

# RECORD OF PROCEEDINGS

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## MIDDLETON CITY COUNCIL MEETING JANUARY 21, 2015

The City Council Meeting of January 21, 2015 was called to order by Mayor Taylor at 6:30 p.m.

**ROLL CALL:** Council Members, Carrie Huggins, Rob Kiser, Beverlee Furner and Council President Lenny Riccio were present.

Mayor Taylor declared a quorum of Council Members present, and proceeded with Council business.

Mayor Taylor introduced the following City officials in attendance: City Attorney Chris Yorgason of Yorgason & Associates and City Deputy Clerk Kandice Cotterell.

**Motion:** Motion by Council President Riccio to accept the amended agenda as posted was seconded by Council Member Furner and carried unanimously.

### **ADMINISTRATIVE ACTION/CONSENT AGENDA:**

3. Mayor Taylor introduced the item and answered Council's questions.

- a. Payroll and miscellaneous accounts payable
- b. Minutes of January 7, 2015.

**Motion:** Motion by Council President Riccio to approve the Consent Agenda items was seconded by Council Member Huggins and carried unanimously.

### **New Business:**

**4a. Consider approving an agreement between the City and developers of Powder River Subdivision No. 2 that identifies the timing for construction of the Willis Road and Wanda Way intersection improvements.**

Mayor Taylor reported the only remaining item being discussed between the developer and City is the cost of improvements to Wanda Way. The City imposed the condition that the developer improve that intersection in 2007, and established a design with a curved entrance from Wanda Way as the road turns north into the subdivision. The City in 2014 designed a ninety-degree (90 %) intersection connecting to Willis Road, with the intent to abandon the portion of Wanda Way parallel to Willis Road. The developer planned to pay \$5,000 and the City's design engineer estimated construction costs for the revised design to be over \$122,000. The developer requested the city waive the 2007 condition that the intersection be improved.

Council President Riccio stated that he believes it would be fair if the developer pays the cost of the original design and the City pays any additional costs attributable to the revised design.

Mayor Taylor added that the City will be the one constructing the north side of Willis Road so will be out in the area doing construction already.

Council Member Kiser asked how long ago the original design was approved. Mayor Taylor answered that it has been five to seven years. Council Member Kiser responded that as time

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goes on standards and codes change, the developer knew that he would have to make improvements ... fast forward seven years and the developer still not done so. Council Member Kiser stated that he would like some time to think about the item before making a decision.

Council President Riccio added that in the long term it is best to get these lots to a final plat and start selling lots so the City would receive real property tax revenue from residences rather than a vacant field with asphalt roads on it. Maybe as an incentive to move forward, it may be appropriate to have a time deadline for the potential savings of the City of absorbing the difference between the revised designs, if it is final platted within a year or two. While it's being phased the final phase can be completed within two years.

Mayor Taylor said he doesn't know if it is effective to choose a deadline since the developer does not control timing of sales, buyers do. He believes it would be fair for the City to pay for the alternative design, and pay the difference of expense between the original and alternate design, and for the developer to pay a portion matching the cost to construct what was originally designed. He then stated that the item will be withdrawn from future agendas until an agreement is reached with the developer.

#### **4c. Consider amending Titles 1-3 City Code, Supplemental Specifications.**

City Attorney Yorgason presented City-proposed amendments to Title 1 and started presenting amendments to Title 3 of the Middleton City Code and answered Council's questions.

Mayor Taylor brought up the issue of door-to-door sales within the City and asked for Council's opinion as to whether or not residents prefer a complete prohibition or recognize a benefit from that type of business marketing approach.

Council President Riccio responded that he believes homeowners have the right to not answer the door, put up a "No Soliciting" sign, or both. He added that a lot of people's livelihood is based on door-to-door sales and, even though a few salesmen can give others a bad name, for the most part they are hard workers just trying to earn a good living. He believes that they should continue to be able to apply for a solicitor's license so the City can monitor and, if it gets out of control, the Council can revisit the issue.

Council Member Kiser agreed. He said that it is easy to put up a sign or not answer your door and believes that prohibiting door-to-door sales would be creating a rule to have to enforce that is not needed.

Council Member Furner echoed both points made, saying it is easiest just to not answer your door.

Council Member Huggins agreed as well to just not answer your door. She added that it seems a little heavy handed and unnecessary to prohibit this marketing approach. Solicitors need to be licensed within the City limits and have to follow the rules. If they don't and it becomes a problem, then the Council should reconsider.

Due to the time, Mayor Taylor postponed the item until later in the meeting.

**Public Comment:** Jessica Patton, Vice-Chair of the Middleton Mayor's Youth Advisory Council (MYAC) gave the MYAC report. She stated that Representative Christy Perry attended the

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January 7, 2015 MYAC meeting and gave a preview of the upcoming legislative session, which is especially exciting as MYAC plans its annual Day-at-the-Capitol. Youth are getting ready for the second annual "Last Man Standing" dodgeball tournament in March, and three MYAC members will be attending the Congress of Cities conference in Washington DC in March.

Mayor Taylor asked the Council Members if there were any subjects or questions they would like Miss Patton to take back to MYAC, and there were none.

Mayor Taylor declared a recess and, after about ten minutes, reconvened the meeting.

**Public Comment- continued:** Tim O'Meara, one of three commissioners of the Middleton Rural Fire District (MRFD), stated MRFD had adopted a capital-improvement plan and ordinance authorizing impact fees, and had a contract with the City to collect those fees, but collection had stopped. The City and MRFD have had many discussions through legal counsel regarding the impact fee for MRFD. The City recently responded to a public records request by the MRFD by supplying copies of building permits issued since January 1, 2013. Mayor Taylor clarified that impact fees had stopped being collected in November of 2011. Commissioner O'Meara stated that the reason those permits were requested was so that he could inform the other Fire District Commissioners how much revenue the District is losing by not collecting its impact fee, which is a separate entity from the City of Middleton and a separate impact fee. He added that there is a joint powers agreement still in effect to collect District impact fees through the City and, as such, the Fire District would like to see that collected again. He said the District commissioners realize, due to the downturn in the economy, it was a good idea to stop the collection of impact fees, and they applaud that decision. However, since collection stopped, the MRFD, as its current impact fee rate of \$725.00 per dwelling unit, has lost \$196,000.00 worth of revenue and they can ill-afford to lose that kind of revenue. He then requested that, as the City reinstates an impact fee for City parks, that the City reinstate for the MRFD also and start collecting those fees.

Mayor Taylor said the City did not have a copy MRFD's ordinance adopting and setting impact fees, and said the City had requested a copy of the ordinance from the MRFD but has not received it yet. Commissioner O'Meara responded that that request is an issue between the two entity's attorneys. Mayor Taylor then added that he hears what Commissioner O'Meara was saying, yet Commissioner O'Meara was here before the Council to request the City start collecting District impact fees again. Commissioner O'Meara stated that he was in attendance as more of an informational item for the Council, to inform Council of what had happened in the past and where the District is now with the impact fee. MRFD is currently reviewing its impact fee and has noticed that the real property tax values are almost identical to where they were in 2008. Mayor Taylor said that the City would like to see the MRFD's ordinance adopting the impact fee that the Fire District is asking the City to collect. Commissioner O'Meara agreed, and stated that is an issue that will be discussed at the next board meeting and will provide it to the City as quickly as possible. Mayor Taylor responded that the City intends to keep its agreements, so, to the extent that the City and the MRFD need to have conversations through attorneys, joint meetings of the Council and District's Board, the City is willing to doing that and wants to do what is right. Commissioner O'Meara stated that the City and MRFD have worked well together and believes they will continue to do so. He stated that the MRFD is in a dire situation, and funding from any source at this time would help.

Mayor Taylor then asked what Commissioner O'Meara viewed as the next steps to help get the ball rolling for the MRFD to collect impact fees. Commissioner O'Meara responded that following the normal procedure at the fire district should resolve the issues with supplying the

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City with the information needed, and then at that point, he does not see any roadblocks to recollecting those fees. Mayor Taylor said the City has requested some information from the MRFD and, after it is received and reviewed, the City will consider the Fire District's request and respond. Commissioner O'Meara said that he has spoken the District Secretary and she is in the process of finding the requested information in hopes of having it for the Board of Commissioners at the District's next meeting. Mayor Taylor asked if, once those documents are provided to the City, it is then incumbent upon the City according to the agreement to perform under the agreement. Commissioner O'Meara answered in the affirmative.

Mr. O'Meara then stated he is also the Director of the Greater Middleton Parks Recreational District (GMRRD), which was also a part of the original joint powers agreement between the City and Fire District. He said, just for the information of the Mayor and Council, GMRRD would like to pursue its impact fee as well. However, due to the changes of the GMRRD board of commissioners, that discussion is considerably further down the line. But therein again, you do have that agreement in place between the GMRRD and the City for those collections and, as far as he knows, has never been repealed. Mayor Taylor asked for clarification if the GMRRD Board had adopted an ordinance based on a capital improvement plan, and Director O'Meara responded that it had. Mayor Taylor then said that the City would like a copy of that ordinance so the City knows the amount of fees the GMRRD is requesting the City collect, and according to which rules and authorization. Director O'Meara said that the aforementioned ordinance will have to be reapproved by the existing board of commissioners as they are, at this time, totally uninformed on impact fees. Mayor Taylor asked, if the GMRRD ordinance is reapproved, then there would not be an assertion that there would be back impact fees the City should have collected? Director O'Meara responded that there would not be back impact fees, it would be from the time that the ordinance comes before City Council and is approved and forward, not retroactively. He also stated that he believes that is the way the MRFD wants to go, it just wants to make sure the City realizes they are losing a lot of revenue.

Mayor Taylor said the City is interested in meeting its obligations under agreements and cooperating with other districts in town so we can all work together well for the benefit of Middleton residents. He then asked if there had originally been meetings or discussions with the different entities, and Mr. O'Meara responded that there had been and he had participated in them. Mayor Taylor asked where the meetings had been held, and Mr. O'Meara stated that they had met wherever it was most convenient whether it be at City Hall, The Sunrise Café, or wherever.

Mayor Taylor then said that he believes the best way to move forward is to have an open and respectful conversation between the City and Fire District, and Commissioner O'Meara replied that he believes this to be a pretty straightforward issue to resolve. Mayor Taylor stated that a good place to start is where the MRFD believes that there were some permits issued that impact fees should have been collected by the City and were not, or were collected by the City and were not forwarded to MRFD. Commissioner O'Meara replied that he does not think that the MRFD would like the City to go back and try to collect monies that weren't collected.

Mayor Taylor then asked if, at the next MRFD Board meeting, the Commissioners would appoint a representative to visit with a representative of the City, and possibly the GMRRD, to see if they can each come to a common understanding to take back to each governing boards, and Commissioner O'Meara agreed that he would do that.

Council Member Huggins asked if the district boundaries for MRFD and GMRRD are each bigger than the City limits, and Mr. O'Meara answered that yes they both were. Council Member

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Huggins followed up asking if there was a way to apply the same fees to its whole district or is it just within the City? Commissioner O'Meara answered that MRFD is currently working on being able to collect impact fees from the County because the Fire Marshall has to approve all building permits within the County before they can be developed and, at that time when builders come for that review, the fire district is looking at collecting the County impact fee per residence. The District does not have that finalized at this time but it is certainly something it is moving towards. Mayor Taylor asked if the Fire District has ever collected fees from County residents in the past, and Commissioner O'Meara answered that it has not been the case before, it was strictly impact fees within City limits collected through the City through the joint powers agreement which the County was not a party to.

Mayor Taylor then asked City Council to appoint a representative to work with the City's legal counsel and have conversations with a representatives and legal counsel from the MRFD and GMPRD as they desire. Council Member Furner said that she would love to represent the City in those conversations.

**Motion:** Motion by Council President Riccio to designate Mayor Taylor and Council Member Furner as representatives for the City in discussions regarding impact fees between the Greater Middleton Parks and Recreation Department and the Middleton Rural Fire District and the City was seconded by Council Member Huggins and carried unanimously.

Mayor Taylor then asked Commissioner O'Meara to please let the City know when the MRFD has a representative, if that is the way the Fire District chooses to go, and then would like to get a meeting scheduled.

#### **4c. Consider amending Titles 1-3 City Code, Supplemental Specifications – continued.**

City Attorney Yorgason finished presenting Title 3 and answered Council's questions.

Mayor Taylor asked if there was any public comment: None

**Motion:** Motion by Council President Riccio to read by title only was seconded by Council Member Kiser and carried unanimously.

#### **4d. Consider approving Prosecution Services Term Agreement with Canyon County, Canyon County Prosecuting Attorney and City of Middleton.**

Mayor Taylor presented the agreement and answered any of Council's questions.

President Riccio asked about the City Prosecutor exercising absolute discretion along with the City's discretion. Mayor Taylor responded that under the agreement the City has to provide the needed information to the County Prosecutor's office in order for prosecutors to be able to do their best job possible.

City Attorney Yorgason stated that the price of this agreement is really good, but one of his concerns is that if the County is not receiving a lot of money, that may influence its priorities. He understands the position the County is taking in the agreement, but thinks that the City needs to monitor going forward to make sure that it is still getting the level-of-service that it wants.

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Mayor Taylor asked if there was any public comment: None

**Motion:** Motion by Council President Riccio to approve Prosecution Services Term Agreement with Canyon County, Canyon County Prosecuting Attorney and City of Middleton was seconded by Council Member Kiser and carried unanimously by roll call vote.

#### **4e. Consider ratifying Resolution 350-15 implementing City impact fee \$1,485.**

City Attorney Yorgason presented the resolution and answered Council's questions.

Mayor Taylor asked if there was any public comment: None

**Motion:** Motion by Council President Riccio to ratify Resolution 350-15 adding the City Park impact fee to the City's fee schedule in the amount of \$1,485 was seconded Council Member Kiser and carried unanimously by roll call vote.

#### **4f. Consider determining whether the revised preliminary plat for Falcon Valley is a substantial change from the previously-approved preliminary plat.**

Mayor Taylor presented the item and answered Council's questions.

Council President Riccio asked if Council can condition it to meet current code if the Council concludes it is not a substantial change, assuming plat notes from the original are added to this revised plat. Mayor Taylor responded no, that Council cannot add a condition if the Council determines there is not a material change.

City Attorney Yorgason added that normally the definition of a material change is whether there is an increased impact to surrounding properties, it's not just "is this a big change or a small change to the revised plat."

Mayor Taylor asked if there was any public comment: None

**Motion:** Motion by Council President Riccio to find that the revised preliminary plat for Falcon Valley is not a substantial change from the previously-approved preliminary plat was seconded by Council Member Furner and carried unanimously.

#### **4g. Consider allowing plat extension and development agreement for Saddle Creek Subdivision.**

Mayor Taylor presented the item and informed Council that all that needs to be addressed in this item is the plat extension, not the development agreement since it was recorded and runs with the land as an obligation on current and future owners of the property. He added that the current property owners have been diligent in renewing the approval of their preliminary plat.

City Attorney Yorgason recommended granting a two year extension.

Mayor Taylor asked if there was any public comment: None

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**Motion:** Motion by Council President Riccio to allow the plat extension for Saddle Creek Subdivision for two years was seconded by Council Member Huggins and carried unanimously.

## **Old Business:**

### **5a. Consider approving Powder River #2 final plat.**

Mayor Taylor withdrew this item from the agenda until the developer and the City can work through the agreement about intersection improvements at Wanda Way and Willis Road.

### **5b. Consider approving TD&D final plat.**

Mayor Taylor withdrew this item from the agenda until the City receives signed easement, agreement and mylar from the applicant.

**Department Comments: None**

## **Mayor's Comments:**

- The Army Corps of Engineers for the Federal Emergency Management Agency submitted the draft revised floodway maps for Willow Creek and Mill Slew. The City will be allowed to review it and submit comments, and those maps will go into effect either January 1, 2016 or 2017. If unchanged, dozens of residences in Middleton will be removed from the floodplain and several residences will become in the floodplain.
- Mayor attended the Nampa State of the City, will be attending Caldwell's, and reminded Council about the Middleton State of the City on February 11, 2015 reminding Council the location changed to the lecture hall at the high school due to the high number of RSVP's that have been received.
- The Centennial Baptist Church in Caldwell invited Mayor and Council to the Public Servants Appreciation Day scheduled on February 15, 2015. Mayor attended last year and really enjoyed it, and encouraged Council Members to attend if they are available.
- The City of Boise received permission from Canyon County to build the Dixie Drain Project, and the City of Middleton has appealed because phosphorus-loaded water discharged from Boise's wastewater treatment plants and floating in the Boise River past Middleton will still negatively affect the water quality, aquatic life, and Middleton residents who enjoy and recreate at or in the river. The appeal hearing is scheduled for Thursday, February 29, 2015.

## **Council Comments:**

- Council Member Kiser informed the Council that the GMPRD is looking for a new board member due to the fact that a current board member has moved out of district boundaries. Mike Okamura was elected President of the Board, and Steve Fillmore is the new Vice President. Council Member Kiser spoke about the new way GMPRD is granting scholarships for the Middleton Soccer Program ... instead of just handing out monies, the District is allowing family members of soccer participants to volunteer time at different events as well as helping out at the District office or at GMPRD parks.

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## Adjourn


Mayor Taylor asked if there was any further business to come before the Council. Hearing none,

**Motion:** Motion by Council President Riccio to adjourn the meeting was seconded by Council Member Kiser and carried unanimously.

Mayor Taylor declared the meeting adjourned at 9:40 p.m.

ATTEST:

  
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Mayor Darin Taylor

  
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Kandice K Cotterell, Deputy Clerk  
Approved: February 4, 2015

