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**MIDDLETON CITY COUNCIL  
JULY 7, 2021**

The Middleton City Council meeting on July 7, 2021 was called-to-order at 5:32 p.m. by Mayor Rule.

**Roll Call:** Mayor Rule, Council President Kiser, Council Members Huggins, Garner and O'Meara and were all present. City Attorney Mark Hilty was also present.

Pledge of Allegiance, Invocation: Jim Taylor

**Action Items**

**A. Approve Agenda**

**Motion:** Motion by Council President Kiser to approve the Amended Agenda as posted July 2, 2021 at 5:00 p.m. Motion seconded by Council Member O'Meara and approved unanimously.

**Information Items:**

**1. WWTP Blower/Dewatering Project Update – Kasey Ketterling (T-O Engineers)**

Mayor Rule introduced Kasey Ketterling from T-O Engineers. Kasey gave an update on the projects. No decisions were made.

**2. Logo Contest – Mayor Rule**

Mayor Rule explained that the City would like to do a logo contest to have a new logo for the City created. He said he will bring it back as an official action item, but just wanted Council to be aware of what he is proposing. No decisions were made.

**Action Items**

**1. Consent Agenda (items of routine administrative business)**

- a. Consider approving minutes for City Council June 16, 2021 regular meeting.
- b. Consider approving minutes for City Council June 22, 2021 special meeting.
- c. Consider ratifying payroll for June 18, 2021 in the amount of \$115,341.42 and July 2, 2021 in the amount of \$81,383.71.
- d. Consider approving accounts payable thru June 28, 2021 in the amount of \$361,543.86.
- e. Consider approving FCO-Todd Campbell/Stonehaven Commercial 12.5 acres.

Mayor Rule called the items. Council President Kiser said he had gone through the accounts payable payments. There were no concerns.

**Motion:** Motion by Council President Kiser approve Consent Agenda Items 1a - e. Motion seconded by Council Member O'Meara and approved unanimously.

**2. Swearing in of new police officer Brent Watson – Sergeant Hilkey**

Mayor Rule swore in the newest police officer into the MPD. Officer Watson was pinned by his wife and Sergeant Hilkey.

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Council President Kiser said that he has had the opportunity to do a ride along with Officer Watson and he *is* the kind of guy we want in our city. Mayor Rule said anyone who wears a bullet proof vest is not paid enough in his opinion.

**3. Consider approving a quote from Proforce Law Enforcement to exchange the MPD service pistols from 45 caliber to 9 mm in an amount not to exceed \$10,345.40. – Sergeant Hilkey**

Mayor Rule called the item and Sergeant Hilkey explained why the police are requesting to exchange the MPD service pistons. The newer pistols are lighter, conform to one's hand, cheaper than the Glock pistol. The ammo cost is less and each pistol can carry 59 rounds as opposed to 30. The sites are better and don't deteriorate with time like other pistols. He feels this is a very good purchase and will serve the MPD well in the future.

Council discussion:

*Council President Kiser:* Has no problems with this purchase.

*Council Member Huggins:* Is this in the budget? Sgt. Hilkey – Yes.

**Motion:** Motion by Council President Kiser to approve a quote from Proforce Law Enforcement to exchange the MPD service pistols from 45 caliber to 9 mm in an amount not to exceed \$10,345.40. Motion seconded by Council Member O'Meara and approved unanimously.

**4. Consider approving quote from Integrity for proposed Park Place Lift Station in an amount not to exceed \$16,450.00. – Bruce Bayne**

Mayor Rule called the item and Public Works Director, Bruce Bayne explained the item. This will allow for the Park Place lift station to be polymer coated in order to fix the degrading concrete. The Lift station will be offline for 2 days during the repair and then will be up and running again. This item is budgeted for.

**Motion:** Motion by Council President Kiser to approve a quote from Integrity for proposed Park Place Lift Station in an amount not to exceed \$16,450.00. Motion seconded by Council Member Garner and approved unanimously.

**5. Consider approving quotes from Integrity Inspection Solutions, Inc. for I&I (Inflow and Infiltration) in the city's phase 2 CCTV area in an amount not exceed \$22,775.00. – Bruce Bayne**

Mayor Rule called the item and Public Works Director explained is this part of the budgeted \$150,000.00 set aside for repairs. They have abandoned the north project and fixed issues elsewhere.

**Motion:** Motion by Council President Kiser to approve quotes from Integrity Inspection Solutions, Inc. for I&I (Inflow and Infiltration) in the city's phase 2 CCTV area in an amount not to exceed \$22,775.00. *Motion seconded by Council Member O'Meara and approved unanimously.*

**6. Consider approving quote from Xylem for UV Bulbs for Waste Water Treatment**

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**Plant in an amount not to exceed \$18,925.00 – Bruce Bayne**

Mayor Rule called the item and Public Works Director, Bruce Bayne explained that every year the city replaces the bulbs in the UV system that kill the remaining bugs after the wastewater has been treated, before it is discharged back into the river. The city only replaces the bulbs needed, and it is a budgeted item.

**Motion:** Motion by Council President Kiser to approve a quote from Xylem for UV Bulbs for Wastewater Treatment Plant in an amount not to exceed \$18,925.00. Motion seconded by Council Member Garner and approved unanimously.

- 7. Public Hearing: An application by Robert Brian Burnett, Drake Investments, Deep River Investments & Deep Water LLC for annexation/rezone, preliminary plat, development agreement modification, and comprehensive plan map amendment with respect to the River Pointe Subdivision located at 10481 Hwy 44, 0 Hwy 44, and 0 Duff Lane. The proposed preliminary plat consists of seven commercial lots, 92 single family homes, 67 garden/patio homes, 115 townhomes and 44 common lots on 88.51 acres of land. As to the 14-acre Duff Parcel (Tax Parcel No. R33935010A/0 Duff Lane), applicant is seeking (1) annexation, (2) rezone to R-3, and (3) comprehensive plan map amendment to “residential” designation. As to the 74-acre parcel located at 10481 Hwy 44, Applicant is seeking a comprehensive plan map amendment to designate uses “commercial” and “residential”. – Roberta Stewart**

Mayor Rule called the item and opened the public hearing at 6:20 p.m, and City Planner, Roberta Stewart said she needed to present 4 items to be put in the record as Exhibits.

- Exhibit A: Draft Minutes from June 7, 2021 Planning and Zoning Meeting.
- Exhibit B: Letter from an Attorney – Matthew Hoffman.
- Exhibit C: City Engineer Recommendation for approval.
- Exhibit D: Letter in opposition – Lori & Sterling Smith.

Roberta then presented a power point presentation of the staff report on the project (Exhibit 1).

Pg. 5 – Kennedy Drain was put in through the DA.

Pg. 8 – Need to address legal issues with a fiscal analysis, stating that the city needs more financial information prior to making a decision. These are county residents, not city residents, she is not sure what their stake with the 14 acres is at this point.

Pg. 9 – Very large application. It was submitted to the city in November 2020, Noticed for a public hearing December 2020. There have been 3 neighborhood meetings, and it has taken many months to review the application, so many things have sent the applicant back to the drawing board. For the record it was told to her that the 2<sup>nd</sup> neighborhood meeting was held at the Riverbend Park Subdivision and at the request of the residents moved inside of one of the residents’ garage. The Engineer was present, but the developer was locked out of his own meeting.

The Legal opposing this project will try to argue council cannot hear the application because there is no signed recommendation from the P&Z. There is nothing in state or city code that supports this. There is no violation in Roberta’s opinion.

Mayor Rule asked why there was so much Notice and Information? Roberta said that in the event of judicial action, the applicant and the city are setting a legal record. As a result, the applicant has been asked to do multiple meetings when items have changed, or too much

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time has passed.

City Attorney Mark Hilty stated in response to the attorney's arguments:

- Argument on procedure that P&Z didn't have an actual DA to review at their hearing.

If the P&Z initiated the creation of the DA in the middle of the public hearing, then there would have needed to have been a pause placed until the actual DA could be drafted and brought back before the commission. Because the DA was created in 2006 and this is a DA modification, the recommendations can be brought to the council, without the actual document being drafted.

Idaho State Code 67-6509 lays out a two-process system for the P&Z and City Council. The recommendation is made by P&Z with the ultimate written conclusions ultimately adopted by City Council for an official decision. At which time the timeline for the final order is issued.

***Applicant presentation:***

*Jon Breckon and Andrew Knowles: Breckon Land Design presented a PowerPoint presentation on the proposed project (Exhibit 2).*

***Questions to Applicant:***

**Mayor Rule opened the public comment:**

*Matt Wilke: In Favor:* He has a background in real estate. He has looked at this property and with the zoning there is a potential for 900 units. They are only requesting 274 lots with 17% green space. 10 ft wide open walking paths, a 55+ older community. The applicant is asking for lower density than is allowed in the M-U space. The project fits well with the community and has sat vacant for the last 13 years with an M-U zoning. He understands the 1-acre sites of the neighbors, however one acre lots are not feasible or cost effective to bring city sewer and water services to such large lots.

*Caleb Lakey: Neutral:* ITD Regional District Administrator. His concerns are that this development doesn't show the ITD Alternate Route/Bypass as part of the plan. How does this development tie into the future development to the west and south with regards to the bypass?

*President Kiser asked:* Is there a timeline for the alternate route?

*Caleb Lakey:* Prior to recently there has been no funding for this a project of this size. The legislature has made funding available and the ITD board has discussed this. This is only pending the conclusion of the environmental study.

*President Kiser:* Hard to agree or plan for a bypass when hearing about it for the last 20 years. He understands there are hurdles, but when we don't see anything being done, it is hard to plan for it.

*Mayor Rule:* When is the Environmental Study scheduled to be done?

*Caleb Lakey:* It is projected to be finished at year end of 2022.

*Nathan Hilkey:* As a resident he is in favor of the project. As an officer, he is opposed, the department doesn't have enough officers to keep up with it.

*Council Member Huggins:* The police have a Police Impact fee in place that goes toward Capital/growth related projects. With this fee the city should see some relief in the budget.

*City Administrator Crofts:* It costs about \$10,000 to build an new officer. And new officers are funded with Impact Fees.

*Matthew Johnson: Opposed:* Lawyer representing the Riverbend Homeowners. He stated that his goal is to provide constructive criticism. He outlined his concerns as stated in the letter submitted (Exhibit B)



- City codes in regard to development agreement. And the fact the P&Z commission never received the completed DA is a problem and he believes it is a flawed reading that the form does not matter.
- There is no timeline for the phasing plan.
- He believes 67-6509 says that City Council may not notice an application without a written FCO. He believes there are substantive and due process errors with this application.
- Other concerns are the noise, lights, traffic, frontage improvements on Duff Lane and that the DA is new for the 14 acres.

**Mayor Rule called a brief recess at 8:13 p.m. and resumed the meeting at 8:22 p.m.**

*Mayor Rule:* He has never known historically of timelines of phasing put on by cities.

*Matthew Johnson:* City of Cascade – River District Subdivision (Mayor Rule asked Matthew to forward him that information)

*Mayor Rule:* There is no driveway access onto the main connector (E. Sawtooth Lake)

*Council Member O'Meara:* The name of the connector was changed from Yukon to East Sawtooth Lake.

*Matthew Johnson:* Concerned that the preliminary plat has had changes made even from the time it was presented to P&Z.

*Council Member Huggins:* Is the concern that the name of the streets was changed, or was the content changed?

*Matthew Johnson:* He hasn't looked at it close enough to know if substantial changes were made.

*Lori Smith: Opposed:* There were actually 4 neighborhood meetings. Each meeting had different plat ideas presented. There were changes to the collector road plan to alleviate traffic to SH44. The collector road ends at Duff Lane – Duff Pond which is a 2-lane road that belongs to CHD4. She is concerned that the 14 acres will affect the surrounding county property adversely. She doesn't think that just because she isn't a citizen of Middleton City her voice shouldn't count.

*Gina Hanley: Opposed:* Developer said to neighbors that if they opposed him in any way he would build apartments. She requested he not attend the 2<sup>nd</sup> neighborhood meeting.

*Mike Graefe: Opposed:* He is not opposed to the subdivision; he is concerned about the roads and the traffic. We don't have time to wait for the future. The future is now.

*Rick Francis: Opposed:* The January Middleton Gazette stated that there are 5,000 building permits. What does this do to for cars? Going from a 5 to 1 home ratio closes off the space. We haven't heard from the County in terms of how to handle Duff Lane.

*Mayor Rule:* Point of clarification, the city has about 300 building permits and 5,000 lots in some form of planning.

*Marilyn Giacalone: Opposed:* Duff Lane is a neighborhood. She is concerned about how the traffic will affect the neighbors.

*Matthew Hoffman: Opposed:* He is concerned about the rapid pace of growth. He thinks that HSB 389 should be considered and that a fiscal analysis should be completed prior to additional growth. The idea that growth helps to pay for growth is flawed. We should be doing a fiscal analysis to know what to charge. As far as the transit orientation on the

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comprehensive plan, Valley Ride is getting out of transportation, so the comp plan needs to change.

*Mayor Rule:* It is hard to know what exact costs of the future will be.

*Armando Fernandez: Opposed:* He lives directly behind the 14 acres; he is concerned about building on in a flood zone. With the elevation of the homes to be built, that could cause flooding to the neighboring properties. He thinks the subdivision if approved will add a potential of 1500 additional cars to the area. The collector road is 60 ft with no driveways and will funnel down to 25 ft Duff Lane. Several homes have driveways directly off of Duff Lane. He is concerned that it will create an emergency scenario where people can't get out in the event of an emergency.

*Applicant Rebuttal:*

*Jon Breckon: Breckon Land Design*

- They did account for the alternate route.
- They have been working on the project since 2020 and have had to work with many different agencies. One of the requirements was to extend the collector road to Duff Lane.
- They have proposed a landscaped berm or fence. They will account for stormwater drainage in their plans, and everything will comply to city code requirements.
- Comprehensive Plan calls for high density-multi-family product that will not be ideal for the area, so they are requesting the amendment to achieve a lower density.
- Phasing-This project was initially submitted last fall with the first plan and there have been many revisions. The plan before council tonight is the one that was presented to P&Z.
- Neighborhood meetings – Different plans presented to address all comments from different agencies.
- Impact Fee requirements - \$374,072.00 to improve SH44 and Duff Lane (CHD4)
- They are required to widen their path to match the development to the south.
- Parking is an issue at Duff Pond, and they have presented an idea for a parking lot on the west side of Duff Lane across from Duff Pond.
- Effects of Sewer on adjacent development. They will connect to city services, this will all be engineered, they will have to raise the elevation to get it out of the flood plain. Connection to city utilities is typically preferred.
- They have moved amenities around to provide open space/buffer space.
- 5 to 1 ratio. The 5 acre lots are much further to the south, so this provides a step-down approach.
- This provides a great solution to the traffic problems.
- If Septics flood it is usually because they were not engineered properly. He can speak to the systems currently in place.
- Duff Lane width – CHD4 needs to provide comment and address concerns.
- Comp Plan accommodates for a collect street from Duff east to Star.

*Council President Kiser:* Point of clarification, which plat is being considered. He is seeing multiple renditions. He appreciates the collector road 60 ft right of way and the sidewalks and 10 ft wide pathways. He wants to understand how the floodplain, and hydrology to the south and the historic drainage will work. He appreciates that the applicant wants to create a community that drains well, is mixed use and pedestrian friendly.

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**Mayor rule closed the public testimony at 9:12 p.m.**

**Council Discussion:**

*Huggins:* This has been a long day with a lot of information. Hearing 2 different legal opinions makes her nervous. To comment on the plan as a whole, the question is not *if* people are going to move in surrounding property owners, it is *when*. People in the county are indeed affected by these developments, but if the city doesn't allow these annexations, soon the city is landlocked and city residents utility rates get raised.

*Kiser:* Growth happens. He would like to see the DA tightened up. He understands that the P&Z commission had the information for the DA bullet pointed in the staff report. He would like to see the DA in an actual contract form.

*Garner:* Would like to see this go back to P&Z to help save the city from a possible lawsuit.

*O'Meara:* They had 3 neighborhood meetings, we (council) can take a couple more to review it. He also wants the widening of Duff Lane to be addressed by CHD4.

*Mayor Rule and City Attorney Mark Hilty discussed the process for sending this back to P&Z.*

**Mayor Rule called a brief recess from the hearing at 9:26 p.m. so that the two attorneys could discuss the timeframe and process to send this back to P&Z. Council continued with the agenda item 8 and the hearing resumed at 9:59 p.m.**

*City Attorney Mark Hilty:* This needs to be remanded to P&Z. Notice will go out for the P&Z August 9<sup>th</sup> hearing, the FCO will be expedited, and the notice will be given for the September 1<sup>st</sup> City Council hearing.

**Motion:** Motion to close the public hearing by Council President Kiser, seconded by Council Member Garner and approved unanimously.

**Mayor Rule closed the public hearing at 10:01 p.m.**

**Motion:** Motion by Council President Kiser to remand the application by Robert Brian Burnett, Drake Investments, Deep River Investments & Deep Water LLC for annexation/rezone, preliminary plat, development agreement modification, and comprehensive plan map amendment with respect to the River Pointe Subdivision to Planning and Zoning Commission for consideration on August 9, 2021 to review with a full development agreement, comments from CHD4, and the current, preliminary plat.

*Huggins:* What if CHD4 doesn't reply?

*Stewart:* They already did comment, but she will contact them to get clarification.

Roll Call: Kiser-Yes, Huggins-Yes, Garner-Yes, O'Meara-Yes

**8. Consider approving annual (June 1, 2021-May 31, 2022) City Beer and Wine License for 208 Burger Q. – Becky Crofts**

Mayor Rule called the item at 9:27 p.m. and City Administrator Becky Crofts asked that council defer this until Legal Counsel is back in the room. The license that is being requested for sale and consumption of beer and wine. The question is not with the sale, the question comes into play when customers want to do onto the patio area and consume the

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alcohol. The proximity is 20 ft inside of the 300 ft limit within a church.

At 9:55 p.m. City Attorney Mark Hilty said that unless there is a concern about waiving the rule for the 300 ft set back that rule can be waived.

Council Member Huggins asked that we talk to the owners of the church, and business owners next door.

Mayor Rule said he will contact the LDS church and the owners of Kraves.

**Motion:** Motion by Council President Kiser to table approving annual (June 1, 2021-May 31, 2022) City Beer and Wine License for 208 Burger Q to the July 21, 2021 city council meeting. Motion seconded by Garner and approved unanimously.

**9. Consider approving additional services authorization to SPF Water scope of work for Water System Planning in an amount not to exceed \$ 37,250.00. - Becky Crofts**

Mayor Rule called the item and City Administrator Becky Crofts explained the reasoning for the additional services.

- Develop a declining balance plan based on the current three pressure zones available and incorporating the City's revised area of impact. The intent of this study is to integrate results into the Master Plan Update report and to use as a separate planning guide as future development requests for water service occur.
- Include new water users into the model that were connected into the City's system after the master plan was created.
- Develop a capital improvement plan (CIP) based upon the revised growth projections such that they are in line with recent wastewater treatment plan upgrades.

When the original plan was made it was based on a projected growth of about 3-5%. The city is currently growing at about 13%. We need to plan for those higher growth. This additional funding is for a planning tool. So that we can talk respectfully and purposely with developers when they come in. It should be about 6 weeks and then you will see the results of the additional funding.

**Motion:** Motion by Council President Kiser to approve additional services authorization to SPF Water scope of work for Water System Planning in an amount not to exceed \$ 37,250.00. Motion seconded by Council Member O'Meara and approved unanimously.

**10. Consider approving additional services authorization to T-O Engineers, Inc Agreement for Blower Expansion project number 200555 in an amount not to exceed \$ \_\_\_\_\_ – Becky Crofts**

Mayor Rule asked that this item be table to July 21, 2021.

**Motion:** Motion by Council President Kiser to table item 10 to July 21, 2021. Motion seconded by Council Member Garner and approved unanimously.

**11. Consider changing employee medical benefit package from Blue Cross of Idaho to Regence Blue Shield Health Reimbursement. – Lindsay Clark-Youngwerth/Becky Crofts**



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Mayor Rule called the item and Lindsay Clark-Youngwerth and Winston Goss from Shandro Group and City Administrator Becky Crofts explained the differences between the current employee city medical plan and the proposed buy down deductible plan. The process is a little different than what employees are currently used to. It will require some training of employees. The goal with this plan change is we have lost officers, planners, and deputy clerks because our plans were too good and too expensive. We are finding employees would rather have more money in their pocket than a really small deductible. Right now the rate of our current plan is projected to increase 6%. Mayor Rule asked what is the reaction of employees to this proposed plan? Does the quality of service stay the same? The employees approached were very favorable to the buy down plan. The network and medical services are the same.

Sergeant Hilkey said this plan would greatly help his officers. They haven't lost officers but have lost really good candidates. He does have an officer that is not able to have his wife insured due to the cost of the current plan. Please change from what we currently have.

Lindsay Clark-Youngwerth/Becky Crofts: We have in writing from Blue Shield that they will credit all of the accumulators, so that if someone has already met their out of pocket it will apply to the new plan. There is a small added cost for administrator and a set up fee. These are one time fees.

Council Member Huggins said she appreciates all of Lindsay's hard work. We have looked at changing the insurance for while and never had the support of the employees. This plan looks to have the support so she is comfortable making the change.

**Motion:** Motion by Council President Kiser to change employee medical benefit package from Blue Cross of Idaho to Regence Blue Shield Health Reimbursement. Motion seconded by Council Member O'Meara and approved unanimously.

#### **Budget Workshop: FY 2022 – Wendy Miles**

City Treasurer Wendy Miles lead the Budget Workshop. There was Council Discussion, no decisions were made.

#### **Public Comment:**

*None.*

#### **Mayor Comments, Council Comments:**

*Council President Kiser:* Next meeting he will not be here. He will phone in. He did a ride along with the police officers. He recommends council do a ride along with our officers, it was a lot of fun and very educational.

*Council Member Huggins:*

*Council Member Garner:*

*Council Member O'Meara:* He attended the FACTS meeting, there is nothing new to pass along. The agreement that the city and GMPRD entered into to remove the backstop at Middleton Place Park is almost completed. There is safety issue with a home on Dewey running a

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business out of the home. Viper Park contract is looking to be completed and brought back to council sometime in August.

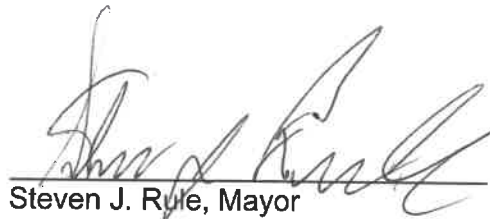
**Mayor Rule:** Director of Compass – Matt Stoll implored that the City reconsider our position of the alternative route. Mayor Rule said City Council has given the City direction, and that the city has outgrown the opportunity for the alternate route. Matt said that as a result SH44 will be widened and go downtown and tear up Middleton. Mayor said he is aware of that. He knows that there are 3 options 1) ITD will force their way through. 2) Make modifications downtown 3) No improvements will be done for quite a few years.

He asked that City Council has discussed the plan and vision for Middleton. Now is time for resolve.

**Adjourn:** Mayor Rule adjourned the city council meeting at 10:38 p.m.

ATTEST:

  
Jennica Reynolds, Deputy Clerk  
Minutes Approved: July 21, 2021

  
Steven J. Rule, Mayor



**Ex. "A"**

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**MIDDLETON CITY PLANNING AND ZONING  
COMMISSION MINUTES  
JUNE 7, 2021**

The June 7, 2021 Planning and Zoning Commission Meeting was called to order by Chairman Ray Waltemate at 5:32 p.m.

**Call to Order - Pledge of Allegiance**

**Roll Call:** Chairman Ray Waltemate, and Commissioners Jackie Hutchison, Janet Gregory, were present. Commissioners Whitney Springston and Kip Crofts were absent.

**Information Items: None**

**Motion:** Motion by Chairman Waltemate to move action item 1 to the end of the meeting and Item 4 be moved to the first item on the agenda. Motion seconded by Commissioner Hutchison and approved unanimously.

**Action Items**

**4. Consider approving Design Review for Zamco Industrial Building.**

Commissioner Waltemate called the agenda item. City Planner Roberta Stewart reminded commissioners they were acting as the design review committee. She gave an overview of the design review and read the staff report.

Applicant: Richard Wilmont-Chrysalis Architecture, 3914 E Presidential Dr., Meridian, ID: They agree with the overview Roberta gave and all the conditions of approval. They do not have physical examples of the samples to be used for a material board (they are hard to acquire right now) but they did provide pictures.

Discussion with commission and applicant about the project.

**Motion:** Motion by Commissioner Gregory to approve Design Review for Zamco Industrial Building with the 4 conditions as read in the staff report. Motion seconded by Commissioner Hutchison and approved unanimously.

**2. Public Hearing: An application by Sterling Land Development, Inc. and David Sterling for annexation/rezone, preliminary plat, variance, and development agreement with respect to the Sterling Lakes Subdivision located at 23251 Duff Lane (Tax Parcel Nos. R3386901000 and R33869010A1). The proposed preliminary plat consists of 121 residential lots and 9 common lots on 51.43 acres of vacant land. Applicants are requesting a rezone to R-3.**

Chairman Waltemate opened the Public Hearing at 5:44 p.m.

City Planner, Roberta Stewart presented the Staff Report (See Exhibit 1) and 2 resident letters (Exhibit 1:A)

*Commissioner Hutchison:* How soon will radius be changed down to 90ft?

*Stewart:* Hopefully soon, this summer.

*Commissioner Hutchison:* Stub road to north, should there be a bad event, how would they all get out? Where are all the exits?

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*Stewart:* There will be 3 exits. Cornell St, the road straight up through plat, and City Engineer said they need another road.

*Applicant: David Sterling:* First part of construction would be to get the bridge done so the access off of Cornell is available. He presented the report. Drainage district doesn't want anyone back behind there, there is not a pathway, only a gravel path for limited access. 5 lots are the ones that they are asking for the variance of the frontage. They are larger than the 8,000 sq ft. minimum lot size, just the frontage is not up to code.

*Commissioner Hutchison:* Is that going to be enough drainage for the overflow and stormwater?

*Sterling:* Yes. He explained how the stormwater drainage will all slope towards mill slough to the south and then the right of way to the north. That is a requirement for grading.

Chairman Waltemate opened public comment at 6:19 p.m.

Public Comment:

*Opposed: Shalene Stevenson:* During construction period, if Duff Lane is not able to be accessed that Construction vehicles will use Greenlinks Rd. Adding 300 homes will increase the already busy traffic something like 10 fold to the current Greenlinks subdivision.

*Neutral: Cliff Beck:* He is concerned about trees in his backyard and their roots. Sounds like the set back of 20 ft will be ok. He would also like to see fencing along park place be open fencing. He would like to have a gate on each fence that abuts the fence so that the native grasses can be cut back by the residents to avoid possible fire hazard. He also would like to see bubblers/water movement in the pond to keep mosquitoes down to a minimum.

*Neutral: Jim Grey:* Questions about phasing of project. What is the timeline before the proceeding to phase 2? Does Cornell need to connect to Duff? What will be the impact on the irrigation for the 2 landowners that have been irrigating the adjoining pasture? What is the type of fencing proposed to the existing landowners property that borders the proposed subdivision?

*Neutral: Douglas Briggs:* Neutral: He is concerned about the trees he has planted out there, and his other concern is the mosquitos, is there something that will be done to keep the mosquitos down to a minimum.

Chairman Waltemate closed the public comment at 6:30 p.m.

*Applicant-David Sterling:*

- Main access will be from Middleton Rd and Cornell, they could stipulate that the construction trucks do no use the Greenlinks as access if desired.
- The city code requires that we put up fencing along the perimeter. Along the back side of the lots there will be a solid 6 ft fence, and then interior there were be a see through fencing around the ponds. They are not proposing fencing between their lots and the adjacent property in the Park Place subdivision. All of those homes have existing fencing of different varieties. The City did ask for a fencing plan last week and we have not been able to get to it yet. They are flexible as to the desires of the homeowners/city. The maintenance of the fence will be maintained by the HOA as it is on an HOA lot. They can talk to individual property owners to discuss access, but they wouldn't want a blanket arrangement for all property owners.
- They don't plan on moving any trees, that pond doesn't extend that far. Drainage District



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- 2 said they want any trees in their easement removed so we will have to have a conversation with them if those trees can be kept.
- Aeration of pond and concerns about mosquitoes: the ground water out here is so high because mill slough is chucked up so high. The current problem with mosquitoes may be that the ground water is so high and is in the ponds already there. Hopefully opening up the ponds and maintaining them with some type of aerator will help to keep the mosquitoes away.
  - Timing of construction: The first thing they have to do is put in the crossing this winter it has to be built during off irrigation season when the water is lowest. Then they will excavate the pond between Mill Slough and Park Place to bring in the fill and the construction would progress from there north. He could see phase one happening this winter/next spring, but that could be expanded and done all at once.
  - The property to the west is still owned by an farmer who is not planning on doing anything yet. To the north is the CBH subdivision. The road has been pre-platted and is part of a phase of their subdivision. The applicant portion of the road would be constructed as they finished phase 2.
  - Irrigation water comes in from the east to the northeast corner and goes along the north boundary of the site. To the pond in the northwest corner, put a pump station and the overflow will go into Mill Slough. The stormwater drainage will go into the middle pond.
  - Existing house and secondary residence and third outbuilding. All of those will be demolished.

**Commission Discussion:**

Commissioners discussed the application and the applicant. They appreciate the way that Mr. Sterling listened to the public and answered their questions. They had no additional comments or questions.

**Motion:** Motion by Chairman Waltemate to recommend to City Council approval of application by Sterling Land Development, Inc. and David Sterling for annexation/rezone, preliminary plat once revisions are made, the variance 1. Being the radius change approved, 2. The frontage change to the setbacks, denied. 3. The bridge variance is an understanding and approved. and development agreement with respect to the Sterling Lakes Subdivision located at 23251 Duff Lane (Tax Parcel Nos. R3386901000 and R33869010A1). The proposed preliminary plat consists of 121 residential lots and 9 common lots on 51.43 acres of vacant land. Applicants are requesting a rezone to R-3. And all conditions and requirements of the City of Middleton and agreed to in the development agreement be met. Motion seconded by Commissioner Hutchison and approved unanimously.

Chairman Waltemate closed the public hearing at 6:43 p.m.

Chairman Waltemate called a brief 10-minute recess at 6:43 p.m. The meeting resumed at 6:53 p.m.

- 3. Public Hearing: An application by David Buich/ Hartley Lane LLC and James L. Escobar, AIA for preliminary plat and development agreement modification with respect to the Hartley Lanes Townhomes located at 0 Hartley Lane (Tax Parcel No. R1788901). The proposed preliminary plat consists of 58 townhome sites, 4 common lots and 1 commercial lot on 6.06 acres of vacant land.**

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City Planner asked that this be tabled to a date certain of July 12, 2021.

**Motion:** Motion by Chairman Waltemate to table action item 3 to table to a date certain of July 12, 2021. Motion seconded by Commissioner Gregory and approved unanimously.

- 4. Public Hearing: An application by Robert Brian Burnett, Drake Investments, Deep River Investments & Deep Water LLC for annexation/rezone, preliminary plat, development agreement modification, and comprehensive plan map amendment with respect to the River Pointe Subdivision located at 10481 Hwy 44, 0 Hwy 44, and 0 Duff Lane (Tax Parcel Nos. R3392000, R3392001 and R33935010A). The proposed preliminary plat consists of seven commercial lots, 115 townhome lots, 67 garden/patio single family lots, 92 single family lots, and 44 common lots on 88.51 acres of vacant land, of which 75 acres is zoned M-U "Mixed Use". Additionally, with respect to the annexation of 14 acres adjacent to Duff Lane (Tax Parcel No. R33935010A), Applicants are requesting a rezone to R-3 and a Comprehensive Plan Map Amendment to change the designation from "Transit Station and Transit Oriented Development" to "Residential."**

Chairman Waltemate called the item and opened the public hearing at 6:55 p.m.

City Planner Roberta Stewart read through the presentation of staff report. (See Exhibit 2) She also entered into the record a survey of Annexation – Exhibit Map (See Exhibit A), the June 2006 Approved Development Agreement (See Exhibit B), and a letter from White Peterson Attorney's at Law received earlier today (See Exhibit C)

Roberta said that the arguments from the attorney state that the City is not able to have these types of variances from code in development agreement. The City Code specifically states in Title 1, Chapter 15, Section 2 "Exceptions of waivers and standards and other land uses may be approved through any of the following public hearing processes; development agreement accompanying a rezone application." The city can do this, the applicant does not need to bring a separate variance application. The other argument about the DA is that the P&Z Commission would need to pause on the DA, because tonight she is not presenting the actual DA that has all the legalese and headings, But actually she has presented a DA. She put it in the staff report. And it just goes into Article 3 of the form the city has used for well over 10 years. There is nothing that has been kept out, it just hasn't been formatted into a legal type brief. The attorney also in this letter quoted code provision Title 5, Chapter 2, Section 1 saying that we have to present this formatted DA before the Commission tonight. We have consulted with our attorney and have looked at that code. That means *only if* we were going along with regular preliminary plat and rezone and annexation and the commission decides midstream you need a DA. That is when you would need to pull back and get that DA done. But the city already has a DA done, we are just asking for a modification. In her opinion that code section brought up by the attorney does not apply in her opinion.

The developer has worked with the city to compromise with regards to the previous DA, to bring setbacks into compliance with R-3 zoning with the exception of the Garden home lots that were approved with 5 ft set backs. The developer has actually changed this project to be a much less intensive use.

The attorney may say that they didn't get the staff report until Friday prior to this meeting (6-4-2021). There is nothing in city code that says the staff report needs to be provided.

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Out of the 22 conditions of the development agreement the commission can approve, or recommend.

Questions by Commission:

*Commissioner Hutchison:* Phasing of the roads. Can the city require the roads are finished?

*Roberta Stewart:* The roads are have to be developed per the development agreement.

*Chairman Waltemate:* Does the city currently have an high capacity public transit system proposed in this area?

*Roberta Stewart:* It is part of the comprehensive plan, and the developer is requesting it be changed to a much less intensive design.

*Commissioner Hutchison:* Regarding the setbacks, can we require they go with the city code and R-3 zoning?

*Stewart:* If the commission sticks with the M-U zoning, the developer is approved for smaller set backs. The developer is proposing a much less intensive use, more in compliance with R-3 zoning.

*Chairman Waltemate:* Is the fire chief ok with the smaller setbacks on the garden homes?

*Roberta Stewart:* His comments are coming in, but she has seen other applications similar to this that have been approved.

*Applicant: John Breckon: Breckon Land Design:* Very grateful to be at this hearing. They have been working with city staff on this project for the past year.

(Presentation: Exhibit D)

- As part of the efforts with neighborhood meetings, meeting city code requirements and the comp plan as it sits now, requires a much denser use than what they would like to do. They are trying to provide a transition from the surrounding areas, that will be more gradual into a higher density but still less dense than what was previously planned for and approved on the comprehensive plan.
- The whole area slopes from the northeast to the river. It is in the floodplain. As such we are proposing the creation of lakes in the area to excavate the fill and provide for historic drainage. The wetlands have not been delineated yet, but that will need to be done to make sure they are not disturbing the wetlands. They plan to create a pond that is used for pressurized irrigation. They have been in coordination with the irrigation ditches to get the plan approved.
- The ponds will be clean, pest free and keep the bugs and mosquitoes out. There will be a nice pathway system, a swimming pool, and pickle ball courts.
- They offered to build a parking lot on the west side of Duff Road across from Duff Pond.
- They will be able to provide city water and sewer. Worst case scenario, they will have to build a lift station.
- There are 8 phases. The collector street will go in earlier than the phase it is attached to, and that is part of the DA.

Questions by Commission

*Chairman Waltemate:* How goes the current discussions with ITD on the approvals.

*Breckon:* They have seen the TIS, and the proposed plan and have given a verbal commitment to that detail shown at the entrance. 44 will need to be improved and widened at the initial phases of the project. Have done initial review of water rights and have talked with the irrigation company, the big canal will stay open,

*Commissioner Gregory:* All water runoff will remain on your property?

*Breckon:* Yes, per state law, all water must remain on our site. On the south side of the 14 acres, there is 15 ft wide buffer with a drainage way to make sure that the drainage does not



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cause problems to the neighbors to the south. They are willing to look at the buffer, with a drain or berm and the fencing that would be required.

*Chairman Waltemate to public:* Are the individuals who have signed in comfortable having the attorney represent them? The answer was yes.

Chairman Waltemate opened the public comment portion at 8:03 p.m.

*Opposed: Attorney Mark Bybee-White* Peterson Attorney's at Law-5700 E Franklin Rd, Ste 200, Nampa, ID: His office has been retained specifically by the southeast area the Riverbend Place HOA. So if addresses on the sign in sheet that say Riverbend Place they most likely are their clients. He detailed the points of the letter received.

- There is no draft of the DA that is being proposed. The old one is being modified and was presented tonight. City code 5-2-1-B: "the commission shall retain jurisdiction of the matter, defer consideration of the rezone requested, set a time limit for submittal of the development agreement." Not ideas for the development agreement, but the development agreement. He does disagree with staff on their position that the development agreement doesn't have to be available to the commission. He believes it should also be available to the public to see what is going in there.
- This is a big application, a lot going on. There is already a 75 acre parcel already zoned in the city. That presents a lot different concerns than the new annexation application. He is hearing this idea that the city doesn't have to get things out to the public in time to provide meaningful comment. Yes, it is true the letter from his office came in today. The staff report was provided on Friday. The last draft he had personally seen of the plat was different on the southern part, and on the 75 acre parcel. Different pond orientation and different street orientation. He also disagrees that the different agency comments have not been received by the city. How can a plat move forward without the comment received, comments that could require plat amendments. It is his opinion that the commission should not recommend for approval a plat that has the potential to be amended once the agency comments until those comments are actually reflected in what the commission is recommending approving.
- There are various things missing that were identified in the staff report. At least our understanding of Section P identified. Things that need to still come forward:
  - City of Middleton municipal domestic water, fire-flow, and sanitary sewer services are to be extended to the subdivision.
  - City Engineer comments are to be completed and approved.
  - City Staff comments are to be completed and approved.We read this to understand that these are comments not received. If they are comments received that is not how it came across in the staff report. If the city is saying no big deal, we will throw in conditions of approval, he disagrees, it should be on the plat. He thinks this can provide challenges for City Council, when the commission approves a plat that has conditions. The plat needs to be in a final format before it goes forward.
- As to the variance concerns, they were unaware there was a variance being requested. He disagrees that even if the city code says that you can put variances and approve them through the development agreement, he disagrees with that. State Code 67-65-16 requires the variances be heard in public hearings after notice. They also provide always an finding of undue hardship and justifies the grant of the variance. If the city is using the development agreement to get around a finding of undue hardship, that is violating state law and the City Ordinance is in violation of



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state law.

- The annexation of the 14 acre parcel should be denied. HSB 389 just passed and presents a lot of questions about city budgets, in particular whether or not the city budgets will be able to grow at the same rate that the city grows. In the application there is this idea that this will pay for itself, that is a conclusion without any support saying why it will pay for itself. If there are caps on budget growth and caps on taxing new annexation and taxing new construction, how can you affirmatively state without some more formal analysis that this will pay for itself without.
- If the 14 acre parcel is annexed the HOA is requesting that it be zoned R-1. He disagrees with the language that the Comp Plan requires it. He believes comp plans are guidance documents, but they are not law, they are ideas for future planning. Up to this point he has heard that this future Transit Oriented Area as it's future land use is outmoded. That this is an obsolete concept for future land use planning. They are hearing while the Comp Plan requires this, but it is an obsolete concept. So does it really requires it, or does the Comp Plan need some work?
- There are traffic concerns for this area that he has let his clients know that if they wanted to address traffic concerns he would leave it to them.

*Chairman Waltemate:* There is a current DA from 2006 that is public record. We are looking to amendments to an already existing record. Not that one doesn't exist, one does exist approved in 2006 and amended again in 2015. What is the concern with the clients from the difference of R-1 to R-3 that they are most concerned with?

*Bybee:* The document does exist, however the changes being proposed are not reflected and have not been available in a proposed DA. His clients are concerned with the higher density near their boundary line. They want some buffer between what they have and what is being proposed.

Chairman Waltemate invited anyone as part of the Riverbend HOA that would like to speak.

*Opposed: Matt Hoffman: 19851 Dominion Way, Caldwell ID:* There has been a long standing conversation between us and the applicant.

- The actual client has come back multiple times through multiple application to us one thing, did something else and it has gone back and forth. At one point the application was pulled out of the City and put toward the county. Then that application was pulled and then brought forward again.
- He is concerned that the flood irrigation will cause problems adding 4 more homes to the back of one acre lots will cause drainage issues.
- HSB 389, Middleton and Star fire are merging so they are already down on personnel, but what are the ratios per person of emergency services able to be provided. He believes until an actual analysis is completed this should not go forward.
- He believes the neighborhood meetings were not noticed properly.
- He believes there are issues with this entire plan on the city side and engineering side.

*In Favor: Brian Burnett: 21977 Duff Lane: He owns the property:*

- He did try to take the parcel to the county. But with Southwest district health they are not approving anything. He has not irrigated the 14 acres out of respect for the neighbors, because it backs up their septic systems. So going to one acre tracks on that is not feasible through the county right now, it would be feasible if he pulled water and sewer but then does not become cost effective to do that. In the county ordinances if

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you pull water and sewer you go to 12,000 sq ft lots which is almost what we have sitting there.

- This property sat for a very long time after the crash in 2008. Everyone that lived around this area could have purchased these properties. The 14 acres was offered to multiple people before he purchased it that did not want to do anything with it. The property is low and it is very expensive to fill up and develop. He owns the adjacent 90 acres on the river below this plat that surround all of the 5 acre tracks in Gabica that he is currently developing in the county and digging a 20 acre lake in. He has every interest to make sure this turns out as beautiful as Middleton can imagine because his interests are aligned with all of these neighbors, even the ones who oppose it, behind it.
- The “wishy-washiness” has been because government agencies (ITD, CHD4, Irrigation, City, MRFD) to cooperate on what they want and require it.
- We have worked through this for the last year and ½. The third neighborhood meeting that was held the landowners called the city and asked if the weather was bad if the meeting could be held in a garage. Then they locked Brian out of the meeting, his engineer was there to answer questions as best as he could, but Brian was not able to present the changes.
- He finds it odd that the HOA has hired legal counsel when half of the participants/homeowners that pay annual dues are personal friends and in favor of this.
- The Gabica properties opposed the Riverbend Project because it was going from a 5 to 1 ratio. The neighbors get along great. He is proposing 4 to 1 transition.
- He thinks it is a concession on those 14 acres to appease every government agency, Southwest District Health, the City, the future plan for this. He knows that that collector is hard for citizens to swallow. But as a developer, you have to think about overall plan for the future, not just this 14 acres that sits in your back yard. These streets and connections and amenities are something he believes will be there for a long time and something that people will think right now I bought property for wide open spaces but now I have river access and walking trails, lakes, pickleball courts, and swimming pools and access to amenities in all that commercial properties. People say he is trying to create something like Eagle. He lives in Eagle and he is trying to create something beautiful that can be created as a destination area and a master plan for this area.
- He will be here for everyone of those neighbors to make sure their needs are met. He has done everything possible to work with the neighbors on the his county property and those that opposed that project can speak to his willingness to work with them to make sure their needs are met.

*In Favor: Todd Campbell:* Custom Builder that will be building in this community if it is approved.

*In Favor: Jack Connell:* He has spent his career with Idaho Power providing services to new developments and went on to design power services to residential subdivisions. Has lived on Gabica Street for 22 years. The Duff Street area is very similar to East Boise Idaho in Boise. The beauty of this development is that it provides for a Master Plan and the amenities that will be provided, that infill smaller infill developments do not allow for. He doesn't think the 55+ community should be only for 55 and older. There are plenty of younger families that will benefit from this type of development.

*Opposed: Rick Francis:* Comment is how fast Middleton is growing. In the January Gazette it was said 5000 building permits were already approved. He questions whether we can sustain that rapid growth.

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*In Favor: Tyler Hess:* He owns property to west (Watkins Ranch). He grew up here and has seen the development, but he decided that he wants to be a part of the planning and creating a beautiful area. Taxes are going up because the cost to run the city is going up. The commercial brought in with these developments are going to be a benefit to the city and help to bring in tax dollars to help ease the burden of the residents. He has been working closely with the City and Brian Burnett to create the master plan, and connectivity, instead of the large bypass that has been discussed to go through that area. He approves of the plan and thinks it will be a benefit to the city.

*In Favor: Matt Wilke:* He is a realtor and supports this project. He looks at 12 units an acre at 75 acres is 900 unit per acre potential. He is looking at this project and seeing the potential being 274 units. That is less than 4 units per acre there. He really likes the project and thinks the concerning the HSB 389 the density of 4 units per acre will not create undue burden on the emergency services. The city is right on point with the density and bringing sewer and water to the property.

*Not stated: Tim Honihan:* Not against progress. Everything Brian has done he has done a good job. Brian has had to change a lot of the things he wanted to do because of the city requirements. He doesn't see the Comprehensive Plan on the wall, there needs to be a new Comprehensive Plan. He is concerned that on Yukon Street there is no driveway access and he doesn't know how the traffic will work as it connects to Duff Lane. He thinks we should look at the past so we don't keep messing up the future. He was disappointed in the city planner, he was disappointed with how she discussed comment received from the public and felt that she was trying to lead the commissioners with their decision.

*Not stated: Grace Davis:* Questions regarding project

- 14 acres, what are the white squares on the north?
- If there will be no more flood irrigation, what will that do to the water table? Are wells going to start going dry?
- Continue to see the different iterations of the plan. She is not seeing any connection from Hwy 44 which leads her to believe all traffic will go through Duff and Yukon.
- City planner said these documents have been available to the general public for many years. She was not aware of them and purchased her property in Feb 2021. And her property borders it. When she bought her property she assumed it was zoned rural residential
- Stated that the widening of 44 will have to be completed prior to homes being built. Does that widening extend all the way down to Duff Lane? The intersection of 44 and Duff is not safe as it is. Adding more homes will not make it any more safe.
- Would the amenities be available for the community or HOA access only.

*Opposed: Lori Smith:* Wanted to get clarification on traffic studies. The last TIS that went with the application was updated Sept 2020 and revised again April 2021. She believes that study should be updated to add the new collector road that dead ends to Duff Pond. She would like clarification on whether a new TIS is warranted. Is there comment from CHD4 about a collector road dead ending into Duff Lane.

*Not stated: Ron Watson:* He has concerns about fire and police department access into subdivisions. He believes that traffic is going to be a major concern.

*Not stated: Mike Giacalone:* Project looks great on paper. Duff cannot handle the traffic so it will filter down Duff, over Landruff and Lansing. You are putting an additional 500 cars on



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the road; you need another access point off of Hwy 44.

Chairman Waltemate closed the public comment portion at 9:09 p.m. He invited the applicant to address the questions posed.

*Applicant: Jon Breckon – Answer to questions*

- Economic Analysis and tax burden, he is not the right person to speak to this. He would say regarding density, there are more lots, which allows for more tax distribution.
- There have been several plans submitted, the reason for that is because of all of the requirements that are needing to be addressed by the different agencies and all of the back and forth to make the required adjustments and address all of the comments so that it can be presented at the neighborhood meeting.
- The transit plan and city comp plan. Comp Plans are updated from time to time. What is proposed is not what is best, and that amendment is being proposed. This would allow for a 4 to one transition.
- Flooding-We will be addressing all irrigation and city requirements, we will not be flood irrigating in the future. This should not cause an issue with the ground water.
- MRFD/Star merging-this is typical as growth continues there will be accommodations to make sure people are serviced appropriately.
- Lots on north portion. Larger home lots with a proposed shared driveway.
- Circulation-main entrance onto the project is off of Hwy 44 on the northeast side of the project. ITD has a great deal of control as to what happens on 44 and Duff Lane. In the DA it states that the development will have to pay the prorate share of improvements on Duff and Hwy 44. ITD has said they will widen the entrance to Duff.
- Safety at Duff – Just showing the connection, but this is a preliminary plat. There is a lot of detail that needs to be designed and reflected and the comments need addressed prior to the construction drawings and final plat.
- Advantage of developers is they help to provide the improvements to the roads.
- Amenities will be run most likely by an HOA. Amenities will be responsible to maintain the improvements. The pathways to and through the development and generous greenspace is open to the public.
- Update the TIS – He cannot speak to that, he is not ITD. They have had more other updates to the TIS, and there may be another update, which will provide more revisions to the plan.
- This plan has changed many times, and they have tried to minimize the plan changes to minimize confusion. With the complicated nature of the project there likely will be additional changes and fine tuning.
- They are willing to provide an additional parking lot for Duff Pond.
- 55 + community was at the request of the City. They would prefer not to limit the age of the higher density.
- If the River Ranch development doesn't move forward they are allowed to connect to Hwy 44.

*Commissioners Discussion:*

*Chairman Waltemate*

- Who owns Duff Lane? – Owned by CHD4.
- Taxes for law enforcement/fire we will always be a little behind, that is something that happens with growth.



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- Can't control taxes.
  - By law only decisions can be made based on this agenda, not based on the past.
  - The policy is ITD will do no improvements on Hwy 44 intersections until there are 3 fatal accidents at those intersections.
  - His issues are not with what has not been completed for this application. His concern comes from the aspects that he has no control over but would like to. He has no control over Duff Lane and the intersection. There is no reason to continue this discussion to future meetings, because there is nothing that the commissioners can control in this situation.

*Commissioner Hutchison:*

- There will be a lot of changes in Canyon County, and we cannot control that. They do not like the connection to Duff Lane and the additional traffic, but it will eventually be developed. There is already a development agreement in place that allows for higher density. We can go with something beautiful, wait till a different application that asks for the DA already in place.
- We are improving the roads in a patchwork quilt type of way. But our hands are tied because we do not own the roads that are being considered. We can only make sure that the pro-rata share is paid to the agencies that control those intersections. (ITD and CHD4)

*Chairman Waltemate:*

- Commissioners feel like they are against the wall, but unless there is additional research or information they need, nothing will change in this application, and it makes no sense to hold up the application.

**Motion:** Motion by Chairman Waltemate to recommend for approval the annex and rezone of the 14 acre parcel to R-3, recommend for approval to City Council the preliminary plat, the amendment of the development agreement and modifications and the comprehensive plan map amendment. The applicant stays compliant with the 7 conditions listed and all agreements made through the development agreement from the application of Robert Brian Burnett, Drake Investments, Deep River Investments & Deep Water LLC for annexation/rezone, preliminary plat, development agreement modification, and comprehensive plan map amendment with respect to the River Pointe Subdivision located at 10481 Hwy 44, 0 Hwy 44, and 0 Duff Lane (Tax Parcel Nos. R3392000, R3392001 and R33935010A). The proposed preliminary plat consists of seven commercial lots, 115 townhome lots, 67 garden/patio single family lots, 92 single family lots, and 44 common lots on 88.51 acres of vacant land, of which 75 acres is zoned M-U "Mixed Use". And encompassing the annexation of 14 acres adjacent to Duff Lane (Tax Parcel No. R33935010A), Applicants are requesting a rezone to R-3 and a Comprehensive Plan Map Amendment to change the designation from "Transit Station and Transit Oriented Development" to "Residential." The motion seconded by Commissioner Hutchison. Motion approved unanimously.

Chairman Waltemate called a 5 minute recess at 10:03 p.m. the meeting resumed at 10:08 p.m.

Chairman Waltemate called the item.

**1. Consent Agenda (items of routine administrative business)**

**a. Consider approving May 10, 2021 regular meeting minutes.**

**Motion:** Motion to move the approval of May 10, 2021 regular meeting minutes to the next meeting July 12, 2021 so that the recording can be reviewed and the minutes can reflect

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comments that may have been left out initially. Motion seconded by Commissioner Hutchison and approved unanimously.

**b. Consider approving FCO for Stonehaven 11.18 Rezone/DA**

**Motion:** Motion to action item 1b Consider approving the FCO for Stonehaven 11.18 Rezone/DA. Motion seconded by Commissioner Gregory and approved unanimously.

**Public/Commission/Staff Comments:**

*Mike Graefe:* He has very mixed emotions about what happened tonight. He is proud of the commissioners and all who represented both sides of the application. He is disappointed. He moved to Middleton 6 years ago and heard every promise made again tonight. He relived what happened at West Highlands when Tom Coleman and his crew came to the City. He has been told there is going to roundabout at Hartley and SH44. He doesn't know when it is going to happen. He hopes and prays that everyone will come to City Council. The residents need to come and stand up to ITD and start demanding change. For ITD to have the gall to say it takes 3 fatalities in one intersection in one month in order for them to act is criminal! ITD promised the roundabout 1<sup>st</sup> when Coleman Homes built, then it was the Tractor Supply, then it was the charter school, and now it is Stonehaven. They have filled in a little pothole when you turn onto Hartley. Nothing has been done. At some point in time, someone has to stand up to ITD, or Big Brother or the Governor. He apologized for getting so emotional.

Commissioner/Staff Comment: None

**Adjourn:** Chairman Waltemate adjourned the meeting at 10:15 p.m.

ATTEST:

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Ray Waltemate, Chairman

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Jennica Reynolds, Deputy Clerk  
Approved: July 12, 2021

Exhibit "B"

WHITE PETERSON

ATTORNEYS AT LAW

MARC J. BYBEE  
WM. F. GIGRAY, III  
DAVID A. HEIDA  
MATTHEW A. JOHNSON  
JAY J. KJHA \*\*  
WILLIAM F. NICHOLS \*  
BRIAN T. O'BANNON \*

WHITE, PETERSON, GIGRAY & NICHOLS, P.A.  
CANYON PARK AT THE IDAHO CENTER  
5700 E. FRANKLIN RD., SUITE 200  
NAMPA, IDAHO 83687-7901  
TEL (208) 466-9272  
FAX (208) 466-4405  
EMAIL: [mjohnson@whitepeterson.com](mailto:mjohnson@whitepeterson.com)

PHILIP A. PETERSON  
WILLIAM L. PUNKONEY

TERRENCE R. WHITE  
OF COUNSEL  
WILLIAM F. "BUD" YOST  
OF COUNSEL

\* Also admitted in OR  
\*\* Also admitted in WA

July 7, 2021

To: Mayor and City Council  
City of Middleton  
1103 West Main Street  
Middleton, ID 83644  
Also delivered electronically to [citymid@middletoncity.com](mailto:citymid@middletoncity.com)

Public Comment: River Pointe – Annex/Zone/DA/Preliminary Plat

Dear Mayor and Councilmembers,

We represent the Riverbend Place Homeowners, a group of concerned community members living adjacent and proximate to the proposed River Pointe annexation and development. Riverbend Place is located to the southeast of the 75-acre MU property and directly south of the 14-acres proposed for annexation and R-3 zoning. On behalf of Riverbend Place, we hereby provide the following comments and concerns regarding the subject applications (Applications).

We apologize for this comment letter being submitted at what will seem the last minute. Unfortunately, due to the scheduling of this hearing immediately after a holiday weekend and the fact that the relevant materials that allow for substantive comment (including for the first time the draft Development Agreement) were not available until just before that holiday weekend, there has been very limited time to prepare comments in a meaningful way.

If your time is limited, I recommend your focus be on the next section of this comment letter designated as *Procedural Issues*. That section alone will indicate that you should remand these applications back to the Planning and Zoning Commission.

**Procedural Issues and Objections**

There have been substantial procedural errors in the hearing process to date. These errors have caused substantial harm to the ability of affected parties to comment in a meaningful manner. Due to these errors, this matter should be remanded back to the P&Z level for corrective actions and a new hearing.

1. The Planning and Zoning process failed to comply with Middleton City Code.

Idaho Code §67-6511A ties a development agreement into the land use process at the zoning stage. Middleton City Code 5-2-1 (B) requires that when the Commission determines

a development agreement is contemplated but not presented that “the commission shall retain jurisdiction of the matter, defer consideration of the rezone requested and set a time limit for submittal of the development agreement.” Per Idaho Code, development agreement amendments (including a restatement, which is a significant and substantial re-writing of a DA) are to go through the same processes as an original development agreement.

In other words, the Commission does not proceed to make a decision or recommendation on a zoning application where a development agreement is involved until a draft development agreement is actually presented to the Commission for hearing. This is a reasonable requirement, as the conditions of a development agreement are critical factors in evaluating whether the zoning change is appropriate and protected. Similarly, the public and affected parties providing comments for such a hearing can not provide any meaningful comment if the terms of a development agreement are not actually presented and are mere suppositions and a mystery.

No draft development agreement was presented to the Commission or available to the public for comment for the June 7, 2021 P&Z hearing. Your Council meeting today is the first time the Restated and Amended Development Agreement is being put forth publicly.<sup>1</sup> For these reasons, and per Middleton City Code 5-2-1(B), these applications should immediately be remanded back to P&Z for a full and appropriate hearing in compliance with City Code.

2. This Council hearing was inappropriately noticed and held, in violation of Idaho Code §67-6509.

The Local Land Use Planning Act (LLUPA) requires that the Council wait to notice and act on an application until a final recommendation has been received from P&Z. Most applications contemplated under LLUPA, including as to development agreements, require public hearings in compliance with the same hearing procedures used for a comprehensive plan. Therefore, the generally applicable public hearing process statute is Idaho Code §67-6509.

Idaho Code §67-6509(b) requires that “[t]he governing board shall not hold a public hearing, give notice of a proposed hearing, nor take action upon the plan, amendments, or repeal until recommendations have been received from the commission.”

Pursuant to this state law, the City may not even notice the Council public hearing on these applications, much less act, until the Commission finalizes and issues its recommendations. As part of our public records request, submitted on June 30, we requested a copy of the final and signed recommendation of the Commission. We received the following response from the City Clerk’s office:

“Those documents [P&Z Findings and Recommendation] will not be approved, finalized and signed until the next regularly scheduled Planning & Zoning Commission on July 12, 2021.”<sup>2</sup>

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<sup>1</sup> This Restated DA draft was not even posted to the City’s website with the alleged development packet materials. We were able to obtain this draft only slightly in advance of today’s meeting only because we were lucky on the timing of a public records request for application materials. It is likely fair to say no other public comment letters previously submitted by other parties were in any way able to be informed by the now-presented terms of this DA.

<sup>2</sup> A full copy of the e-mail response is attached if you would like to see the full context.



In the absence of the Commission recommendation, which has not yet even been approved and won't be even finally considered for another five days, the Council can have no concrete idea of the recommendations and determinations the Commission is even making. The problem is compounded, as discussed above, by the fact that the Commission has never even been presented a draft development agreement as required to evaluate and make a recommendation on.

For these reasons, and to comply with Idaho Code §67-6509(b), these applications must be remanded back to the Commission and the Council should not act, nor even hold or notice a public hearing, until the Commission recommendations have been finalized and received.

3. These procedural issues harm and impair the due process rights of affected parties.

Land use applications require duly held public hearings to preserve due process rights for the parties involved. This includes applicants, but also affected parties. The intent is to provide opportunity for meaningful review and comments to identify issues, balance interests, and preserve appropriate land use development. Idaho courts do review whether any alleged procedural issues actually cause substantive harm to the ability of an affected party.

On these applications, there is little doubt that the procedural issues have substantially impaired and harmed the ability of affected parties to meaningfully participate in the public hearing process. No meaningful opportunity to review and comment on the development agreement, a critical document, has been provided. P&Z has never even seen the DA, despite a City Code requirement saying they must. Additionally, other significant information relevant to P&Z review was missing – an objection we raised before the P&Z at its hearing.

Similarly, proceeding with a Council hearing – without first having the required P&Z Recommendation – is a violation of Idaho Code and means affected and commenting parties do not even know specifically what to comment about as there can only be supposition and speculation about what recommendations and conditions P&Z may even be presenting. This is poor and inappropriate process, and violates the due process rights of the parties involved.

**Based on the above-listed procedural objections, the City Council should take no further action on the applications and instead remand this matter back to P&Z for full compliance with Middleton City Code 5-2-1(B) and the notice and hearing requirements of Idaho Code §67-6509.**

**Applications Comments**

It is important to note that this matter is actually four applications. Idaho Code does allow for applications to be considered in combination, but each application still constitutes a distinct and individual decision. This distinction has been glossed over in many of the proceedings to date. At the June 7 P&Z hearing in particular, the Commission was essentially told they had to approve the applications in total because “they have to” in relation to the total development concept – despite commissioners asking questions and raising concerns specific to certain applications.

The Council (and the Commission) should have the role of carefully evaluating each

application in relation to its specific standards. The City does not “have to” approve things just because an applicant has tied them all together into one general development proposal. Indeed, the very purpose of the public hearings and the City review is to identify substantive issues that need addressing or refinement.

Additionally, the discretion afforded the City upon review varies by the type of application.

#### Annexation Application

Idaho generally consider annexation as a legislative act. That means the City is afforded maximum discretion to determine whether it believes it is or is not appropriate to annex additional land into the City.

This annexation application contemplates annexation of the 14-acre parcel. This 14-acres juts out like a dagger into the middle of the county bordering the City to the east. The dagger nature of this proposed annexation necessarily should raise questions about the fiscal and service burdens that may be imposed on the City.<sup>3</sup>

As part of its annexation application process, the City requires the Applicant to make a showing of the fiscal impacts (benefits and costs). All the Applicant has provided is a blanket statement in its May 5, 2021 application cover letter that “The property taxes post-development will provide greater tax revenue to the City than continuing the agricultural use.”

That statement is not a fiscal impact analysis. While the statement may have some truth to it, the statement overlooks that the annexation, zoning, and development of the property will also incur costs to the City to provide services to the area. The development increases demand on water, sewer, City facilities, roads, fire and police, and City services. There is no true analysis included in the application materials or staff review showing the interplay of the property taxes and the service costs.

A true fiscal impact analysis is a standard part of major development applications. It allows a city to more truly evaluate the balance between the benefits and cost of a development. A fiscal impact analysis is a necessary component for determining whether an annexation really is economical, efficient, and constitute orderly growth.

The interplay of the 14-acre annexation with the 74-acre MU parcel is further reason a true fiscal impact analysis should be required. There is no showing in the record that a true fiscal impact analysis was done for the original 74-acre annexation. Even if one may exist, such is now outdated as that decision and development agreement is fifteen years old. An update, reflecting the current state as well as the addition of the 14-acres, is a critical tool the Council should require to truly be able to evaluate whether this constitutes orderly development.

The Applicant should be more than willing to conduct such a fiscal impact analysis as part of its application. If Applicant’s blanket statement is true, then the fiscal impact analysis can provide a true showing of the fiscal benefits of this development. This would be much more concrete evidence than just trying to sell the development as pretty on paper because it contains walking paths and fills in a large portion of the city with small homes.

Of additional importance, the City should require a fiscal impact analysis due to the unknowns and uncertainties created by House Bill 389. This legislation, passed by the State

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<sup>3</sup> Idaho Code §50-222, Annexation by Cities, specifically contemplates that a city should review a proposed annexation for whether it provides for “orderly development” and can “allow efficient and economically viable provision of tax-supported and fee-supported municipal services.”

Legislature this past session and of immediate effect, places significant constraints on the City's ability to recognize tax revenues from new construction. The uncertainties surrounding HB389, and how it may impair cities' abilities to fund and provide services, has caused many cities in Idaho to reconsider and even pause evaluations of new development. The City of Middleton would be highly advised to take note of HB389 and its potential impacts, particularly in relation to a proposed new development like River Pointe. Again, requiring a full fiscal impact analysis may go a long way to addressing some of these unknowns and uncertainties.

#### Zoning Application

The 14-acre parcel proposed for annexation is proposed to be zoned as R-3. The City Council should instead zone the parcel as R-1.

A lot of discussion has already been had about the Comprehensive Plan as it relates to zoning. First, it is important to note that a comprehensive plan is merely guidance. Second, all the parties have identified that the current Comprehensive Plan land use designation for the 14-acre parcel is obsolete. The Applicant admits as much, including that they were informed of such by City staff, in their original applications. The Comp Plan currently identifies this area as transit-centered or transit-oriented, but everyone has recognized that designation was put in place when a different approach was contemplated for this area. That approach has been rendered obsolete by regional changes to transportation plans, including Valley Transit moving away from a concentrated transit approach.

Essentially this means the Comprehensive Plan should more or less be considered as lacking a current designation for the 14-acre area. A look at the surrounding area though, even as identified in the Staff Report, makes clear that this area is a rural-urban transition zone. With the 74-acre parcel already slated for some more intensive urban, mixed-use style development, it is even more important that the surrounding areas, particularly to the east, be contemplated for an orderly and appropriate transition from rural to urban.

A R-1 zoning is more appropriate to preserve the nature and character of the City of Middleton and this area. R-1 would soften the transition area and help reduce and balance impacts that come with intensifying density. R-1 zoning is also more in line with the existing residential development to the south of the 14-acres. In particular, the traffic impacts – a major comment and concern in the proceedings to date – could be mitigated by lower density zoning of the 14-acre parcel. A R-1 zoning, as could likely be shown by a fiscal impact analysis, also more likely balances the increase in services and demands (such as traffic).<sup>4</sup>

#### Development Agreement

Development agreements, by Idaho Code, are connected to zoning decisions on a property. On these applications, the development agreement is therefore relevant as it is restating and amending a development agreement already required and in place in on the 74-acre parcel. Additionally, an additional development agreement – or addition to the existing development agreement, is contemplated in connection with the annexation and zoning of the 14-acre parcel.

It is very hard to substantively comment in full on the draft development agreement at

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<sup>4</sup> Our clients are also quite frustrated on the now proposed R-3 zoning application as it flies in the face of representations made them at the neighborhood meetings, a process infused with confusion due to the Applicant's shifting plans and statements.

this time due to lateness in which a draft was made publicly available and the fact that no development agreement has ever been presented at the P&Z level. However, the following preliminary comments immediately jump off the page.

- There are no timelines or deadlines designated in the draft DA. The DA would essentially entitle the development in perpetuity (a mistake that also appears to have been made in the now very-dated 2006 DA). Best practice would be for the City to require incorporation of some timelines and deadlines into the development agreement to ensure timely and orderly development. The recession, and accompanying development stall, in the 2007 time period should have been a lesson to all cities about the dangers of development entitlements without some requirements as to timing. A failure to include benchmarks and deadlines leaves the door open for vacant, unfinished neighborhoods – with little recourse for the City to take to require action on either development or a re-evaluation of the entitlements. Development entitlements in perpetuity are problematic. At minimum, the DA should include a maximum length of years for which it is in effect – thereby ensuring there are checkpoints where the City can apply more current updated standards if the development does not proceed according to anticipated schedule.<sup>5</sup> Better yet would be to outline a timeline of phasing and accompanying improvements, with performance guarantees – such as bonds, on certain improvements. None of that is currently included in the draft DA.
- A development agreement for the 14-acres should be required to incorporate and ensure the timely development of appropriate mitigation and buffer techniques. This should include items like the no-parking requirements and ongoing maintenance of such signage, as well as the addition of buffering techniques between any development on the 14-acres and the existing residential properties to the south – such as berming and/or screening.
- The Staff Report identifies that the 2006 Development Agreement for the 74-acres is quite outdated and old at this point. While some initial work appears to have been done between staff and the applicant to negotiate on some updates, such as on setbacks, further careful attention should still be required to ensure the Restated DA is up to current standards (such as the timeline requirements as commented above). Additionally, the City should see this as an opportunity to address flaws that may have existed in the original 2006 DA. The Applicant has made the decision to seek re-opening of the DA so as to get some benefits such as reducing street size. Similarly, the City should be able to evaluate and seek some refinements to improve the City's ability to manage and provide services – in particular by incorporating more clear conditions on the traffic improvements to be installed and even more importantly the deadlines for doing so. As currently drafted the DA leaves much of those issues unaddressed, including unknowns as to when significant issues (like whether the Sawtooth Road connector) will be evaluated and determined for next steps based on outside circumstances such as the River Walk development proposal. There needs to be additional attention and refinement to set specific triggers or dates that these decisions are made, so such do not linger in perpetuity with no direction.

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<sup>5</sup> A reasonable developer should have little trouble in negotiating to an agreeable timeline. As an additional protection, a developer always has the opportunity to seek a development agreement modification to seek to extend out timelines if factors, such as general economic circumstances, require refining and re-thinking the original schedule.



- Duff Lane and street improvements and frontages associated with such require more careful attention and addressing in the DA. The current language (DA Provision 3.14) pushes any direction on Duff Lane out until Phase 8, which is very uncertain. Additionally, there is nothing that addresses how Duff Lane is handled and the traffic issues mitigated under the circumstances where Phase 4 leads to Duff Lane becoming a major outlet for traffic (something that may happen depending on how River Walk proceeds).
- While we are glad to see a draft development agreement finally presented publicly, significant additional time and refinement is necessary to allow for meaningful public comment and input, as well as to ensure the development agreement is actually up to contemporary standards. This should start with a remand of the applications, now with a draft DA, back to the P&Z Commission for proper consideration required by City Code and as should have been done originally.

#### Preliminary Plat

There is so much in the way of concern and uncertainty on the other applications, that meaningful comment on the Preliminary Plat is difficult. So much may need to be adjusted or changed still based on the direction from the other applications, particularly zoning. At minimum though, our clients want to strongly encourage the Council to push that any preliminary plat for the 14-acres incorporate substantial buffering or screening between that parcel development and the River Bend subdivision to its south. This is necessary to mitigate the light, noise, and visibility impacts between the neighborhoods in this rural-urban interface area.

At this point we want to include a comment previously made in our comment letter to P&Z and which remains appropriate for Council consideration. These comments are also applicable to the timing and way in which the Council packet materials and additional application materials, such as the draft DA, were made (or not made) available for public review and input.

Please note the following comment discusses a continuance of the hearing, as it was drafted for the P&Z level. It is recommended that the more appropriate step for the Council would be to actually remand the applications back down to P&Z for a new hearing.

*The scope, scale, and timing of the Applications and supporting material require appropriate time to digest and comment.*

Prior to last Friday, the City had only made available on the website the River Pointe Master Land Use Application, dated May 5, 2021. Prior to that Application, there had been multiple and different conceptual plans presented by the Applicant to neighboring property owners. This is one of the reasons that there ended up needing to be three neighborhood meetings. The shifting goalposts of the project is also a concern the Commission can see throughout many of the public comments submitted to date.

The Staff Report, including substantial additional new information related to the Application, was not posted and made available to the public until late afternoon on Friday, June 4, 2021. It is completely understandable that this is a complicated project that would require substantial time for City staff to review.

However, the complexity and significance of this Project also are a reason there can be no rush in deliberations.

The ability of affected parties to meaningfully participate in the process also requires reasonable time and process. That so much additional information and the staff analysis was not publicly available until just over 72-hours prior to the public hearing substantially impairs the ability of the public to meaningfully comment and participate. It also means that many of the public comments already submitted are based on outdated and/or incomplete information, which undermines the ability of such commenters to fully present their concerns and items of interest.

There is a substantial amount of new information now available about this project – with more to come due to the missing and incomplete information. At minimum, this necessitates a continuance of the hearing, so as to allow the information to be fully presented and digested by all parties, including the Commission, so as to provide meaningful due process.

#### Traffic

The following comment was provided to the P&Z, and we feel remains relevant for Council consideration:

#### **Traffic Impacts Require More Scrutiny and Analysis**

As discussed in the Staff Report, the development of utilities and traffic services for River Pointe are heavily contingent on other developments. This is problematic planning, as multiple contingencies come into play without clear assurances for access and safe travel.

We strongly recommend the Commission fully exhaust these contingencies, in particular the impacts if River Ranch does not proceed. The Commission should also more fully evaluate and ask for study on the impact of the River Street connector road, and particularly its interface with Duff Road and then on north to 44 or south to other potential routes or future routes. Many of the public comments submitted as of the date of this letter already have referenced these concerns, particularly as to Duff Lane and Duff Pond. The traffic analysis must go beyond simply looking at how River Street will connect with Duff Lane, and instead be more comprehensive in evaluating the impact and improvements to Duff Lane itself. For efficiency we will simply refer to such again here and add our voice in support of those concerns as a reason for denial or delaying of deliberation on these Applications until these traffic issues are better analyzed and resolved.

#### Additional Comments

The following are additional miscellaneous comments previously submitted in our letter to P&Z and that remain relevant for the Council.

- It is alleged that there will be no driveway access to Yukon Street. A

review of the plat for the 14-acres though reveals that Lot 16 is essentially just a shared driveway, which does indeed interface substantially more similar to a driveway than a public road onto Yukon.

- Phasing was a new concept introduced with the Staff Report on Friday, and not clearly included in the Master Land Use Application previously available. The phases, and in particular where such phasing may be tied to the timing of required conditions, requires much more time to reasonably evaluate and comment. This again supports the argument for a continuation of the hearing and to better incorporation as conditions in the DA.
- The Staff Report references “variances.” See *Staff Report Sections K and L* in particular. However, there were no applications for variances as part of the Master Land Use Application; nor is there any analysis in the Staff Report of how the City Code on variances should be applied to this situation. This raises major concerns about whether variances are being adopted without appropriate procedure.
- In addition, Section L of the Staff Report is troubling in that it seems to suggest that these variances are an issue of compromise whereby the City settles for lower setbacks than standards require. It is the Developer who is bringing forward these new applications and seeking approvals for modifications and additions, including a substantial new 14-acre annexation and development. This is not a situation where the City should compromise on its standards, but instead should be looking to improve the Project and its impacts by using the opportunity to bring the Project up to current standards after a fifteen-year delay.
- It should be clarified how the development recreational facilities are being made available for public use. In particular, how are things like pickleball courts and swimming pools being maintained and made available on an ongoing basis. Will ownership be transferred to the City? How will the City pay for such if that is the case? Or how will the public access/use be preserved if the facilities are owned/maintained by a private entity or entities?

### Conclusion

The Riverbend Homeowners Group understands that development will occur in this area and that there will be some transition of this area. However, it is imperative that the City take into careful consideration how such development occurs in an orderly and safe manner with appropriate buffering and transition. The Project as currently proposed does not satisfy the goals or criteria of orderliness and transition.

For the many reasons and questions stated above, as well as the many submitted in other public comments to date, we hereby request that this Council deny the Applications, in particular the annexation and zoning of the 14- acre parcel. In the alternative, based on the procedural and substantive issues highlighted above, we strongly recommend that this Council remand this matter back to P&Z for complete submission of required materials, further development of the Record, and full and appropriate deliberations as required by city code and state law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Matthew A. Johnson', with a long horizontal flourish extending to the right.

Matthew A. Johnson  
for Riverbend Homeowners Group



## Roberta Stewart

---

**From:** Matthew A. Johnson <mjohnson@WHITEPETERSON.com>  
**Sent:** Wednesday, July 7, 2021 10:38 AM  
**To:** Steve Rule; CITMID; Carrie Huggins; Rob Kiser; Tim O'Meara; Jeff Garner  
**Cc:** Mark Hilty; Becky Crofts; Roberta Stewart  
**Subject:** River Pointe - Comment Letter  
**Attachments:** River Pointe - Middleton Council Comment Ltr on behalf of Riverbend.pdf; Council Comment Letter Attachment - PRR Email.pdf

Dear Mayor and Council,

On behalf of the Riverbend Homeowners Group, please see the attached comment letter (and accompanying attachment as referenced in the comment letter) with respect to the River Pointe development applications. We appreciate and apologize that there is not more time between now and the meeting for you to review and consider this comment letter; unfortunately the timing of the letter is a product of the procedural circumstances and the attempt to provide comments that are more substantive based on actual up-to-date documents.

Your consideration is appreciated.

Matthew A. Johnson  
WHITE PETERSON GIGRAY & NICHOLS, P.A.  
Canyon Park at the Idaho Center  
5700 E. Franklin Rd., Ste. #200  
Nampa, ID 83687-7901  
208.466.9272 (tel)  
208.466.4405 (fax)  
[mjohnson@whitepeterson.com](mailto:mjohnson@whitepeterson.com)

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## Matthew A. Johnson

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**From:** Jennica Reynolds <jreynolds@middletoncity.com>  
**Sent:** Friday, July 2, 2021 1:55 PM  
**To:** Matthew A. Johnson  
**Cc:** Roberta Stewart; Becky Crofts  
**Subject:** RE: Public records request: River Pointe - Johnson  
**Attachments:** River Pointe Subdivision 210701.pdf; 210630\_MBW Comments-Reformed Development Agreement-Draft.pdf; 210630\_Signed Letter to Roberta.pdf; BFE updated.pdf; Engineering Comments 7-1-2021.pdf; FD Comments Updated River Pointe\_6\_22\_2021.pdf; LANDSCAPE SET.pdf; Pre-draft River Pointe Subdivision 6-24-2021.pdf; Response to City Eng (003).pdf; Response to City Planner - Copy (002).pdf; Response to Floodplain comments.pdf; Response to pz - Copy.pdf; River Pointe CC Affidavit 7.7.2021.pdf

Mr. Johnson,

Please see the attached documents per your public records request.

Please note per the request for: P&Z Commission Findings of Fact, Conclusions of Law, and Recommendation(s) (or Order(s)) – final and signed.

Those documents will not be approved, finalized and signed until the next regularly scheduled Planning & Zoning Commission on July 12, 2021.

Best,

*Jennica Reynolds*

Administrative Deputy Clerk

City of Middleton

208-585-3133

[jreynolds@middletoncity.com](mailto:jreynolds@middletoncity.com)

**From:** Matthew A. Johnson <mjohnson@WHITEPETERSON.com>

**Sent:** Wednesday, June 30, 2021 7:18 PM

**To:** Jennica Reynolds <jreynolds@middletoncity.com>; Becky Crofts <bcrofts@middletoncity.com>

**Subject:** Public records request: River Pointe

Ms. Reynolds –

Please consider this a written Public Records Request pursuant to Title 74, Chapter 1 of Idaho Code.

Contact information for Requester is all in the signature below.

I request copies of the following records related to the currently pending River Pointe development applications:

- P&Z Commission Findings of Fact, Conclusions of Law, and Recommendation(s) (or Order(s)) – final and signed
- Any additional application materials, including revised plats, submitted by the Applicant to the City since June 7, 2021
- To date, public and agency comments submitted since June 8, 2021
- Affidavit of publication of Notice of City Council Public Hearing

Electronic copies of the records is acceptable and preferred. Since time is of the essence with the upcoming public hearing (and since these documents have unfortunately not been made generally available on the City website), we would appreciate partial responses if necessary to expedite response times.

Thank you for your assistance with this request.

Matthew A. Johnson  
WHITE PETERSON GIGRAY & NICHOLS, P.A.  
Canyon Park at the Idaho Center  
5700 E. Franklin Rd., Ste. #200  
Nampa, ID 83687-7901  
208.466.9272 (tel)  
208.466.4405 (fax)  
[mjohnson@whitepeterson.com](mailto:mjohnson@whitepeterson.com)

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# Exhibit "C"



July 7, 2021

TO: City of Middleton  
Roberta Stewart, Planner

FROM: Civil Dynamics PC, City Engineer  
Amy Woodruff, PE

A handwritten signature in blue ink, likely belonging to Amy Woodruff, PE.

**RE: RIVER POINTE SUBDIVISION PRELIMINARY PLAT**

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Thank you for the opportunity to review the above referenced preliminary plat. It is recommended Mayor Rule and City Council approve the preliminary plat.



# Exhibit "D"

July 1, 2021

Mayor Steve Rule  
City Council President Rob Kiser  
City Council member Carrie Huggins  
City Council Member Jeff Garner  
City Council Member Tim O'Meara

City of Middleton, ID

## **RE: Comments on June 7, 2021 Planning and Zone Meeting River Pointe Subdivision**

We are Sterling and Lori Smith, residing at 10079 Riverbend Place, Middleton, ID. Our property is located east of and adjacent to the proposed 75 acre River Point Subdivision, and south of the proposed 14 acres.

We were in attendance at the June 7, 2021 Planning and Zoning Meeting and have listened to the audio tape as well to fully grasp the content and tone of the proceedings. We urge you to review the audio tape as well as there were several improprieties, some of which are outlined below, along with questions that were asked at the meeting but not answered:

### Discriminatory Action with regards to Comment Letters received day of P&Z meeting

- Sterling Land Development
  - City Planner stated 2 Property Owners have requested denial of the project
  - "I need to get those into the record as Exhibit A"
  - Letters were given to Commissioners: they took ~ 7 minutes to read
- River Point Subdivision
  - In middle of City Planner's Staff Report, she stopped to insert a "little note" that an attorney has been hired to present tonight and just today we got a, I think a 5 page letter, opposing this subdivision. She then refutes the first three points in the attorney's letter but does not add the letter to the Record at that time or give to the Commissioners to read
  - She continues with her Staff Report for 3 more slides
  - She comments that a lot of comments came in today and so I need to put them into the record as Exhibit C
  - She need proceeded to state that "You are under no obligation to sit here and read them, there are a lot".

We believe that the City Planner's actions and comments towards the letters received on the River Point Subdivision were discriminatory in that she allowed the Commissioners to read letters during one Public Hearing but told the Commissioners that they were under no obligation to read the letters during another Public Hearing. We also believe that the City Planner's actions showed her bias towards approving the River Point Subdivision without all the required reports available for review.

### Misleading Statements

- City Planner stated that the Comprehensive Plan required a Collector Road and Transit Station;  
Isn't the Comprehensive Plan set as guidelines to be revised as conditions change?
- City Planner stated that north of the Proposed high density 14 acres is also high density, across Highway 44.  
That is a true statement but she omitted to state that there are low density homes between the 14 acres and Highway 44. In fact, there are 26 homes with lot sizes ranging from .4 to 10 acres, on a total of 33 acres. The Proposal for the 14 acres is 26 houses on 14 acres.  
See attached map
- City Planner stated that the Deputy Chief had verbally approved the application and that will be noted in his written report.  
While her statement that he has verbally approved the application could be true, she can not give the Commissioners the guarantee of what his written report will state. The Commissioners should have the benefit of all the facts prior to approving a project. The report should not be dismissed because the Fire District is "too backed up".
- City Planner stated that the Collector Road (Yukon Street) is required by the Comprehensive Plan to alleviate the traffic on Highway 44 and is to provide an alternate route from Middleton Road to Duff Lane.  
How can the addition of ~400-500 cars added to the Collector Road from the proposed 75 and 14 acres project and the proposed developments to the west of the 75 acres (River Ranch Crossing-on the P&Z meeting 7/12/21) dead-ending into Duff Lane at Duff Pond, a two lane county road, alleviate the traffic on Highway 44?  
  
Is there a plan for continuing the Collector Road through to the east? This would require purchase of private rural residential and agriculture property.
- Applicant has stated that the project's services will pay for themselves but has not provided any accounting information to back up that statement.  
This statement was made on the application prior to the passing of HB389 which now limits the increase on a City's budget for services.

### Contradictory Statements

- Transit Station
  - City Planner stated the Comprehensive Plan requires Transit Station
  - Applicant is requesting for a Zoning Change from Transit Station to Residential  
How can the Zoning Change be approved if a Transit Station is required?
- River Walk Loop
  - City Planner stated that the River Walk through the proposed 75 and 14 acre subdivision is something "all public can enjoy"
  - Applicant's Representative, Jon Breckon of Breckon Land Design, stated that the pathways through the 75 and 14 acres are not open to the public  
How can both of these statements be true?
- Traffic Impact Study (TIS)
  - 1<sup>st</sup> application was dated 9/20/20 and included a TIS
  - 2<sup>nd</sup> application was dated 3/11/21 and included a revised TIS dated 4/14/21
  - 3<sup>rd</sup> application was dated 5/5/21 with changes made by City on 4/23/21 for the addition of a Collector Road as required by the Comprehensive Plan  
Shouldn't the TIS be revisited again with the addition of the Collector Road?

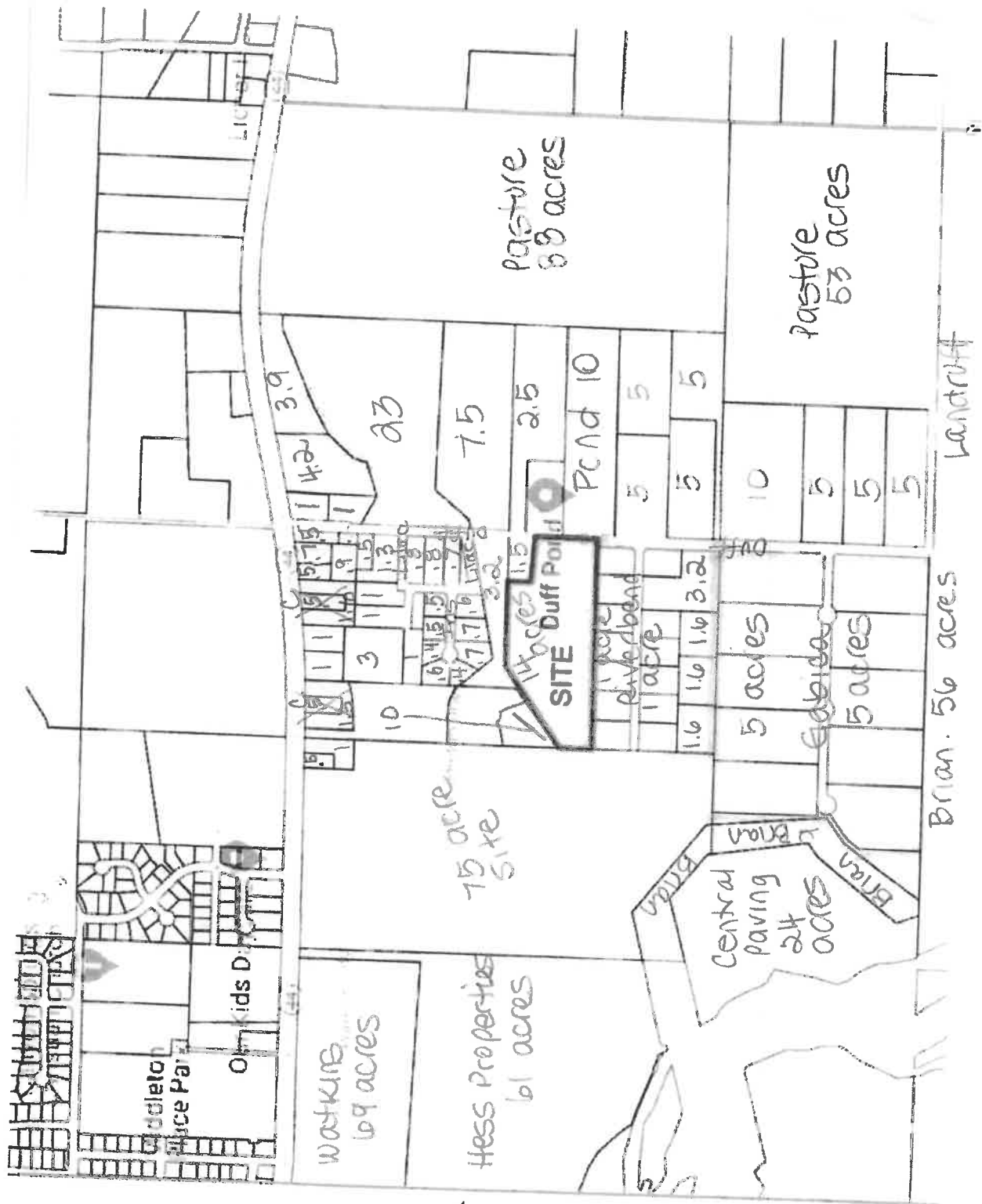
Respectfully, it is not our intent to stop any of the Proposed Developments plans for the City of Middleton. We believe, however, that this project is such a large scope with many reports missing from key agencies that prudence should prevail in allowing everyone's concerns to be addressed and questions to be answered rather than rushing through the process.

Sincerely,



Sterling and Lori Smith  
10079 Riverbend Place  
Middleton, ID 83644

Enclosure





## River Pointe Subdivision

Annexation & Rezone / Preliminary Plat / Development Agreement Modification / Comprehensive Plan Map Amendment



### Project Description:

Subdivision with (a) 7 commercial lots fronting Hwy 44, (b) 92 single family homes, (c) 28 "Garden/Patio homes" for 55+ homebuyers, (d) 39 patio homes with no 55+ restriction, (e) 30 single story townhomes for 55+ homebuyers, (f) 85 two-story townhomes with no 55+ restriction, and (g) 44 common lots on 88.5 acres of vacant land located at 10481 Highway 44 and 0 Duff Lane (Tax Parcel Nos. R33935010A0, R3392 & R3392001).

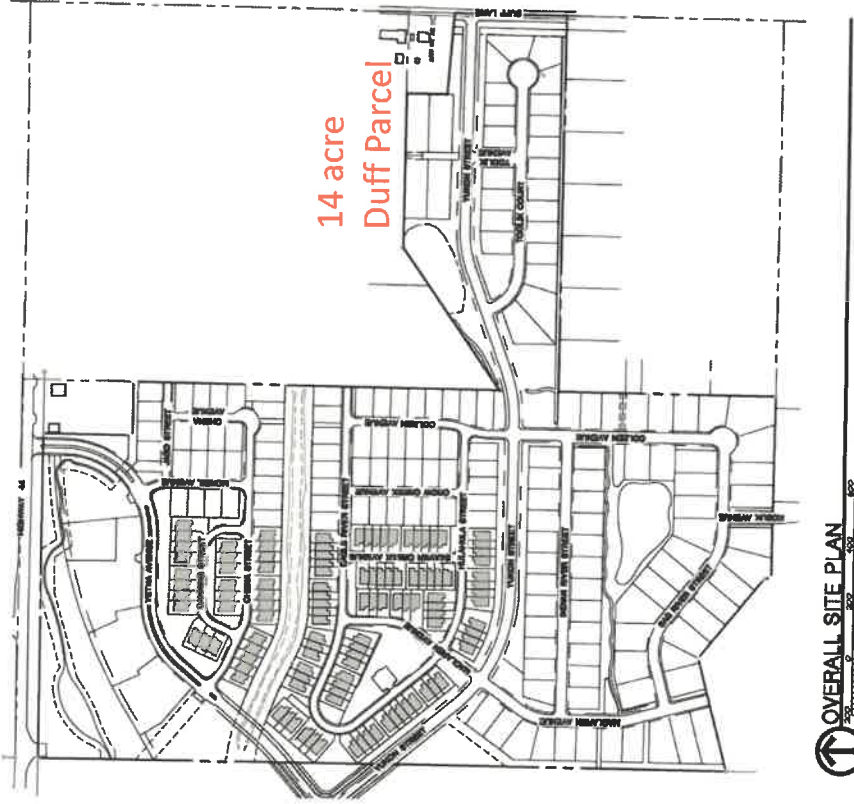
The project will also include numerous amenities such as a swimming pool facility, five pickleball courts, large playground and common lots, community ponds, and lengthy 10' wide pathways that will connect to the new "River Walk Loop" planned for the City of Middleton.

### Applications:

Applicant has submitted four applications to be considered by City Council. They are (1) Annexation/Rezone, (2) Preliminary Plat, (3) Development Agreement Modification, and (4) Comprehensive Plan Map Amendment.



74 acre M-U Zone



### History & Condition of Property:

The Project is comprised of two main components. The first part is made up of two parcels totaling 74 acres that were annexed into the City in 2006 over 15 years ago. The property was rezoned M-U ("Mixed Use") at that time. Mixed Use zoning allows high density residential with commercial uses. A Development Agreement was also executed in 2006, and it entitled Applicant to more high density housing uses, narrower setbacks, and smaller lots than allowed by the 2006 Code and the current 2021 Code. It appears that earlier Governing Boards intended this project area to include commercial uses along with residential uses that are more intensive than normally found in Middleton subdivisions. Despite having these "loose" entitlements, Applicant has worked with Planning Staff on a compromise to bring some of these more loose standards up to the stricter requirements of the current code.

The second component of the project is a 14-acre parcel located off Duff Lane. It is currently in Canyon County and zoned "Agricultural," and it is the subject of the annexation/rezone application.

Over 5 years ago, the P&Z and City Council designated this 14 acre project site "Transit Station" and "Transit Oriented Development" on the Future Land Use Map. The Comprehensive Plan defines "Transit-Oriented Development" as "high density residential and light commercial uses in close proximity to a high capacity public transportation network system...etc.". Again, it appears that earlier governing bodies intended this area near the intersection of Duff Lane and Hwy 44 to be an intensive project site that would serve numerous needs and uses, and that plan has been set forth in our Comprehensive Plan for a number of years.



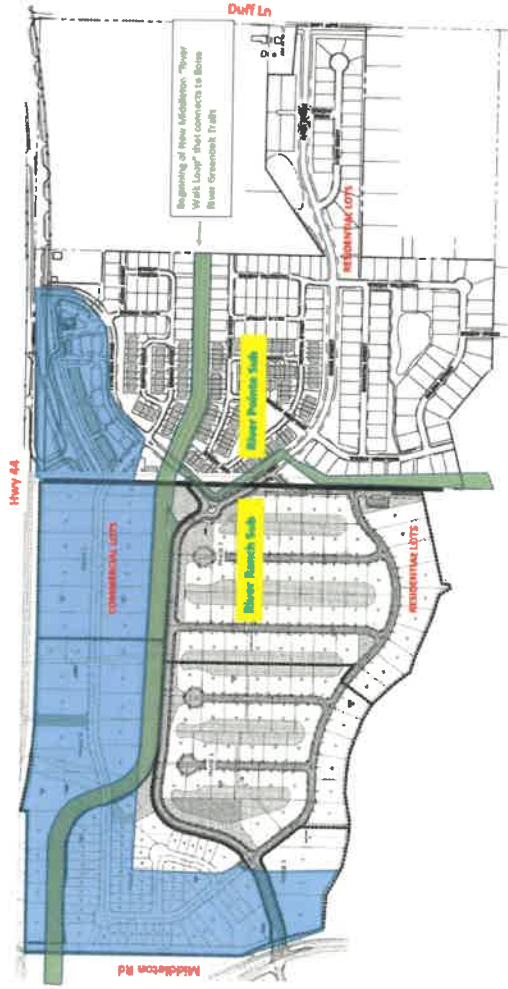


As to the surrounding property, property to the south of the 14 acre Duff parcel is a County Subdivision known as River Bend Place. This newer subdivision began development around 2018/2019. It should be noted that River Pointe's M-U zoning and intensive land uses had already been planned and set in place for about 13 years prior to the development of the newer River Bend subdivision to the south.

Property to the north of River Pointe matches the intensity of River Pointe with Middleton C-2 Commercial Zoning and higher density R-4 Residential. Property generally to the east is County Rural Residential and R-1. Property to the west is County Agricultural that is soon to be developed with high intensity uses.



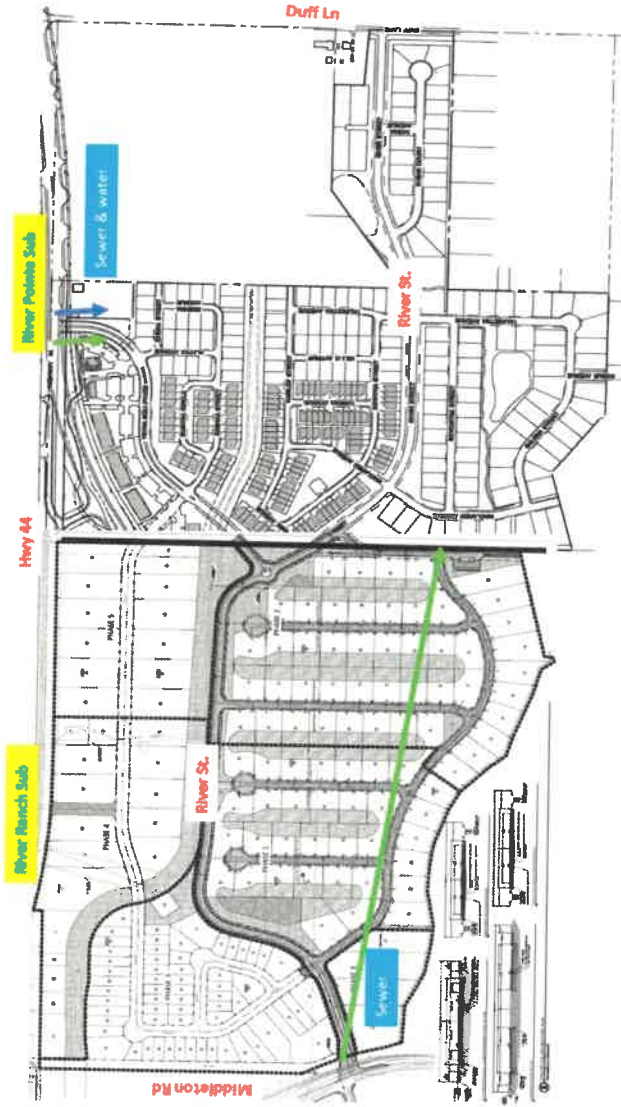




River Pointe is being developed in collaboration with another large subdivision to the west known as River Walk Crossing. River Walk Crossing is a 118 acre project with 35 acres of commercial property and 83 acres of single-family home sites. River Walk Crossing is finalizing plans, and the annexation and preliminary plat for that project should come before this Council in a few weeks.

If both projects are approved and completed, they will create a new and vibrant commercial center for Middleton along with a new multi-mile River Walk Loop that will provide numerous gathering places for social and recreational uses.





### City Services:

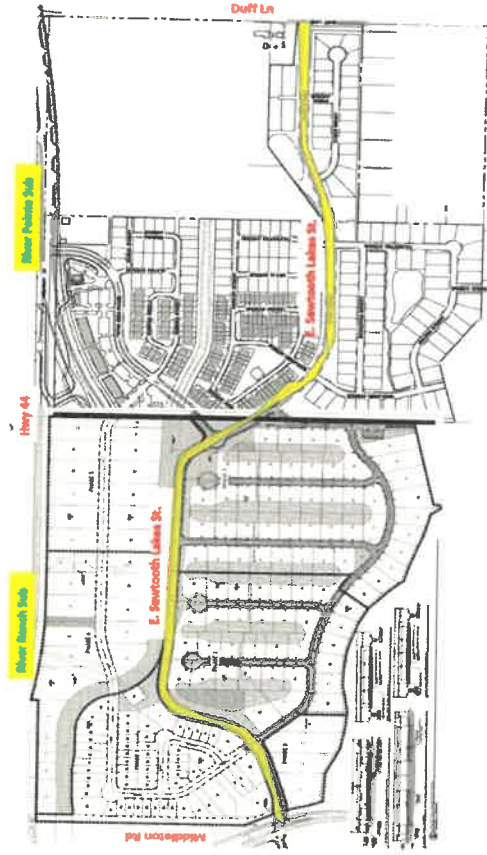
Domestic water and sanitary sewer run along Highway 44 and are accessible by Developer for the project. Sewer service from the west through the new River Walk Crossing project will also facilitate sewer service for the southern portion of River Pointe.

### Middleton Rural Fire District:

The Middleton Rural Fire District has reviewed the preliminary plat multiple times. Deputy Chief Islas approved the preliminary plat with the standard comments. He also approved Developer's proposed accesses and agreed that Developer does not need to provided a 2<sup>nd</sup> access until Developer begins improvements south of the Kennedy Drain.







**Traffic, Access & Streets:** Access to the project is through Highway 44 and Duff Lane. When the neighboring River Walk Crossing project is completed to the west, River Pointe will also have access to Middleton Road via a new east-west collector road called E. Sawtooth Lakes Street.

Sawtooth Lakes Street is a collector street that is a "planned" street set forth in the Comprehensive Plan and "Transportation, Schools & Recreation Map". This street is critical to Middleton's long-term transportation planning and circulation. It is also important to recognize that Sawtooth Lakes Street has been shown on the Comprehensive Plan Maps since 2016, which is a date prior to some of the growth in the surrounding area, including the River Bend Place Subdivision.

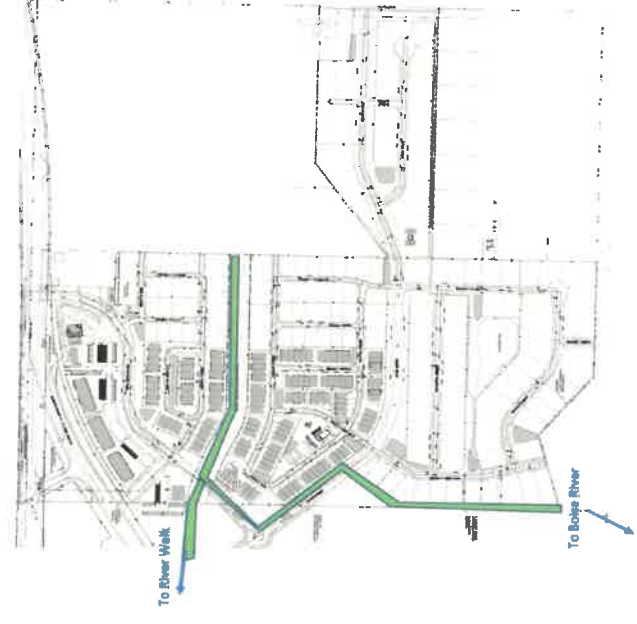
As to street improvements, ITD and Canyon Co. Hwy Dist. #4 have reviewed the Preliminary Plat and have recommended pro-rata share fees in the amount of \$400,033. ITD has also recommended additional construction on Hwy 44 to improve traffic flow. Improvements include right turn-lane construction, striping for suicide lane and re-striping at Greenlinks Ave. These payments and recommendations have been made a part of the Development Agreement under consideration

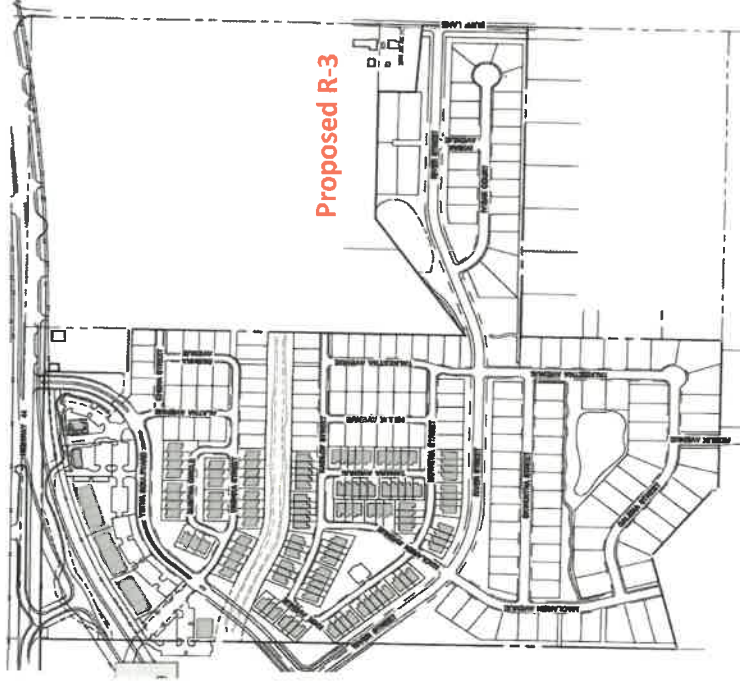
*Planning Staff finds that Applicant's transportation design & access as set forth in the preliminary plat are in the best interest of the City of Middleton and in harmony with the Comprehensive Plan.*



**Open Space & Amenities:** Applicant has exceeded the 5% Open Space requirement by providing 14.86 acres (or 16.79%) of open space in the form of a swimming pool facility, five pickle ball courts, large common area park with play facility, community ponds, extensive 10' wide pathways, and open grassy common lots with shade structure.

The 10' asphalt pathways will be part of the intricate "River Walk Loop" that will follow the Kennedy lateral to a new 22 acre Crane Creek Plaza and large park with 45 acre fishing pond and beach facilities. The pathways will then loop around and connect with the Boise River greenbelt trails and new boardwalk facility. The City has recently hired an engineer to start the planning for the River Walk Loop, and we will bring the plans to you for approval in the near future.





*Planning Staff finds that Applicant's request complies with the following requirements of annexation/rezone:*

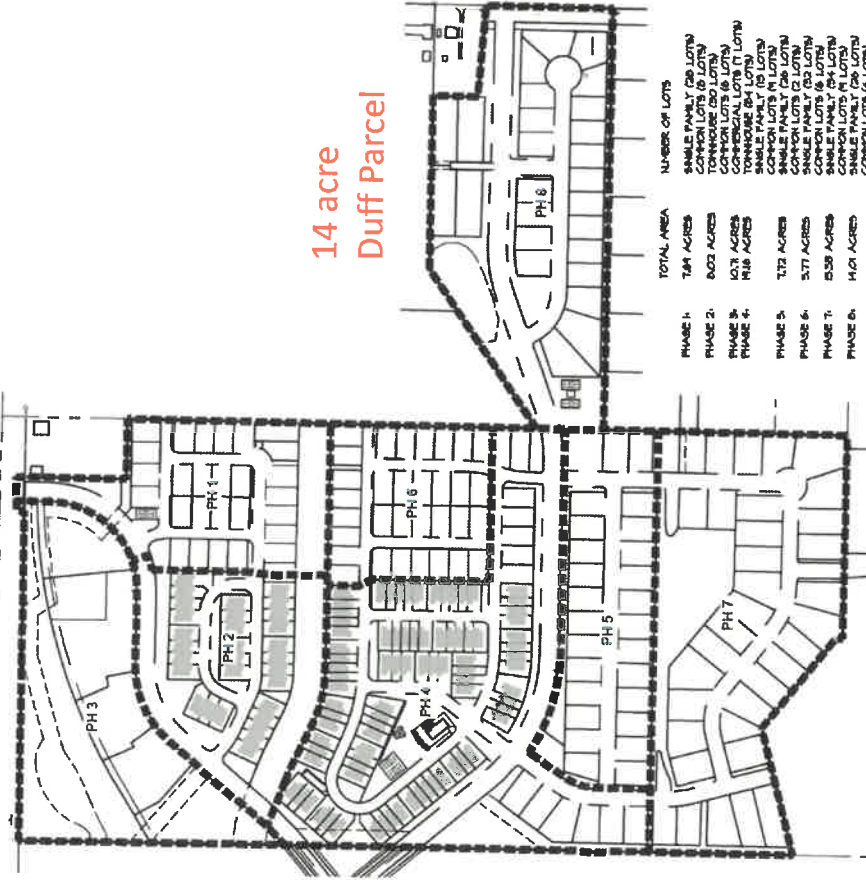
- ## Legal Discussion re: annexation fiscal impact on City





74 acre M-U portion

14 acre  
Duff Parcel



**Preliminary Plat Application:** The preliminary plat will be developed in eight phases. As to the 14-acre Duff parcel, the plat is in compliance with all dimensional standards for the R-3 zone and in compliance with all other Middleton city codes and standards.

As to the 74 acre M-U portion of the preliminary plat, it complies with all dimensions and standards of the current Code except for those items set forth as waivers or exceptions in the proposed Development Agreement (as allowed by MCC 1-15-2).

Therefore, Planning Staff finds that the preliminary plat (1) is in compliance with the Code and Standards of Middleton, (2) is not materially detrimental to the public health, safety and welfare as stated in the last slide, and (3) is in harmony with the Comprehensive Plan, as will be shown in more depth below.

**Legal Discussion – (1) DA's permit waivers & (2) claim lack of time.**



**Development Agreement Modification Application:** This project was annexed and rezoned in 2006, and a Development Agreement was recorded with that application. The DA is 15 years old, and it contains a lot of outdated style requirements and old circumstances that are no longer of concern. Planning Staff is recommending that these outdated provisions regarding roofing, siding, fencing...etc., be entirely removed and replaced with the following DA provisions that are more relevant to the current conditions as noted below:

1. A concept plan generally matching the current preliminary plat shall be attached to the DA and all development, including the amenities, shall be generally consistent with the concept plan.
2. Townhomes may have no more than five units per townhome structure.
3. The 55+ homebuyer requirement for townhomes and Garden/Patio homes north of the Kennedy Drain shall be created by deed restriction in compliance with the laws of the State of Idaho.
4. For townhomes south of the drain that are not 55+ restricted, the CC&Rs must contain provisions for HOA maintenance of front yard landscaping, limit of rentals to 20%, no short-term rentals less than 6 months, and creation of a fine-schedule to ensure compliance with the CC&Rs.
5. Developer shall provide a 20' wide landscaped buffer between the commercial lots and residential lots in lieu of MCC 5-4-10-7.
6. Only black wrought iron fencing shall be used in the subdivision.
7. On commercial buildings with rear elevations facing Hwy 44 must have enhanced architectural features on the rear and side. Each unit will be allowed a 2<sup>nd</sup> sign on the rear elevation.
8. All 10' pathways shall be encumbered with a public access easement.
9. Garden homes may have a minimum lot width of 60 feet and minimum lot size of 6,000 s.f. (Please note this 6000 s.f. lot size was already allowed in the old DA for garden homes and also the ordinary single-family homes. Applicant has agreed to bring the ordinary single family homesites up to 8000 s.f., in keeping with the current code rather than the 6000 s.f. size Developer is actually entitled to.
10. Because the Garden Homes are adjacent to the townhome lots and integrated to some degree, the 36' wide Townhome Road Section may also be constructed through the Garden Home portions of the plat. Parking will not be allowed on the 36' roadway, and parking signs to that effect must be posted.
11. Developer may develop the lots in Phases 1 through 3 north of the Kennedy Drain without providing a second access. The 2<sup>nd</sup> access off of Duff Lane or Middleton Road must be completed with Phase 4.
12. Developer shall obtain an ITD approach permit, construct all City required road improvements, and dedicate the same to the City of Middleton.





**Development Agreement Application con't:**

14. Developer to complete a Traffic Study and shall pay traffic pro-rata fees in the amount of \$400,033.
15. Developer will be allowed a minimum centerline radius of 90' or less if the intersection has a bulb out in the design.
16. Developer shall provide an east/west collector connecting Middleton Road to Duff Lane.
17. Developer shall dedicate a 50' right of way on the western perimeter to be able to complete Yetna Avenue and Sawtooth Lakes Street in the event the River Walk project to the west is not ultimately developed. Alternatively, Developer may enter into an agreement with the Developer of River Walk to complete the off-site portions of Yetna Avenue and Sawtooth Lakes Street in the event the River Walk project does not develop.
18. If the River Walk project to the west is not developed, Developer will design and construct a sewer lift station to allow sewer service to the southern portion of the project.
19. Developer must execute and record cross-access easements to ensure there are no land-locked parcels.
20. Miscellaneous provisions to ensure compliance with the current code on density, parking, and dimensions.



**Development Agreement Modification can't:**

As a final matter, special attention should be given to setbacks in the proposed DA. The 2006 DA allowed Developer some narrower setbacks and smaller lots sizes than required by the stricter standards in the code for R-3 zoning. For example, in the DA, single family homesites had a minimum lot size of 6000 s.f., and rear yard setback of 15 feet. Current code is 8000 s.f. lots with 20 foot rear setbacks. The DA also allowed small single family homesites with 0' side yard setbacks and front yard setback of 20 feet. Current R-3 zoning requires 10' side yard setback and 25' front yard setback.

In the spirit of cooperation, Applicant has worked with Planning Staff to put together a compromised plan for setbacks. This compromise brings some of the setbacks and lot dimensions up to the stricter standards for current R-3 zoning while allowing Developer the more narrower dimensions previously entitled in the DA and in M-U zoning. Both sides have compromised to find that middle ground between the DA's loose entitlements and the stricter standards of the current code.

The proposed setbacks are as follows:

Home Type	Interior Side Setback	Side Street Setback	Front Yard Setback	Rear Yard Setback
Townhomes	12' exterior and 0' for common wall	20'	20'	15'
Garden Homes	5'	20'	20'	15'
Traditional Homes	10'	20'	25'	20'

Planning Staff finds that the Development Agreement Modification application is in compliance with City Code, which requires that the DA be in the form required by the City. Additionally, Idaho State Code sec. 67-6511A requires a public hearing with proper notice, which has been done.



Legal topic: No formatted DA was presented at P&Z. Instead, provisions were set forth in the Staff Report. Attorney Claims that this was a fatal flaw that requires City Council to force the hearing back before P&Z with a written DA

#### 5-2-1: CREATION:

A. Method Of Creation: A development agreement may be created by the property owner or by the City as part of a rezone application.

B. Commission Determination: In the event of a determination by the commission that a development agreement should be entered into, the commission shall retain jurisdiction of the matter, defer consideration of the rezone requested and set a time limit for submittal of the development agreement

C. Council Determination: In the event of a determination by the Council that a development agreement should be entered into, the Council shall remand the rezone matter back to the commission for consideration of the development agreement. The Council may direct the commission on remand of the matter to the commission. (Ord. 609, 7-3-2018)

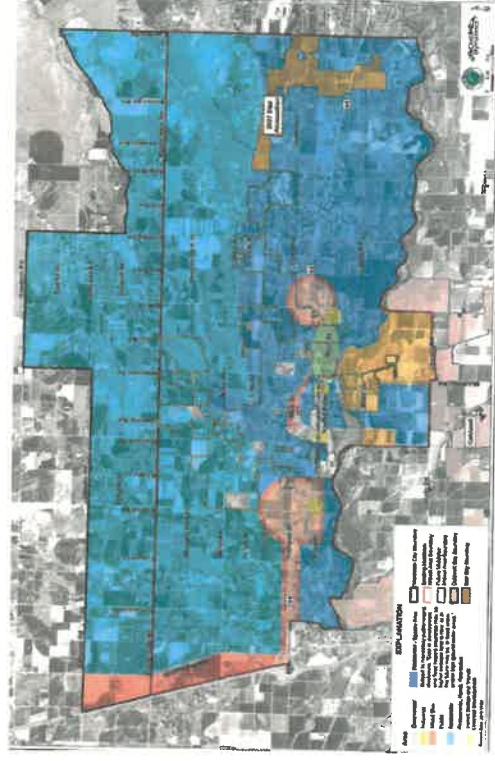
#### 5-2-5: MODIFICATION:

A development agreement may be modified by agreement of the parties after complying with the notice and public hearing provisions of Idaho Code section 67-6509



**Comprehensive Plan Map Amendment Application:** Applicant is requesting via the Comp Plan Map Amendment Application to change the Future Land Use Map land use designation for the 14 acre Duff parcel. Currently, the Future Land Use Map shows "Transit Station," and "Transit Oriented Development" designations along with a "Mixed Use" designation for the 14 acre parcel. As stated earlier, The Comprehensive Plan defines "Transit-Oriented Development" as *"high density residential and light commercial uses in close proximity to a high-capacity public transportation network system...etc."*. So earlier governing boards intended an intensive use on this 14 acre Duff parcel. Applicant is requesting through this Comp Plan Map Amendment to bring that intensity down to the less intensive use under the "Residential" designation, which is still in harmony with the Comprehensive Plan.

*As to be shown on the next slide, Planning Staff finds that the proposed changes to the Future Land Use Map is still in "harmony" with the Middleton Comprehensive Plan.*



### **Comprehensive Plan Findings**

Among other findings already listed above, before the Council can approve Applicant's four applications, the Council must find that the applications are in harmony with the Middleton Comprehensive Plan and with the *Goals, Objectives, and Strategies* set forth in the Plan.

*Planning Staff finds that the project and four applications are in harmony with the plan as follows:*

1. *First and foremost, the Project completes the east/west collector street shown on the Transportation, Schools & Recreation Map (E. Sawtooth Lakes St.), which will take a lot of traffic pressure off Hwy 44, and*
2. *As shown in more detail in the Staff Report, Applicant's applications comply with Goals 3, 4, 6, 7, 8, 10, and 16.*



**Comments Received from Surrounding Landowners:** There have been numerous written comments submitted with respect to the proposed project. All comments have been appended to the back of the Staff Report and will be made a part of the record and Final Order. The general comments involve the following:

- a. Project will increase traffic
- b. Project is too dense and intensive for a "rural area."
- c. Developer should pay fair share of impacts on community
- d. Developer's gravel pit is a nuisance.
- e. Criticism of process at the June 7<sup>th</sup> public hearing before the Planning & Zoning Commission.
- f. Claims that there has not been enough time to "digest" or address a complicated project.

**Comments from Agencies:** As already discussed above, comments from CHD4, ITD, COMPASS and Middleton Rural Fire Department have been received.

**Comments from City Engineer, Planning Staff & Floodplain Administrator:** Comments from City Engineer, Planning Staff, and Floodplain Administrator were appended to the Staff Report and have been made a part of the Record.

**Applicant Information:** Application was received and accepted on September 15, 2020. The Applicant is Breckon Land Design for Drake Investments LLC, Robert Brian Burnett, Deep River Investments & Deep Waters LLC / 6661 N. Glenwood, Garden City, ID 88714 / 208.376.5153 / mwall@breckonld.com.

**Applicable Codes and Standards:**

Idaho State Statute Title 67, Chapter 65  
Idaho Standards for Public Works Construction and Middleton Supplement thereto  
Middleton City Code 1-14, 1-15, 1-16, 5-1, 5-2, 5-3, and 5-4.





**Notices & Neighborhood Meeting:**

	Dates:
Newspaper Notification	06/20/2021
Radius notification mailed to Adjacent landowners within 300'	06/15/2021
Circulation to Agencies	06/14/2021
Sign Posting property	06/15/2021
Neighborhood Meeting	08/18/2020, 3/8/2021 & 4/12/2021

You'll see that Applicant completed 3 Neighborhood Meetings. That is more than is usually required. Applicant's first Neighborhood Meeting was sufficient for this public hearing, but because of complaints regarding irregularities, Planning Staff requested Applicant to conduct additional meetings to ensure there would be no outstanding controversy on the matter before City Council.

**FINDINGS:**

*Planning Staff finds that Notice for the City Council public hearing was appropriate and given according to law. Notice for the Planning & Zoning Commission public hearing was also given according to law: (1) newspaper notice 5/23/2021; (2) agency notice 5/18/2021; (3) landowner notice within 300' 5/19/2021 and (4) post box notice 5/19/2021.*

**Legal Discussion – notice not require signed FCO / neighborhood meetings**



### **Conclusions and Recommended Conditions of Approval:**

The Planning & Zoning Commission is tasked with considering four separate applications for Annexation/Rezone, Preliminary Plat, Development Agreement Modification, and Comprehensive Plan Map Amendment. When considering the applications, Council is required to make "Findings of Facts" and "Conclusions of Law" before making the order.

**As to Findings of Facts,** Staff set forth all legally required Findings of Facts in the Staff Report and in this presentation. If Council accepts those findings, it need merely state on the record that it accepts the facts set forth in the Staff Report and presentation. Additionally, Council may state on the record that it has considered all statements and public testimony given at tonight's hearing.

**As to Conclusions of Law,** Staff has set forth all required conclusions of law in the Staff Report and presentation, and if Council agrees, then Council need merely state on the record that it accepts all Conclusions of Law set forth in the Staff Report and presentation. Also, if Council so finds, Council may also state on the record that the July 7, 2021 public hearing was conducted in compliance with Middleton City Code and State Statute.

**As to the Order,** if Council denies any of the applications, pursuant to Middleton City Code 1-14(E)(8), Council must state on the record what Applicant can do to gain approval, if anything.

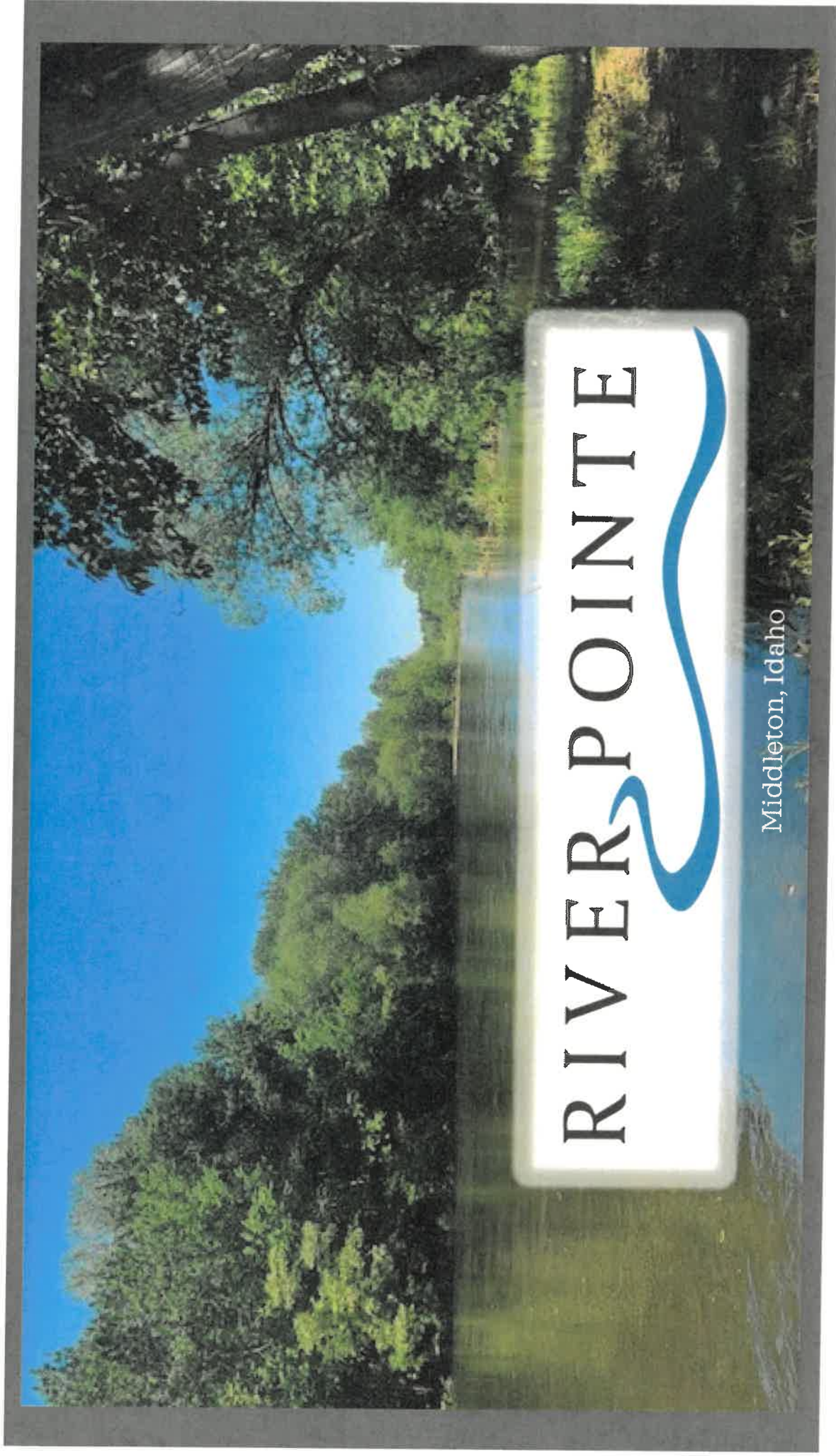
If Council is inclined to approve the applications based upon the noted Findings of Facts and Conclusions of Law, then Planning Staff recommends the approval be subject to the following conditions:

1. City of Middleton municipal domestic water, fire flow and sanitary sewer services are to be extended to serve the subdivision.
2. All 7/1/21 comments of City Engineer and all comments of the Floodplain Administrator are to be completed and approved.
3. All requirements of the Middleton Rural Fire District, ITD and CHD4 are to be completed and approved.
4. Developer shall comply with all terms of the proposed Reformed and Restated Development Agreement (If, however, the Council is not inclined to approve specific portions of the DA, then those discrete portions can be excepted in the motion.)

Prepared by Middleton City Planner, Robert Stewart

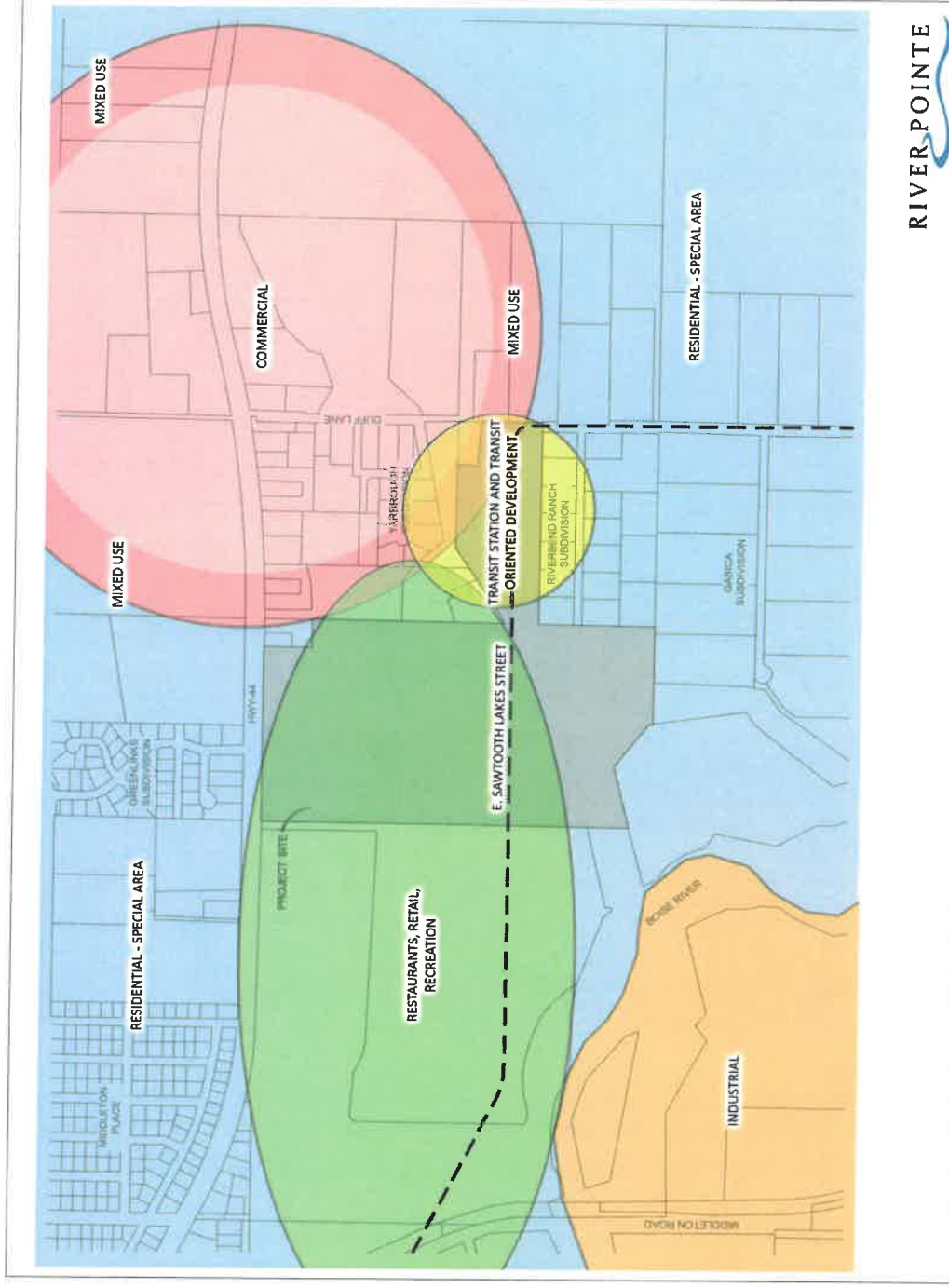
Dated: 7/7/2021

## Exhibit 2



# Middleton Future Land Use Map

- Last revised July 12, 2019
- Area remains unchanged from prior FLUM's
- E. Sawtooth Lakes St. - 100-foot ROW proposed
- 14-acres in Transit Oriented Development
- Proposing Map revision to R-3 zone for annexed property



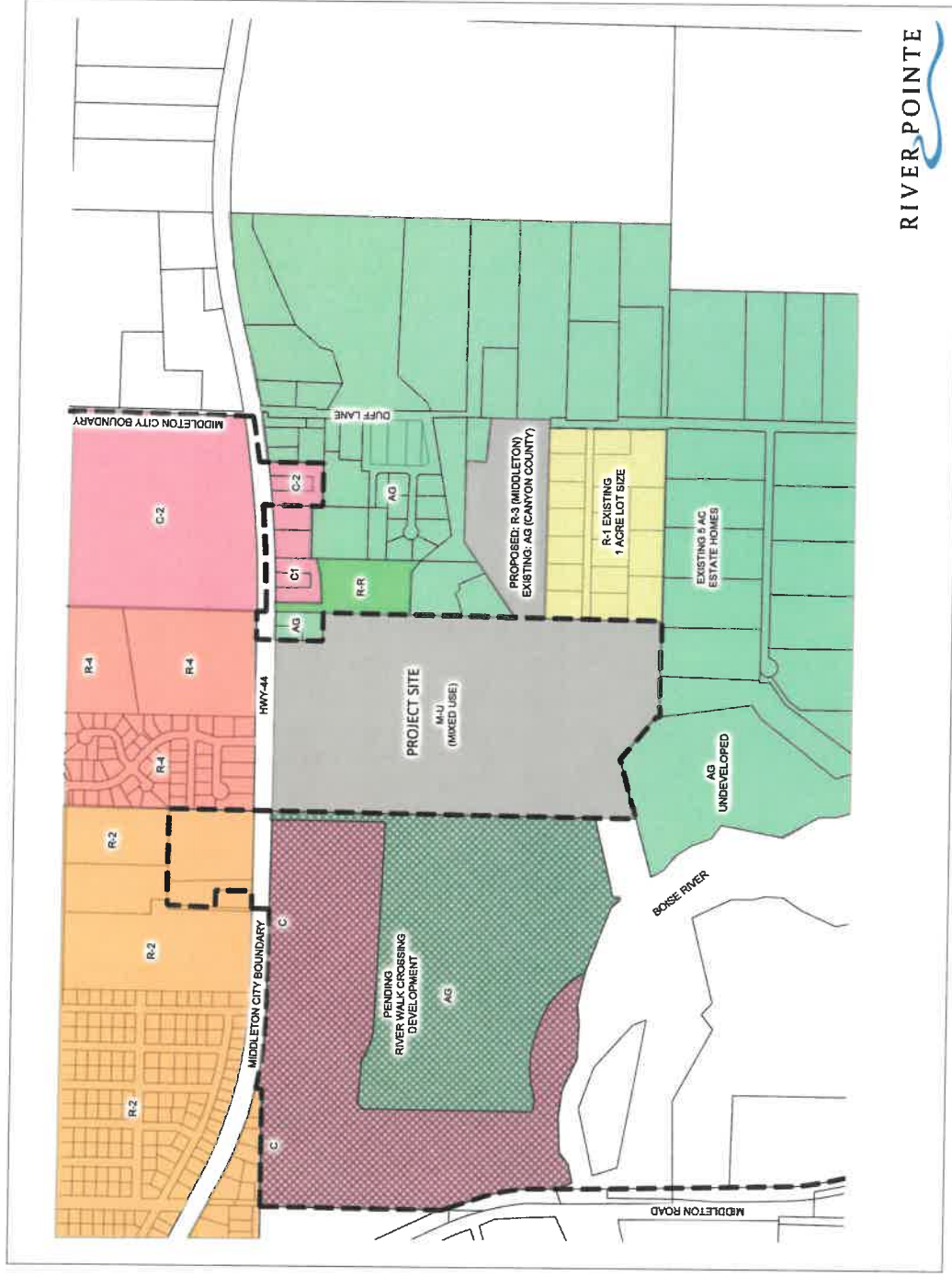


- Approved in 2005
- 100-foot collector ROW proposed
- No minimum lot size for high density area
- Medium density lots - 6,000 sf minimum
- Low density lots - 7,000 sf minimum
- 14-acres not included



# Zoning Map

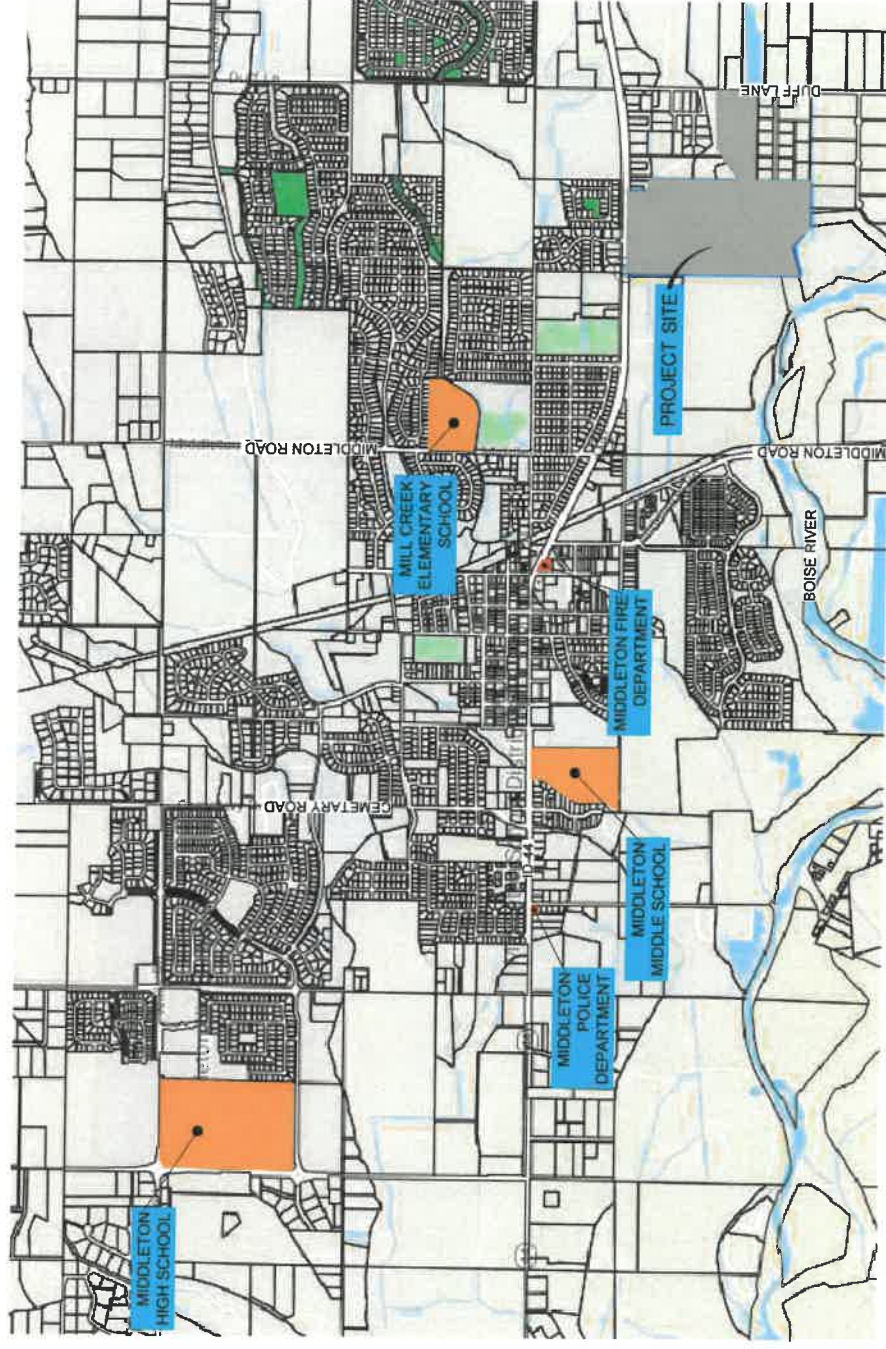
- 10481 Highway 44
- Annexation & Rezone planned for proposed River Walk Crossing development
- All property shown is within the Middleton Area of Impact





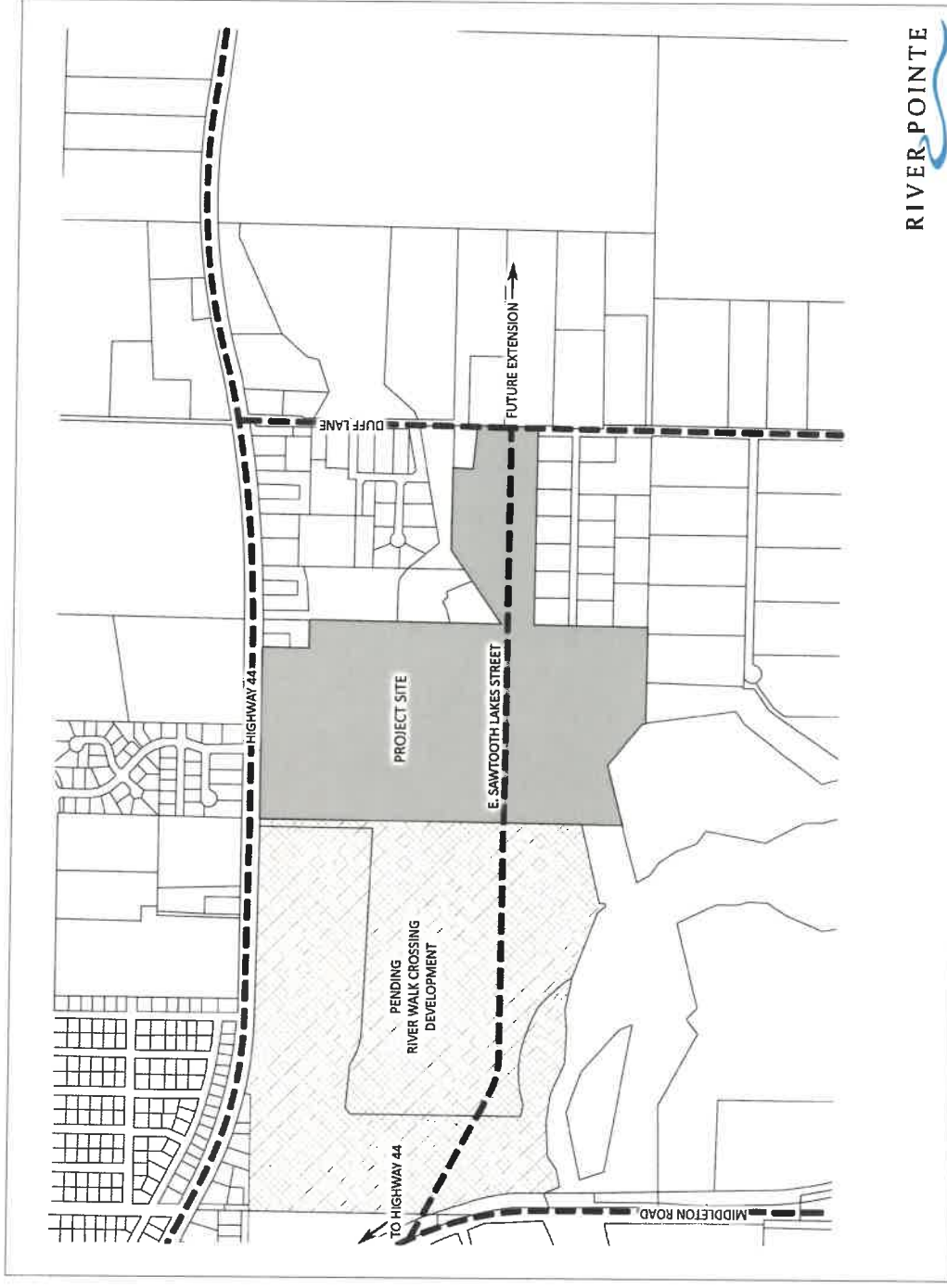
# Middleton Schools and Emergency Services

- Mill Creek Elementary - 1.3 miles
- Middleton Middle School 1.6 miles
- Middleton High School 3.6 miles
- Middleton Fire : 1.1 miles
- Middleton Police: 2 miles



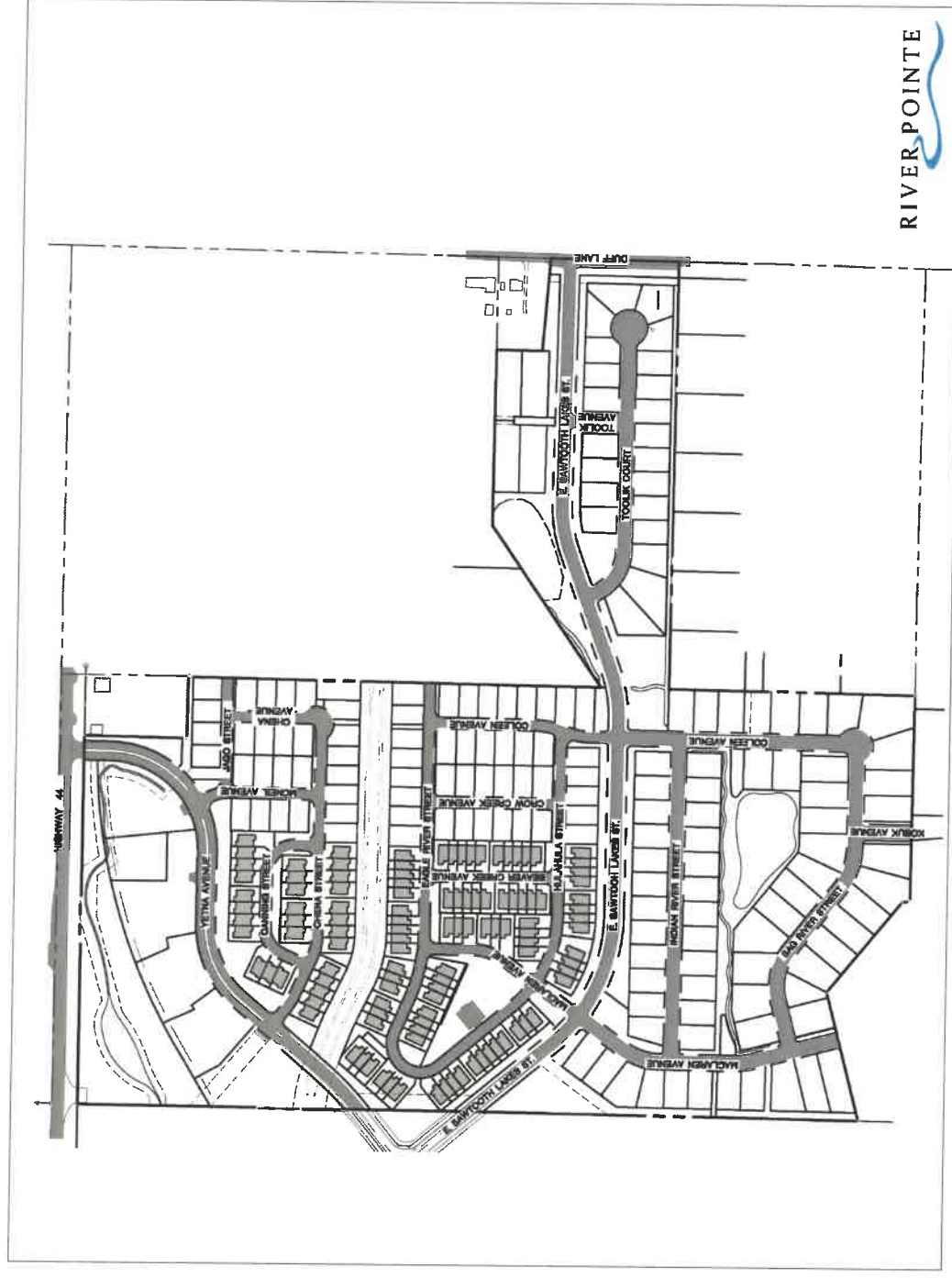
# Middleton Traffic Circulation Plan

- E. Sawtooth Lakes St. will extend west to Middleton Road when River Walk Crossing is developed
- E. Sawtooth Lakes Street will be a 60-foot wide east-west collector



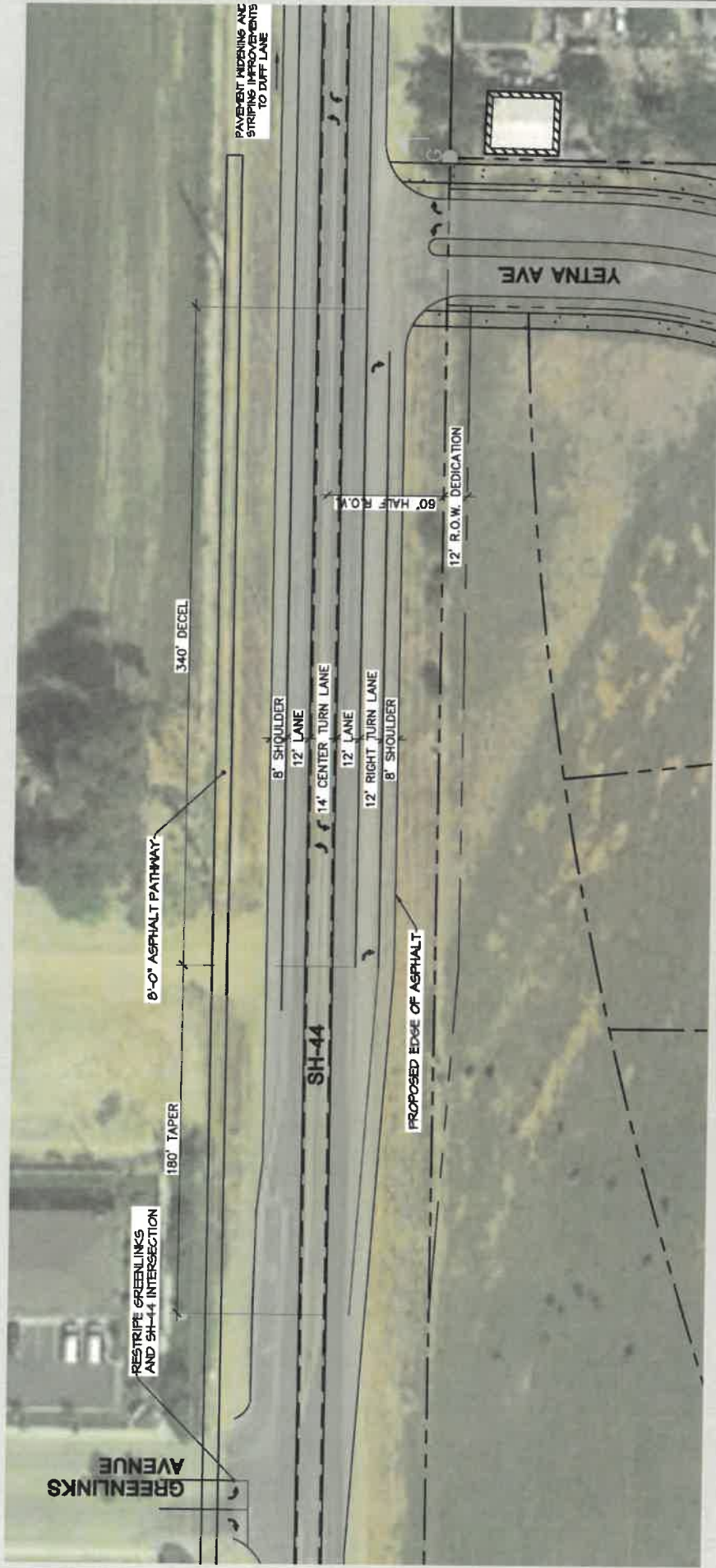
## Proposed Circulation Plan

- Divided Entry off of Highway 44 (Yetna Ave.)
- E. Sawtooth Lakes Street is the east-west collector
- E. Sawtooth Lakes Street will continue west to Middleton Road

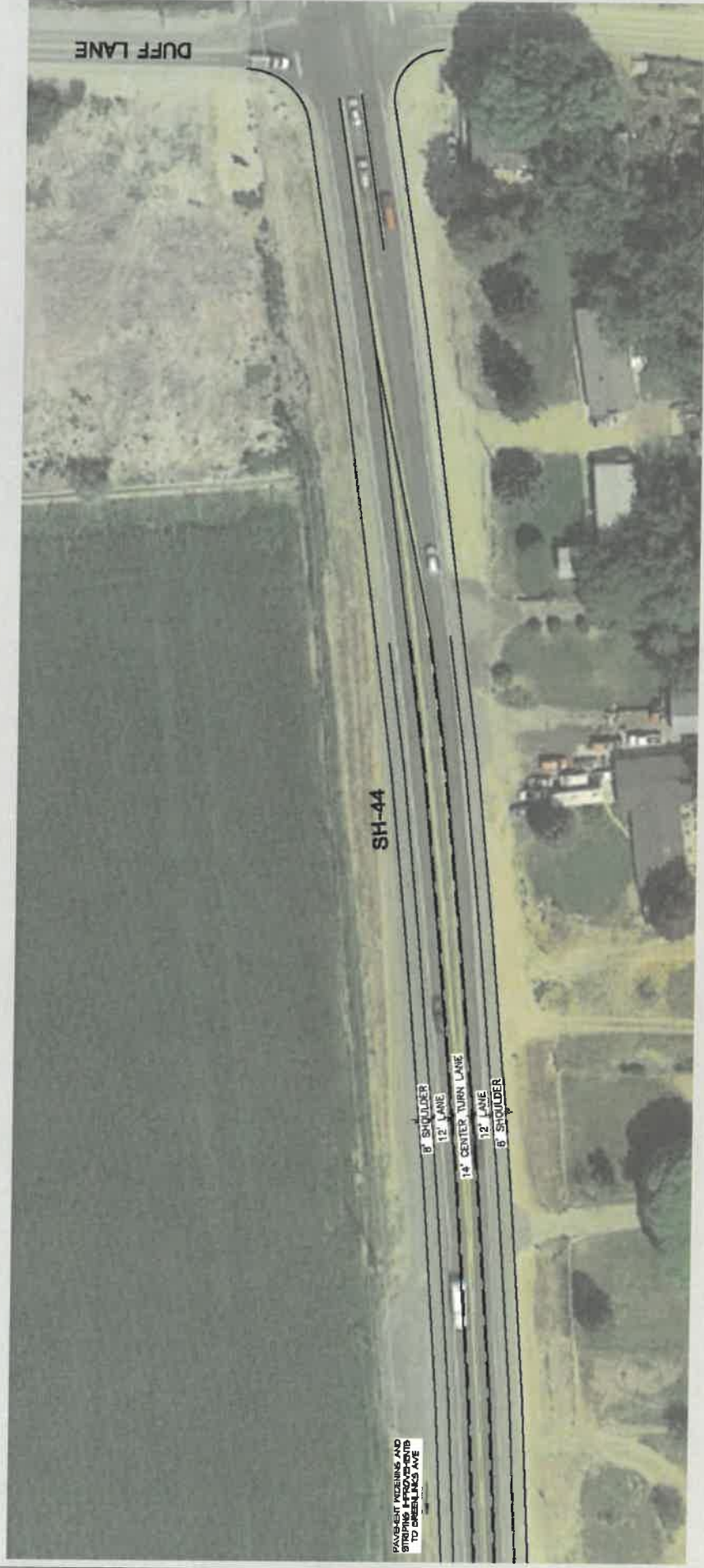




# Planned Improvements to Highway 44



# Planned Improvements to Highway 44



## Proposed Development Layout

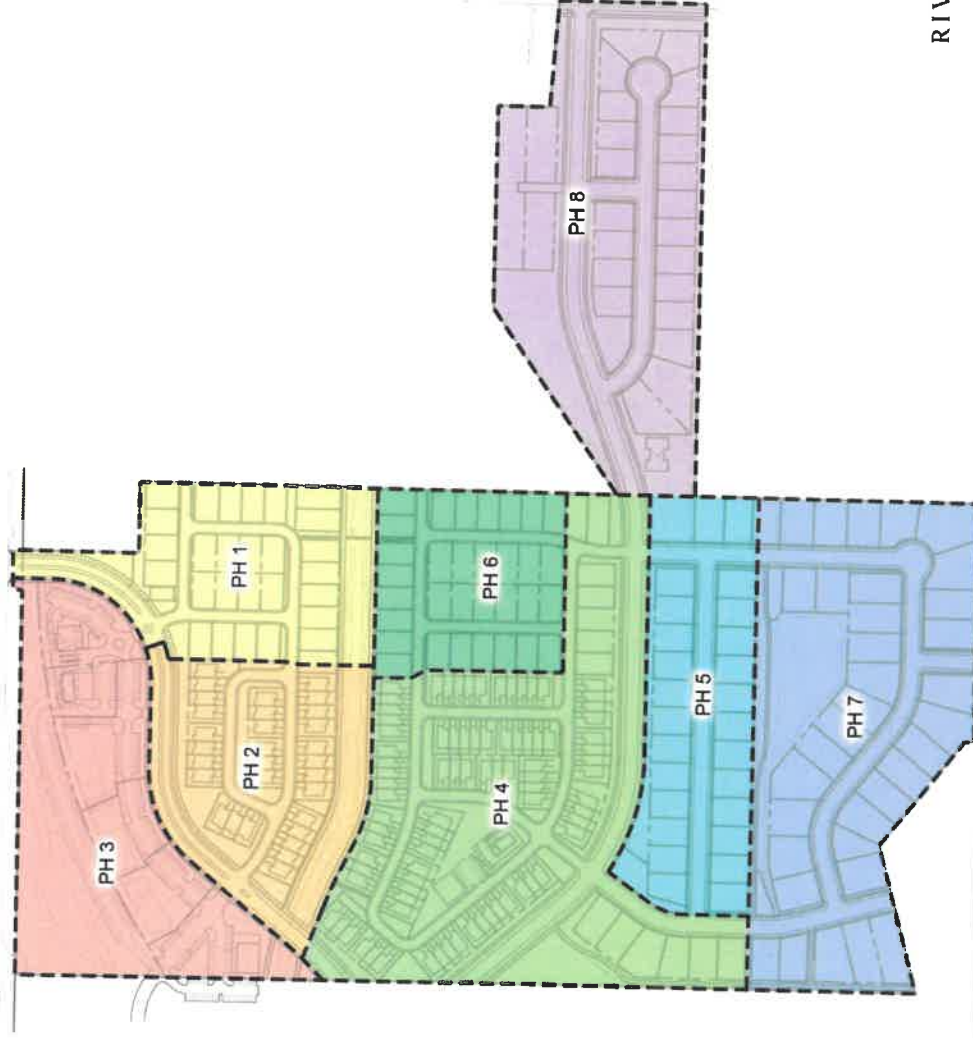
- Commercial lots at north end
- 55+ Townhomes and garden homes north of Kennedy Drain
- Townhomes and garden homes transition between the 55+ community and the traditional residential
- R-3 compliant residential lots south of Sawtooth Lakes Drive and on 14-acres
- Residential lot sizes are largest at the south end





# Proposed Phasing Plan

- **Phase 1** - Garden Homes-55+
- **Phase 2** - The Villas-Townhomes for 55+
- **Phase 3** - Commercial
- **Phase 4** - Townhomes, Garden homes & Single-Family
- **Phase 5** - Single-Family
- **Phase 6** - Garden Homes
- **Phase 7** - Single-Family
- **Phase 8** - Single Family





## GARDEN HOMES AT RIVER POINTE

- Restricted to Active Adult (55+) north of Kennedy Drain
- Single Level Patio Homes
- Small Lots
- Low Maintenance
- Minimum house size - 1,250 SF
- Minimum lot size - 6,000SF



## GARDEN HOMES AT RIVER POINTE

- Restricted to Active Adult (55+) north of Kennedy Drain
- Single Level Patio Homes
- Small Lots
- Low Maintenance
- Minimum house size - 1,250 SF
- Minimum lot size - 6,000SF





# SOUTH RIVERPOINTE

- Family Living
- Single Level and 2-story Homes
- Traditional Home Designs
- Minimum house size - 1,750 SF
- Minimum lot size - 8,000SF

# SOUTH RIVER POINTE



RIVER POINTE



# SOUTH RIVER POINTE



RIVER POINTE

# SOUTH RIVER POINTE



RIVER POINTE

# THE VILLAS AT RIVER POINTE

- Active Adult Living
- Single Level Luxury Townhomes
- Small Lots, Fully Landscaped
- Low Maintenance
- North of Kennedy Drain
- Up to 5 attached units per building





# THE TOWNHOMES AT RIVER POINTE

- Luxury Townhomes
- Front yard landscaping maintained by the HOA
- CC&R's that assure upkeep and high quality living
- Low Maintenance Living
- South of Kennedy Drain



RIVER POINTE













## COMMERCIAL DEVELOPMENT

- Up to 80,000 sf commercial space
- Restaurant Pad
- Two drive through sites
- Flexible business opportunities
- Seven commercial lots
- Plaza area



RIVER POINTE



## COMMERCIAL DEVELOPMENT

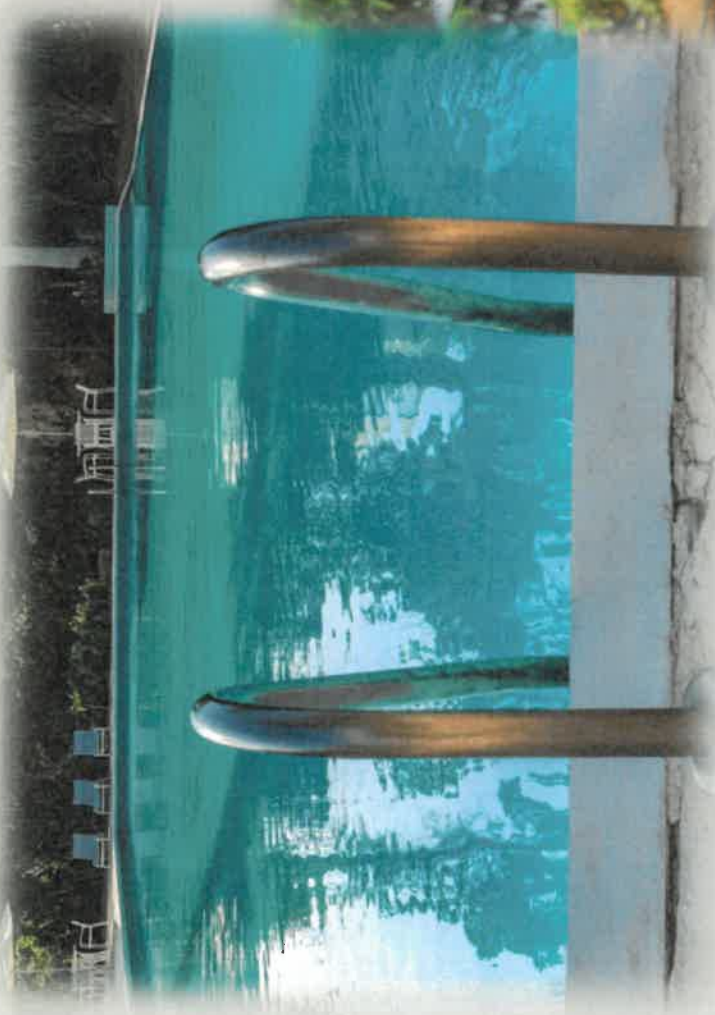
- Up to 80,000 sf commercial space
- Restaurant Pad
- Two drive through sites
- Flexible business opportunities
- Seven commercial lots
- Plaza area



RIVER POINTE



# AMENITIES AND COMMON AREAS



Community Pool

Children's Play Area



# AMENITIES AND COMMON AREAS



Pathway along Kennedy Drain

Pickleball Courts





# AMENITIES AND COMMON AREAS

Landscaped Pathways  
and Community Pond



# AMENITIES AND COMMON AREAS

Landscaped Boulevard Entry  
from Highway 44





**Thank You**  
**from the**  
**River Pointe Team**





# 7) River Pointe Subdivision - Annex/PP/DA Mod/Comp Plan Amnd

July 7, 2021 - City Council Public Hearing

Please check

Name	Address	Phone or Email	Please check			
			In Favor	Neutral	Opposed	Testify
Paul Seeman	10055 Riverbend Pl.		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Kelly Futsen	2350 W. Merrill		<input checked="" type="checkbox"/>			
Marty Wall	6661 N. Glenwood - Garden City		<input checked="" type="checkbox"/>			
Mike Graefe	1889 Ridge Way			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Carey Lakey	177D, D3				<input checked="" type="checkbox"/>	
for Riverbend 14th Precinct Matthew Johnson	5700 E. Franklin Rd. Ste. 200 Nampa, ID			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
April Wilke	8982 Collector Ln		<input checked="" type="checkbox"/>			
MATT WILKE	P.O. Box 7 MIDDLETON IDAHO		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
ANDREW KNOWLES	1521 E. CRANFORD PT. DRIVE		<input checked="" type="checkbox"/>			



**7) River Pointe Subdivision - Annex/PP/DA Mod/Comp Plan Amnd**

July 7, 2021 - City Council Public Hearing

Please check

[illegible]



# 7) River Pointe Subdivision - Annex/PP/DA Mod/Comp Plan Amnd

July 7, 2021 - City Council Public Hearing

Please check

Name	Address	Phone or Email	Please check			
			In Favor	Neutral	Opposed	Testify
MATT HOFFMAN	19851 Dominion Way	208-283-3767		X	X	
Maria-fernandes	10076 Riverbend Place	707-246-5194		X		
Michael P Valley	10073 Riverbend Pl	408-761-3323		X		
Kathleen Kelley	10073 Riverbend Pl	881-801-7278		X		
ARMANDO FERNANDES STERLING SMITH	10076 Riverbend Pl	707-652-9191		X		
LOREY SMITH	10079 Riverbend Pl	707 372 8242		X		
	10079 Riverbend Pl	707 372 8743		X		
LEON GILLESPIE	511 N. Dewey	208-860-8115		X		
Qua Hawley	10055 Riverbend Pl.	708-429-9164		X		





Please check

[illegible]