



ADMINISTRATIVE REVIEW AND REPORT
City Council, City of Middleton
October 3, 2018

1. **APPLICANT** City of Middleton, P.O. Box 487, Middleton, Idaho 83644
2. **APPLICATION** Accepted September 5, 2018.

A request by the City of Middleton to terminate its development and related agreements with:

Part 1 Barclay Associates LLC as successor to Riverbend Estates LC relating to the proposed **River Run Subdivision**, Inst. Nos. 2007068924 and 2010026501, records of Canyon County, Idaho.

Part 2 Gary T. and Lisa D. Brown relating to the **Saddle Creek Subdivision**, Inst. # 200683378 records of Canyon County, Idaho.

Part 3 Various entities relating to the **West Highlands Subdivision** Black Cat Development LLC, Inst. #200628160 and #2007066334; West Highlands LLC and Coleman Homes LLC, Inst. #2009015525; West Highlands Sub. Homeowners Assoc. Inc., Inst. #2011049721; and West Highlands LLC and Coleman Homes LLC, Inst. #2011049722 records of Canyon County, Idaho

3. **NOTICES OF PUBLIC HEARING**

Published notice Idaho Press Tribune	September 14, 2018
Letter to Property Owners within 300'	September 13, 2018
Letter to Agencies	September 13, 2018
Properties Posted	September 27, 2018

4. **APPLICABLE CODES AND STANDARDS**

Idaho Code 67-6511A
Middleton City Code (MCC) 6-2-3.G., Ord. 293 adopted Feb. 23, 2000
MCC 1-14-1, 2, and 4; 1-15-1, 2 and 5, Ord. 609 adopted July 18, 2018
MCC 5-2 and 5-4

5. **AGENCY RESPONSES TO DATE** None.

6. **OTHER RESPONSES TO DATE**, and attached to this report.

- A. A Termination of Development Agreement signed by Steve Zimmerman, President of Barclay Associates LLC, successor to Riverbend LC which was the developer of River Run Subdivision.
- B. A letter from Gary and Lisa Brown requesting reconsideration of the city's denial of their request to extend approval of the preliminary plat for Saddle Creek Subdivision until October 16, 2020, and requesting the related development agreement not be terminated.
- C. A letter from Rick and Crystel Menefee, neighbor to the north of Gary and Lisa Brown, informing the city the Menefee 23.5 acres has been listed for sale the past year, several serious offers were received in the past three months, and they have no concerns with the extension of the Browns' plat.
- D. A letter from attorney Jeff Bower representing the owner and developer of West Highlands stating the West Highlands approved preliminary plat is valid and requesting this item be removed from the agenda.

7. **ADMINISTRATIVE ANALYSIS**

Part 1 River Run Subdivision. The city owns all of the real property that is the subject of the Development Agreements and Addendum No. 1, so the city's interest as the city and as successor-in-interest to the developer have merged. The city intends to use the property for city public water, wastewater, transportation and park infrastructure and improvements. The city does not intend to construct mixed-use, multi-family, or 333 residential units as proposed at the time the agreements were signed. The city acquired the property from Barclay Associates LLC who signed a Termination of Development Agreement that was recorded as Inst. #2018-039404 in records of Canyon County, Idaho.

Part 2 Saddle Creek Subdivision. The development was approved in 2006, and the Browns requested and received least the following extensions: 2009, 2012, 2014, 2016. City council on September 19, 2018 denied the developer's request for another extension. The preliminary plat expires on October 16, 2018. City standards for improvements along Lansing Lane section line, and E. 9th Street quarter-section line, have substantially changed since the subdivision was approved, and now include wider right-of-way, paved bicycle lane and pedestrian path.

Part 3 West Highlands Subdivision. City Council approved a preliminary plat for West Highlands subdivision on March 15, 2006, and an amended preliminary plat on May 6, 2009. Paragraph 3.2 of the Development Agreement and paragraph 3.2 of the

Development Agreement Revision #1, state:

The development shall comply with the Middleton Comprehensive Plan and City Code, as they exist in final form at the time the Development Application was approved, except as otherwise provided by Idaho Code.

The City Code 6-2-3.G. adopted by Ordinance 293 on February 23, 2000 and in effect on March 15, 2006 and May 6, 2009, states:

Phased Developments: Application for development of a proposed subdivision in phases may be made if the subdivision is to include fifteen (15) or more lots, parcels or sites.

1. In the event that the development of the proposed subdivision approved in preliminary plat form is to be completed in more than one phase, the subdivider may file and obtain certification [i.e., city signature] of the acceptance of successive final plats for **continuous segments of the preliminary area** without reapplication for preliminary plat approval, provided that **application for final plat approvals are submitted in successive intervals of not more than one year each, and provided that development standards adopted by the city subsequent to preliminary approval are followed** (bold added for emphasis).
2. Filing a final plat(s) on phased developments may require modification of the conditions as approved by council. Council reserves the right to modify and/or add conditions to the final plat(s) to conform with adopted policies and/or ordinance changes for each phase submitted after one year following the preliminary plat approval.
3. All items in each phase shall be completed before council approval will be given for any subsequent phases.

Phases 1, 2, and 3 were constructed between 2006 and 2011. The developer and city signed the Impact Fee Agreement, and the developer on behalf of the subdivisions' homeowners signed the Parks Dedication Agreement in December 2011.

In 2012, the city amended city code to allow successive final plats for phased developments to be accepted within two (2) years, rather than (1) one year.

Phases 4 and 5 were constructed between 2012 and 2015, at which time the developer filed an application to amend the preliminary plat approved in 2009. The developer withdrew that application after the planning and zoning commission hearing and before the city council hearing; the preliminary plat approved in 2009 was valid.

Phases 6, 7 and 8 were constructed in 2016. Phase 8 final plat application was accepted by city on August 28, 2015, Phase 8 was the last phase constructed. The city accepted Phase 9 final plat application on November 18, 2016. The city accepted Phase 10 final plat application on December 30, 2016.

The Idaho Supreme Court on February 15, 2017 decided in favor of the city in a lawsuit filed by the city in 2015 against the developer to determine that the Parks Dedication Agreement was valid.

In August of 2017, I notified the developer that I would not add to city council agenda any final plats north of Willis Road until the developer improved the intersection at Willis Road and Hartley Lane according to the conditions of subdivision approval, and until the developer updated its traffic impact study and paid its proportionate share of improvements at the following three intersections: State Highway 44/Emmett Road, State Highway 44/Hartley Lane, and State Highway 44/Cemetery Road.

On December 20, 2017, the developer and city agreed on the developer's proportionate share of costs to improve the three intersections along State Highway 44, and the developer agreed to pay the city \$350,000 as its proportionate share for the entire subdivision. See attached emails verifying agreement.

The city accepted Phase 11 final application on December 27, 2017.

Ordinance 293, adopted by the city on February 23, 2000, was in place at the time the development application was approved, and applications for final plat approvals were to be continuous segments of the preliminary plat area, and submitted in successive intervals of not more than one year each.

The applicant's attorney's letter states, and city records confirm, more than one year elapsed between: the city's acceptance of Phase 8 final plat application on August 28, 2015 and Phase 9 on November 18, 2016; and the city's acceptance of Phase 9 final plat application on November 18, 2016 and Phase 10 on December 30, 2016.

Also, Phases 9 and 10 are not "continuous segments of the preliminary area" as required by city code at the time the development application was approved.

The developer has breached the Development Agreement three times. Pursuant to Development Agreement paragraph 6.1, Default, the Development Agreement and revisions can be terminated by city council.

What portion of the \$350,000 is owed to the city for Phases 1-8 if no phases are built on the north side of Willis Road? That portion is calculated by subtracting lots constructed from the total subdivision lots, determining the percent constructed,

and multiplying that percent by the agreed-to proportionate share for the entire subdivision ... 968 (100%) total residential lots – 398 (41%) Phases 1-8 residential lots x \$350,000 = \$143,500.

In February 2018, the city invoiced the developer \$16,130.80 to reimburse the city for city-incurred expenses to pay the contracted City Engineer to review plans and construction for West Highland Subdivision Phases 6, 7, and 8. The developer owes the city \$159,630.80 (\$16,130.80 + \$143,500).

8. **PLANNING AND ZONING COMMISSION RECOMMENDATION.** The Planning and Zoning Commission did not conduct a public hearing to consider the city's application to terminate development and related agreements, so city council is required by state law to conduct two public hearings.

9. **CONCLUSION:**

Part 1 River Run Subdivision - The development and related agreements are obsolete.

Part 2 Saddle Creek Subdivision – Twelve (12) years have passed since the subdivision was approved, and development standards are substantially different now. The preliminary plat expires on October 16, 2018.

Part 3 West Highlands Subdivision – Under current city code, less than two years elapsed between the time Phase 8 final plat application was accepted by the city on August 28, 2015 and Phase 9 final plat application was accepted November 18, 2016, and the preliminary plat approved in 2009 would be valid. However, the preliminary plat expired on August 29, 2016 according to the terms of the Development Agreement and revisions. A default can be declared and the agreements terminated. The developer owes the city \$159,630.80.

Reviewed and Reported by Darin Taylor, September 28, 2018.