



**CITY OF MIDDLETON
Planning and Zoning Commission**

In Re:

West Highlands Subdivision
February 27, 2015 Application(s)

**Findings of Fact,
Conclusions of Law, and
Recommendation**

SUMMARY OF THE REQUEST

West Highlands Land Development LLC and North West Highlands, LLC (individually and collectively Owner) own certain real property commonly referred to as West Highlands Subdivision that was annexed into Middleton city limits, zoned R-3 for a density of three single-family dwellings per gross acre, and preliminary-platted into residential and common-area subdivision lots.

Coleman Homes, LLC (Developer) has completed or commenced construction of houses on 268 of the originally-approved 962 lots (approx. 28%).

Owner and Developer applied to amend the preliminary plat and development agreement(s) to:

1. Include a lot for dedication to Middleton School District #134 for an elementary school site to compensate for the impact West Highlands Subdivision will have on schools;
2. Include a lot for dedication to the City of Middleton for a publicly owned and maintained park to:
 - A) Satisfy the Owner's and Developer's obligations contained in the *West Highlands Impact Fee Agreement* and *Parks Dedication Agreement* to make available to the public approximately 12.8 acres of improved park land owned and maintained by the West Highlands homeowners association,



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B) Preserve Owner's and Developer's credits contained in the *West Highlands Impact Fee Agreement* and *Parks Dedication Agreement* to offset all City impact fees that would be due for houses built in West Highlands Subdivision,

C) Relieve Owner and Developer from the personal guarantee contained in the *West Highlands Impact Fee Agreement* and *Parks Dedication Agreement*,

D) Render the *West Highlands Impact Fee Agreement* and *Parks Dedication Agreement* null and void; and

3. Vary the dimensional standards for a substantially increased number of lots in West Highlands Subdivision so the total number of residential lots originally approved, remains approximately the same despite the intended lot dedication to Middleton School District #134.

FINDINGS OF FACT

1. **APPLICATION:** An application by the Owner and Developer (Applicant) to amend the West Highlands Subdivision preliminary plat and development agreement was received by the City in multiple parts, and deemed complete and accepted by the City on February 27, 2015 (Application).
 - A. On February 3, 2015, the application to amend the **preliminary plat**, fee, and traffic impact study (except field data) were received from the Applicant's engineer via hand delivery. Becky McKay from Engineering Solutions said she would be unavailable for a February 2015 hearing before the Middleton Planning and Zoning Commission, and said she would be available for the Planning and Zoning Commission meeting scheduled for March 16, 2015.
 - B. On February 5, 2015, the application to amend the **development agreement** and fee were received from the Applicant's engineer via hand delivery on February 3, 2015, and the proposed **Revision #3** to the development agreement was received from Applicant's attorney via e-mail.



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- C. On February 27, 2015, the **traffic impact study including field data** was received from the Applicant's engineer via e-mail. The city missed the deadline by one day to publish notice of the public hearing for this application in the newspaper at least 15 days before the hearing, so the Planning and Zoning Commission meeting was re-scheduled from March 16, 2015 to March 23, 2015.
2. **APPLICABLE CODES AND STANDARDS:** On February 27, 2015, the following codes and standards had been adopted by the State of Idaho and City of Middleton, and are applicable to the Applicant's application:
- A. Idaho Code Title 67, Chapter 65,
 - B. Idaho Code Title 50, Chapter 13,
 - C. Middleton Connects planning and future acquisitions map as recommended by the Middleton Planning and Zoning Commission on October 21, 2013 and approved by the Middleton City Council on November 6, 2013,
 - D. Middleton City Code Titles 6 and 5 as adopted by the Middleton City Council in Ordinance Nos. 527 and 528 on February 19, 2014 and a summary was published on February 27, 2014,
 - E. Middleton Standards for Public Works Construction were approved by Middleton City Council Resolution 352-15 on February 18, 2015, and
 - F. Middleton Master Transportation Plan, 2007.
3. **PUBLIC HEARING NOTICES:**
- A. Published notice Idaho Press Tribune: March 2, 2015
 - B. Letters to Property Owners within 300 Feet: March 2 and 6, 2015
 - C. Letter to Applicant: March 2 and 6, 2015
 - D. Letter to Agencies: March 2, 6, and 13, 2015



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| E. | Property Posted: | March 9, 2015 |
| F. | Commission hearing | March 23, 2015 |
| G. | Commission continued hearing and verbal decision | April 20, 2015 |
| H. | Commission written decision | May 18, 2015 |

4. SUPPLEMENTAL APPLICATION AND RECORD:

- A. On March 5, 2015, the city e-mailed the Applicant some preliminary feedback regarding the proposed development agreement "*Revision #3.*"
- B. On March 10, 2015, the City received a letter from Sawtooth Law Offices PLLC representing Canyon Hill Ditch Company, Middleton Mill Ditch Company and Middleton Irrigation Association (collectively Ditch Companies).
- C. On March 12, 2015, a revised Page 1 of 2 for that portion of the preliminary plat north of Willis Road between Hartley and Cemetery roads (**showing the school property = 15 acres and city property = 3 acres**) was received by the City from the Applicant's engineer via e-mail and hand delivery.
- D. On March 13, 2015, a revised Page 1 of 2 for that portion of the preliminary plat north of Willis Road between Hartley and Cemetery roads (**showing the school property = 9.72 acres and city property = 7.5 acres**) was received from the Applicant's engineer via hand delivery.
- E. On March 16, 2015, a revised development agreement entitled ***Amended and Restated Development Agreement*** was received from Applicant's attorney via e-mail.
- F. On March 19, 2015, the City e-mailed the following documents to Engineering Solutions:
- 1) City Staff Report for March 23, 2015,
 - 2) Horrocks Engineers' Memorandum to the City dated March 16, 2015,
and
 - 3) Civil Dynamics' Memorandum to the City dated March 16, 2015.



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- G. On March 23, 2015, Engineering Solutions e-mailed the following documents to the City:
- 1) Engineering Solutions' letter to the City dated March 23, 2015, and
 - 2) Six Mile Engineering's letter to Engineering Solutions dated March 22, 2015.
- H. On March 23, 2015, the City received a letter from Canyon Highway District No. 4 and hand delivered to Engineering Solutions at the Planning and Zoning Commission hearing on March 23, 2015.
- I. On March 23, 2015 at the Planning and Zoning Commission's public hearing for the Application, testimony was received from the Applicant, City and others.
- J. On March 30, 2015, the City e-mailed to Engineering Solutions the City's water system map for the West Highlands Subdivision area.
- K. On April 2, 2015, the City e-mailed to Engineering Solutions the Horrocks Engineers Memorandum to the City dated April 2, 2015.
- L. On April 6, 2015, the City e-mailed to Engineering Solutions the Precision Engineering designs, road right-of-way descriptions and exhibits, and the CAD files for roundabouts to be constructed at the intersections of Willis and Hartley roads, Willis and Cemetery roads, and 9th Street and Hartley Ln.
- M. On April 9, 2015, the City e-mailed to Engineering Solutions the Horrocks Engineers Memorandum to the City dated April 8, 2015.
- N. On April 14, 2015, Engineering Solutions delivered **revised plats** to the City, and e-mailed the following documents to the City:
- 1) Engineering Solutions' revised plats,
 - 2) Engineering Solutions' letter to the City dated April 14, 2015,
 - 3) Six Mile Engineering's April 14, 2015 letters to Engineering Solutions responding to Horrocks Engineers' April 2 and 8, 2015



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- 4) memorandum, and
4) **Six Mile Engineering's Traffic Impact Study Update** dated April 14, 2015.

 - O. On April 17, 2015, the City e-mailed to Engineering Solutions the *Revised Staff Report for the April 20, 2015 Planning and Zoning Commission Hearing and the City-requested revisions to proposed Amended and Restated Development Agreement.*

 - P. On April 20, 2015, the Planning and Zoning Commission approved minutes for its March 23, 2015 meeting.

 - Q. On April 20, 2015 at the Planning and Zoning Commission's continued public hearing for the Application, testimony was received from the Applicant, City and others.

 - R. On May 18, 2015, the Planning and Zoning Commission approved minutes for its April 20, 2015 meeting.
5. Revision #2 of the development agreement dated March 31, 2009 and recorded in records of Canyon County, Idaho as Inst. No. 2009015525, requires:
- Section 3.2.2.2:
- a) At least 10% at least 70 feet wide
 - b) At least 10% at least 70-79 feet wide
 - c) At least 10% at least 80-89 feet wide
 - d) At least 10 % at least 90 feet wide
- Section 3.2.2.5 For lots identified with hatching on Exhibit G:
- a) Minimum lot width 55 feet
 - b) Minimum interior lot area 5700 square feet, corner lot 6600 square feet
 - c) Minimum interior side setback 5 feet, side street setback 15 feet.
- Section 4.2: Parties agree Developer may be entitled to a credit for impact fees, to be calculated after the adoption of the impact fees ordinance. Parties agree



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Developer is not entitled to credit for services that only impact his development.

Section 4.3: Developer not subject to impact fees or credits for portions of the development where construction has commenced and is pursued according to the terms of the agreement.

6. The Applicant's proposed preliminary plat substantially increases the number of small lots with variances to the dimensional standards required in an R-3 zone.
7. In the *Parks Dedication Agreement* dated December 8, 2011 and recorded in Canyon County, Idaho records as Inst. No. 2011049721, the Applicant promised and covenanted to make approximately 12.8 acres of improved park lands in the West Highlands Subdivision available to the public under the same terms, conditions and rules as West Highlands Subdivision homeowners. The park land was to include at least one major and one minor amenity. "Major amenity" includes children's play equipment, volleyball courts, tennis courts and similar improvements. Minor amenities include barbecue areas, picnic tables and similar improvements. The agreement provides that parks made available to the public do not include clubhouse, swimming pool, pool deck area, gym facility or adjacent restroom improvements. Once parks are final platted and developed, legal descriptions were to be added to Exhibit A attached to the *Parks Dedication Agreement*.
8. The Applicant has neither added park land descriptions to Exhibit A of the *Parks Dedication Agreement*, nor improved park lands and made them available to the public as promised and covenanted to in the *Parks Dedication Agreement*.
9. In the *West Highlands Impact Fee Agreement* dated December 8, 2011 and recorded in records of Canyon County, Idaho as Inst. No. 2011049722, the Applicant promised and covenanted that each of the approximately 12.8 acres of park land owned and operated by the West Highland Subdivision homeowners park to be at least 1.00 acre in size; contain at least one major and one minor amenity; landscaped with grass, shrubs and trees; and connected to each other and to the external boundaries of West Highlands Ranch Subdivision through a system of meandering sidewalks within landscaped corridors at least twenty-five feet wide. Once final platted and developed, each park's description were to be added to



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Exhibit E of the *West Highlands Impact Fee Agreement*.

10. The Applicant has neither added park land descriptions to Exhibit E of the *West Highlands Impact Fee Agreement* nor improved park lands as promised and covenanted to in the *West Highlands Impact Fee Agreement*.
11. In the *West Highlands Impact Fee Agreement* dated December 8, 2011 and recorded in records of Canyon County, Idaho as Inst. No. 2011049722, the Applicant promised and covenanted that transportation improvements would be constructed in accordance with Exhibit D:

Signal at State Highway 44 and Cemetery Road,
Willis Road - 50% of 7,920 linear feet,
Cemetery Road - 50% of 2,162 linear feet, and
9th Street - 4,758 linear feet.

The Applicant's obligation to install a traffic signal at the State Highway 44 and Cemetery Road intersection was limited to a \$175,000 cash commitment that expires December 31, 2015 if the light is not installed by the City or Idaho Transportation Department.

12. There is not enough evidence in the record to determine whether the Applicant has constructed Willis Road - 50% of 7,920 linear feet, and Cemetery Road - 50% of 2,162 linear feet as promised and covenanted in the *West Highlands Impact Fee Agreement* dated December 8, 2011 and recorded in records of Canyon County, Idaho as Inst. No. 2011049722.
13. The Applicant has not constructed 9th Street - 4,758 linear feet as promised and covenanted in the *West Highlands Impact Fee Agreement* dated December 8, 2011 and recorded in records of Canyon County, Idaho as Inst. No. 2011049722.
14. Neither the City of Middleton nor the Idaho Transportation Department intend to install a traffic signal at the State Highway 44 and Cemetery Road intersection, so it appears the Applicant's \$175,000 cash contribution obligation in the *West*



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Highlands Impact Fee Agreement dated December 8, 2011 and recorded in records of Canyon County, Idaho as Inst. No. 2011049722, will expire on December 31, 2015.

15. In the *West Highlands Impact Fee Agreement* dated December 8, 2011 and recorded in records of Canyon County, Idaho as Inst. No. 2011049722, the Parties agreed the then present value of the construction of certain parks and transportation improvements exceeded the total amount of impact fees owed for West Highlands Ranch Subdivision, so the Parties agreed the Developer in that agreement was not responsible to pay City impact fees for houses built in West Highlands Ranch Subdivision.
16. In the *West Highlands Impact Fee Agreement* dated December 8, 2011 and recorded in records of Canyon County, Idaho as Inst. No. 2011049722, the Applicant promised and covenanted to provide one or more financial guarantees in a form approved by the City for park land and transportation improvements in the event Developer applies for building permits before completion of the equivalent level of service of park land and transportation improvements. Acceptable guarantees include, but are not limited to, irrevocable letters of credit and/or cash deposits.
17. The Applicant has completed or commenced construction on 268 lots in the first five phases of West Highlands Subdivision, and has not completed the equivalent level of service of park land and transportation improvements, and has not provided the City with one or more financial guarantees in a form approved by the City as promised and covenanted in the *West Highlands Impact Fee Agreement*.
18. Middleton School District #134 has requested the Applicant donate land in West Highlands Subdivision to the District for an elementary school site since the number of elementary school students from West Highlands will fill an elementary school. An elementary school site in the Middleton School District is fifteen (15) acres and consists of space for the school, parking, playground, and student drop-off and pick-up.
19. The proposed amended preliminary plat (Revision 04/14/2015) for the land north of



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Willis Road between Hartley Lane and Cemetery Road shows a proposed dedication of a combined area of 17.63 acres to the City for a City park and to Middleton School District #134 for a future elementary school site. The City and District are agreeable entering into an intergovernmental agreement to share park land by allowing a portion of an abutting City park also to be used as a playground for elementary school students.

The School District needs approximately eight (8) acres for its school building and parking lot, and the Applicant promised and covenanted to make available to the public approximately 12.8 acres of improved park land, so the plat should show approximately 20.8 acres, rather than 17.63 acres, and is approximately three (3) acres short of being able to achieve the Applicant's goal of the City and School District sharing park land.

20. Donating land to the School District is not the same as improved park land made available to the public, so the "Proposed School Site" shown on the plat (Revision 04-14-2015) does not count towards improved park land made available to the public.
21. The revised preliminary plat and, according to City staff, the Applicant's statements during a meeting between the Applicant and City held in April 20, 2015 to discuss park land and the school site among other subjects, the Applicant does not intend to dedicate approximately 12.8 acres of improved land to the City for a City park.
22. The proposed Amended and Restated Development Agreement paragraph 3.10 seeks to limit the Applicant's contributions to the cheapest transportation option. The City has a transportation plan and future land use map, and the contributions should be consistent with the plan and map, not the cheapest option.

CONCLUSIONS OF LAW

1. If a Finding of Fact is deemed to be a conclusion of law, then the Finding of Fact is incorporated here as if restated in full.



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2. The Application was received by the City in multiple parts, and deemed complete and accepted by the City on February 27, 2015.
3. The codes and standards applicable to the Application are stated in the Findings of Fact.
4. Notice of the Application, and of the Planning and Zoning Commission's public hearing to consider the Application, were mailed, published and posted according to law.
5. The Planning and Zoning Commission's public hearing considering the Application was conducted according to law.
6. The City has kept a record of the Application and related documents, and the Planning and Zoning Commission's public hearing, according to law.
7. The Applicant is in breach and default of the *Parks Dedication Agreement* dated December 8, 2011 and recorded in Canyon County, Idaho records as Inst. No. 2011049721, because the Applicant has neither added park land descriptions to the Parks Dedication Agreement, nor improved park lands and made them available to the public, despite having constructed or commenced construction on about twenty-five percent (25%) of the Applicant's approved residential lots.
8. The Applicant is in breach and default of the *West Highlands Impact Fee Agreement* dated December 8, 2011 and recorded in records of Canyon County, Idaho as Inst. No. 2011049722, because the Applicant has neither added park land descriptions to the West Highlands Impact Fee Agreement, nor improved park lands and connected them to each other and to the external boundaries of West Highlands Ranch Subdivision through a system of meandering sidewalks within landscaped corridors at least twenty-five feet (25') wide.
9. The Applicant has neither added park land descriptions to Exhibit A of the *Parks Dedication Agreement* or to Exhibit E of the *West Highlands Impact Fee Agreement* nor improved park lands as promised and covenanted to in the *West Highlands Impact Fee*



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Agreement, so the Applicant owes impact fees for houses constructed in West Highlands Subdivision.

10. The Applicant has not constructed certain parks and transportation improvements as promised and covenanted to in the *West Highlands Impact Fee Agreement* dated December 8, 2011 and recorded in records of Canyon County, Idaho as Inst. No. 2011049722, so the value of constructed park and transportation improvements does not exceed the total amount of impact fees owed for West Highlands Ranch Subdivision, and the Applicant should pay City impact fees for houses built in West Highlands Ranch Subdivision.

11. Based on the Applicant's expressed intent to not dedicate approximately 12.8 acres of improved land to the City for a City park, the proposed Amended and Restated Development agreement should be changed to include a dedication of fifteen (15) acres to the School District, no dedication of land to the City for a City Park, and a reaffirmation that the *Parks Dedication Agreement* dated December 8, 2011 recorded in the records of Canyon County, Idaho as Inst. No. 2011049721, and the *West Highlands Impact Fee Agreement* dated December 8, 2011 recorded in the records of Canyon County, Idaho as Instrument No. 2011049722, remain in full force and effect.

12. The proposed Amended and Restated Development Agreement paragraph 3.10 seeks to limit the Applicant's contributions to the cheapest transportation option. The City has a transportation plan and future land use map, and the contributions should be consistent with the plan and map, not the cheapest option.

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law, the Planning and Zoning Commission approves the application(s) by West Highlands Ranch Development LLC, North West Highlands LLC, and Coleman Homes LLC to amend the West Highlands Ranch Subdivision preliminary plat and development agreement(s) subject to the following conditions:

A. Regarding the Traffic Impact Study and Intersection Improvements



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- 1) The Traffic Impact Study Update be revised using a 2025 build out year and the update shall include in Table 9, Page 18, an analysis of the intersection of W. 9th Street and Cemetery Road since W. 9th Street will be extended east to Cemetery Road at the time West Highlands Ranch Subdivision is developed.

- 2) The Applicant acquire and construct, or pay to acquire and construct, the right-of-way and following off-site improvements rationally related and roughly proportional to the impacts of West Highlands Ranch Subdivision on the City's transportation system, with construction or payment at the times and percentages (using PM Peak Hour) stated below or to be determined upon receipt of a traffic study update accepted by the City.
 - a) _____ percent (%) of the Willis Road / Hartley Lane roundabout designed by the City by July 15, 2017, the year a new elementary school surrounded by West Highlands Subdivision is anticipated to open.

 - b) _____ percent (%) of the Willis Road / Cemetery Road roundabout designed by the City by July 15, 2021, the year a new elementary school is anticipated to open east of The Estates Subdivision, being simultaneously developed by the Applicant across Cemetery Road east of West Highlands subdivision.

 - c) _____ percent (%) of the W. 9th Street / Cemetery Road roundabout designed by the City at the time the phase nearest to Heights Elementary School is developed.

 - d) One-hundred percent (100%) of W. 9th Street from the Applicant's property to Cemetery Road at the time the phase nearest to Heights Elementary School is developed.

 - e) _____ percent (%) of intersection improvements at the intersection of State Highway 44 and Emmett Road (using Idaho



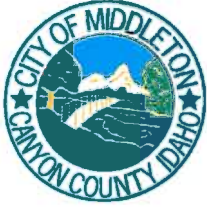
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Transportation Department's improvement plan) by _____.

- f) _____ percent (%) of intersection improvements at the intersection of State Highway 44 and Hartley Lane (using Idaho Transportation Department's improvement plan) within sixty (60) calendar days of City Council's approval of the amended preliminary plat.
- g) _____ percent (%) of intersection improvements at the intersection of State Highway 44 and Cemetery Road (using Idaho Transportation Department's improvement plan) by _____.

B. Regarding the Proposed Amended Preliminary Plat (Revision 04-14-2015)

- 1) The preliminary plat is revised to address the City's comments detailed in Civil Dynamics' Memorandum to the City dated April 17, 2015.
- 2) The preliminary plat is revised to include designs using roundabout plans, drawings and right-of-way descriptions the City provided the Applicant on April 6, 2015 for the following intersections:
 - a) Willis Road and Hartley Lane,
 - b) Willis Road and Cemetery Road,
 - c) 9th Street and Hartley Lane, and
 - d) 9th Street and Cemetery Road.
- 3) The preliminary plat is revised to show 15 acres in West Highlands Ranch Subdivision as an elementary site and convey that 15 acres to Middleton School District #134 within thirty (30) calendar days of City Council's approval of the amended preliminary plat.
- 4) The preliminary plat is revised to incorporate Active Transportation (formerly commonly referred to as Complete Streets) and cycle track.
- 5) The construction drawings include a sheet(s) for road striping and signage



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that includes crosswalks, and bicycle lanes along Willis Road, Hartley Lane, Cemetery Road, W. 9th Street, and Meadow Park Boulevard. All cross walks to be thermoplastic, not painted.

- 6) The Applicant review the proposed preliminary plat with the bus company providing service to the School District and show the likely bus stops, if any, on the preliminary plat (even though they may change over time) seeking to eliminate bus stops on West Highlands Parkway, Willis Road, Hartley Lane, Cemetery Road, W. 9th Street, and Meadow Park Boulevard.
- 7) The preliminary plat be revised to remove direction indicators (W, E, N, S) and name differently each east-west and north-south road segment.
- 8) Cluster mailbox units are installed by the Applicant to provide for postal delivery to all lots less than 70 feet wide, and include in construction drawings the location of cluster mailbox units with a symbol in the legend, and a detailed description of a cluster mailbox unit by note and drawing.
- 9) For Willis Road, Hartley Lane, Cemetery Road, W. 9th Street, the Applicant upon each final plat approval grant an easement(s) to the City for the area including the sidewalk for the purpose of sidewalk, utility and other transportation-related maintenances and improvement, and show those anticipated easements on the preliminary plat. Each easement shall encompass the entire area from the right-of-way line to two feet behind the back edge of the sidewalk. Sidewalks shall be located wholly within an easement.
- 10) The Applicant stub water and sewer service lines to the Middleton Cemetery District property, and show the stubs on the preliminary plat and construction drawings.
- 11) The Applicant stub water and sewer service lines to the property owned by John Olsen, and show the stubs on the preliminary plat and construction drawings.



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C. Regarding the Proposed Amended and Restated Development Agreement


- 1) The Applicant signs an amended development agreement agreed-to by the City Council.

[end of text]



Jeremy Fielding, Chairman
Planning and Zoning Commission

Attest:



Kandice Cotterell
Deputy Clerk

