

Middleton City Council

Findings of Facts, Conclusions of Law, and Decision & Order



In the Matter of an application by Jane Suggs/Gem State Planning for preliminary plat and development agreement termination/modification with respect to the Waverly Park Subdivision located at 0 Duff Lane (Tax Parcel Nos., R338570120 and R33857011) involving 417 buildable lots and 55 common lots on 157.56 acres of vacant land (the “Property”).

A. Findings of Fact: The Middleton City Council reviewed the facts as outlined in the staff report for the hearing date of September 1, 2021 (which staff report is attached hereto as Exhibit “A” and incorporated herein by this reference and made a part hereof as if set forth in full), and considered public testimony and applicant submittals, as set out below. Additionally, all pertinent Idaho State statutes and City ordinances, standards and codes were used in evaluating the application.

1. Hearing Facts: See Staff Report for the hearing date of September 1, 2021, which Report is attached hereto as Exhibit “A” and incorporated herein by this reference.
2. Process Facts: See Staff Report for the hearing date of September 1, 2021, which Report is attached hereto as Exhibit “A” and incorporated herein by this reference.
3. Application and Property Facts: See Staff Report for the hearing date of September 1, 2021, which Report is attached hereto as Exhibit “A” and incorporated herein by this reference.
4. Required Findings per Middleton City Code 1-14-2(E)(7), 1-14, 1-16, 5-1, 5-2, 5-3, and 5-4, an Idaho Code Secs., 67-6503, 67-6513, 67-6511, 50-1301 through 50-1329, and 50-222.: See Staff Report for the hearing date of September 1, 2021, which Report is attached hereto as Exhibit “A” and incorporated herein by this reference.

B. Conclusions of Law: The Middleton City Council has the authority to hear these applications and order that they be approved or denied. The public notice requirements were met, the hearing was legally noticed and posted, and the hearing was held and conducted under the requirement of Idaho Code and City ordinances. Specifically, based upon the findings of fact, the Middleton City Council finds the following:

1. That the City of Middleton has the authority to exercise the powers conferred upon it by the “Local Land Use Planning Act of 1975,” codified at Chapter 65, Title 67, Idaho Code

I.C. §67-6503).

2. That the City of Middleton properly exercised said authority.
3. That due consideration has been given to the comment(s) received from the governmental subdivisions providing services in the City of Middleton planning jurisdiction and comment(s) received in written form and through public testimony.
4. That notice of the application and public hearing were given according to law.
5. That City Council's public hearing was conducted according to law, and the City has kept a record of the application and related documents.
6. That codes and standards applicable to the applications are the Idaho Standards for Public Works Construction, the Middleton Supplement to the Idaho Standards for Public Works Construction, Middleton City Code 1-14, 1-16, 5-1, 5-2, 5-3, and 5-4, an Idaho Code Secs., 67-6503, 67-6513, 67-6511, 50-1301 through 50-1329, and 50-222.

C. Order of Decision:

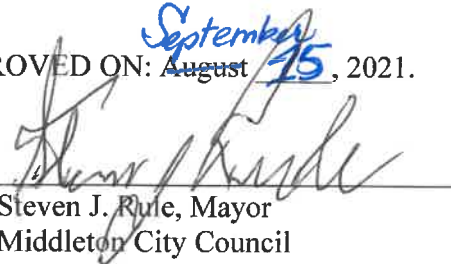
Pursuant to the City Council's authority as provided in Middleton City Code 1-5-2, and based upon the Findings of Fact and Conclusions of Law, the Mayor and City Council hereby order the following:

1. The application for preliminary plat is approved subject to the conditions of approval set forth in the Staff Report for the September 1, 2021, public hearing.
2. The application for development agreement termination/modification is approved subject to the conditions of approval set forth in the Staff Report for the September 1, 2021, public hearing.

D. Right to Request Regulatory Taking Analysis

The Applicants are hereby notified of their right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code.

WRITTEN ORDER AND DECISION APPROVED ON: ~~August~~ ^{September} 15, 2021.


Steven J. Rule, Mayor
Middleton City Council

Attested by:


Roberta Stewart
Planning and Zoning Department



STAFF REVIEW AND REPORT Middleton City Council

Waverly Park Subdivision

City Council Public Hearing Date: September 1, 2021

Snapshot Summary:

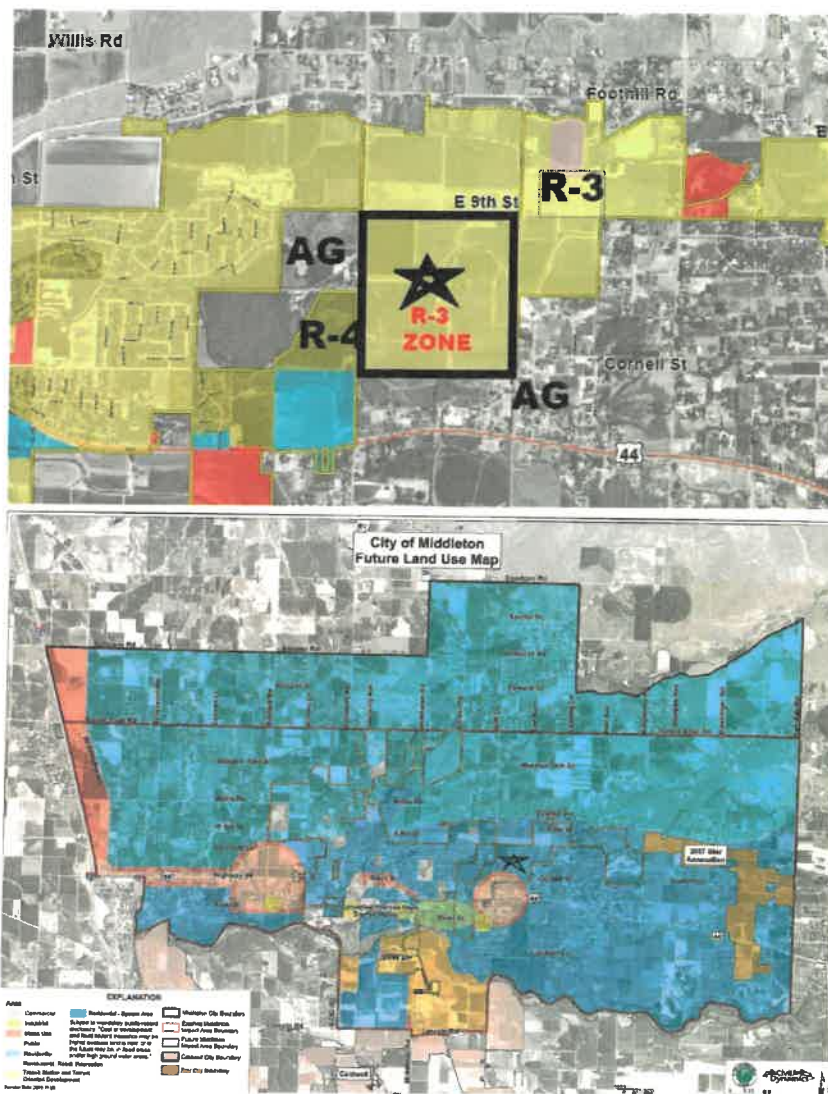


Acreage	157.56 acres
Current Zoning	R-3 ("Single Family Residential")
Proposed Zoning	To remain the same R-3
Current Land Use	Residential
Proposed Land Use	To remain the same "Residential"
Lots	417 single family home lots – 54 common lots
Density	2.6 (density allowed is 3 single family dwellings per gross acre).
Open Space	19.24 acres / 12.2%
Amenities	10' wide walking pathway with public easement / 6 acre common lot.

- A. Application Requests:** Applicant submitted two applications: (1) Preliminary Plat and (2) Development Agreement Termination/Modification.

- B. Project Description:** Subdivision with 417 single family home lots and 54 common lots on 157 acres. (Tax Parcel Nos. R33857011 & R33857012). Amenities include 10' walking path along the slough/canal and 6 acre open space common lot.
- C. Current Zoning & Property Condition:** The 157 acre project site is currently zoned R-3 ("Single Family Residential"). The property is surrounded by City R-3 zoning on the north and east sides. County property zoned agricultural surrounds the project on the west, south, and east sides. A small amount of County C-1 (Neighborhood Commercial) is also located to the south of the project.

The project parcel is designated a Residential use on the Future Land Use Map, and that will remain unchanged.



- D. **City Services:** Domestic water is already located in 9th Avenue and easily accessible. Sanitary sewer is available along Duff Lane and 9th Avenue and easily accessible.



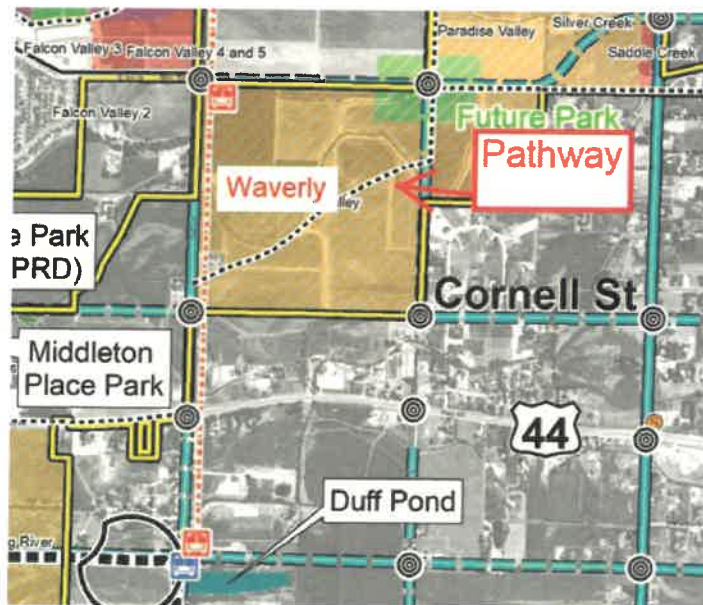
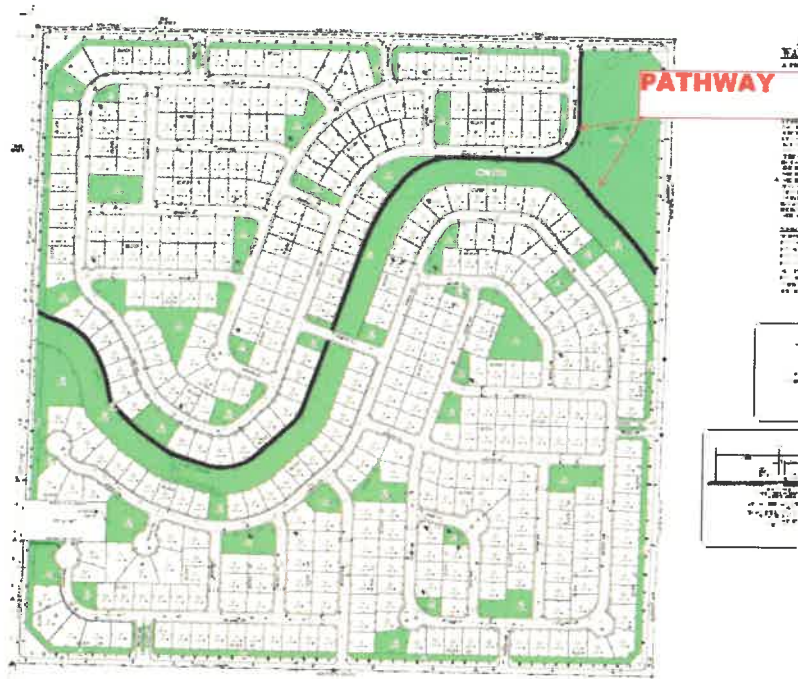
- E. **Traffic, Access & Streets:** Access to the project is via Duff Lane, 9th Avenue, Cornell Street, and Albright Avenue.

Project Owner/Developer will contribute to the improvement of nearby roads and intersections by paying \$2,105,850 in Traffic Impact Fees pursuant to the new Mid-Star Impact Fee Schedule. These fees are collected at building permit issuance.

In addition to Traffic Impact Fees, Owner/Developer will pay Proportionate Share fees to cover impacted intersections that are NOT on the Mid-Star fee schedule. These fees are being re-reviewed by Idaho Transportation Department in light of the new Mid Star fee schedule under review. ITD has a long queue for review and will not be able to render a recommendation on a fee amount until a few weeks after the September 1st hearing date. This, however, should not affect City Council's ability to approve the Preliminary Plat if it is so inclined. Council will merely need to make payment of all City required Proportionate/Pro-rata Share fees a condition of Preliminary Plat and Final Plat approval.

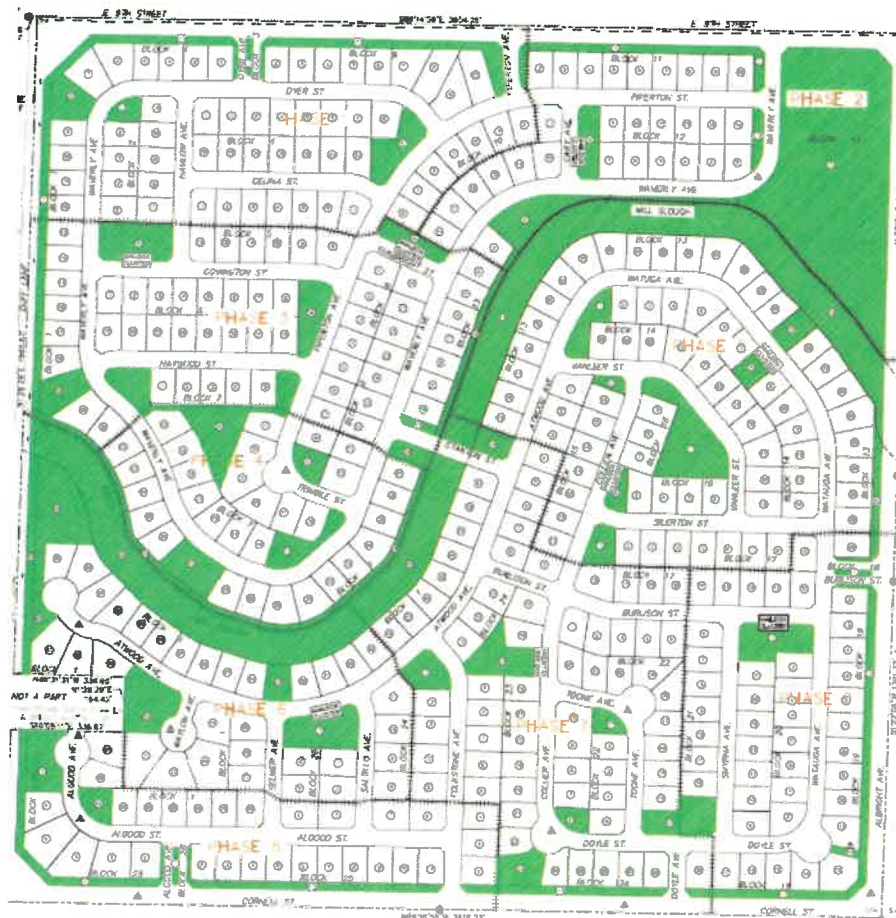
Finally, it should be noted that Developer will further mitigate any traffic impacts by improving, at its own cost, ½ road street frontages along Duff Lane, 9th Avenue, Cornell St., and Albright Avenue.

- F. **Pathway & Open Space:** Applicant has provided a 10' wide asphalt pathway along the slough that runs through the property. This pathway will connect to future pathways in the Regional trail system as shown on the Comprehensive Plan's "Transportation, Schools, and Recreation Map."



- G. **Stormdrain and Pressurized Irrigation:** Stormdrain facilities and pressurized irrigation have been provided in the preliminary plat and are approved by the City Engineer.
- H. **Middleton Rural Fire District:** The Middleton Rural Fire District has reviewed the preliminary plat and issued general comments approving the preliminary plat.
- I. **Preliminary Plat Application:** Please see full copy of the Preliminary Plat attached to this Staff Report as Exhibit "A". City Engineer's "recommendation" letter for approval is attached as Exhibit "B".

Developer is proposing nine phases for the development of the plat:



FINDINGS:

Planning Staff finds that the preliminary plat complies with the dimensional standards of the R-3 Zone and other requirements of the Middleton City Code. No variances are requested with respect to the preliminary plat.

Planning Staff further finds that the preliminary plat is not materially detrimental to the public health, safety and welfare, and City services are located within easy access. Finally, as will be discussed at length below in section K, the preliminary plat is also in harmony and compliance with the Middleton Comprehensive Plan.

- J. Development Agreement:** The subject property was annexed into the City before 2006. In 2006, the owners and the City entered into a Development Agreement (“DA”) that involved this property and an additional 90 acres to the east. Applicant is requesting that its 157 acres be removed from the requirements of the 2006 DA, leaving the remaining 90 acres owned by others subject to the DA.

Planning Staff is in favor of terminating the 2006 DA as to the Applicant’s 157 acres. Owner/Developer has designed the preliminary plat to the current standards of the Middleton Code and standards of the 2019 Comprehensive Plan. The current preliminary plat meets all dimensional standards for the R-3 Zone and does not involve any variances, waivers or exceptions from the Code. If the Owner/Developer develops the property per the 2006 DA, the Developer must improve all streets and infrastructures to the outdated standards of the 2006 Middleton Code. Additionally, Developer will not be required to install the pathways and open space required by the current 2019 Comprehensive Plan.

Both Owner and City Staff agree that the preliminary plat will be a better plat if it is designed to the standards found in the current code and Comprehensive Plan. There is essentially no benefit it retaining the outdated standards mandated by the 2006 DA.

Attached as Exhibit “C” is a true copy of the proposed Development Agreement Termination. Attached as Exhibit “H” is a true copy of the old 2006 Paradise Valley DA that applies to this property.

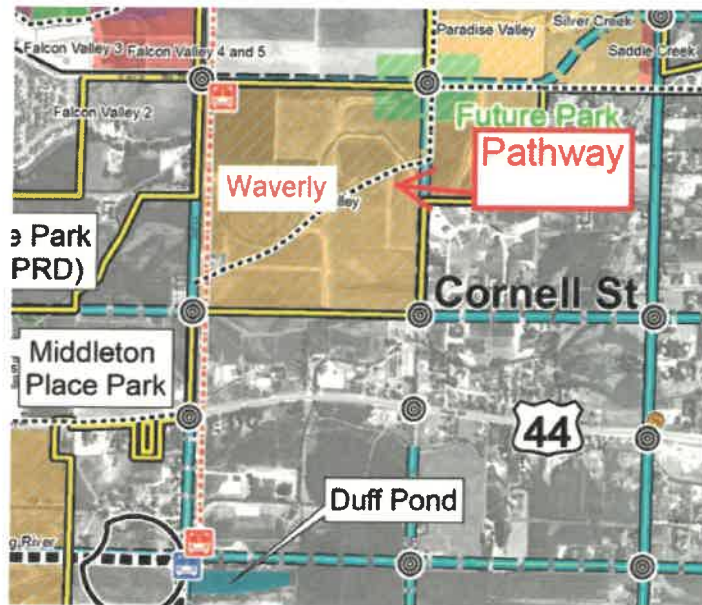
FINDINGS:

As will be stated in more detail below in section K below, this DA termination is in harmony with the current 2019 Comprehensive Plan.

- K. Comprehensive Plan & Land Use Map:** The Waverly Park project is in compliance with the “Residential” land use designation noted on the Future Land Use Map.



Additionally, the Project's pathway system is substantially consistent with the required pathway shown on the Comprehensive Plans' *Transportation, Schools, & Recreation Map*.



Finally, the Waverly Park preliminary plat and development agreement termination are in harmony with the Comprehensive Plan's "Goals, Objectives, and Strategies" as follows:

- a. Goal 3: The project provides safe vehicle and pedestrian facilities in light of the street improvements and public pathways shown on the preliminary plat.
- b. Goal 4: The project will establish a good quality of life with development that pays through impact fees and property taxes for the public services it receives when infrastructure is installed. Additionally, quality lots for residential use increase the quality of life and general welfare of the City residents.
- c. Goal 6: Water, sewer, and road systems have been expanded in an orderly manner consistent with population growth.

d. *Goal 10: Project provides parks and open space.*

FINDINGS:

For reasons stated above, Planning Staff finds that the Waverly Park project and its two applications are in harmony with the 2019 Comprehensive Plan.

L. Comments Received from Surrounding Landowners: One letter from Jim Grey, dated June 8, 2020, regarding the inability to comment on the project at the P&Z proceeding on the matter. See letters attached as Exhibit “D “

M. Comments from Agencies: The Middleton Rural Fire Department issued standard comments regarding the project in its August 4, 2021, comment letter.

Staff received two comment letters from Canyon Highway District #4 dated 6/2/2021 and 7/7/2021. CHD4 recommended that the outparcel receive access through the project. (This is accomplished on the newest version of the preliminary plat.) CHD4 also recommended that the City collect proportionate share fees and get all Right of Way dedicated. Finally, CHD4 noted that the bridge would need to be widened during construction drawings.

A comment letter from COMPASS notes that the project exceeds projected growth forecasts and states concerns that the transportation system may be adversely impacted by the project.

An August 3, 2021, comment letter from Drainage District #2 set forth standard procedures for dealing with the drainage easement.

All agency comments have been appended to this Staff Report as Exhibit “E”.

N. Comments from City Engineer and Planning Staff: Copies of comments from City Engineer and Planning Staff are attached as Exhibit “F”.

O. Applicant Information: Application was received and accepted on May 18, 2020. The Applicant is Jane Suggs/Gem State Planning / 9840 W. Overland Road, Boise, ID 83709 / jane@gemstateplanning.com.

P. Notices & Neighborhood Meeting:	Dates:
Newspaper Notification	08/03/2021
Radius notification mailed to Adjacent landowners within 300'	08/02/2021
Circulation to Agencies	08/02/2021

FINDINGS:

The current public hearing was tabled from August 18, 2021 to the date certain of September 1, 2021. Planning Staff finds that Notice for the City Council Public Hearing was appropriate and given according to law.

Q. 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.

- R. P & Z Commission's Conclusions and Recommendation:** At the June 8, 2020 hearing before the Planning & Zoning Commission, the Commission recommended approval of the Waverly Park Preliminary Plat subject to the conditions of approval set forth in the Staff Report for the proceeding. See copy of executed Findings of Facts, Conclusions of Law and Recommendation and minutes from the 6/8/2020 hearing attached as Exhibit "G".

S. Conclusions and Recommended Conditions of Approval:

The City Council is tasked with considering applications for (1) Preliminary Plat and (2) Development Agreement Modification/Termination. In considering the applications, City Council must ultimately make (a) *Findings of Facts*, (b) *Conclusions of Law*, and (c) an *Order*.

As to Findings of Facts, Planning Staff made *Findings of Facts* in compliance with Idaho State Law and Middleton City Code. (See findings of facts above in parentheses.) If Council agrees with the findings of facts in the Staff Report, and after hearing public testimony, Council may state on the record that it accepts the *Findings of Fact* in the Staff Report and all, or a portion, of the facts stated during public testimony, setting the foundation for the Order.

As to Conclusions of Law, Planning Staff finds that City Council has the authority to hear these applications in order that they may be denied or approved and that the public notice requirements for this hearing were met. Furthermore, Planning Staff finds that the above noted *Findings of Facts* are in compliance with Idaho State law and Middleton City Code. If Council agrees with Staff's stated *Conclusions of Law*, Council may state on the record that it accepts the *Conclusions of Law* set forth in the Staff Report.

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, if anything, to gain approval of the application(s).

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

1. City of Middleton municipal domestic water, fire flow and sanitary sewer services are to be extended to serve the subdivision.
2. All City Engineer review comments are to be completed and approved.
3. All requirements of the Middleton Rural Fire District are to be completed and approved.
4. Owner Developer shall construct, at its own cost, all frontage improvements along Duff Lane, 9th Avenue, Cornell Street, and Albright Avenue.
5. Owner/Developer shall pay all City required impact fees at the time of building permit issuance and all traffic proportionate/pro-rata share fees prior to the approval of final plat for Phase 1.
6. Sewer and water capacity are reserved at the time City approves the construction drawings for each individual subdivision phase.

Prepared by Middleton City Planner, Robert Stewart

Dated: August 25, 2021

APPENDIX


Exhibit "A"

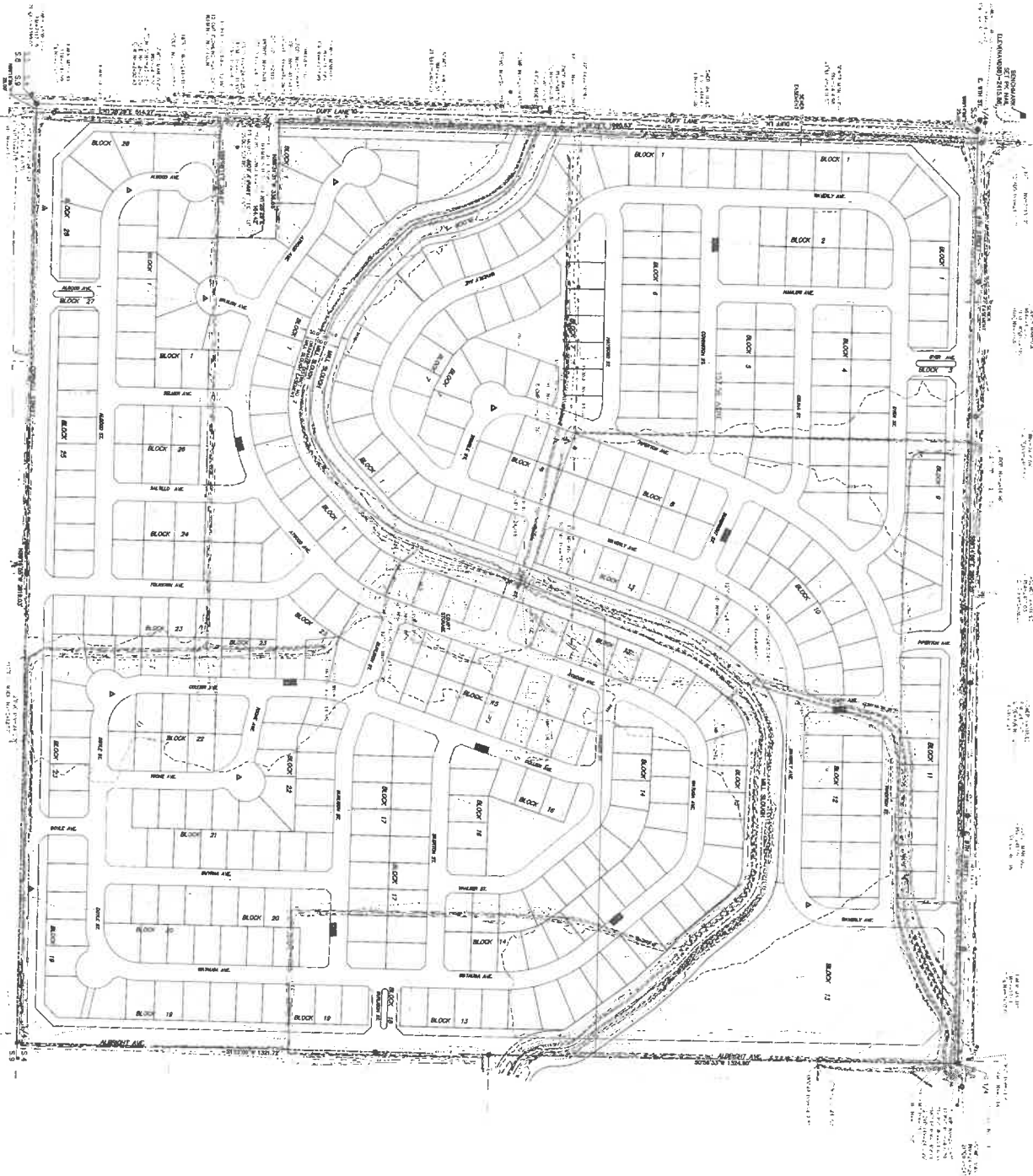
8/14/2021 Preliminary Plat Under Consideration

SHEET	DESCRIPTION
PP-1 -	COVER SHEET, INDEX, VICINITY MAP, NOTES & COMMON LOT TABLE
PP-2 -	EXISTING CONDITIONS
PP-3 -	SUBMISSION LAYOUT & DETAILS
PP-4 -	CONCEPTUAL ENGINEERING
PP-5 -	LOT & CURVE TABLES
PP-6 -	CONCEPTUAL SEWER PROFILES
PP-7 -	CONCEPTUAL SEWER PROFILES

[illegible]

▲ **Prüfung 12/13**
 ▲ **Prüfung 13/14**
 ▲ **Prüfung 14/15**
 ▲ **Prüfung 15/16**
 ▲ **Prüfung 16/17**
 ▲ **Prüfung 17/18**
 ▲ **Prüfung 18/19**
 ▲ **Prüfung 19/20**
 ▲ **Prüfung 20/21**
 ▲ **Prüfung 21/22**
 ▲ **Prüfung 22/23**
 ▲ **Prüfung 23/24**
 ▲ **Prüfung 24/25**
 ▲ **Prüfung 25/26**
 ▲ **Prüfung 26/27**
 ▲ **Prüfung 27/28**
 ▲ **Prüfung 28/29**
 ▲ **Prüfung 29/30**
 ▲ **Prüfung 30/31**
 ▲ **Prüfung 31/32**
 ▲ **Prüfung 32/33**
 ▲ **Prüfung 33/34**
 ▲ **Prüfung 34/35**
 ▲ **Prüfung 35/36**
 ▲ **Prüfung 36/37**
 ▲ **Prüfung 37/38**
 ▲ **Prüfung 38/39**
 ▲ **Prüfung 39/40**
 ▲ **Prüfung 40/41**
 ▲ **Prüfung 41/42**
 ▲ **Prüfung 42/43**
 ▲ **Prüfung 43/44**
 ▲ **Prüfung 44/45**
 ▲ **Prüfung 45/46**
 ▲ **Prüfung 46/47**
 ▲ **Prüfung 47/48**
 ▲ **Prüfung 48/49**
 ▲ **Prüfung 49/50**
 ▲ **Prüfung 50/51**
 ▲ **Prüfung 51/52**
 ▲ **Prüfung 52/53**
 ▲ **Prüfung 53/54**
 ▲ **Prüfung 54/55**
 ▲ **Prüfung 55/56**
 ▲ **Prüfung 56/57**
 ▲ **Prüfung 57/58**
 ▲ **Prüfung 58/59**
 ▲ **Prüfung 59/60**
 ▲ **Prüfung 60/61**
 ▲ **Prüfung 61/62**
 ▲ **Prüfung 62/63**
 ▲ **Prüfung 63/64**
 ▲ **Prüfung 64/65**
 ▲ **Prüfung 65/66**
 ▲ **Prüfung 66/67**
 ▲ **Prüfung 67/68**
 ▲ **Prüfung 68/69**
 ▲ **Prüfung 69/70**
 ▲ **Prüfung 70/71**
 ▲ **Prüfung 71/72**
 ▲ **Prüfung 72/73**
 ▲ **Prüfung 73/74**
 ▲ **Prüfung 74/75**
 ▲ **Prüfung 75/76**
 ▲ **Prüfung 76/77**
 ▲ **Prüfung 77/78**
 ▲ **Prüfung 78/79**
 ▲ **Prüfung 79/80**
 ▲ **Prüfung 80/81**
 ▲ **Prüfung 81/82**
 ▲ **Prüfung 82/83**
 ▲ **Prüfung 83/84**
 ▲ **Prüfung 84/85**
 ▲ **Prüfung 85/86**
 ▲ **Prüfung 86/87**
 ▲ **Prüfung 87/88**
 ▲ **Prüfung 88/89**
 ▲ **Prüfung 89/90**
 ▲ **Prüfung 90/91**
 ▲ **Prüfung 91/92**
 ▲ **Prüfung 92/93**
 ▲ **Prüfung 93/94**
 ▲ **Prüfung 94/95**
 ▲ **Prüfung 95/96**
 ▲ **Prüfung 96/97**
 ▲ **Prüfung 97/98**
 ▲ **Prüfung 98/99**
 ▲ **Prüfung 99/100**
 ▲ **Prüfung 100/101**
 ▲ **Prüfung 101/102**
 ▲ **Prüfung 102/103**
 ▲ **Prüfung 103/104**
 ▲ **Prüfung 104/105**
 ▲ **Prüfung 105/106**
 ▲ **Prüfung 106/107**
 ▲ **Prüfung 107/108**
 ▲ **Prüfung 108/109**
 ▲ **Prüfung 109/110**
 ▲ **Prüfung 110/111**
 ▲ **Prüfung 111/112**
 ▲ **Prüfung 112/113**
 ▲ **Prüfung 113/114**
 ▲ **Prüfung 114/115**
 ▲ **Prüfung 115/116**
 ▲ **Prüfung 116/117**
 ▲ **Prüfung 117/118**
 ▲ **Prüfung 118/119**
 ▲ **Prüfung 119/120**
 ▲ **Prüfung 120/121**
 ▲ **Prüfung 121/122**
 ▲ **Prüfung 122/123**
 ▲ **Prüfung 123/124**
 ▲ **Prüfung 124/125**
 ▲ **Prüfung 125/126**
 ▲ **Prüfung 126/127**
 ▲ **Prüfung 127/128**
 ▲ **Prüfung 128/129**
 ▲ **Prüfung 129/130**
 ▲ **Prüfung 130/131**
 ▲ **Prüfung 131/132**
 ▲ **Prüfung 132/133**
 ▲ **Prüfung 133/134**
 ▲ **Prüfung 134/135**
 ▲ **Prüfung 135/136**
 ▲ **Prüfung 136/137**
 ▲ **Prüfung 137/138**
 ▲ **Prüfung 138/139**
 ▲ **Prüfung 139/140**
 ▲ **Prüfung 140/141**
 ▲ **Prüfung 141/142**
 ▲ **Prüfung 142/143**
 ▲ **Prüfung 143/144**
 ▲ **Prüfung 144/145**
 ▲ **Prüfung 145/146**
 ▲ **Prüfung 146/147**
 ▲ **Prüfung 147/148**
 ▲ **Prüfung 148/149**
 ▲ **Prüfung 149/150**
 ▲ **Prüfung 150/151**
 ▲ **Prüfung 151/152**
 ▲ **Prüfung 152/153**
 ▲ **Prüfung 153/154**
 ▲ **Prüfung 154/155**
 ▲ **Prüfung 155/156**
 ▲ **Prüfung 156/157**
 ▲ **Prüfung 157/158**
 ▲ **Prüfung 158/159**
 ▲ **Prüfung 159/160**
 ▲ **Prüfung 160/161**
 ▲ **Prüfung 161/162**
 ▲ **Prüfung 162/163**
 ▲ **Prüfung 163/164**
 ▲ **Prüfung 164/165**
 ▲ **Prüfung 165/166**
 ▲ **Prüfung 166/167**
 ▲ **Prüfung 167/168**
 ▲ **Prüfung 168/169**
 ▲ **Prüfung 169/170**
 ▲ **Prüfung 170/171**
 ▲ **Prüfung 171/172**
 ▲ **Prüfung 172/173**
 ▲ **Prüfung 173/174**
 ▲ **Prüfung 174/175**
 ▲ **Prüfung 175/176**
 ▲ **Prüfung 176/177**
 ▲ **Prüfung 177/178**
 ▲ **Prüfung 178/179**
 ▲ **Prüfung 179/180**
 ▲ **Prüfung 180/181**
 ▲ **Prüfung 181/182**
 ▲ **Prüfung 182/183**
 ▲ **Prüfung 183/184**
 ▲ **Prüfung 184/185**
 ▲ **Prüfung 185/186**
 ▲ **Prüfung 186/187**
 ▲ **Prüfung 187/188**
 ▲ **Prüfung 188/189**
 ▲ **Prüfung 189/190**
 ▲ **Prüfung 190/191**
 ▲ **Prüfung 191/192**
 ▲ **Prüfung 192/193**
 ▲ **Prüfung 193/194**
 ▲ **Prüfung 194/195**
 ▲ **Prüfung 195/196**
 ▲ **Prüfung 196/197**
 ▲ **Prüfung 197/198**
 ▲ **Prüfung 198/199**
 ▲ **Prüfung 199/200**
 ▲ **Prüfung 200/201**
 ▲ **Prüfung 201/202**
 ▲ **Prüfung 202/203**
 ▲ **Prüfung 203/204**
 ▲ **Prüfung 204/205**
 ▲ **Prüfung 205/206**

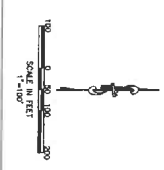
[illegible]



EXISTING CONDITIONS FOR
WAVERLY PARK SUBDIVISION

LEGEND

LOT LINE	---
STREET	---
LOT NUMBER	---
STREET NAME	---
STREET WIDTH	---
STREET CENTERLINE	---
STREET RIGHT-OF-WAY	---
STREET EASEMENT	---
STREET CLOSURE	---
STREET OPENING	---
STREET CLOSURE	---
STREET OPENING	---

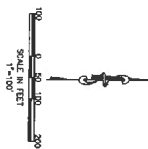




PRELIMINARY ENGINEERING FOR
WAVERLY PARK SUBDIVISION

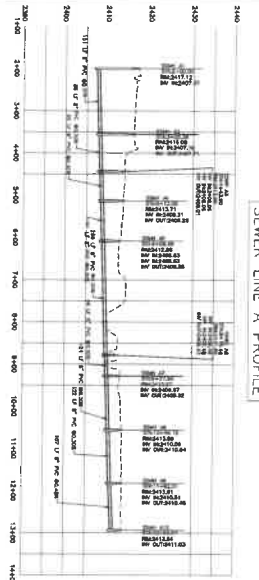
LEGEND

LOT LINES	1
LOT LINES	2
LOT LINES	3
LOT LINES	4
LOT LINES	5
LOT LINES	6
LOT LINES	7
LOT LINES	8
LOT LINES	9
LOT LINES	10
LOT LINES	11
LOT LINES	12
LOT LINES	13
LOT LINES	14
LOT LINES	15
LOT LINES	16
LOT LINES	17
LOT LINES	18
LOT LINES	19
LOT LINES	20
LOT LINES	21
LOT LINES	22
LOT LINES	23
LOT LINES	24
LOT LINES	25
LOT LINES	26
LOT LINES	27
LOT LINES	28
LOT LINES	29
LOT LINES	30
LOT LINES	31
LOT LINES	32
LOT LINES	33
LOT LINES	34
LOT LINES	35
LOT LINES	36
LOT LINES	37
LOT LINES	38
LOT LINES	39
LOT LINES	40
LOT LINES	41
LOT LINES	42
LOT LINES	43
LOT LINES	44
LOT LINES	45
LOT LINES	46
LOT LINES	47
LOT LINES	48
LOT LINES	49
LOT LINES	50
LOT LINES	51
LOT LINES	52
LOT LINES	53
LOT LINES	54
LOT LINES	55
LOT LINES	56
LOT LINES	57
LOT LINES	58
LOT LINES	59
LOT LINES	60
LOT LINES	61
LOT LINES	62
LOT LINES	63
LOT LINES	64
LOT LINES	65
LOT LINES	66
LOT LINES	67
LOT LINES	68
LOT LINES	69
LOT LINES	70
LOT LINES	71
LOT LINES	72
LOT LINES	73
LOT LINES	74
LOT LINES	75
LOT LINES	76
LOT LINES	77
LOT LINES	78
LOT LINES	79
LOT LINES	80
LOT LINES	81
LOT LINES	82
LOT LINES	83
LOT LINES	84
LOT LINES	85
LOT LINES	86
LOT LINES	87
LOT LINES	88
LOT LINES	89
LOT LINES	90
LOT LINES	91
LOT LINES	92
LOT LINES	93
LOT LINES	94
LOT LINES	95
LOT LINES	96
LOT LINES	97
LOT LINES	98
LOT LINES	99
LOT LINES	100

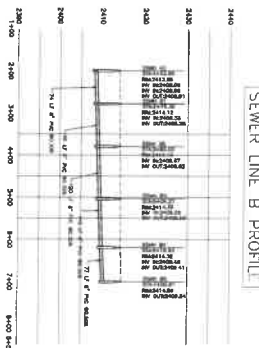


[illegible]

SEWER LINE A PROFILE



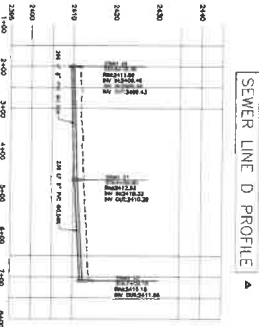
SEWER LINE B PROFILE



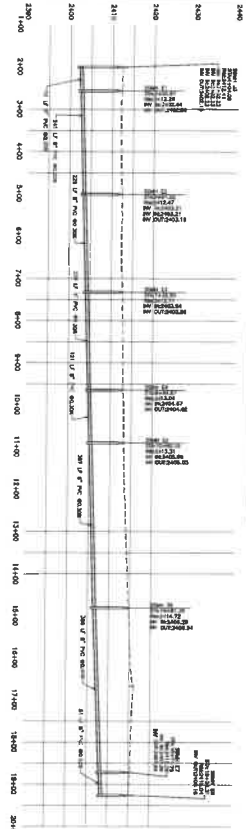
SEWER LINE C PROFILE



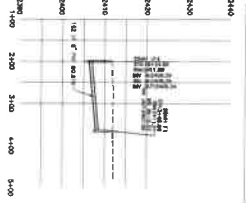
SEWER LINE D PROFILE



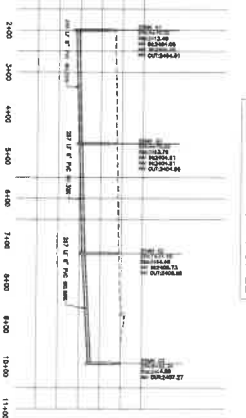
SEWER LINE E PROFILE



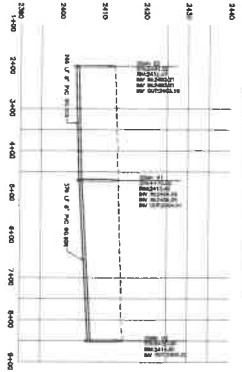
SEWER LINE F PROFILE



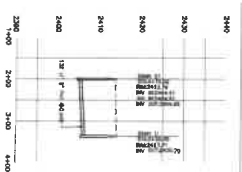
SEWER LINE G PROFILE



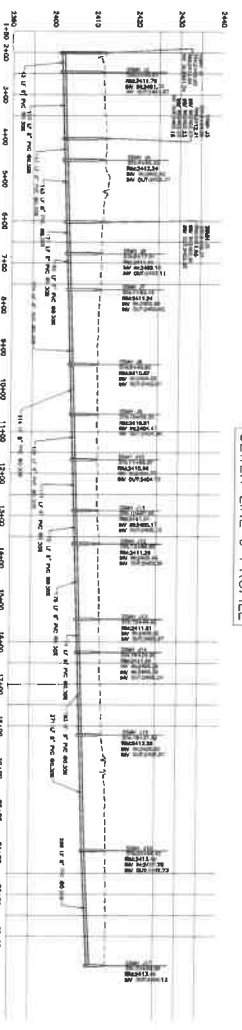
SEWER LINE H PROFILE



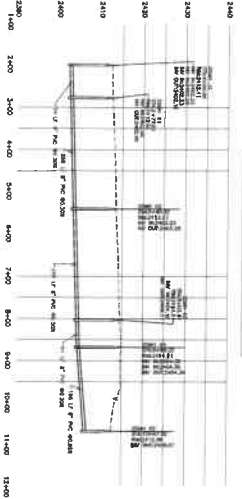
SEWER LINE I PROFILE



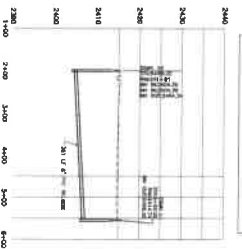
SEWER LINE J PROFILE



SEWER LINE K PROFILE



SEWER LINE L PROFILE



SCALE IN FEET
1"=10'
VERTICAL SCALE: 1"=10'

Exhibit "B"

City Engineer "Recommendation for Approval" Letter

August 27, 2021

TO: City of Middleton
Roberta Stewart, Planner

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



RE: **Waverly Park Subdivision Preliminary Plat – City Council Recommendation of Approval**

Thank you for the opportunity to review the above referenced preliminary plat submittal.
We recommend the preliminary plat be approved by Mayor and City Council.

Exhibit "C"

Proposed Development Agreement
Termination/Modification

RECORDING REQUESTED BY &
WHEN RECORDED RETURN TO:

City Clerk
City of Middleton
1103 W Main St
Middleton, Idaho 83644

DRAFT

**FIRST AMENDMENT TO PARTIALLY TERMINATE DEVELOPMENT
AGREEMENT - PARADISE VALLEY**

This First Amendment to Development Agreement (Agreement) entered into by and between the City of Middleton, a municipal corporation of the State of Idaho, hereinafter referred to as "City," and Open Door Rentals LLC, a limited liability company in the State of Idaho, whose principal address is _____, hereinafter referred to as "Developer."

WHEREAS, Developer is the owner of real property comprised of approximately 157.85 acres (the "Property"), which Property is more fully described in EXHIBIT "A" and incorporated herein by this reference as if set forth in full; and

WHEREAS, the Property was made part of a Development Agreement when Developer's predecessor in interest entered into that certain DEVELOPMENT AGREEMENT, PARADISE VALLEY (the "Original DA"), recorded with the office of the Canyon County Recorder as Instrument No. 200683381, a copy of which is attached hereto as "EXHIBIT B" and incorporated by this reference as if set forth in full; and,

WHEREAS, the Original DA encompassed the Property and additional real property not currently owned by the Developer, which additional real property totaled approximately 96.25 acres; and,

WHEREAS, the Property is currently zoned R-3; and,

WHEREAS, Developer and City have determined that the Original DA should be terminated as to the Property so the Property can be developed solely in accordance with the current R-3 Zone; and,

WHEREAS, Developer desires to proceed with the development of the property in a manner compliant with the City of Middleton's R-3 Zone.

WHEREAS, the Developer and City have agreed to the terms of this Agreement as a means of terminating the Original DA as it relates to the Property, while not modifying the Original DA as it relates to any other real property not owned by Developer.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer agree as follows:

1. That as to the Property, the Original DA is hereby terminated and shall be of no further force or effect as to the Property.
2. That the Property shall be subject to the R-3 Zone of the City of Middleton, Idaho, in effect at the time this Development Agreement is fully executed.
3. That this Agreement shall be recorded with the office of the Canyon County Recorder.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, on the day and year set forth below.

DATED this _____ day of _____, 2021.

CITY OF MIDDLETON

BY: _____

Steven J. Rule, Mayor
City of Middleton

ATTEST:

City Clerk, or deputy

STATE OF IDAHO)
) s.s.
County of Canyon)

On this _____ day of _____ in the year of 2021, before me _____, personally appeared Steve Rule, known to me to be the Mayor of the City of Middleton, and acknowledged to me that he executed the same, and was so authorized to do so for and on behalf of said City of Middleton.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for Idaho
Residing at _____

My Commission Expires: _____

STATE OF IDAHO)
County of Canyon) s.s.

On this _____ day of _____, in the year of 2021, before me _____, personally appeared _____, known or identified to me to be the person whose name is subscribed to the within and forgoing instrument, and acknowledged to me that he/she executed the same on behalf of Open Door Rentals, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for Idaho
Residing at _____
My Commission Expires: _____

EXHIBIT A

Order No.: 34601911519

Parcel I:

A portion of Section 4, Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

Commencing at the West quarter corner of Section 4; Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho; thence
South 89°43'19" East, 25.00 feet along the East-West Midsection line to a point on the right-of-way line of Duff Lane, THE POINT OF BEGINNING; thence
South 89°43'19" East, 2,616.03 feet along the East-West Midsection line to the center of said Section; thence
South 00°36'59" West, 1,023.36 feet along the North-South Midsection line 4; thence
Leaving the Midsection line North 89°43'19" West, 1,248.28 feet; thence
South 22°46'41" West, 330.00 feet; thence
South 20°19'52" West, 298.28 feet; thence
South 34°53'01" West, 160.28 feet; thence
South 57°31'00" West, 226.60 feet; thence
South 90°00'00" West, 143.38 feet; thence
North 71°07'58" West, 188.78 feet; thence
North 54°40'00" West, 178.63 feet; thence
North 45°38'49" West, 154.50 feet; thence
North 18°15'51" West, 224.99 feet; thence
North 36°17'00" West, 87.38 feet; thence
North 65°28'23" West, 179.83 feet to the right-of-way line of Duff Lane; thence
Along said right-of-way line;
North 00°59'53" East, 1,236.16 feet to the POINT OF BEGINNING.

Parcel II:

A portion of Section 4, Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

Commencing at the West quarter of Section 4, Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho; thence
South 89°43'19" East, 25.00 feet along the East-West Midsection line to a point on the right-of-way line of Duff Lane, thence
South 00°59'53" West, 1,236.16 feet parallel to the West Section line of said Section 4 to the POINT OF BEGINNING; thence
South 65°28'23" East, 179.83 feet along the centerline of the Middleton Mill Ditch, thence
Continuing along said centerline
South 36°17'00" East, 87.38 feet, thence
South 18°15'51" East, 224.99 feet, thence
South 45°38'49" East, 154.50 feet, thence
South 54°40'00" East, 178.63 feet, thence
South 71°07'58" East, 188.78 feet, thence
North 90°00'00" East, 143.38 feet, thence
North 57°31'00" East, 226.60 feet, thence
North 34°53'01" East, 160.28 feet, thence

EXHIBIT A

(continued)

North 20°19'52" East, 298.28 feet, thence

North 22°46'41" East, 330.00 feet thence leaving said Ditch

South 89°43'19" East, 1,248.28 feet to a point on the Mid-Section line of said Section 4, thence

South 00°36'59" West, 1,622.65 feet along the Mid-Section line of said Section 4 to the South quarter corner of said Section 4, thence

Along the South Section line of said Section 4

North 89°45'14" West, 2,633.67 feet to a point 25.00 feet East, of the Southwest corner of said Section 4, thence

North 00°59'53" East, 514.26 feet parallel to the West Section line of said Section 4, thence

South 89°36'47" East, 336.67 feet, thence

North 00°59'53" East, 164.42 feet, thence

North 89°00'07" West, 336.65 feet to a point 25.00 feet East of the Section line of said Section 4, thence

North 00°59'53" East, 729.20 feet parallel to the West Section line of said Section 4 to the POINT OF BEGINNING.

Exhibit "B"

Recording Requested By and
When Recorded Return to:

City Clerk
City of Middleton
P.O. Box 487
Middleton, Idaho 83644

CANONICAL RECORDS
BY *[Signature]*
REQUEST *[Signature]*
TYPE *[Signature]* FEE

2003 OCT 16 PM 4 03

RECORDED

200683381

For Recording Purposes Do
Not Write Above This Line

**DEVELOPMENT AGREEMENT
PARADISE VALLEY**

This Development Agreement entered into by and between the City of Middleton, a municipal corporation in the State of Idaho, hereinafter referred to as "City", and Richard M Phillips and Staci Phillips Trust, whose address is 210 Murray Street, Boise, Idaho 83714, the owner of the real property described herein and applicant(s) for PARADISE VALLEY SUBDIVISION, hereafter referred to as "Developer".

WHEREAS, the Developer has applied to the City for a zone change to R-3 for the Development of the property described as attached hereto and incorporated by reference herein on Exhibit 1 ("Property") to develop a Residential Subdivision, which includes approximately 256 acres of residential uses. The Property is currently zoned Ag. The Developer has enclosed a concept plan which is attached hereto as Exhibit 2.

WHEREAS, the City, pursuant to Section 67-6511A, Idaho Code, has the authority to conditionally rezone the property and to enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for a specific purpose or use which is appropriate in the area, but for which all allowed uses for the requested zoning may not be appropriate pursuant to the Idaho Code and the Middleton City Code.

WHEREAS, the Middleton City Code allows a property owner or developer to request that an application for zoning or zoning map amendment be processed in connection with the execution of a development agreement, wherein through such development agreement, a property owner or developer may agree to make written commitments concerning the use or development of a subject parcel in exchange for the change of zoning requested; and

WHEREAS, the City is willing to allow the proposed development within the City Of Middleton, Idaho, subject to the terms and conditions of this Agreement and the Special Conditions attached hereto; and

WHEREAS, the City desires to induce Developer to develop the Property because the development proposed by Developer is in the public interest. The City believes that development by Developer will generate additional tax revenue, provide employment, and stimulate beneficial commercial growth and development; and

WHEREAS, the City acknowledges that Developer and its successors and/or assigns are relying upon the effectiveness of this Development Agreement in the decision to purchase the Property; and

WHEREAS, the City has approved the requested annexation and zoning to R3 subject to the following terms and/or commitments and desires to formalize and clarify the respective obligations of the parties.

WHEREFORE, the City of Middleton and the Developer do enter into this Agreement and for and in consideration of the mutual covenants, duties and obligations herein set forth, it is agreed as follows:

ARTICLE I LEGAL AUTHORITY

1.1 This Development Agreement is made pursuant to and in accordance with the provisions of Idaho Code Section 67-6511A and Middleton City Code, Title 5, Chapter 7).

ARTICLE II ZONING ORDINANCE AMENDMENT

- 2.1 The City will adopt an ordinance amending the Middleton Zoning Ordinance to rezone the property to R-3. The Ordinance will become effective after its passage, approval, and publication and the execution and recordation of this Development Agreement.
- 2.2 This Development Agreement shall not prevent the City in subsequent actions applicable to the Property, from applying new ordinances and regulations of general application adopted by the City in exercise of its police powers that do not conflict with Developer's property rights, the parties' commitments applicable to the Property as set forth herein, or the R-3 zone classification approved hereby. Any such subsequent ordinances shall not supersede the specific commitments set forth herein.

ARTICLE III CONDITIONS ON DEVELOPMENT

The sole uses(s) allowed and restrictions pursuant to this conditional rezone as reflected in this Agreement are as follows:

- 3.1 Developer shall develop the Property subject to the conditions and limitations set forth in this Agreement, and to the standards that the City has in force at the time of the annexation application for the R-3 zoning classification except as otherwise provided in this Agreement (the "Project"). Developer shall further submit such applications regarding preliminary and final plat reviews and any other applicable applications as may be required by the City.
- 3.2 Developer agrees that, unless otherwise agreed to by the Parties, the conceptual site development plan (the "Conceptual Plan") attached hereto as Exhibit B shall dictate the type of development to be constructed in each of the components of the Project. Block lengths shall apply in accordance with the approved conceptual plan. Residential densities within the Project shall not exceed three (3) dwelling units per gross acre.
- 3.3 The Project shall comply with the Middleton Comprehensive Plan and Middleton City Code, and all state and federal law as they exist in final form at the time the development application was submitted, except as otherwise provided in this Agreement and will require a complete set of plans which shall include:
 - 3.4.1 Site plan including street, curb and gutter, street signs, irrigation lines, sidewalk and site lighting;
 - 3.4.2 Underground utility plan including water, sanitary sewer, storm drainage, irrigation, and fire protection;
 - 3.4.3 Any other required improvements set forth as conditions of approval; Soils report, including bearing values, soils profile, ground water and other elements as requested by the City Engineer or Building Official;
 - 3.4.4 Review and Approval by the City Engineer and Building Official of site, utility, and landscape plans before a building permit is issued.
- 3.4 Unless otherwise agreed, Developer will at its sole expense, design and construct all public improvements as shown in this development agreement in strict accordance with the Middleton City Code in existence at the time of the development application or as otherwise provided in this Agreement.

3.5 Street Improvements and Access. Developer agrees to submit a traffic impact study to the City acceptable to the City Engineer. In particular, the traffic study shall be in accordance with the standards identified in the *Transportation Impact Analyses for Site Development*, 2005, by the Institute of Transportation Engineers. At a minimum, such a traffic impact study must consider the cumulative impacts of surrounding developments. Developer agrees to mitigate its proportionate share of adverse traffic impacts as required by the City.

3.5.1 Developer shall make any and all necessary street improvements as provided in the Conceptual Plan and required by the City Engineer pursuant to the Traffic Impact Study;

3.5.2 Developer shall construct the following street improvements to standards adopted by the City including associated curb, gutter and sidewalk per the requirements of the Middleton City Code in effect as of the effective date of this Development Agreement, and the Traffic Impact Study.

3.5.2 Project accesses shall conform to the diagram contained in Exhibit 2.

3.5.3 Review and Approval by the City Engineer and Building Official of any and all street improvements and access shall be required before building permits shall be issued.

3.5.4 Provided the Developer is in substantial compliance as determined by the City Engineer, building permits may be issued prior to the completion of secondary street improvements.

3.6 Landscape Improvements.

3.6.1 Developer shall provide landscaping on designated frontages in accordance with exhibit 2 and the provisions of the Middleton City Code in place as of the effective date of this Development Agreement.

3.6.2 Developer will provide landscaping in accordance with the provisions of the City of Middleton for R-3 zoned properties in place as of the effective date of this Development Agreement as depicted with the Conceptual Plan.

3.6.3 Developer or its successors or assigns shall maintain all site landscape areas as required by law.

3.7 Setbacks.

3.7.1 Developer shall comply with the setbacks for R-3 zoned property as provided in the Middleton City Code in effect as of the effective date of this Development Agreement except patio house lots which setbacks shall be 5 foot side yard, 15 foot rear yard, 15 feet to the front of the house, 20 feet to the garage and 15 feet flanking street. Maximum lot coverage shall



be defined as the building envelope inside the setbacks. Side entry garage requirements do not apply to the patio lots. Minimum lot width to be 50 feet on patio lots. Flag lots may be allowed on up 10% of the lots with frontage not less than 30 feet.

3.8 Utilities.

3.8.1 Developer shall bring to the Property all utilities it requires for development subject to appropriate reimbursement provisions in latecomers' agreements, except for sanitary sewer, a separate agreement for sewer applies.

3.8.2 Developer shall construct all on-site utilities required for development of the Property, including sewer, water, electricity, natural gas, and any others Developer deems appropriate.

3.8.3 All on-site utilities shall be constructed underground.

3.9 Conditions, Security for Completion: All of the conditions set forth herein shall be complied with or shall be secured by a letter of credit for completion by the Developer before a Final Plat Approval or Occupancy permit will be granted. Failure to comply by a letter of credit for completion of the conditions within the time frame established in the subdivision plat approval conditions, the Middleton City Code or the terms of this Agreement shall result in a default of this Agreement by the Developer. The Developer may be allowed to provide a letter of credit for certain conditions at one hundred and fifty percent (150%) of the estimated cost of completion pursuant to Middleton City Code, and, provided the Developer is in substantial compliance, to be determined by the City Engineer, the City Council may issue building permits prior to completion of certain secondary public improvements.

3.11 Expanded Use. No change in the use or restriction specified in this Agreement shall be allowed or changed without modification of this Agreement pursuant to the requirements of the Middleton City Code. In the event Developer changes or expands the use permitted by this Agreement or fails to comply with the restrictions without formal modification of this Agreement as allowed by the Middleton City Code, Developer shall be in default of this Agreement.

3.12 Commencement of Construction: The Developer shall commence construction of site infrastructure (e.g., grading of streets or installation of utilities) within five years of the effective date of this Agreement. Developer acknowledges that preliminary plat approval is valid for twelve (12) months pursuant to Middleton City Code § 6-2-3(F)(3). Upon Developers request an extension of 12 months shall be allowed for cause. In the event the Developer fails to commence construction within the time

periods herein stated, the Developer shall be in default of this Agreement.

- 3.13 **Final building Permit.** Final building permit approval and construction of the improvements on the Property, in accordance with those approved plans, shall be deemed to satisfy the conditions and obligations of Developer set forth in this Development Agreement.

ARTICLE IV AFFIDAVIT OF PROPERTY OWNERS

- 4.1 An affidavit of all owners of the Property agreeing to submit the Property to this Development Agreement and to the provisions set forth in Idaho Code Section 67-6511A and Middleton City Code shall be provided and is incorporated herein by reference.

ARTICLE V DEFAULT

- 5.1 In the event Developer, its successors or assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, fail to faithfully comply with all of the terms and conditions included in this Agreement, this Agreement may be modified or terminated by the Middleton City Council upon compliance with the requirements of the Middleton City Code. In the event the City Council determines that this Agreement shall be modified, the terms of this Agreement shall be amended and Developer shall comply with the amended terms. Failure to comply with the amended terms shall result in default. In the event the City Council, after compliance with the requirements of the Middleton City Code, determines that this Agreement shall be terminated, the zoning of the Property shall revert to City R-3 zoning. All uses of the Property, which are not consistent with City R-3 zoning shall cease. Nothing herein shall prevent Developer from applying for any nature of use permit consistent with City R-3 zoning. A waiver by the City of any default by Developer of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.
- 5.2 The execution of this Development Agreement and the written commitments contained herein shall be deemed written consent to change the zoning of the Property to its prior designation upon failure of the conditions imposed upon Developer by this Development Agreement.
- 5.3 **Remedies and Specific Performance.** In addition to the remedies provided by the Default provisions herein, any applicable Permits issued pursuant to this Agreement, and the proceedings Findings of Facts and

Conclusions of Law issued herein may be revoked at any time for a material violation of the permit, or any material violation of any condition thereof, by motion of the City Council after notice and Developer's failure to cure such failure within thirty (30) days, followed by a due process hearing upon at least ten (10) days written notice to Developer. The City Council, after finding that Developer has exercised due diligence in curing any such failure, may provide a reasonable extension of time for Developer to cure such failures. In the event a breach of this Agreement in addition to all other remedies at law or in equity, and as set forth in this Agreement.

5.4 **Financial Assurance.** In the event that certain improvements are not completed by Developer as required under this Agreement, Developer shall submit a mutually acceptable bond, cash deposit, certified check, or irrevocable bank letter of credit, or other security agreement to the City for one hundred fifty percent (150%) of the estimated costs associated with the completion thereof as estimated by the City Engineer and approved by the CITY prior to the issuance of an occupancy permit for any of the buildings within the Project for which said improvements are required to be constructed. In the event Developer fails to complete construction of the specified improvements within a period of time as required under this Agreement, the City may proceed to have such work completed. In order to accomplish this, the City may appropriate said security agreement, bond, cash, deposit, or letter of credit.

ARTICLE VI UNENFORCEABLE PROVISIONS

- 6.1 If any term, provision, commitment or restriction of this Development Agreement or the application thereof to any party or circumstances shall, to any extent be held invalid or unenforceable, the remainder of this instrument shall remain in full force and effect.
- 6.2 This Development Agreement is intended to be supplemental to all other local, City, State and Federal Code requirements, rules and regulations, and is established to assure compatibility of the resulting land use with the surrounding area. Provided, however, that to the extent this Development Agreement conflicts with any provision of the Middleton City Code, this Development Agreement shall prevail to the extent permitted by law.

ARTICLE VII ASSIGNMENT AND TRANSFER

- 7.1 After its execution, the Development Agreement shall be recorded in the office of the County Recorder at the expense of the Applicant. Each commitment and restriction on the development subject to this Agreement,

shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property, adjacent property and other residential property near the Property and shall run with the land. This Development Agreement shall be binding on the City and the Applicant and owners, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns; provided, however, that if all or any portion of the Property is divided and each owner of a legal lot shall only be responsible for duties and obligations associated with an owner's parcel and shall not be responsible for duties and obligations or defaults as to other parcels of lots within the Property. The new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect only to such owner's lot or parcel.

ARTICLE VII GENERAL MATTERS

- 8.1 **Amendments.** Any alteration or change to this Development Agreement shall be made only after complying with the notice and hearing provisions of Idaho Code Section 67-6509, as required by Middleton City Code, Title 5, Chapter 7.
- 8.2 **Paragraph Headings.** This Development Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Development Agreement. As used in this Development Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.
- 8.3 **Choice of Law.** This Development Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Development Agreement. Any action brought in connection with this Development Agreement shall be brought in a court of competent jurisdiction located in Canyon County, Idaho.
- 8.4 **Notices.** Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below.

Middleton: City Clerk
City of Middleton
P.O Box 487
Middleton, Idaho 83644

Developer: **Mr. Richard M. Phillips and Staci Phillips Trust**

210 Murray Street
Boise, Idaho 83714

Or such other addresses and to such other persons as the parties may hereafter designate in writing to the other parties. Any such notice shall be deemed given upon delivery if by personal delivery, upon deposit in the United States mail, if sent by mail pursuant to the foregoing.

8.5 Attorneys' Fees and Costs. In the event an action is brought to enforce any provision of this Agreement, or in the event an action is brought to recover damages for breach of this Agreement, the prevailing party in such action shall be entitled to recover from the other party all reasonable attorneys' fees and costs incurred, including attorneys' fees and cost incurred on appeal.

8.6 Effective Date. This Development Agreement shall be effective after delivery to each of the parties hereto of a fully executed copy of the Development Agreement.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, on the day and year first above written.

Dated this 4 day of October, 2006.

CITY OF MIDDLETON

By: Frank McKeen
Mayor

ATTEST:

Ellen Smith CHC
City Clerk



Handwritten initials

STATE OF IDAHO)
) ss
County of Canyon)

On this 12 day of October, in the year of 2006, before me
Elena Gomez, personally appeared Frank McKeown and Ellen Smith,
known or identified to me, to be the persons whose names are subscribed to the within
and foregoing instrument and acknowledged to me that they executed the same, and were
so authorized to do so for and on behalf of said City of Middleton.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year first above written.



Elena Gomez
Notary Public for Idaho
Residing at Middleton, Idaho
My Commission expires: 3-14-11

Richard M. Phillips

Richard M. Phillips
By: Richard M. Phillips

Staci Phillips Trust

Richard M. Phillips
By: Richard M. Phillips
Its: Trustee

STATE OF IDAHO)
)ss
County of Ada)

On this 7 day of Sept., in the year 2006, before me, personally appeared Richard M. Phillips, known or identified to me to be the Trustee of the Staci Phillips Trust and acknowledged to me that he executed the same, and was so authorized to do so for and on behalf of Staci Phillips Trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Norita Stricker
Notary Public for Idaho

Residing at: Eagle, Id.

My Commission expires: 2/9/07



STATE OF IDAHO)
)ss.
County of Ada)

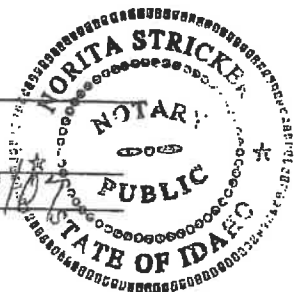
On this 7 day of Sept., in the year 2006, before me, personally appeared Richard M. Phillips, known or identified to me to be the person whose name is subscribed to the within and forgoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Norita Stricker
Notary Public for Idaho

Residing at: Eagle, Id.

My Commission expires: 2/9/07



Paradise Valley Subdivision Annexation an Zoning Application

Richard M. Phillips
210 Murray Street
Boise, Idaho 83714

Exhibit "A"

Parcel I.

A parcel located in the West Half of the East Half of Section 4 of Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

~~Beginning~~ at a 5/8 inch diameter iron pin marking the Southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 4 (Southeast 1/16 Corner), from which a brass cap monument marking the Northwest corner of said Northwest Quarter of the Southeast Quarter of Section 4 (NW 1/16 Corner) bears

North 1° 09' 16" East a distance of 1,322.13 feet; thence

North 89° 21' 27" West along the Southerly boundary of said Northwest Quarter of the Southeast Quarter of Section 4 and the Northerly boundary of the Whisper Creek Estates Subdivision Phases 2 and 3 as shown in Book 22 of Plats on Page 20 in the office of the recorder, of Canyon County, Idaho, a distance of 1,321.83 feet to a 5/8 inch diameter iron pin marking the Northwest corner of said WHISPER CREEK ESTATES SUBDIVISION Phases 2 and 3 and the Southwest corner of the Northwest Quarter of the Southeast Quarter of said Section 4; thence

North 0° 56' 33" East along the Westerly boundary of said Southeast Quarter of Section 4 a distance of 1,324.60 feet to a point marking the Northwest corner of said Southeast Quarter of Section 4, said point being witnessed by a 5/8 inch diameter iron pin bearing

South 0° 56' 33" West a distance of 50.00 feet; thence

North 1° 08' 22" East along the Westerly boundary of the Northeast Quarter of said Section 4 a distance of 648.95 feet to a 5/8 inch diameter iron pin; thence leaving said Westerly boundary

South 89° 14' 59" East a distance of 934.54 feet to a 5/8 inch diameter iron pin; thence

North 1° 40' 02" East a distance of 678.91 feet to a 5/8 inch diameter iron pin; thence a distance of 178.48 feet along the arc of a 250.00 foot radius curve right, said curve having a central angle of 40° 54' 12" and a long chord bearing

North 22° 07' 08" East a distance of 174.71 feet to a 5/8 inch diameter iron pin; thence a distance of 128.50 feet along the arc of a 180.00 foot radius curve left, said curve having a central angle of 40° 54' 12" and a long chord which bears

North 22° 07' 08" East a distance of 125.79 feet to a 5/8 inch diameter iron pin; thence

North 1° 40' 02" East a distance of 333.10 feet to a 5/8 inch diameter iron pin on the Southerly right-of-way of Foothill Road; thence

South 89° 31' 18" East along said Southerly right-of-way a distance of 90.02 feet to a 5/8 inch diameter iron pin; thence leaving said Southerly right-of-way

South 1° 40' 02" West a distance of 100.02 feet to a 5/8 inch diameter iron pin; thence

South 10° 15' 10" West a distance of 133.97 feet to a 5/8 inch diameter iron pin; thence

(continued)

South 1° 40' 02" West a distance of 102.48 feet to a 5/8 inch diameter iron pin; thence a distance of 171.49 feet along the arc of a 250.00 foot radius curve right, said curve having a central angle of 39° 18' 10" and a long chord bearing

South 21° 19' 07" West a distance of 168.15 feet to a 5/8 inch diameter iron pin; thence a distance of 116.61 feet along the arc of a 170.00 foot radius curve left, said curve having a central angle of 39° 18' 10" and a long chord bearing

South 21° 19' 07" West a distance of 114.34 feet to a 5/8 inch diameter iron pin; thence

South 1° 40' 02" West a distance of 693.15 feet to a 5/8 inch diameter iron pin; thence

South 69° 14' 55" East a distance of 312.79 feet to a 5/8 inch diameter iron pin on the Easterly boundary of said West Half of the East Half of Section 4; thence

South 1° 11' 43" West along said Easterly boundary a distance of 648.96 feet to a brass cap monument marking the Southeast corner of the Southwest Quarter of the Northeast Quarter of said Section 4; thence continuing along said Easterly boundary

South 1° 09' 16" West a distance of 1,322.13 feet to the POINT OF BEGINNING.

Parcel II

A parcel located in the West Half of the Northeast Quarter of Section 4 of Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

COMMENCING at a brass cap monument marking the Northeast corner of said West Half of the Northeast Quarter of Section 4 (East 1/16 Corner), from which a brass cap monument marking the Southeast corner of said West Half of the Northeast Quarter of Section 4 (SE 1/16 Corner) bears

South 1° 11' 43" West a distance of 2,640.93 feet; thence

South 1° 11' 43" West along the Easterly boundary of said West Half of the Northeast Quarter a distance of 698.89 feet to a 5/8 inch diameter iron pin on the Southerly right-of-way of Foothill Road and the POINT OF BEGINNING; thence

North 89° 31' 18" West along said Southerly right-of-way a distance of 187.14 feet to a 5/8 inch diameter iron pin; thence leaving said Southerly right-of-way

South 1° 40' 02" West a distance of 100.02 feet to a 5/8 inch diameter iron pin; thence

South 10° 15' 10" West a distance of 133.97 feet to a 5/8 inch diameter iron pin; thence

South 1° 40' 02" West a distance of 102.48 feet to a 5/8 inch diameter iron pin; thence a distance of 171.49 feet along the arc of a 250.00 foot radius curve right, said curve having a central angle of 39° 18' 10" and a long chord bearing

South 21° 19' 07" West a distance of 168.15 feet to a 5/8 inch diameter iron pin; thence a distance of 116.61 feet along the arc of a 170.00 foot radius curve left, said curve having a central angle of 39° 18' 10" and a long chord bearing

South 21° 19' 07" West a distance of 114.34 feet to a 5/8 inch diameter iron pin; thence

South 1° 40' 02" West a distance of 693.15 feet to a 5/8 inch diameter iron pin; thence

(continued)

South 89° 14' 59" East a distance of 312.79 feet to a 5/8 inch diameter iron pin on the Easterly boundary of said West Half of the Northeast Quarter; thence

North 1° 11' 43" East along the Easterly boundary of said West half of the Northeast Quarter a distance of 1,293.08 feet to the POINT OF BEGINNING.

Parcel, III

A parcel located in the West Half of the Northeast Quarter of Section 4 of Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

COMMENCING at a brass cap monument marking the Northeast corner of said West Half of the Northeast Quarter of Section 4 (East 1/16 Corner), from which a brass cap monument marking the Southeast corner of said West Half of the Northeast Quarter of Section 4 (SE 1/16 Corner) bears

South 1° 11' 43" West a distance of 2,646.22 feet; thence

South 1° 11' 43" West along the Easterly boundary of said West Half of the Northeast Quarter a distance of 698.39 feet to a 5/8 inch diameter iron pin on the Southerly right-of-way of Foothill Road; thence

North 89° 31' 18" West along said Southerly right-of-way a distance of 277.16 feet to a 5/8 inch diameter iron pin; thence leaving said Southerly right-of-way

South 1° 40' 02" West a distance of 333.10 feet to the POINT OF BEGINNING; thence a distance of 128.50 feet along the arc of a 180.00 foot radius curve right, said curve having a central angle of 40° 54' 12" and a long chord bearing

South 22° 07' 08" West a distance of 125.79 feet to a 5/8 inch diameter iron pin; thence a distance of 178.48 feet along the arc of a 250.00 foot radius curve left, said curve having a central angle of 40° 54' 12" and a long chord bearing

South 22° 07' 08" West a distance of 174.71 feet to a 5/8 inch diameter iron pin; thence

South 1° 40' 02" West a distance of 678.91 feet to a 5/8 inch diameter iron pin; thence

North 89° 14' 59" West a distance of 934.54 feet to a 5/8 inch diameter iron pin on the Westerly boundary of said West Half of the Northeast Quarter; thence

North 1° 08' 22" East along said Westerly boundary 1,056.01 feet to a point; thence leaving said Westerly boundary

South 89° 31' 18" East a distance of 199.79 feet to a point; thence

South 71° 31' 51" East a distance of 318.14 feet to a point; thence

North 75° 56' 42" East a distance of 266.70 feet to a point; thence

South 75° 37' 18" East a distance of 295.36 feet to the POINT OF BEGINNING.

PARCEL IV

Lot 4, Block 3, WHISPER CREEK ESTATES, PHASE II AND III, Canyon County, Idaho, according to the plat filed in Book 22 of Plats, Page 20, records of said County.

AND

(continued)

Red

The 15.11 feet of vacated Lamp Road, as disclosed in Vacation, recorded October 4, 1995 as Instrument No. 9527918 and located Westerly and adjacent to Lot 4, Block 3, WHISPER CREEK ESTATES PHASE II AND III, Canyon County, Idaho, according to the plat filed in Book 22 of Plats, Page 20, records of said County.

As amended by Affidavit recorded November 12, 1999 as Instrument No. 009944917, Records of Canyon County, Idaho.

12

EXHIBIT "A"
PARCEL 5

A PARCEL OF LAND IN THE SW $\frac{1}{4}$ OF SECTION 4,
T4N, R2W, B.M., CANYON COUNTY, IDAHO AND
BEING MORE PARTICULARLY DESCRIBED AS
FOLLOWS:

BEGINNING AT THE WEST $\frac{1}{4}$ CORNER OF SAID
SECTION 3, T4N, R2W, B.M., CANYON COUNTY,
IDAHO

THENCE ALONG THE MID-SECTION LINE OF SAID
SECTION, THE BASIS OF BEARING
S 89°43'38" E 2629.25 FEET TO THE CENTER OF
SAID SECTION 3, THENCE ALONG THE MID-
SECTION LINE

S 00°28'53" W 1324.53 FEET TO A $\frac{1}{16}$ TH CORNER,
THENCE

S 00°53'52" W 1321.47 FEET TO A $\frac{1}{4}$ CORNER,
THENCE ALONG THE SOUTH SECTION LINE OF SAID
SECTION 3

N 89°45'30" W 2643.55 TO THE SOUTHWEST
CORNER OF SAID SECTION 3, THENCE
ALONG THE WEST SECTION LINE OF SAID SECTION
3

N 00°59'53" E 514.24 FEET, THENCE LEAVING THE
SECTION LINE

S 89°36'47" E 361.68 FEET, THENCE

N 00°59'53" E 164.42 FEET, THENCE

N 89°00'07" W 361.66 FEET TO A POINT ON THE
SECTION LINE, THENCE

N 00°59'53" E 1965.04 FEET ALONG THE SECTION
LINE TO THE POINT OF BEGINNING.

CONTAINS 158.95 ACRES



PARADISE VALLEY SUBDIVISION

A PORTION OF SECTION 4
T. 4 N., R. 2 E., S. 20 N.
COUNTY OF SUTTER, CALIF.
SUBDIVISION
-2-

Exhibit 2

FOOTBALL ROAD

650 TOTAL LOTS

UNLESS OTHERWISE NOTED FIGURES 1 & 2



OWNER	PARADISE VALLEY SUBDIVISION
DESIGNER	JOHN J. DUFF, LANDSCAPE ARCHITECT
DATE	5/15/2006
PROJECT	PARADISE VALLEY SUBDIVISION
LOCATION	SECTION 4, T. 4 N., R. 2 E., S. 20 N., COUNTY OF SUTTER, CALIF.
SCALE	1" = 100'
NOTES	SEE EXHIBIT 1 FOR GENERAL NOTES

THESE PLANS ARE PRELIMINARY AND ARE NOT TO BE USED FOR CONSTRUCTION WITHOUT THE APPROVAL OF THE LOCAL AGENCIES. THE DESIGNER ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED HEREON. THE USER OF THESE PLANS SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND FOR THE ACCURACY OF THE INFORMATION PROVIDED HEREON.

(P)

Exhibit "D"

Comments Received from the Public/Citizens



TO The PLANNING & ZONING Commissioners,
I'm upset THAT we The PROPERTY
OWNERS THAT border The proposed
JANE SUGGS / Gem STATE PLANNING
ARE NOT ALLOWED TO COMMENT
ON SUCH A VERY LARGE SUBDIVISION
THAT WILL IMPACT US AND EVERY-
ONE THAT USES DUFF LANE.

I WAS TOLD NO COMMENT IS ALLOWED
BECAUSE THIS PLANNED SUBDIVISION
WILL FOLLOW THE MIDDLETON CITY CODE.

The P & Z commissioners should
STILL LISTEN TO us PROPERTY OWNERS
PUT YOURSELVES IN OUR SHOES.
I believe you too would be
UPSET NOT BEING ALLOWED TO
COMMENT.

Sincerely, Jim Grey
ADDRESS: 23557 DUFF LANE

Exhibit "E"

Comments Received from Public Agencies

MIDDLETON RURAL FIRE DISTRICT




Waverly Park Subdivision

STAR FIRE PROTECTION DISTRICT

DATE: August 4, 2021

TO: City of Middleton
Attn: Roberta Stewart

FROM: Victor Islas, Deputy Chief 

SUBJECT: Fire District Review

PROJECT NAME: Waverly Park Subdivision, Middleton, Idaho

Fire District Summary Report:

Overview: This development can be serviced by the Middleton Rural Fire District. This development shall comply with the 2018 International Fire Code (IFC) and any codes set forth by the City of Middleton, Idaho.

Fire Response Time: This development will be served by the Middleton Rural Fire District Station 53, located at 302 E. Main St., Middleton, ID 83644.

- Station 53 is 2.1 miles with a travel time of 4 minutes the proposed entrance of the development at Duff Land & 9th St. under ideal driving conditions to
- Station 53 is 1.7 miles with a travel time of 3 minutes the proposed entrance of the development at Duff Land & Cornell St. under ideal driving conditions to

Accessibility: Roadway Access, Traffic, Radio Coverage

Access roads shall be provided and maintained following Appendix D and Section 503 of the IFC. Access shall include adequate roadway widths, signage, turnarounds, and turning radius for fire apparatus.

Access road design shall be designed and constructed to allow for evacuation simultaneously with emergency response operations.

One- or two-family dwelling residential developments: Developments of one- or two-family dwellings where the number of dwelling units exceeds 30 shall provide with at least two separate and approved fire apparatus access roads.

- The six proposed access to the development on 9th street and Cornell St meets the intent of the fire code.

Where a bridge or an elevated surface is part of a fire apparatus access road, the bridge shall be constructed and maintained in accordance with **AASHTO HB-17**. Bridges and elevated surfaces shall be designed for a live load sufficient to carry the imposed loads of fire apparatus (75,000 pounds). Vehicle load limits shall be posted at both entrances to bridges where required by the fire code official. Where elevated surfaces designed for emergency vehicle use are adjacent to surfaces that are not designed for such use, approved barriers, approved signs or both shall be installed and maintained where required by the fire code official.

(208) 286-7772
11665 W. STATE ST., SUITE B
STAR, IDAHO 83669

MIDDLETON RURAL FIRE DISTRICT



Waverly Park Subdivision

STAR FIRE PROTECTION DISTRICT

All access roads in this development shall remain clear and unobstructed during construction of the development. Additional parking restrictions may be required as to maintain access for emergency vehicles at all times. Hydrants shall remain unobstructed at all times per city code.

The fire district requires that Autoturn models be submitted for review. Autoturn models should reflect a standard fire engine and 50' ladder truck.

An unobstructed vertical clearance of no less than 13 feet 6 inches shall be maintained at all times.

The applicant shall work with City of Middleton and Fire District to provide an address identification plan and signage which meets the requirements set forth by each agency. Addressing shall be placed in a position that is plainly legible and visible from the street or road fronting the property, as set forth in International Fire Code Section 505.1

- To eliminate confusion and delay in response times during calls for service. The use of duplicate name at disjointed areas should be eliminated and the use of the street names St. James Dr., St. James St. and Peregrine St. should not be approved.

Upon commencement of initial construction of a new structure, a clear visible freestanding sign or post shall be erected and maintained in place until the permanent address numerals are attached or otherwise displaced upon the premises at completion.

Water Supply:

Water supply requirements will be followed as described in Appendix B of the 2015 International Fire Code unless agreed upon by the Fire District.

1. Fire Flow: One- and two-family dwellings not exceeding 3,600 square feet require a fire-flow of 1,000 gallons per minute for a duration of 1 hours to service the entire project. One- and two-family dwellings in excess of 3,600 square feet require a minimum fire flow as specified in Appendix B of the International Fire Code.
2. Water Supply: Acceptance of the water supply for fire protection will be by the Fire District and water quality by the City of Middleton for bacteria testing.
3. Water Supply: Final Approval of the fire hydrant locations shall be by the Fire District or their designee in accordance with International Fire Code Section (IFC) 508.5.4 as follows:
 - a. Fire hydrants shall have a Storz LDH connection in place of the 4 ½" outlet. The Storz connection may be integrated into the hydrant, or an approved adapter may be used on the 4 1/2" outlet.
 - b. Fire hydrants shall have the Storz outlet face the main street or parking lot drive aisle.
 - c. Fire hydrants shall be placed on corners when spacing permits.
 - d. Fire hydrants shall not have any vertical obstructions to outlets within 10'.
 - e. Fire hydrants shall be placed 18" above finished grade to the center of the Storz outlet.
 - f. Fire hydrants shall be provided to meet the requirements of the City of Middleton Standards.
 - g. Show all proposed or existing hydrants for all new construction or additions to existing buildings within 1,000 feet of the project.

(208) 286-7772

11665 W. STATE ST., SUITE B
STAR, IDAHO 83669

MIDDLETON RURAL FIRE DISTRICT



Waverly Park Subdivision

STAR FIRE PROTECTION DISTRICT

Inspections:

Final inspection by the Fire District of the above listed including hydrant flow must be completed before building permits are issued

Additional Comments:

Side Setback as per City Code. Any modification to setback will require review and approval by the Fire District.

Streetlights to be operational prior to the first certificate of occupancy being issued. Lighting is essential in assisting first responders with identifying entrances safely while responding to calls for service.

(208) 286-7772
11665 W. STATE ST., SUITE B
STAR, IDAHO 83669

From: [Chris Hopper](#)
To: [Roberta Stewart](#); "[Amy Woodruff \(amy@civildynamics.net\)](#)"; [Becky Crofts](#)
Cc: [Lenny Riccio](#)
Subject: FW: Waverly Park - Duff Lane right of way dedication by Albright
Date: Wednesday, July 7, 2021 2:26:00 PM
Attachments: [aerial of Albright property with driveway.pdf](#)
Importance: High

CHD4's recommendation would be that for arterial corridors, an alternate access through the subdivision be provided such that if/when the existing Albright access to Duff Lane is restricted (RIRO or fully restricted) they would have a viable alternative available.

By the time access restrictions on Duff become necessary it is highly likely that segment will be fully under city jurisdiction, so CHD4 will leave the decision up to the city.

Respectfully,

Chris Hopper, P.E.

District Engineer

Canyon Highway District No. 4
15435 Hwy 44
Caldwell, Idaho 83607
208-454-8135

From: Jane Suggs <jane@gemstateplanning.com>
Sent: Wednesday, July 7, 2021 2:01 PM
To: Roberta Stewart <rstewart@middletoncity.com>
Cc: Shawn Brownlee <shawn@trilogyidaho.com>; Chris Hopper <CHopper@canyonhd4.org>; Becky Crofts <bcrofts@middletoncity.com>; Amy Woodruff <amy@civildynamics.net>
Subject: Waverly Park - Duff Lane right of way dedication by Albright
Importance: High

Hi Roberta,

We've met with Mr. and Mrs. Albright concerning the dedication of right of way for Duff Lane improvements.

They need to know if their existing driveway connection to Duff Lane will remain when they dedicate the needed right of way.

Can you confirm that their driveway connection to Duff Lane will remain at the same location?

Please let me know as soon as possible. The Albrights will not continue our conversation until the driveway location is confirmed.

Thank you,

Jane

Jane Suggs

Gem State Planning, LLC

9839 W. Cable Car Street, Suite 101

Boise, ID 83709

208-602-6941



CANYON HIGHWAY DISTRICT No. 4
15435 HIGHWAY 44
CALDWELL, IDAHO 83607

TELEPHONE 208/454-8135
FAX 208/454-2008

June 2, 2021

City of Middleton Planning & Zoning
1103 West Main Street
Middleton, ID 83644
Attention: Roberta Stewart

Bailey Engineering, Inc.
4242 Brookside Lane
Boise, Idaho 83714
Attention: David Bailey, P.E.

Re: Waverly Park Subdivision—Preliminary Plat

Mrs. Stewart:

Canyon Highway District No. 4 (CHD4) has reviewed the preliminary plat for Waverly Park Subdivision, approximately 419 single-family residential lots located at the southeast corner of 9th Street and Duff Lane. CHD4 offers the following comments for your consideration:

Jurisdiction

CHD4 and the City entered into an Exchange Maintenance Agreement (11/27/18) for the logical distribution of maintenance activities on roadway segments where both parties have jurisdiction. Duff Lane between Foothill Road to the north side of Highway 44 is assigned to CHD4 for maintenance activities. The other public streets within the proposed subdivision will fall solely under the City's jurisdiction.

Mitigation Improvements

The following are impacts described in the traffic impact study:

- Purple Sage Road and Duff Lane intersection
 - AM Peak=1.6%, PM Peak=2.6%, Average=2.1%
- 9th Street and Duff Lane intersection
 - AM Peak=8.8%, PM Peak=10.2%, Average=9.5%
- Cornell Street and Duff Lane intersection
 - AM Peak=16.7% and PM Peak=18.5%, Average=17.6%
- N Middleton Road and SH 44 intersection
 - AM Peak=4.7%, PM Peak=5.5%, Average=5.1%
- Duff Lane and SH 44 intersection
 - AM Peak=7.9%, PM Peak=9.2%, Average=8.6%

(Waverly Park Subdivision TIS, Dated 5/6/20, Page 8)

Per the Capital Improvement Plan FY 17 dated April 25, 2017, with exception to design and build of the 9th street/Duff roundabout, none of the intersections impacted appear to be mitigated through impact fees. Staff recommends the City review these impacts through an additional proportional share of the improvement costs or have impacts mitigated through exactions.

Access and Improvements

Duff Lane

Proposal is to locate access on the section and ¼-section lines. No direct driveway access to Duff Lane is proposed. CHD4 recommends the City review relocating approach of out parcel (R3385701000) through the subdivision.

Falcon Valley No. 5 improvements widened Duff Lane approximately 48' measured from centerline (CL) to top back of curb (TBC). The proposed widening of 25' measured from CL to TBC appears to generally match Middleton's five-lane urban section of 72' TBC to TBC (48'+25'). CHD4 staff will review the proposed improvements and impact of making these improvements from centerline at time of improvement drawings. The bridge crossing at Mill Slough will require widening and will be reviewed at time of Improvement Drawings as well.

Staff recommends the City require extending frontage improvements across the outparcel (Canyon County Parcel No. R3385701000).

Right-Of-Way Dedications

ROW dedication of Duff Lane appears consistent with the Middleton code and Middleton's supplemental to the ISPWC.

Please feel free to contact me at any time prior to the hearing if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Lenny Riccio', with a stylized flourish extending to the right.

Lenny Riccio, E.I.T.
Assistant District Engineer
Transportation Planner
Canyon Highway District No. 4

Communities in Motion 2040 2.0 Development Review

The Community Planning Association of Southwest Idaho (COMPASS) is the metropolitan planning organization (MPO) for Ada and Canyon Counties. COMPASS has developed this review as a tool for local governments to evaluate whether land developments are consistent with the goals of *Communities in Motion 2040 2.0* (CIM 2040), the regional long-range transportation plan for Ada and Canyon Counties. This checklist is not intended to be prescriptive, but rather a guidance document based on CIM 2040 2.0 goals.

Development Name: Waverly Park






Agency: Middleton

CIM Vision Category: Future Neighborhoods

New households: 417

New jobs: 0

Exceeds CIM forecast: Yes

	CIM Corridor: Duff Lane Pedestrian level of stress: R Bicycle level of stress: R	Level of Stress considers facility type, number of vehicle lanes, and speed. Roads with G or PG ratings better support bicyclists and pedestrians of all ages and comfort levels.
	Housing within 1 mile: 890 Jobs within 1 mile: 100 Jobs/Housing Ratio: 0.1	A good jobs/housing balance – a ratio between 1 and 1.5 – reduces traffic congestion. Higher numbers indicate the need for more housing and lower numbers indicate an employment need.
	Nearest police station: 3 miles Nearest fire station: 2.1 miles	Developments within 1.5 miles of police and fire stations ensure that emergency services are more efficient and reduce the cost of these important public services.
	Farmland consumed: Yes Farmland within 1 mile: 913 acres	Farmland contributes to the local economy, creates additional jobs, and provides food security to the region. Development in farm areas decreases the productivity and sustainability of farmland.
	Nearest bus stop: >4 miles Nearest public school: 1.7 miles Nearest public park: 1.6 miles Nearest grocery store: >4 miles	Residents who live or work less than ½ mile from critical services have more transportation choices. Walking and biking reduces congestion by taking cars off the road, while supporting a healthy and active lifestyle.

Recommendations

This proposal exceeds growth forecasted for this area. Transportation infrastructure may not be able to support the new transportation demands. Necessary services, such as grocery stores, employment, and public transportation are several miles from this location. There are no plans for future public transportation serving this area.

The Middleton Connects City Vision Map calls for a public multi-use pathway connecting Duff Lane with East 9th Street. Consider a pathway parallel to the Mill Slough to satisfy this need for pedestrian connectivity in this area.

More information about COMPASS and *Communities in Motion 2040 2.0*:

Web: www.compassidaho.org

Email info@compassidaho.org

More information about the development review process:

<http://www.compassidaho.org/dashboard/devreview.htm>



Boise Office
Golden Eagle Building
1101 W. River St., Ste. 110
P.O. Box 7985
Boise, Idaho 83707
Tel. (208) 629-7447

Challis Office
1301 E. Main Ave.
P.O. Box 36
Challis, Idaho 83226
Tel. (208) 879-4488

Twin Falls Office
236 River Vista Place
Suite 301
Twin Falls, Idaho 83301
Tel. (208) 969-9585

Fax (208) 629-7559



Tuesday, August 03, 2021

David P. Claiborne *

S. Bryce Farris

Patxi Larrocea-Phillips

Evan T. Roth

Daniel V. Steenson

Matthew A. Sturzen

**Katie L. Vandenberg-Van
Vliet**

Andrew J. Waldera **

James R. Bennetts (retired)

*Attorneys licensed in Idaho
* Also licensed in Washington
** Also licensed in Oregon*

City of Middleton
Attn: Roberta Stewart
P.O. Box 487
Middleton, Idaho 83644

Re: Waverly Park Subdivision located on Duff Lane, btw 9th and Cornell Middleton, Idaho

Dear Ms. Stewart:

The Drainage District No. 2 (referred to as "District") has a ditch or drain and easement that runs through or abuts this property. The District's easement is 100 feet, 50 feet to either side for open drains and 50 feet, 25 feet to either side for piped or closed drains. In addition, the Middleton Mill Ditch Company and Middleton Irrigation Association (collectively referred to as "MM-MI") have a lateral ditch and easement that runs through or abuts this property. The easement is 25 feet each side from the top of bank. The developer must contact the District and MM-MI's attorneys, Sawtooth Law Offices, PLLC, for approval before any encroachment, change of easement, or drainage discharge into District or MM-MI facilities occurs. The District and MM-MI must review drainage plans and construction plans prior to any approval.

The District and MM-MI generally require a License Agreement prior to any approval for the following reasons:

1. Relocation of a facility which would also require a new easement and relinquishment of the old easement once the relocation has been completed.
2. Piping of a facility.
3. Encroachment on a facility with gas, water and sewer lines, utility lines, roadways, bridges or any other structures.
4. Drainage discharges into any facilities.

www.sawtoothlaw.com



August 3, 2021
City of Middleton ltr.
Page 2

Also, please be advised that neither the District or MM-MI approves of trees within their easements. Therefore, any existing trees within easement will need to be removed. On occasion, the District and MM-MI may make exceptions on a case-by-case basis, which requires the developers/owners to obtain written permission from the District or MM-MI for existing trees to remain.

Please contact me if you have any questions.

Yours very truly,

A handwritten signature in blue ink, appearing to read "S. Bryce Farris". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

S. Bryce Farris

SBF:krk
cc: MM-MI/DD2

Exhibit "F"

City Engineer & Planner Comments

From: [Roberta Stewart](#)
To: [Roberta Stewart](#)
Subject: FW: Waverly Park - 419 lots in Middleton
Date: Friday, May 28, 2021 1:26:50 PM
Attachments: [Waverly Park PPlat Set 20200911.pdf](#)
[image001.png](#)

Engineering Comments from Amy Woodruff below

Roberta L. Stewart

PLANNER
City of Middleton, Planning & Zoning
1103 W. Main St.
P.O. Box 487
Middleton, ID 83644

Tele - (208) 585-3133
Fax – (208) 585-9601
rstewart@middletoncity.com

www.middleton.id.gov



From: Amy Woodruff <amy@civildynamics.net>
Sent: Thursday, May 6, 2021 12:43 PM
To: Roberta Stewart <rstewart@middletoncity.com>
Cc: Rachel Speer <rspeer@middletoncity.com>
Subject: RE: Waverly Park - 419 lots in Middleton

Roberta and Rachel,

Attached is the most current Waverly Park preliminary plat that I have in my files. Per your request (Roberta), I did take a fresh look at it. There is really only one follow up comment that should be addressed prior to hearing:

1. Please remove the St James St. extension to Albright. The road may terminate in a way that makes sense to access L7B21.
2. As a derivative of one (1) above, extend a pedestrian path from the end of St James to the pathway in Albright.
3. The culvert crossing was not reviewed by Civil D for either condition or geometry at this (the preplat) project stage. I don't really have the details or field data needed to provide

meaningful comments. It is assumed CHD4 will follow up with comments if the crossing is on their work plan and we will review the crossing in detail at the construction drawing phase, which is typical. If you would like to address the crossing in the Development Agreement, a general clause should cover it. Please know any costs assigned to the crossing at this point in the project development would not be effective at the time of construction, Phase 6.

If there is something you specifically wanted me to review, please let me know. Otherwise, I will follow up with a conditional recommendation today.

Thank you.

Amy Woodruff
453-2028



May 21, 2020

TO: City of Middleton
Bruce Bayne, PE, Zoning Official

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

A handwritten signature in blue ink, appearing to read "Amy Woodruff", is placed over the "FROM" line.

RE: Waverly Park Subdivision Preliminary Plat

Thank you for the opportunity to review the above referenced preliminary plat submittal. Every effort was made to identify all the review comments, but given the size of the project and the utility constraints, additional comments may come up as the application goes forward. Please review the complete code section cited below:

MCC 5-4-3. Traffic Impact Analysis is required to be submitted.

MCC 5-4-4:A. Please submit a title commitment with ownership information, including schedule B.

MCC 5-4-4:A.2.a. The boundary needs stamped by the PLS.

MCC 5-4-4:A.2.f. The site topography is very difficult to discern, especially the contour data. Please consider whether there may be a better way to structure the sheets.

MCC 5-4-4: A.2.h. Please clearly show the pathway the full length of Mill Slough to Allbright Street. The pathway should be 12 ft wide.

MCC 5-4-4:A.2.i. Detail ownership of land not in a subdivision.

MCC 5-4-4:A.2.j. Add zoning of adjacent land.

MCC 5-4-4:A.2.k. Please list number of common lots per phase in the table on PP-1.

MCC 5-4-4:A.2.m. Add names of property owners adjacent to the exterior boundary.

MCC 5-4-4:A.2.o. Please dimension lots as practical in lieu of extensive use of curve data.

MCC 5-4-4:A.2.r. Please coordinate with the City regarding the right of way needed at Allbright/Cornell intersection and Allbright/9th intersection. A roundabout is shown for each on the City's planning map.

MCC 5-4-4:A.3. The sewer mains shown as being oversized do not meet 10 State Standards. However, we also recognize that options for sewerage the parcel are limited and the City will weigh carefully the operational challenges of oversize mains against installation of a lift station (or other). We need to consult with DEQ regarding the specifics and will follow up with our findings and recommendations.

MCC 5-4-10-2:H.3. Minimum spacing between centerline of roads is 250 ft, including Decatur and Peregrine. You may apply for variance if Peregrine cannot be adjusted.

MCC 5-4-10-2:J.2. Review this code section and revise road names accordingly. Coordinate with the City regarding duplicate road names.



General comments:

1. Please revisit the right of way width for Cornell. MCC requires a 100 foot right of way (50 foot half section.) and improved per the Middleton Supplemental.
2. The typical section for 50' half section dimensions may need corrected.
3. Minimum centerline radius is 125 ft. The 60 ft radii may be problematic for Middleton Rural Fire as well.
4. Lot 16 Block 22 is not minimum size.



CITY OF MIDDLETON

P.O. Box 487 | 1103 W Main Street, Middleton, ID 83644

Tele (208) 585-3133 | Fax (208) 585-9601

citmid@middletonidaho.us | www.middleton.id.gov

PLANNER COMMENTS – WAVERLY PARK SUBDIVISION

August 4, 2021

1. As indicated in my 8/3/2021 email, the street names need to be revised. We will send over proposed street names to fix disjointed/duplicative street names. Street names St. James, Decatur, and Peregrine are duplicate names and must be discarded. We will probably need about 7 new names to fill in the gaps when we remove other duplicative names not mentioned here.
2. Please call out the pathway along the slough with some kind of descriptive note. Per MCC 5-4-10-8, the pathway must be 10' wide and paved with asphalt. It should be placed within a 20' public access easement. Looks like the pathway also transects through the park at L1/B13. Please add a note to clarify that the pathway through L1/B13 is for public access and meets standards of MCC 5-4-10-8.
3. We are discussing the need to dedicate the 6 acre park at L1/Blk13. We can address this with you in the next few days.
4. Add L39/Blk 1 to common lot schedule
5. Some blocks seem to have gotten confused. Please review these problem areas:
 - a. Block 28, Lot 1 at Waylon Avenue should be Block 27, Lot 1 probably.
 - b. Block 24, at the southern end along Cornell Street should probably be Block 23
 - c. Block 22 at Toone St., should be Block 21
 - d. Block 24 at Burlison Street should be Block 23.
6. Show mailboxes on preliminary plat
7. Your plat is missing the following notes:
 - a. Irrigation ditches through the project shall be piped where they cross roadways with all structures located beyond any public right-of-way. All irrigation and drainage facilities shall be located outside of the right of way.
 - b. Building Setbacks shall be in compliance with the standards set forth in the R-3 Zone at the time of building permit issuance.
 - c. Mailbox clusters to be installed by Owner as shown on the preliminary plat

Roberta L. Stewart

Middleton City Planner



CITY OF MIDDLETON

P.O. Box 487 | 1103 W Main Street, Middleton, ID 83644
Tele (208) 585-3133 | Fax (208) 585-9601
citmid@middletonidaho.us | www.middleton.id.gov

UPDATED PLANNER COMMENTS – WAVERLY PARK SUBDIVISION

August 11, 2021

Some of my comments from the 8/4/2021 were not completed. Please complete the following requests and send over an updated preliminary plat with 2 full-size paper copies.

1. Streets in Middleton can only be "Avenues" or "Streets". Please change Algood Place to Algood **Avenue**.
2. We will not let your pre-plat proceed to City Council until you place a public access easement over the pathways along the slough. I cannot see that note anywhere. It is critical to keep your plat in compliance with our comp plan by noting that public access. The easement must be at least 20' wide to be in compliance with MCC 5-4-10-8.
3. Add L39/Blk 1 to common lot schedule. See below. Or tell me why it is not a common lot.



4. Where is Block 27. Looks like it got skipped entirely. I think, but I am not sure, your engineer intended Block 28, Lot 1 (the street island) to be Block 27, Lot 1??
5. You are still not showing mailboxes. Please add them to the plat.

Roberta L. Stewart

Middleton City Planner

Exhibit "G"

P&Z Commision Findings of Facts, Conclusions of Law and
Recommendation. Minutes from P&Z Meeting on 6/8/2020

Middleton Planning & Zoning Commission

Findings of Facts, Conclusions of Law, and Decision & Order



In the Matter of the Request of Jane Suggs/Gem State Planning for Preliminary Plat for the Waverly Park Subdivision located at 0 Duff Lane at the southeast corner of 9th Street and Duff Lane (Tax Parcel Nos. R33857012 and R33857011):

A. Findings of Fact:

1. Hearing Facts: (See Staff Report for the hearing date of June 8, 2020, which Report is attached hereto as Exhibit "A" and incorporated herein by this reference.)
2. Process Facts: (See Staff Report for the hearing date of June 8, 2020, which Report is attached hereto as Exhibit "A" and incorporated herein by this reference.)
3. Application and Property Facts: (See Staff Report for the hearing date of June 8, 2020, which Report is attached hereto as Exhibit "A" and incorporated herein by this reference.)
4. Required Findings per Middleton City Code 1-14-2(E)(7): (See Staff Report for the hearing date of June 8, 2020, which Report is attached hereto as Exhibit "A" and incorporated herein by this reference.)

B. Conclusions of Law:

1. That the City of Middleton shall exercise the powers conferred upon it by the "Local Land Use Planning Act of 1975," codified at Chapter 65, Title 67, Idaho Code (I.C. §67-6503).
2. That due consideration has been given to the comments received from the governmental subdivisions providing services in the City of Middleton planning jurisdiction, comments received from individuals of the public, and comments from City Planning Staff and City Engineer.
3. That notice of the application and public hearing were given according to law.
4. That Planning and Zoning Commission's public meeting was conducted according to law, and the City has kept a record of the application and related documents.
5. That codes and standards applicable to the application are the Idaho Standards for Public Works Construction, the Middleton Supplement to the Idaho Standards for Public Works Construction, and Middleton City Code 1-14, 1-15, 1-16, 5-1, 5-2, 5-3, and 5-4.
6. That this recommendation is subject to the Conditions of Approval set forth in the

attached Staff Report for the hearing date of June 8, 2020, which Report is incorporated herein by reference.

7. That public facilities and services required by the proposed development will not impose expense upon the public if the attached conditions of approval are imposed.

C. Decision and Order:

Pursuant to the Planning & Zoning Commission's authority as provided in Middleton City Code 1-5-5, and based upon the above Findings of Facts and Conclusions of Law, it is hereby recommended that:

1. City Council approve the preliminary plat subject to the Conditions of Approval set forth in the Staff Report for the June 8, 2020, Public Hearing attached hereto as Exhibit "A" and incorporated herein by this reference.

WRITTEN RECOMMENDATION AND DECISION APPROVED ON: August 9, 2021.



Ray Waltemate, Chairman
Planning and Zoning Commission

Attest: 

Roberta Stewart
Planning and Zoning Department

Exhibit "A"



ADMINISTRATIVE REVIEW AND REPORT

Middleton Planning and Zoning Commission

Waverly Park Subdivision – Preliminary Plat

A request by Jane Suggs/Gem State Planning to approve a Preliminary Plat according to Middleton City Code 5-4-4, for Waverly Park Subdivision consisting of 431 residential and 58 common lots on approximately 157.6 acres of vacant land. The subject property is located at the southeast corner of Duff Lane and 9th Street and is already in City Limits and zoned R-3, three residential dwelling units per gross acre. Property is Canyon County Parcel No. R33857011 and R33857012, Middleton, Idaho.

Applicant: Jane Suggs/Gem State Planning
9840 W Overland Road, Suite 120
Boise, ID 83709

Representative: Same as Applicant

1. **APPLICATION:** The application was received and accepted by the City on May 13, 2020
2. **NOTICE OF PUBLIC HEARING:**
Published notice Idaho Press Tribune: May 22, 2020
Letters to 300' Property Owners: May 20, 2020
Letters to Agencies: June 2, 2020
Property Posted: May 22, 2020
3. **APPLICABLE CODES AND STANDARDS:**
Idaho Code Title 67, Chapter 65
Middleton City Code, (MCC) 1-14-5; 1-15-1; 5-4-3 and -4
Idaho Standards for Public Works Construction (ISPWC)
Middleton Supplement to the ISPWC
Middleton Comprehensive Plan and Maps, Dec. 4, 2019 version
4. **CITY STAFF COMMENTS REGARDING THE PROPOSED PRELIMINARY PLAT:**

The subject property is zoned R-3, three residential units per gross acre. The proposed preliminary plat complies with that zoning density standard.

The minimum buildable lot size in this community is 7,794 square feet and the largest is 14,103 square feet.



ADMINISTRATIVE REVIEW AND REPORT

Middleton Planning and Zoning Commission

Road names are still to be confirmed so that the plat meets MCC 5-4-10-2.J.2.

Cluster mailboxes are required and shown per correspondence from the Middleton Post Master and the United States Postal Service regional office.

MCC 5-4-3 requires developer to prepare and submit for city approval a traffic analysis (TIS) and payment of proportionate share of traffic impact at intersections. That is still required and is noted as a condition of approval.

A neighborhood meeting was not required.

City Planning and Zoning Review Comments: Are to be completed and approved as a condition.

City Engineer Review Comments: Are to be completed and approved as a condition.

Written Agency Responses Received to Date: None.

Written Comments From Landowners Received to Date: None

5. CONCLUSION

The proposed preliminary plat complies with most of the city's code and standards. If the Planning and Zoning Commission recommend that the City Council approve the preliminary plat, it is recommended to be with the following conditions.

1. City of Middleton municipal domestic water, fire flow, sanitary sewer services and transportation facilities are extended to serve the subdivision.
2. The TIS must be approved by the city, and before City Council approval, the applicants proportionate share for traffic impacts at all required intersections must be determined.
3. Cluster mailbox location(s) must be shown.
4. Preliminary plat corrections identified by the City Engineer and Planning and Zoning Official are made.
5. Requirements of Middleton Rural Fire are incorporated.
6. Requirements of CHD#4 are incorporated.
7. Minimum lot size of 8,000 square feet must be attained.

Drafted by: Bruce Bayne
Date: June 5, 2020



ADMINISTRATIVE REVIEW AND REPORT

Middleton Planning and Zoning Commission

Code 5-4-4 for Crescent Lake Subdivision consisting of 105 residential lots and 5 common lots on 35.134 acres of vacant land, Canyon County Parcel No. R33833010, located West of Kingsbury Rd, North of Highway 44, Middleton, Idaho.

Motion seconded by Commissioner Gregory.
Aye- Waltemate, Hutchison, Gregory
Opposed-Springston
Motion passed.

Public hearing closed at 9:06 p.m.

- I. Public Meeting: A request by Jane Suggs/Gem State Planning to approve a Preliminary Plat according to Middleton City Code 5-4-4, for Waverly Park Subdivision consisting of 431 residential and 58 common lots on approximately 157.6 acres of vacant land. The subject property is located at the southeast corner of Duff Lane and 9th Street and is already in City Limits and zoned R-3, three residential dwelling units per gross acre. Property is Canyon County Parcel No. R33857011 and R33857012, Middleton, Idaho.**

The applicant is proposing to build the subdivision according to Middleton city codes and standards. No exceptions are requested so the Planning and Zoning Commission, and subsequently City Council, will consider the application at public meetings where interested residents may observe, but not participate by offering comments since it is not a public hearing.

Chairman Waltemate called the public meeting beginning at 9:07 p.m. Planning and Zoning Official Bruce Bayne addressed the concerns expressed through a resident's letter that the public is not able to comment in a public meeting. If the applicant is applying for a preliminary plat and the property has already been annexed into the City and planned and the applicant is doesn't request anything outside of the City Code a public meeting is held and not open to public comment. He then read the staff report.

Commission discussion: The same intersections will be affected by the TIS in this application as the application for Waterford Subdivision.

Applicant: Jane Suggs/Gem State Planning: 9840 Overland Road Boise, Idaho. She gave a brief overview of the project. They have submitted an updated preliminary plat that addresses the City staff and City Engineer comments. The buildout is about 7 years in the future so that can be considered as phasing is considered. They plan to ask for a waiver of a public right of way to decrease the required right of way of Cornell Street from 100 ft to 60 ft. The 100 ft right of way will cause them to lose 15-16 lots.

Commission discussion: The traffic will go out on 9th Street and Cornell, no traffic will come out on Duff. Bruce said the City has done that on purpose, and in collaboration with Canyon Highway District 4. The right of way on Duff, 9th and Albright is 100 ft. Bruce said he is not in favor of reducing the right of way on Cornell Street, it was brought up by the applicant. The City's comprehensive plan and transportation plan have not allowed for too narrow of roads. We are building roads for the population buildout of 90,000 residents. Bruce said there is a code for exception of waiver of standards however it does require a Special Use Permit, it can go through a development agreement, it can be a variance, or a condition of approval, however all of these things require a public hearing at both P&Z

and at City Council not just one.

Discussion from Commission: We are discussing the approval of the preliminary plat any waivers are going to have to go to a public hearing.

Motion: Motion by Chairman Waltemate to recommend approval to City Council request by Jane Suggs/Gem State Planning to approve a Preliminary Plat according to Middleton City Code 5-4-4, for Waverly Park Subdivision consisting of 431 residential and 58 common lots on approximately 157.6 acres of vacant land. The subject property is located at the southeast corner of Duff Lane and 9th Street and is already in City Limits and zoned R-3, three residential dwelling units per gross acre. Property is Canyon County Parcel No. R33857011 and R33857012, Middleton, Idaho. with conditions put forth by the City Staff.

Motion seconded by Commissioner Springston and approved unanimously.

Chairman Waltemate called 5 min recess at 9:31 p.m.

Chairman Waltemate called the meeting back in session at 9:38 p.m.

- J. Public Hearing: A request by Todd Campbell (TCCH Inc.)/Paul Watson (Falkirk Holdings LLC), for a special use permit to amend City Approved Construction Plans which required a local collector roadway section (60 feet wide) adjacent to commercial zoning transitioning to a local roadways section (50 feet wide) in the residential area, to allow for a 50 foot wide Local Commercial Collector as modified by the applicant. The subject property is 12.5 acres located at the southwest corner of Willis Rd and Hartley Ln., Middleton, Idaho.**

Chairman Waltemate called the public hearing at 9:38 p.m. Planning and Zoning Official Bruce Bayne read the staff report. He answered a question from the commissioner Hutchison that the applicant is asking to go from 60 ft right of way to 50 ft right of way in the commercial portion of the project

Applicant: Jay Walker: Altera Consulting: 849 E State Street, Eagle Idaho 83616. He gave a brief explanation of what has gone on with the project. Currently they have stamped and approved plans for Stonehaven 3. It is currently under construction. The concern is for the additional right of way of 7 ft that will be maintained by the city and the request is to give back the 7 ft "no man's land" to the back of the sidewalk to the property owner of the commercial development.

Chairman Waltemate asked for future land use when the commercial is developed how does that effect development in that area. Jay said it doesn't affect it at all. The street size doesn't change, but the additional right of way could be changed to have additional parking stalls with a new commercial development. Right now, it is dirt behind the vertical curb and nothing says it will be grass when a new commercial development goes in. Bruce explained why the City wants the additional right of way. The additional right of way provides a buffer in the commercial area where there will be more traffic in the area. The applicant has already been allowed to reduce the size of the sidewalk width from 8 ft to 5ft and that was done on purpose to keep the continuity of the concrete sidewalk throughout the development. Either way if the HOA/COA does not maintain it the City will.

Exhibit "H"

Original 2006 Paradise Valley Development Agreement

WAVERLY

Recording Requested By and
When Recorded Return to:

City Clerk
City of Middleton
P.O. Box 487
Middleton, Idaho 83644

RECEIVED
BY *[Signature]*
REQUEST *[Signature]*
TYPE *[Signature]*

SEP 16 PM 4 03

RECORDED

200683381

For Recording Purposes Do
Not Write Above This Line

DEVELOPMENT AGREEMENT PARADISE VALLEY

This Development Agreement entered into by and between the City of Middleton, a municipal corporation in the State of Idaho, hereinafter referred to as "City", and Richard M Phillips and Staci Phillips Trust, whose address is 210 Murray Street, Boise, Idaho 83714, the owner of the real property described herein and applicant(s) for PARADISE VALLEY SUBDIVISION, hereafter referred to as "Developer".

WHEREAS, the Developer has applied to the City for a zone change to R-3 for the Development of the property described as attached hereto and incorporated by reference herein on Exhibit 1 ("Property") to develop a Residential Subdivision, which includes approximately 256 acres of residential uses. The Property is currently zoned Ag. The Developer has enclosed a concept plan which is attached hereto as Exhibit 2.

WHEREAS, the City, pursuant to Section 67-6511A, Idaho Code, has the authority to conditionally rezone the property and to enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for a specific purpose or use which is appropriate in the area, but for which all allowed uses for the requested zoning may not be appropriate pursuant to the Idaho Code and the Middleton City Code.

WHEREAS, the Middleton City Code allows a property owner or developer to request that an application for zoning or zoning map amendment be processed in connection with the execution of a development agreement, wherein through such development agreement, a property owner or developer may agree to make written commitments concerning the use or development of a subject parcel in exchange for the change of zoning requested; and

[Signature]

WHEREAS, the City is willing to allow the proposed development within the City Of Middleton, Idaho, subject to the terms and conditions of this Agreement and the Special Conditions attached hereto; and

WHEREAS, the City desires to induce Developer to develop the Property because the development proposed by Developer is in the public interest. The City believes that development by Developer will generate additional tax revenue, provide employment, and stimulate beneficial commercial growth and development; and

WHEREAS, the City acknowledges that Developer and its successors and/or assigns are relying upon the effectiveness of this Development Agreement in the decision to purchase the Property; and

WHEREAS, the City has approved the requested annexation and zoning to R3 subject to the following terms and/or commitments and desires to formalize and clarify the respective obligations of the parties.

WHEREFORE, the City of Middleton and the Developer do enter into this Agreement and for and in consideration of the mutual covenants, duties and obligations herein set forth, it is agreed as follows:

ARTICLE I LEGAL AUTHORITY

1.1 This Development Agreement is made pursuant to and in accordance with the provisions of Idaho Code Section 67-6511A and Middleton City Code, Title 5, Chapter 7).

ARTICLE II ZONING ORDINANCE AMENDMENT

- 2.1 The City will adopt an ordinance amending the Middleton Zoning Ordinance to rezone the property to R-3. The Ordinance will become effective after its passage, approval, and publication and the execution and recordation of this Development Agreement.
- 2.2 This Development Agreement shall not prevent the City in subsequent actions applicable to the Property, from applying new ordinances and regulations of general application adopted by the City in exercise of its police powers that do not conflict with Developer's property rights, the parties' commitments applicable to the Property as set forth herein, or the R-3 zone classification approved hereby. Any such subsequent ordinances shall not supersede the specific commitments set forth herein.

ARTICLE III CONDITIONS ON DEVELOPMENT

The sole uses(s) allowed and restrictions pursuant to this conditional rezone as reflected in this Agreement are as follows:

- 3.1 Developer shall develop the Property subject to the conditions and limitations set forth in this Agreement, and to the standards that the City has in force at the time of the annexation application for the R-3 zoning classification except as otherwise provided in this Agreement (the "Project"). Developer shall further submit such applications regarding preliminary and final plat reviews and any other applicable applications as may be required by the City.
- 3.2 Developer agrees that, unless otherwise agreed to by the Parties, the conceptual site development plan (the "Conceptual Plan") attached hereto as Exhibit B shall dictate the type of development to be constructed in each of the components of the Project. Block lengths shall apply in accordance with the approved conceptual plan. Residential densities within the Project shall not exceed three (3) dwelling units per gross acre.
- 3.3 The Project shall comply with the Middleton Comprehensive Plan and Middleton City Code, and all state and federal law as they exist in final form at the time the development application was submitted, except as otherwise provided in this Agreement and will require a complete set of plans which shall include:
 - 3.4.1 Site plan including street, curb and gutter, street signs, irrigation lines, sidewalk and site lighting;
 - 3.4.2 Underground utility plan including water, sanitary sewer, storm drainage, irrigation, and fire protection;
 - 3.4.3 Any other required improvements set forth as conditions of approval; Soils report, including bearing values, soils profile, ground water and other elements as requested by the City Engineer or Building Official;
 - 3.4.4 Review and Approval by the City Engineer and Building Official of site, utility, and landscape plans before a building permit is issued.
- 3.4 Unless otherwise agreed, Developer will at its sole expense, design and construct all public improvements as shown in this development agreement in strict accordance with the Middleton City Code in existence at the time of the development application or as otherwise provided in this Agreement.

3.5 Street Improvements and Access. Developer agrees to submit a traffic impact study to the City acceptable to the City Engineer. In particular, the traffic study shall be in accordance with the standards identified in the *Transportation Impact Analyses for Site Development*, 2005, by the Institute of Transportation Engineers. At a minimum, such a traffic impact study must consider the cumulative impacts of surrounding developments. Developer agrees to mitigate its proportionate share of adverse traffic impacts as required by the City.

3.5.1 Developer shall make any and all necessary street improvements as provided in the Conceptual Plan and required by the City Engineer pursuant to the Traffic Impact Study;

3.5.2 Developer shall construct the following street improvements to standards adopted by the City including associated curb, gutter and sidewalk per the requirements of the Middleton City Code in effect as of the effective date of this Development Agreement, and the Traffic Impact Study.

3.5.2 Project accesses shall conform to the diagram contained in Exhibit 2.

3.5.3 Review and Approval by the City Engineer and Building Official of any and all street improvements and access shall be required before building permits shall be issued.

3.5.4 Provided the Developer is in substantial compliance as determined by the City Engineer, building permits may be issued prior to the completion of secondary street improvements.

3.6 Landscape Improvements.

3.6.1 Developer shall provide landscaping on designated frontages in accordance with exhibit 2 and the provisions of the Middleton City Code in place as of the effective date of this Development Agreement.

3.6.2 Developer will provide landscaping in accordance with the provisions of the City of Middleton for R-3 zoned properties in place as of the effective date of this Development Agreement as depicted with the Conceptual Plan.

3.6.3 Developer or its successors or assigns shall maintain all site landscape areas as required by law.

3.7 Setbacks.

3.7.1 Developer shall comply with the setbacks for R-3 zoned property as provided in the Middleton City Code in effect as of the effective date of this Development Agreement except patio house lots which setbacks shall be 5 foot side yard, 15 foot rear yard, 15 feet to the front of the house, 20 feet to the garage and 15 feet flanking street. Maximum lot coverage shall

be defined as the building envelope inside the setbacks. Side entry garage requirements do not apply to the patio lots. Minimum lot width to be 50 feet on patio lots. Flag lots may be allowed on up 10% of the lots with frontage not less than 30 feet.

3.8 Utilities.

3.8.1 Developer shall bring to the Property all utilities it requires for development subject to appropriate reimbursement provisions in latecomers' agreements, except for sanitary sewer, a separate agreement for sewer applies.

3.8.2 Developer shall construct all on-site utilities required for development of the Property, including sewer, water, electricity, natural gas, and any others Developer deems appropriate.

3.8.3 All on-site utilities shall be constructed underground.

3.9 Conditions, Security for Completion: All of the conditions set forth herein shall be complied with or shall be secured by a letter of credit for completion by the Developer before a Final Plat Approval or Occupancy permit will be granted. Failure to comply by a letter of credit for completion of the conditions within the time frame established in the subdivision plat approval conditions, the Middleton City Code or the terms of this Agreement shall result in a default of this Agreement by the Developer. The Developer may be allowed to provide a letter of credit for certain conditions at one hundred and fifty percent (150%) of the estimated cost of completion pursuant to Middleton City Code, and, provided the Developer is in substantial compliance, to be determined by the City Engineer, the City Council may issue building permits prior to completion of certain secondary public improvements.

3.11 Expanded Use. No change in the use or restriction specified in this Agreement shall be allowed or changed without modification of this Agreement pursuant to the requirements of the Middleton City Code. In the event Developer changes or expands the use permitted by this Agreement or fails to comply with the restrictions without formal modification of this Agreement as allowed by the Middleton City Code, Developer shall be in default of this Agreement.

3.12 Commencement of Construction: The Developer shall commence construction of site infrastructure (e.g., grading of streets or installation of utilities) within five years of the effective date of this Agreement. Developer acknowledges that preliminary plat approval is valid for twelve (12) months pursuant to Middleton City Code § 6-2-3(F)(3). Upon Developers request an extension of 12 months shall be allowed for cause. In the event the Developer fails to commence construction within the time

periods herein stated, the Developer shall be in default of this Agreement.

- 3.13 **Final building Permit.** Final building permit approval and construction of the improvements on the Property, in accordance with those approved plans, shall be deemed to satisfy the conditions and obligations of Developer set forth in this Development Agreement.

ARTICLE IV AFFIDAVIT OF PROPERTY OWNERS

- 4.1 An affidavit of all owners of the Property agreeing to submit the Property to this Development Agreement and to the provisions set forth in Idaho Code Section 67-6511A and Middleton City Code shall be provided and is incorporated herein by reference.

ARTICLE V DEFAULT

- 5.1 In the event Developer, its successors or assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, fail to faithfully comply with all of the terms and conditions included in this Agreement, this Agreement may be modified or terminated by the Middleton City Council upon compliance with the requirements of the Middleton City Code. In the event the City Council determines that this Agreement shall be modified, the terms of this Agreement shall be amended and Developer shall comply with the amended terms. Failure to comply with the amended terms shall result in default. In the event the City Council, after compliance with the requirements of the Middleton City Code, determines that this Agreement shall be terminated, the zoning of the Property shall revert to City R-3 zoning. All uses of the Property, which are not consistent with City R-3 zoning shall cease. Nothing herein shall prevent Developer from applying for any nature of use permit consistent with City R-3 zoning. A waiver by the City of any default by Developer of any one or more of the covenants or conditions hereof shall apply solely to the breach and breaches waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.
- 5.2 The execution of this Development Agreement and the written commitments contained herein shall be deemed written consent to change the zoning of the Property to its prior designation upon failure of the conditions imposed upon Developer by this Development Agreement.
- 5.3 **Remedies and Specific Performance.** In addition to the remedies provided by the Default provisions herein, any applicable Permits issued pursuant to this Agreement, and the proceedings Findings of Facts and

Conclusions of Law issued herein may be revoked at any time for a material violation of the permit, or any material violation of any condition thereof, by motion of the City Council after notice and Developer's failure to cure such failure within thirty (30) days, followed by a due process hearing upon at least ten (10) days written notice to Developer. The City Council, after finding that Developer has exercised due diligence in curing any such failure, may provide a reasonable extension of time for Developer to cure such failures. In the event a breach of this Agreement in addition to all other remedies at law or in equity, and as set forth in this Agreement.

5.4 Financial Assurance. In the event that certain improvements are not completed by Developer as required under this Agreement, Developer shall submit a mutually acceptable bond, cash deposit, certified check, or irrevocable bank letter of credit, or other security agreement to the City for one hundred fifty percent (150%) of the estimated costs associated with the completion thereof as estimated by the City Engineer and approved by the CITY prior to the issuance of an occupancy permit for any of the buildings within the Project for which said improvements are required to be constructed. In the event Developer fails to complete construction of the specified improvements within a period of time as required under this Agreement, the City may proceed to have such work completed. In order to accomplish this, the City may appropriate said security agreement, bond, cash, deposit, or letter of credit.

ARTICLE VI UNENFORCEABLE PROVISIONS

- 6.1 If any term, provision, commitment or restriction of this Development Agreement or the application thereof to any party or circumstances shall, to any extent be held invalid or unenforceable, the remainder of this instrument shall remain in full force and effect.
- 6.2 This Development Agreement is intended to be supplemental to all other local, City, State and Federal Code requirements, rules and regulations, and is established to assure compatibility of the resulting land use with the surrounding area. Provided, however, that to the extent this Development Agreement conflicts with any provision of the Middleton City Code, this Development Agreement shall prevail to the extent permitted by law.

ARTICLE VII ASSIGNMENT AND TRANSFER

- 7.1 After its execution, the Development Agreement shall be recorded in the office of the County Recorder at the expense of the Applicant. Each commitment and restriction on the development subject to this Agreement,

shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property, adjacent property and other residential property near the Property and shall run with the land. This Development Agreement shall be binding on the City and the Applicant and owners, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns; provided, however, that if all or any portion of the Property is divided and each owner of a legal lot shall only be responsible for duties and obligations associated with an owner's parcel and shall not be responsible for duties and obligations or defaults as to other parcels of lots within the Property. The new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect only to such owner's lot or parcel.

ARTICLE VII GENERAL MATTERS

- 8.1 **Amendments.** Any alteration or change to this Development Agreement shall be made only after complying with the notice and hearing provisions of Idaho Code Section 67-6509, as required by Middleton City Code, Title 5, Chapter 7.
- 8.2 **Paragraph Headings.** This Development Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Development Agreement. As used in this Development Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.
- 8.3 **Choice of Law.** This Development Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Development Agreement. Any action brought in connection with this Development Agreement shall be brought in a court of competent jurisdiction located in Canyon County, Idaho.
- 8.4 **Notices.** Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below.



Middleton: City Clerk
City of Middleton
P.O Box 487
Middleton, Idaho 83644

Developer: Mr. Richard M. Phillips and Staci Phillips Trust

210 Murray Street
Boise, Idaho 83714

Or such other addresses and to such other persons as the parties may hereafter designate in writing to the other parties. Any such notice shall be deemed given upon delivery if by personal delivery, upon deposit in the United States mail, if sent by mail pursuant to the foregoing.

8.5 **Attorneys' Fees and Costs.** In the event an action is brought to enforce any provision of this Agreement, or in the event an action is brought to recover damages for breach of this Agreement, the prevailing party in such action shall be entitled to recover from the other party all reasonable attorneys' fees and costs incurred, including attorneys' fees and cost incurred on appeal.

8.6 **Effective Date.** This Development Agreement shall be effective after delivery to each of the parties hereto of a fully executed copy of the Development Agreement.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, on the day and year first above written.

Dated this 4 day of October, 2006.

CITY OF MIDDLETON

By: Frank McKern
Mayor

ATTEST:

Ellen Smith CHC
City Clerk

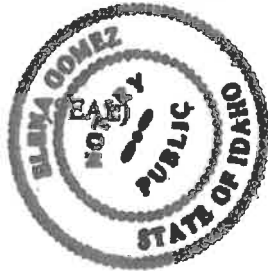


(Handwritten initials)

STATE OF IDAHO)
) ss
County of Canyon)

On this 12 day of October, in the year of 2006, before me
Elena Gomez, personally appeared Frank McLean and Ellen Smith,
known or identified to me, to be the persons whose names are subscribed to the within
and foregoing instrument and acknowledged to me that they executed the same, and were
so authorized to do so for and on behalf of said City of Middleton.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year first above written.



Elena Gomez
Notary Public for Idaho
Residing at Middleton Idaho
My Commission expires: 3-14-11

Richard M. Phillips

Richard M. Phillips
By: Richard M. Phillips

Staci Phillips Trust

Richard M. Phillips
By: Richard M. Phillips
Its: Trustee

STATE OF IDAHO)
)ss
County of Ada)

On this 7 day of Sept., in the year 2006, before me, personally appeared Richard M. Phillips, known or identified to me to be the Trustee of the Staci Phillips Trust and acknowledged to me that he executed the same, and was so authorized to do so for and on behalf of Staci Phillips Trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Norita Stricker
Notary Public for Idaho

Residing at: Eagle, Id.

My Commission expires: 2/9/07



STATE OF IDAHO)
)ss.
County of Ada)

On this 7 day of Sept., in the year 2006, before me, personally appeared Richard M. Phillips, known or identified to me to be the person whose name is subscribed to the within and forgoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Norita Stricker
Notary Public for Idaho

Residing at: Eagle, Id.

My Commission expires: 2/9/07



Paradise Valley Subdivision Annexation an Zoning Application

Richard M. Phillips
210 Murray Street
Boise, Idaho 83714

Exhibit "4"

Parcel I.

A parcel located in the West Half of the East Half of Section 4 of Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

BEGINNING at a 5/8 inch diameter iron pin marking the Southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 4 (Southeast 1/16 Corner), from which a brass cap monument marking the Northeast corner of said Northwest Quarter of the Southeast Quarter of Section 4 (NE 1/16 Corner) bears

North 1° 09' 16" East a distance of 1,322.13 feet; thence

North 89° 21' 27" West along the Southerly boundary of said Northwest Quarter of the Southeast Quarter of Section 4 and the Northerly boundary of the Whisper Creek Estates Subdivision Phases 2 and 3 as shown in Book 22 of Plats on Page 20 in the office of the recorder, of Canyon County, Idaho, a distance of 1,321.83 feet to a 5/8 inch diameter iron pin marking the Northwest corner of said WHISPER CREEK ESTATES SUBDIVISION Phases 2 and 3 and the Southwest corner of the Northwest Quarter of the Southeast Quarter of said Section 4; thence

North 0° 56' 33" East along the Westerly boundary of said Southeast Quarter of Section 4 a distance of 1,324.60 feet to a point marking the Northwest corner of said Southeast Quarter of Section 4, said point being witnessed by a 5/8 inch diameter iron pin bearing

South 0° 56' 33" West a distance of 50.00 feet; thence

North 1° 08' 22" East along the Westerly boundary of the Northeast Quarter of said Section 4 a distance of 648.95 feet to a 5/8 inch diameter iron pin; thence leaving said Westerly boundary

South 89° 14' 19" East a distance of 934.54 feet to a 5/8 inch diameter iron pin; thence

North 1° 48' 02" East a distance of 678.91 feet to a 5/8 inch diameter iron pin; thence a distance of 178.48 feet along the arc of a 180.00 foot radius curve right, said curve having a central angle of 40° 54' 12" and a long chord which bears

North 22° 07' 08" East a distance of 174.71 feet to a 5/8 inch diameter iron pin; thence a distance of 128.58 feet along the arc of a 180.00 foot radius curve left, said curve having a central angle of 40° 54' 12" and a long chord which bears

North 22° 07' 05" East a distance of 125.79 feet to a 5/8 inch diameter iron pin; thence

North 1° 40' 02" East a distance of 323.10 feet to a 5/8 inch diameter iron pin on the Southerly right-of-way of Foothill Road; thence

South 89° 51' 10" East along said Southerly right-of-way a distance of 98.02 feet to a 5/8 inch diameter iron pin; thence leaving said Southerly right-of-way

South 1° 40' 02" West a distance of 100.02 feet to a 5/8 inch diameter iron pin; thence

South 10° 18' 10" West a distance of 139.97 feet to a 5/8 inch diameter iron pin; thence

(continued)

South 1° 40' 02" West a distance of 102.48 feet to a 5/8 inch diameter iron pin; thence a distance of 171.49 feet along the arc of a 250.00 foot radius curve right, said curve having a central angle of 39° 18' 10" and a long chord bearing
 South 21° 19' 07" West a distance of 158.15 feet to a 5/8 inch diameter iron pin; thence a distance of 116.61 feet along the arc of a 170.00 foot radius curve left, said curve having a central angle of 39° 18' 10" and a long chord bearing
 South 21° 19' 07" West a distance of 114.34 feet to a 5/8 inch diameter iron pin; thence
 South 1° 40' 02" West a distance of 693.15 feet to a 5/8 inch diameter iron pin; thence
 South 49° 14' 59" East a distance of 312.79 feet to a 5/8 inch diameter iron pin on the Easterly boundary of said West Half of the East Half of Section 4; thence
 South 1° 11' 43" West along said Easterly boundary a distance of 648.56 feet to a brass cap monument marking the Southeast corner of the Southeast Quarter of the Northeast Quarter of said Section 4; thence continuing along said Easterly boundary
 South 1° 09' 16" West a distance of 1,322.13 feet to the POINT OF BEGINNING.

Parcel II

A parcel located in the West Half of the Northeast Quarter of Section 4 of Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

COMMENCING at a brass cap monument marking the Northeast corner of said West Half of the Northeast Quarter of Section 4 (East 1/16 Corner), from which a brass cap monument marking the Southeast corner of said West Half of the Northeast Quarter of Section 4 (SE 1/16 Corner) bears
 South 1° 11' 43" West a distance of 2,648.93 feet; thence
 South 1° 11' 43" West along the Easterly boundary of said West Half of the Northeast Quarter a distance of 698.19 feet to a 5/8 inch diameter iron pin on the Southerly right-of-way of Foothill Road and the POINT OF BEGINNING; thence
 North 89° 31' 18" West along said Southerly right-of-way a distance of 197.14 feet to a 5/8 inch diameter iron pin; thence leaving said Southerly right-of-way
 South 1° 40' 02" West a distance of 100.02 feet to a 5/8 inch diameter iron pin; thence
 South 10° 15' 10" West a distance of 133.97 feet to a 5/8 inch diameter iron pin; thence
 South 1° 40' 02" West a distance of 102.48 feet to a 5/8 inch diameter iron pin; thence a distance of 171.49 feet along the arc of a 250.00 foot radius curve right, said curve having a central angle of 39° 18' 10" and a long chord bearing
 South 21° 19' 07" West a distance of 158.15 feet to a 5/8 inch diameter iron pin; thence a distance of 116.61 feet along the arc of a 170.00 foot radius curve left, said curve having a central angle of 39° 18' 10" and a long chord bearing
 South 21° 19' 07" West a distance of 114.34 feet to a 5/8 inch diameter iron pin; thence
 South 1° 40' 02" West a distance of 693.15 feet to a 5/8 inch diameter iron pin; thence

(continued)

PK

South 89° 14' 59" East a distance of 312.79 feet to a 5/8 inch diameter iron pin on the Easterly boundary of said West Half of the Northeast Quarter; thence

North 1° 11' 43" East along the Easterly boundary of said West half of the Northeast Quarter a distance of 1,293.01 feet to the POINT OF BEGINNING.

PARCEL III

A parcel located in the West Half of the Northeast Quarter of Section 4 of Township 4 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

COMMENCING at a brass cap monument marking the Northeast corner of said West Half of the Northeast Quarter of Section 4 (East 1/16 Corner), from which a brass cap monument marking the Southeast corner of said West Half of the Northeast Quarter of Section 4 (CN 1/16 Corner) bears

South 1° 11' 43" West a distance of 2,640.93 feet; thence

South 1° 11' 43" West along the Easterly boundary of said West Half of the Northeast Quarter a distance of 696.89 feet to a 5/8 inch diameter iron pin on the Southerly right-of-way of Foothill Road; thence

North 89° 31' 18" West along said Southerly right-of-way a distance of 277.16 feet to a 5/8 inch diameter iron pin; thence leaving said Southerly right-of-way

South 1° 40' 02" West a distance of 333.10 feet to the POINT OF BEGINNING; thence a distance of 128.50 feet along the arc of a 180.00 foot radius curve right, said curve having a central angle of 40° 54' 12" and a long chord bearing

South 22° 07' 00" West a distance of 125.79 feet to a 5/8 inch diameter iron pin; thence a distance of 178.48 feet along the arc of a 250.00 foot radius curve left, said curve having a central angle of 40° 54' 12" and a long chord bearing

South 22° 07' 00" West a distance of 174.71 feet to a 5/8 inch diameter iron pin; thence

South 1° 40' 02" West a distance of 678.91 feet to a 5/8 inch diameter iron pin; thence

North 89° 14' 59" West a distance of 934.34 feet to a 5/8 inch diameter iron pin on the Westerly boundary of said West Half of the Northeast Quarter; thence

North 1° 05' 22" East along said Westerly boundary 1,056.01 feet to a point; thence leaving said Westerly boundary

South 89° 31' 18" East a distance of 189.79 feet to a point; thence

South 71° 31' 51" East a distance of 315.14 feet to a point; thence

North 75° 56' 42" East a distance of 266.70 feet to a point; thence

South 75° 37' 18" East a distance of 295.36 feet to the POINT OF BEGINNING.

PARCEL IV

Lot 4, Block 3, WHISPER CREEK ESTATE, PHASE II AND III, Canyon County, Idaho, according to the plat filed in Book 22 of Plats, Page 20, records of said County.

AND

(continued)

Rev

The 15.11 feet of vacated Loop Road, as disclosed in Vacation, recorded October 4, 1995 as Instrument No. 9527928 and located Westerly and adjacent to Lot 4, Block 1, WHISTLER CREEK RESORTS PHASE II AND III, Canyon County, Idaho, according to the plat filed in Book 22 of Plats, Page 20, records of said County.

As amended by Affidavit recorded November 12, 1999 as Instrument No. 009944917, records of Canyon County, Idaho.

PK

EXHIBIT "A"
PARCEL 5

A PARCEL OF LAND IN THE SW $\frac{1}{4}$ OF SECTION 4,
T4N, R2W, B.M., CANYON COUNTY, IDAHO AND
BEING MORE PARTICULARLY DESCRIBED AS
FOLLOWS:

BEGINNING AT THE WEST $\frac{1}{4}$ CORNER OF SAID
SECTION 3, T4N, R2W, B.M., CANYON COUNTY,
IDAHO
THENCE ALONG THE MID-SECTION LINE OF SAID
SECTION, THE BASIS OF BEARING
S 89°43'38" E 2629.25 FEET TO THE CENTER OF
SAID SECTION 3, THENCE ALONG THE MID-
SECTION LINE
S 00°28'53" W 1324.53 FEET TO A $\frac{1}{16}$ TH CORNER,
THENCE
S 00°53'52" W 1321.47 FEET TO A $\frac{1}{4}$ CORNER,
THENCE ALONG THE SOUTH SECTION LINE OF SAID
SECTION 3
N 89°45'30" W 2643.55 TO THE SOUTHWEST
CORNER OF SAID SECTION 3, THENCE
ALONG THE WEST SECTION LINE OF SAID SECTION
3
N 00°59'53" E 514.24 FEET, THENCE LEAVING THE
SECTION LINE
S 89°36'47" E 381.68 FEET, THENCE
N 00°59'53" E 184.42 FEET, THENCE
N 89°00'07" W 381.68 FEET TO A POINT ON THE
SECTION LINE, THENCE
N 00°59'53" E 1965.04 FEET ALONG THE SECTION
LINE TO THE POINT OF BEGINNING.

CONTAINS 158.95 ACRES



