_\_\_\_\_  
 MAYOR \_\_\_\_\_ CITY ENGINEER (SEE SEAL HERE)

APPROVED \_\_\_\_\_ CITY ATTORNEY

**PLANNING COMMISSION APPROVAL**

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20 \_\_\_\_\_ BY THE  
 MEMBERS \_\_\_\_\_ CITY PLANNING COMMISSION

DIRECTOR - SECRETARY \_\_\_\_\_ CHAIRMAN, PLANNING COMMISSION

**BOWDEN FIELDS SUBDIVISION**

MIDWAY CITY, WASHCUT COUNTY, STATE OF UTAH

SCALE: 1" = 40' FEET

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**SURVEYOR'S CERTIFICATE**

IN ACCORDANCE WITH SECTION 16-26-03 OF THE UTAH CODE, I, BRIG CHRISTENSEN, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR HOLDING LICENSE NUMBER 145796 IN ACCORDANCE WITH TITLE 16, UTAH CODE, AS A PROFESSIONAL ENGINEER AND PROFESSIONAL LAND SURVEYOR LICENSED UNDER THE PROFESSIONAL ENGINEERING AND SURVEYING ACT. I HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED ON THIS PLAN IN ACCORDANCE WITH SECTION 16-26-03 OF THE UTAH CODE AND HAVE PLACED MONUMENTS AS REPRESENTED ON THE PLAN.

DATE \_\_\_\_\_ SURVEYOR \_\_\_\_\_ (SEE SEAL HERE)

**CURVE TABLE**

CURVE LENGTH	RADIUS	DELTA	CHORD	BEARING
C1	23.45'	15.00'	89°54'48"	N 42°17'20" E
C2	23.45'	15.00'	89°54'48"	N 42°17'20" E
C3	14.66'	15.00'	55°58'38"	N 61°46'05" E
C4	54.68'	56.50'	55°29'38"	N 58°36'18" E
C5	61.47'	56.50'	62°20'17"	N 58°36'18" E
C6	51.19'	56.50'	57°54'14"	N 58°36'18" E
C7	51.19'	56.50'	57°54'14"	N 58°36'18" E
C8	51.19'	56.50'	57°54'14"	N 58°36'18" E
C9	14.66'	15.00'	55°58'38"	N 61°46'05" E
C10	23.67'	15.00'	90°25'12"	N 21°29' S 44°32'58" E
C11	23.71'	15.00'	90°34'53"	N 21°32' S 44°32'58" E
C12	16.02'	250.00'	03°40'18"	N 16°02' S 89°59'29" E
C13	24.20'	15.00'	92°27'06"	N 21°68' S 44°32'58" E
C14	24.20'	15.00'	92°27'06"	N 21°68' S 44°32'58" E
C15	72.85'	30.00'	139°37'04"	N 21°68' S 44°32'58" E
C16	72.85'	30.00'	139°37'04"	N 21°68' S 44°32'58" E

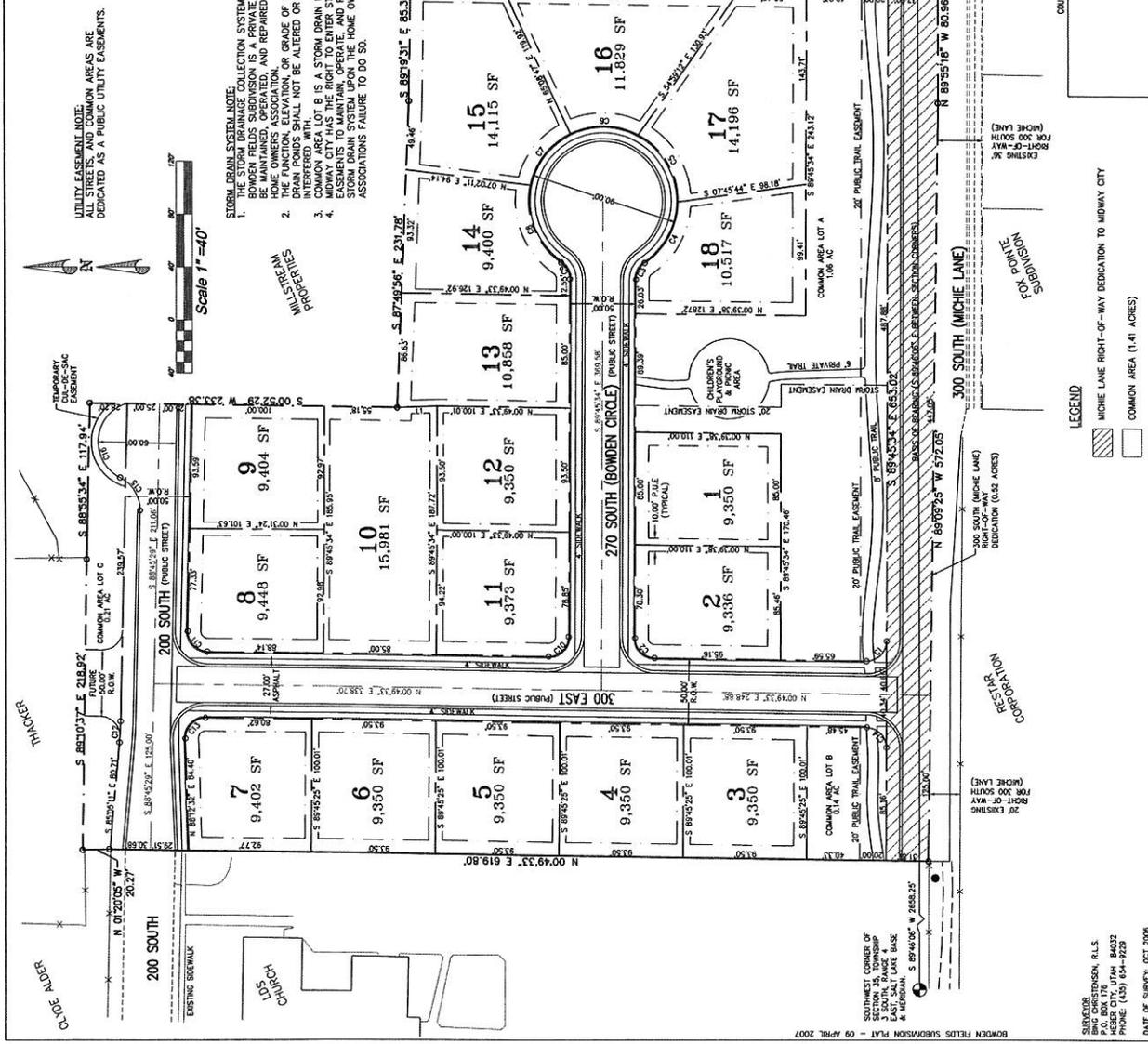
**LINE TABLE**

CURVE LENGTH	BEARING
L1	29.86' S 02°15'58" E

ADDRESSING TO BE COMPLETED BY WASHCUT COUNTY GIS DEPARTMENT

**ADDRESS TABLE**

LOT	ADDRESS
1	3-- EAST BOWDEN CIRCLE (270 SOUTH)
2	3-- EAST BOWDEN CIRCLE (270 SOUTH)
3	2-- SOUTH 300 EAST
4	2-- SOUTH 300 EAST
5	2-- SOUTH 300 EAST
6	2-- SOUTH 300 EAST
7	2-- SOUTH 300 EAST
8	2-- SOUTH 300 EAST
9	3-- EAST 200 SOUTH
10	2-- SOUTH 300 EAST
11	3-- EAST BOWDEN CIRCLE (270 SOUTH)
12	3-- EAST BOWDEN CIRCLE (270 SOUTH)
13	3-- EAST BOWDEN CIRCLE (270 SOUTH)
14	3-- EAST BOWDEN CIRCLE (270 SOUTH)
15	3-- EAST BOWDEN CIRCLE (270 SOUTH)
16	3-- EAST BOWDEN CIRCLE (270 SOUTH)
17	3-- EAST BOWDEN CIRCLE (270 SOUTH)
18	3-- EAST BOWDEN CIRCLE (270 SOUTH)



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

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## **PLANNING COMMISSION STAFF REPORT**

**DATE OF MEETING:** October 16, 2013

**NAME OF APPLICANT:** Midway City

**AGENDA ITEM:** Code Text Amendment of Title 16 for Affordable Housing

### **ITEM: 5**

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

### **BACKGROUND & ANALYSIS:**

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 the 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 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 is a specific ordinance that establishes that amount of affordable housing required for a development (please see attached.)

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 the developer can 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 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 \$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.

Staff 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 home 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.

After reviewing the different available options and discussing these with the Planning Commission over the past couple of months, staff 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. Staff also recommends close consideration of this option.

**POSSIBLE FINDINGS:**

- 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.

**ALTERNATIVE ACTIONS:**

1. Recommendation to remove Section 16.20 from the Municipal Code. This action can be taken if the Planning Commission feels that the current Land Use Map and Land Use Code fulfill the City’s need for affordable housing.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for recommendation
2. Recommendation to amend Section 16.20 so that inclusionary zoning is voluntary option for the developer. This action can be taken if the Planning Commission feels that the described amendment promotes the vision in the General Plan and helps the City’s fulfill its need for affordable housing.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for recommendation

3. Recommendation of no change. This action can be taken if the Planning Commission feels that the current language is acceptable and meets the City's vision as established in the General Plan.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for recommendation
  
4. Continuance. This action can be taken if the Planning Commission feels that there are unresolved issues.
  - 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

**CHAPTER 16.20 AFFORDABLE HOUSING CODE**

<b>Section 16.20.1</b>	<b>Purpose and Intent</b>
<b>Section 16.20.2</b>	<b>Development Requirements</b>
<b>Section 16.20.3</b>	<b>Base Requirement/Affordable Unit Equivalents</b>
<b>Section 16.20.4</b>	<b>Residential Base Requirement</b>
<b>Section 16.20.5</b>	<b>Off-Site Affordable Housing</b>
<b>Section 16.20.6</b>	<b>Fees-In-Lieu</b>
<b>Section 16.20.7</b>	<b>Impact Fee Exemption</b>
<b>Section 16.20.8</b>	<b>Allowable Prices</b>
<b>Section 16.20.9</b>	<b>Zoning and Density</b>
<b>Section 16.20.10</b>	<b>Enforcement/Management/Waiver Options</b>
<b>Section 16.20.11</b>	<b>Definitions</b>

**Section 16.20.1 Purpose and Intent**

The purposes of this Chapter are to:

- A. Provide requirements, guidelines, and incentives for the construction of affordable housing for low-income and moderate-income households in Midway City within subdivisions and planned unit developments;
- B. Implement the affordable housing goals, policies, and objectives contained in the Midway City General Plan;
- C. Ensure the opportunity of affordable housing for residents and workers in Midway City and Wasatch County;
- D. Retain affordable housing units in perpetuity;
- E. Maintain a balanced community that provides and integrates housing for people of all income levels and family sizes; and
- F. Implement planning for affordable housing as required by Utah Code.

**Section 16.20.2 Affordable Housing Development Requirements**

All Affordable Housing Units shall meet the following criteria:

- A. The specific unit type and design shall be consistent with the character of the surrounding neighborhood or development in which the Affordable Housing Unit is located.

B. Affordable Housing Units shall comply with all the development standards outlined in the Midway City Land Use Title except as specifically permitted in this Chapter. The architectural guidelines for the Affordable Housing Units shall comply with the minimum guidelines outlined in the Midway City Affordable Housing Architectural Guidelines (“Architectural Guidelines”) in place at the time of construction. These Architectural Guidelines are subject to amendment by the Midway City Council from time to time. Any variances from these Architectural Guidelines in the construction of the Affordable Housing Unit require approval by the Midway City Council.

C. The minimum size of an Affordable Housing Unit shall be based on the style of unit, as outlined in the Affordable Unit Equivalent (AUE) definition in this Chapter.

D. The affordable housing component in a development shall be constructed in conjunction with the rest of the development, and shall not be the last portion constructed. In any case, no more than 50 per cent of the Market Rate Units in a development will be issued occupancy permits before the completion and issuance of occupancy permits for the Affordable Housing Units related to the development. The timing of the construction of the affordable housing component shall be defined and incorporated in the development agreement for the project.

E. The affordable housing component in a development shall be constructed on site, except for as outlined in this Title.

F. Unless another alternative ownership or deed restriction is approved by the Midway City Council, the underlying real property associated with an Affordable Housing Unit will be deeded to Midway City or a land trust approved by the Midway City Council with the intent of retaining this property for use as affordable housing in perpetuity. The holder of the deed or its agent will insure that the Affordable Housing Unit complies with Midway City Ordinances and will monitor the following:

1. Income qualification for the dwelling owner or renter
2. Allowable capital improvements to the dwelling
3. Rental and sales policies
4. Occupancy requirements including the dwelling owner or renter’s ongoing compliance with Midway City ordinances and any HOA requirements or restrictions
5. Starting sales and rental prices
6. Allowable annual price increases

G. All rental units shall be rented for a minimum period of 30 consecutive days. Nightly and weekly rentals shall be prohibited.

H. The maximum sale price of an affordable unit shall be limited to a price that is affordable to a household earning 60-80 per cent, 40-60 per cent, or 20-40 per cent of the Area Median Income (AMI), based on the type of unit(s) and targeted household(s).

I. If there is a Home Owner’s Association (HOA) in a development containing Affordable Housing Units, then the HOA fees and dues for the affordable housing units are to be set at rates lower than the Market Rate Units and in rough proportion to the relationship between the Market

Rate Units' lot or unit sizes and the Affordable Housing Units' lot or unit sizes. The developer may request a review of this requirement and the ratio may be adjusted by the Midway City Council. This relative difference or ratio between the market rate units' HOA fees and dues and the Affordable Housing Units' HOA fees and dues will be included in the recorded plat and the development agreement.

J. Affordable units shall only be rented and sold to eligible households earning 80 percent of AMI, or less, based on the type of unit(s) and targeted household(s).

K. If a household's income increases to an amount above 80 percent of AMI while occupying an affordable unit, the household shall not be required to vacate the unit. However, upon vacating the premises, the unit shall be sold to a qualifying household.

L. Midway City or its designee will qualify applicants, determine the selection and prioritization process for obtaining affordable housing and maintain the list of qualified candidates for affordable housing. The process and method used to prioritize candidates for affordable housing in Midway City is subject to review and modification by the Midway City Council.

**Section 16.20.3 Base Requirement/Affordable Unit Equivalentents**

A. Base Requirement: there shall be a base requirement to provide affordable housing throughout all zones of Midway City.

B. This Chapter is primarily intended for owner occupied units. Residential developments that are intended to be long-term rental units will still be required to provide Affordable Housing Units in the amount specified in this Chapter. However, the specific application of the provisions in this Chapter are subject to review and modification on a case by case basis by the Midway City Council.

C. Affordable Unit Equivalentents (AUEs): All new residential development shall be obligated to provide a certain number of Affordable Unit Equivalentents (AUEs), as outlined in this Chapter. An AUE is defined as a "2-bedroom unit with a minimum of 900 square feet of net livable space, measured interior wall to interior wall." One bathroom is defined as a sink, toilet, and shower or bathtub; one half of a bathroom is defined as a sink and toilet. It is recommended in owner occupied housing that unfinished basement space be an element of new construction units where geological conditions permit. When a full-size unfinished basement is included in an owner occupied unit, there will be an AUE bonus as outlined below. Multiple smaller units together may constitute one AUE, or fewer larger units, according to the conversion in Table 1, below:

**Table 1: Affordable Unit Equivalent Conversion**

Unit type	Minimum Livable Size	# of Bathrooms	AUE Conversion	AUE Conversion with an unfinished Basement Bonus
Studio	400 square feet	1	.44	N/A
One Bedroom	650 square feet	1	.72	N/A

Two Bedroom	900 square feet	1.5	1	1.30
Three Bedroom	1150 square feet	2	1.28	1.60

1. If the total number of AUEs in a given number of units contains a decimal, then the developer shall pay a fee in lieu for the fractional obligation only. Excess fractional AUEs on one phase may be deferred for credit in another phase of the same development. There will be no refund on excess AUEs constructed.

Example: if a developer has an obligation of 3.4-AUEs, then 3-AUEs shall be provided, and a fee in lieu paid for the 0.4 remainder, as outlined in Section 6.

2. Example of AUEs in use, using the conversion in Table 1:

Example of how to satisfy Affordable Housing Requirement for 3.4 AUEs

<b>Example 1</b>		
3-Two Bedroom Unit: with unfinished basements	= 3 x 1.30 = 3.90	3.9 AUEs
		No Fee in Lieu. 0.5 AUEs left over Excess AUEs may be deferred to additional phases within the same Development.
<b>Example 2</b>		
2-Two Bedroom Units	= 2 x 1 = 2:	2.0 AUEs
1-Three Bedroom Unit	= 1 x 1.28 = 1.28 :	1.28 AUEs
Total	=	3.28 AUEs
		Rounded to 3.3 AUEs Plus Fee in Lieu 0.1 AUE
<b>Example 3</b>		
Two Bedroom Units:		
3-Two Bedroom Units	= 3 x 1 = 3:	3.0 AUEs
		Plus Fee in Lieu 0.4 AUE
<b>Example 4</b>		
1-Two Bedroom Units	= 1 x 1 = 1:	1.0 AUEs
2-Three Bedroom Unit	= 2 x 1.28 = 2.56 :	2.56 AUEs
Total	=	3.56 AUEs
		Rounded to 3.6 AUEs No Refund on 0.2 fractional excess AUEs

#### Section 16.20.4 Residential Base Requirement

A. Obligation Rate: All market rate residential development in standard subdivisions or PUD with five or more units shall be required to develop or ensure the development of affordable housing at a rate of 10 percent of the units in a development. This Obligation Rate is subject to

annual review and modification by the Midway City Council. Affordable Housing Units developed on-site in fulfillment of this requirement are not included in the density calculation for the project. The affordable housing obligation shall be met concurrently with the issuance of any building permits for market-rate units as outlined in this Section and the development agreement.

1. Calculation of Required AUEs: the total number of allowed market rate units shall be multiplied by the 10 per cent Obligation Rate. The resulting number shall represent the total number of AUEs required of the project, and shall be in addition to the proposed market rate units in the project.
2. Expansion: For existing development which applies for additional units the obligation rates shall be calculated on the net unit increase only.

B. Example Calculation for Residential Development Requirement:

Number of Allowed market Units in Example Development = 23  
Affordable Housing Requirement = 23 x 10% Obligation rate = 2.3  
Total Affordable Unit Equivalents Required = 2.3

### **Section 16.20.5      Off-Site Affordable Housing**

A. Allowances: Affordable housing may be provided off-site if the application meets the following criteria:

1. It has been requested by the developer of a residential development and it has been determined by the Midway City Council, in its sole discretion, that the provision for on-site affordable housing would not be in the best interest of Midway City or the long-term vision for Midway City. These projects shall comply with the following requirements:
  - a. Prior to beginning improvements of the residential development, a suitable alternate site within Wasatch County for the Affordable Housing Units, preferably within Midway City limits, shall be presented by the applicant, and approved by the Midway City Council.
  - b. Prior to beginning improvements of the residential development, a development plan, site plan, final plat if required, elevations, deed restriction, and timeline of construction for the Affordable Housing Units shall be approved by the Midway City Council.
  - c. The applicants may choose to work with an approved non-profit entity approved by the Midway City Council to ensure the provision of their Affordable Housing Unit obligation.
  - d. The applicants may choose to cooperate with an external property to share in the provision of Affordable Housing Units; if so, they shall comply with the requirements in this Section.
  - e. The applicants must demonstrate ownership of conforming lots of record sufficient to build the proposed Affordable Housing Units for each alternative site or demonstrate ownership of existing units which are in good condition, meet the minimum size and room requirements referenced in this Section, are acceptable to the Midway City Council, and are sufficient to provide the proposed Affordable Housing Units.
  - f. All offsite Affordable Housing Units shall be governed by and fully comply with this Section.
2. Residential projects including multiple parcels, and sharing approved densities and obligations. These projects shall comply with the following requirements:

- a. All involved properties shall submit one consolidated application, demonstrating on which parcels market units will be placed, on which parcels Affordable Housing Units will be placed, site plans of each property, and a phasing plan if the project is to be developed in phases.
- b. It shall be demonstrated that public health, safety, and welfare is benefited or that it is in the best interest of Midway City and the long term vision of Midway City by clustering Affordable Housing Units on fewer than all of the involved parcels.

**Section 16.20.6 Fees-In-Lieu**

- A. Applicability: Unless specifically approved at the time of final development approval by the Midway City council, a fee-in-lieu option shall be available only for the fractional remainder of a development’s AUE obligation not met with constructed AUEs, for example the 0.4 remainder of a 13.4 AUE obligation where 13 AUEs were built.
- B. Fee Amount: a per-unit fee-in-lieu amount shall be adopted by the Midway City Council, and shall be reviewed and updated no less often than once every two years.
- C. The fee shall be the per-unit fee multiplied by the fractional remainder after rounding to the nearest tenth of one percent. There are no rebates or refunds for AUE constructed beyond the developer’s AUEs obligation.

**Section 16.20.7 Impact Fee Exemption**

Applicability: If so provided in the Midway City Impact Fee Ordinance in effect at the time a development’s final approval is granted, Affordable Housing Units will not be assessed impact fees by Midway City.

**Section 16.20.8 Allowable Prices**

The monthly rents and initial sales prices of Affordable Housing Units shall be set annually by the Wasatch Housing Authority and based on the annually Adjusted Median Income for Wasatch County (“AMI”) and current mortgage lending rate data. These prices will range for households earning less than or equal to 80 percent of AMI and reflect the appropriate family size for each Affordable Housing Unit type as outlined below:

Affordable Housing Unit Type	Household Size
Studio	1
One Bedroom	2
Two Bedroom	3
Three Bedroom	4

### **Section 16.20.9            Zoning and Density**

A. Affordable Housing Units included within a development will not reduce the allowable number of Market Rate Units nor reduce the open space requirements within a development. The minimum sizes and frontage for the Market Rate Units as required by the zoning within a development will be proportionally reduced by the space used by the Affordable Housing Units. To insure that that this reduction of square footage in the Market Rate Units is spread over the development yet also to leave some flexibility to the design of the subdivision/PUD, the reduction must be limited in any one Market Rate Unit to no more than two times the average square footage reduction from the size required per Market Rate Unit, unless specifically approved by the Midway City Council.

B. Regardless of the zoning for the Market Rate Units within a development, owner occupied Affordable Housing Units in a subdivision may be either single family or twin homes.

C. Within a subdivision, the minimum lot sizes and setbacks for Affordable Housing Units are as follows:

1. Single Family Lots:

Minimum lot size: 6,000 sq feet

60 feet of frontage

Side setbacks: 10 feet and 15 feet

Front setback: 25 feet

Rear setback: 20 feet

2. Twin Home Lots

Minimum lot size: 10,000 sq feet

80 feet of frontage

Side setbacks: 15 feet each side

Front setback: 30 feet

Rear setback: 25 feet

D. Within a PUD, to allow for the inclusion of Affordable Housing Units, the requirements for the density, overall setbacks, the amount of open space, and configurations of the open space may be adjusted or reduced up to 15 percent, or as specifically approved by the Midway City Council.

### **Section 16.20.10            Enforcement/Management/Waiver Option**

A. To insure the completion and occupancy of each Affordable Housing Unit within a standard subdivision, prior to the recording of the plat of the standard subdivision, the Developer is required to comply with either paragraph one or paragraph two below:

1. If the Developer chooses to build and sell the Affordable Housing Units, then:

a. The Developer is required to retain within the developer's construction bond, an amount per AUE equal to the bonding requirement set by Midway City or its designee for each AUE required in the standard subdivision. This amount will be in addition to any warranty bond amount required. This bond requirement will be reduced or released upon the issuing of each occupancy permit for the required AUE. Failure to complete the required Affordable Housing

Units within the timeframe specified in the Development Agreement will result in forfeiture of the bond; and

b. The developer is required to escrow with the Midway City Attorney, a quit claim deed to Midway City for each of the lots or pads required to construct the Affordable Housing Units

c. If the development is entirely designed and built to meet Midway City's affordable housing standards, then separate bonding will not be required.

2. If the Developer uses a Midway City approved outside entity to construct the Affordable Housing Units, then the Developer will deliver in a form acceptable to Midway City, a contract executed with the approved entity that will

a. Transfer to the Midway City approved entity, the deeds for the lots or pads required to construct the Affordable Housing Units; and

b. Obligate the Midway City approved entity to assume the responsibility of building the Affordable Housing Units in a manner consistent with the requirements outlined in this Chapter and the relevant terms of the development agreement.

B. To insure the completion and occupancy of each Affordable Housing Unit within a PUD, prior to the recording of the plat of the PUD, the Developer is required retain within the developer's construction bond, an amount per AUE equal to the bonding requirement set by Midway City or its designee for each AUE required in the PUD. This amount will be in addition to any warranty bond amount required. This bond requirement will be reduced or released upon the issuing of each occupancy permit for the required AUE. Failure to complete the required Affordable Housing Units within the timeframe specified in the Development Agreement will result in forfeiture of the bond.

#### **Section 16.20.11 Definitions**

A. Affordable Housing Unit. For-sale or rental housing, affordable to households whose incomes do not exceed 80 percent of the Area Median Income.

B. Affordable Unit Equivalent. A 2-bedroom unit with 900 square feet of net livable (AUE) space, measured interior wall to interior wall, shall be considered one Affordable Unit Equivalent. Multiple smaller units together may constitute one Affordable Unit Equivalent, or fewer larger units.

C. Area Median Income (AMI). Current median household income for Wasatch County, as determined by the U.S. Department of Housing and Urban Development.

D. Bedroom. A room designed to be used for sleeping purposes that contains closets and meets all applicable Building Code requirements for light, ventilation, sanitation and egress.

E. Deed Restriction. Conditions and covenants included on the deed for a minimum of 50 years that will restrict the sale and occupancy of the property exclusively to persons who meet the affordable housing criteria administered by Wasatch County Housing Authority or its successor.

F. For-Sale Units. Housing units offered for sale including, but not limited to, single family homes, condominiums, town homes, and other common interest developments.

G. Market Rate Unit. A dwelling unit where the rental rate or sales price is not restricted to certain income levels.

H. Rental Units. Housing units offered for rent or lease.

I. Twin Home. Two individual, owner occupied homes that share a common wall and may share common access easement.

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.

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## PLANNING COMMISSION STAFF REPORT

**DATE OF MEETING:** October 16, 2013

**NAME OF APPLICANT:** Midway City

**AGENDA ITEM:** Code Text Amendment of Title 16 for required improvements of Utility Lines

### **ITEM: 6**

**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.**

### **BACKGROUND & ANALYSIS:**

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. These are two of the reasons that the code has been reviewed and they will be discussed in more detail further in this report.

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.*

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 others have not. 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.

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.

Staff 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 while 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 and Power and Light would also charge an impact fee based on the greater amount of amps. If the older homes were not upgraded then we would still have poles 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.

Staff has 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 chose 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.

After reviewing the different available options and discussing these with the Planning Commission over the past couple of months, staff 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.

**POSSIBLE FINDINGS:**

- 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

**ALTERNATIVE ACTIONS:**

1. Recommendation of no change. This action can be taken if the Planning Commission feels that the current language is acceptable and meets the City's vision as established in the General Plan.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for recommendation
  
2. Continuance. This action can be taken if the Planning Commission feels that there are unresolved issues and the issue should be further investigated and researched.
  - 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