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

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

**Call to Order - Pledge of Allegiance**

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

**Information Items: None**

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

**Action Items**

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

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

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

Discussion with commission and applicant about the project.

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

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

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

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

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

*Stewart:* Hopefully soon, this summer.

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

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

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

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

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

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

Public Comment:

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

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

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

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

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

*Applicant-David Sterling:*

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

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2 said they want any trees in their easement removed so we will have to have a conversation with them if those trees can be kept.

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

**Commission Discussion:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Questions by Commission:

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

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

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

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

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

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

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

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

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

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

Questions by Commission

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

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

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

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

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

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

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

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

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

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state law.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

*Not stated: Grace Davis:* Questions regarding project

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

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

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

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

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

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

*Applicant: Jon Breckon – Answer to questions*

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

*Commissioners Discussion:*

*Chairman Waltemate*

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

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

*Commissioner Hutchison:*

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

*Chairman Waltemate:*

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

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

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

Chairman Waltemate called the item.

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

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

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

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

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

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


**Public/Commission/Staff Comments:**

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

Commissioner/Staff Comment: None

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

ATTEST:

  
Jennica Reynolds, Deputy Clerk  
Approved: July 12, 2021

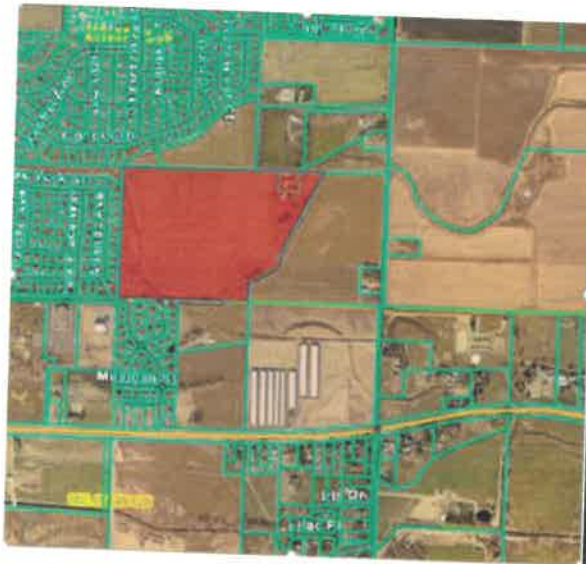
  
Ray Waltemate, Chairman





# Sterling Lakes Subdivision

Annexation/Rezone, Preliminary Plat, Development Agreement & Variance



DESCRIPTION	DETAILS
Acreage	51.4 acres
Current Zoning	County Zoning AG
Proposed Zoning	R-3
Current Land Use	Agricultural
Proposed Land Use	Residential
Lots	121 residential lots and 9 common lots
Density	2.3 units/ acre
Open Space	34.6%
Amenities	17.8 acres of open, multi-use pathway along Mill slough providing connectivity to pathway to north

**Project Description:** Residential subdivision with 121 buildable lots and 9 common lots on 51.4 acres of vacant land located at 23251 Duff Lane (Tax Parcels #R3386901000 and #R33869010A1). Applicant proposes 3 phases of development.

**Application Requests:** Applicant has four applications. The first application is an annexation and rezone application to change the zoning from County Agricultural to City of Middleton R-3 zoning. The second application is for Preliminary Plat. The third application is for Development Agreement approval, and fourth application is a variance for road turning radius, frontage requirements and typical roadway section revision.

**Current Zoning & Property Condition:** The property is currently located in the County and zoned AG. The property to the north and west are within Middleton city limits, and zoned R-3. Property to east is zoned R-4.





**City Services:** City water and sewer are located immediately west and south of the project. Sewer and water will connect to existing sewer from Cornell Street. Water and sewer main stubs will be provided in the northeast quadrant of the plat for future extension.

- City Water
- City Sewer





### **Traffic, Access & Streets:**

- Access to the subdivision is via Cornell Street at the southeast and southwest quadrants of the plat.
- Developer should be required to improve, per City standards, its half of the 100' right-of-way for Cornell Street, including an approximately 40' span bridge at the crossing of Cornell Street and the Mill Slough. Staff recommends this requirement be made a condition of approval for preliminary plat.
- A stub road is required as an extension of Sturgeon Way to the north boundary of plat.
- ITD is in the process of reviewing the preliminary plat.
- Planning Staff is in the process of calculating Developer's pro-rata share for traffic impacts and intersection controls. Developer's payment of these pro-rata fees should be made a condition of approval for preliminary plat.





**Pathway, Sidewalks & Open Space:** 5' wide concrete sidewalks span the local roads throughout the subdivision. An 8' wide asphalt pathway will span along the frontage improvements to Cornell. Applicant's proposed pathways are in compliance with Comprehensive Plan "Transportation, Schools and Recreation Map."

Developer has provided 34.6% open space in the subdivision, which exceeds the 5% minimum required by MCC 5-4-10-10.

**Storm drain and Pressurized Irrigation:** Storm drain facilities and pressurized irrigation have been provided and are approved by the City Engineer.

**Middleton Rural Fire District:** The subject property is in the Middleton Rural Fire District. The District has reviewed the preliminary plat. Approval of the preliminary plat should be conditioned subject to compliance with District comments.

**Preliminary Plat Application:** Other than the variances that are the subject of the variance application, the preliminary plat complies with all dimensional standards and codes of the City of Middleton.

Planning Staff further finds that the preliminary plat is not materially detrimental to the public health, safety and welfare. As will also be shown below, the preliminary plat is in harmony with the City's Comprehensive Plan.

**Annexation and Rezone:** Applicant is requesting that the entire 51.4 acre project parcel be annexed into the City of Middleton and rezoned to R-3 zoning, which permits three single family homes per gross acre. The parcel is contiguous to City limits, and City services are accessible to the parcel, which are the primary requirements for annexation. Applicant has also complied with all other documentation requirements necessary to complete the annexation and rezone of the property.

Additionally, as will be shown below, Planning Staff finds that the annexation/rezone application is in harmony with the Comprehensive Plan.





**Development Agreement:** Annexation and rezone requests generally require a Development Agreement ("DA"). Applicant and City Staff have used the City's form for the DA, and have merely added five new provisions:

- a. Property with legal description to be added to the DA.
- b. The Property to be rezoned R-3.
- c. Developer shall, at its own cost, improve the 50' half-road portion of Cornell Street and comply with the City comments and recommendations for final plat approval.
- d. Developer shall pay additional pro-rata or proportionate share fees for all traffic impacts and intersection controls affected by the subdivision.
- e. Developer shall build only single family homes.
- f. Developer may use subdivision property not used for residential purposes for common area, utility lines, storm water management or other "allowed" uses per MCC 5-4-1 Table 1.
- g. Note: The DA will cover any variances the Planning and Zoning Commission chooses to approve.



**Variance #1:** MCC 5-4-10-2(H.2) requires local roads to have a minimum centerline radius of 125'. Applicant is seeking a variance reducing the centerline radius to 100'. Lowering the radius to 100' is consistent with past Planning & Zoning approvals. In fact, City Staff will shortly bring an application to Planning & Zoning to change the Code from 125' to 90' in light of the many variance requests that have resulted from the stringent 125' requirement. Staff Engineers have been working with Fire Deputy Chief Victor Islas on the matter, and Staff and Deputy Chief agreed that the turning radius can safely go as low as 90', which is even less than what Applicant is currently requesting.

Planning staff finds this variance is not detrimental to the public health and safety and will not constitute a granting of a special privilege in light of the fact that most current subdivision applications have received the same variance request and the code will shortly be changed to allow an even smaller turning radius of 90'.

**Variance #2: Lot Frontage Requirements.** City of Middleton code Title 5-4-1 states that the minimum frontage width for lots zoned R-3 is 75 feet. A variance is requested to reduce this minimum width at the front setback line for lots located on a curved section Block 3 Lots 2,3,4,5,6,7,8,9 and Block 5 Lot 16. See red highlighted area. The lots will still meet the city area requirement of a minimum of 8,000 sf. Applicant's request will allow them to add more lots.



Planning staff recommends that this variance request be denied. There is no hardship requirement or special circumstance that would be the basis for not following the Code's dimensional standards. Applicant is requesting the variance so it can add more buildable lots, but that is not the basis for a variance.

**Variance #3:** Applicant's preliminary plat involves a bridge to cross the Mill Slough. Applicant is requesting a variance to not be required to construct a 3 lane urban roadway over the bridge. The rest of the Cornell Street will involve a 3 lane urban roadway per the Code, but at the portion of the bridge, it will convert to a 2 lane road the length of the bridge.

Planning Staff finds that the special configuration of the area requires this variance. There is no need for a 3 lane road over a bridge because the middle lane is for turning, and there is no need to turn while on the bridge. Additionally, permitting only 2 lanes will be cost-effective when constructing the bridge.





**Comprehensive Plan & Land Use Map:** Applicant's project complies with the Comprehensive Plan Land Use Map because the project parcel is designated "Residential" on the Land Use Map, which matches the residential use planned for the site.

Additionally, Applicant's project and 3 applications comply with the *Goals, Objectives, and Strategies* of the 2019 Middleton Comprehensive Plan as follows:

- a. *Goals 3 and 23:* The project provides safe vehicle and pedestrian facilities in light of the street improvements and sidewalks 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.
- c. *Goals 11:* The housing type matches the residential lifestyle in the area the project is located.



**Comments Received from Surrounding Landowners:** two property owners have requested denial of the project, letters received 6/4/2021. Exhibit "A" to be added to record.

**Comments from Agencies:** 6/2/2021 comments from the Middleton Rural Fire District. 5/24/2021 comments from Drainage District 2. (Copies of the comments can be found in the Planning & Zoning Packet.)

**Comments from City Engineer and Planning Staff:** Copies of City Engineer comments dated 5/20/21 and Planning Staff comments dated 5/25/2021 are in the Planning & Zoning Commission packet.

**Applicant Information:** Application was received and accepted on March 19, 2021. The Applicant/Owner is Sterling Land Development, Inc, 1159 E. Iron Eagle Drive, Suite 170-K, Eagle, ID 83616 (949) 226-4482.





**A. Notices & Neighborhood Meeting:**

**Dates:**

Newspaper Notification

05/23/2021

Radius notification mailed to  
Adjacent landowners within 300'

05/20/2021

Circulation to Agencies

05/20/2021

Sign Posting property

05/20/2021

Neighborhood Meeting

02/26/2021

**A. Applicable Codes and Standards:**

Idaho State Statue 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.

**Conclusions and Recommended Conditions of Approval:** The Planning & Zoning Commission is tasked with considering the four separate applications for (1) Annexation/Rezone, (2) Preliminary Plat, (3) Development Agreement and (4) variance.

A. The Commission is tasked with making the final order on the Variances. The applications do not proceed to City Council. Applicant has made 3 variance requests, of which only two have met the required findings set forth by planning staff. If the Commission is inclined to approve any of the 3 requests, Planning Staff does not recommend any conditions be attached to the approval(s).

B. As to the remaining applications for (1) preliminary plat, (2) annexation/rezone, and (3) Development Agreement, the Commissioners must decide whether to recommend approval or denial of the applications to City Council. If the Commissioners are inclined to recommend to City Council approval of the three applications, Planning Staff recommends that the Commissioners' recommendation be subject to the following conditions of approval:

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 Planning Staff review comments are to be completed and approved.
4. All requirements of the Middleton Rural Fire District are to be completed and approved.
5. All Floodplain Administrator comments are to be completed and approved.
6. Applicant to construct, at its own cost, the half road of Cornell Street outside of the subdivision as shown on the preliminary plat and dedicate the 50' wide half-road to the City of Middleton.
7. Developer to pay all pro-rata traffic impact fees prior to approval of final plat.
8. For any variance the Commission does not approve, Applicant shall revise the preliminary plat to comply with all standards and codes of the City of Middleton.
9. Add stub road to north boundary.
10. Revise Note 1 on preliminary plat to read: "All building and setback dimension standards shall be in accordance with R-3 zoning at the time of building permit issuance."
11. Add note to preliminary plat that all private lanes shall have a public access easement shown on the final plat.
12. Note 8 on the preliminary plat to be deleted.

## River Pointe Subdivision

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

### Project Description:

Subdivision with (a) up to 7 commercial lots, (b) 92 single family homes, (c) 67 "Garden/Patio homes" for 55+ homebuyers, (d) 30 single story townhomes for 55+ homebuyers, and (e) 84 two-story townhomes for 55+ homebuyers on 88.5 acres of vacant land located at 10481 Highway 44 and 0 Duff Lane (Tax Parcel Nos. R33935010A0, R3392 & R3392001).

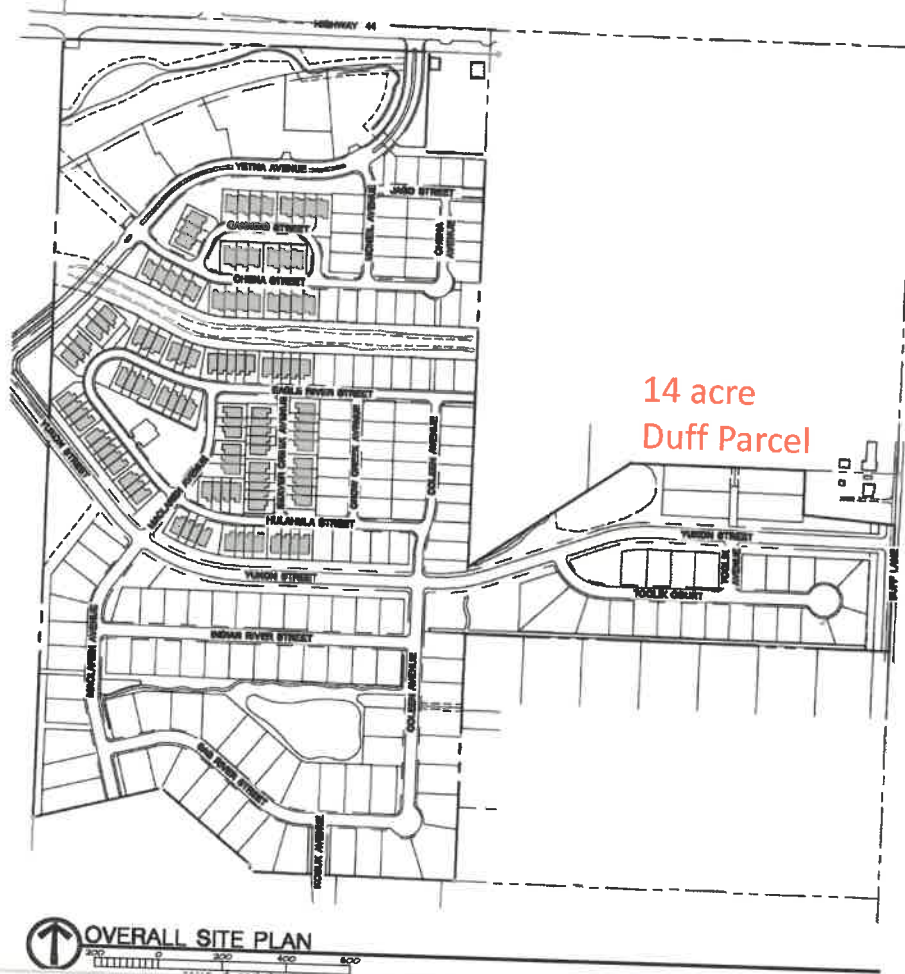
The project will include numerous amenities such as swimming pool facility, five pickleball courts, large playground, community ponds, large greenspace common lots, and lengthy 10' wide pathways that will connect to a large city-wide "River Walk Loop" planned for the City of Middleton.

Applicant is proposing 8 phases to build out the development.

Applicant has submitted four applications to be considered by the Commission: (1) Annexation/Rezone, (2) Preliminary Plat, (3) Development Agreement Modification, and (4) Comprehensive Plan Map Amendment



M-U Zone

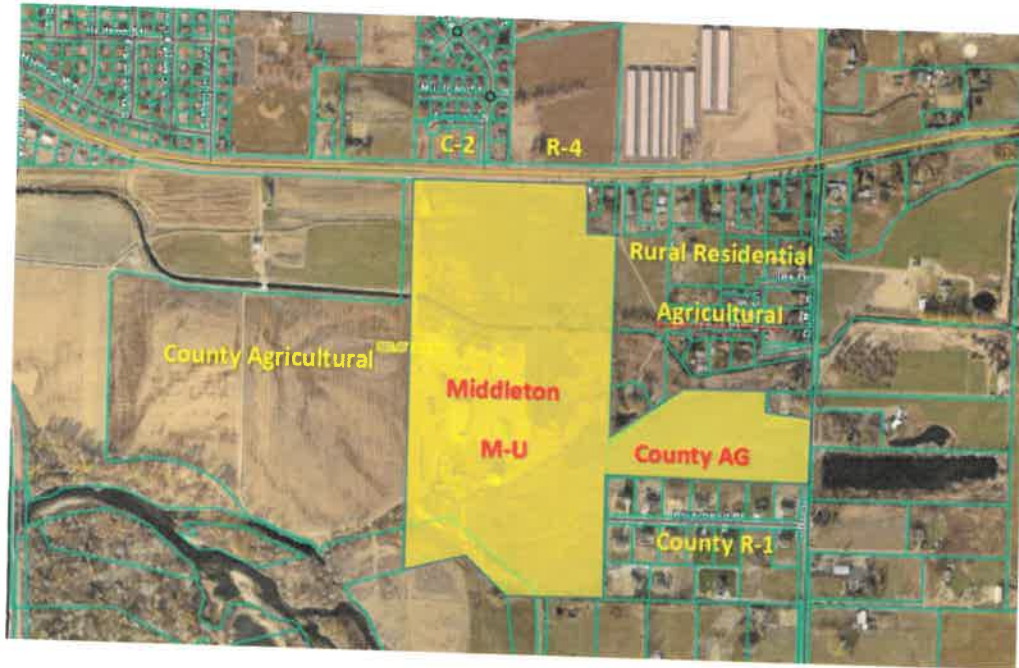


### History & Condition of Property:

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

The second component is a 14-acre parcel located off Duff Lane. It is currently in Canyon County and zoned "Agricultural," and it is the subject of the annexation/rezone application before the Commission. Over 5 years ago, the P&Z and City Council designated this 14 acre project site "Transit Station" and "Transit Oriented Development" on the Future Land Use Map. The Comprehensive Plan defines "Transit-Oriented Development" as "high density residential and light commercial uses in close proximity to a high capacity public transportation network system...etc.". Again, it appears that earlier governing bodies intended this area near the intersection of Duff Lane and Hwy 44 to be an intensive project site that would serve numerous needs and uses.

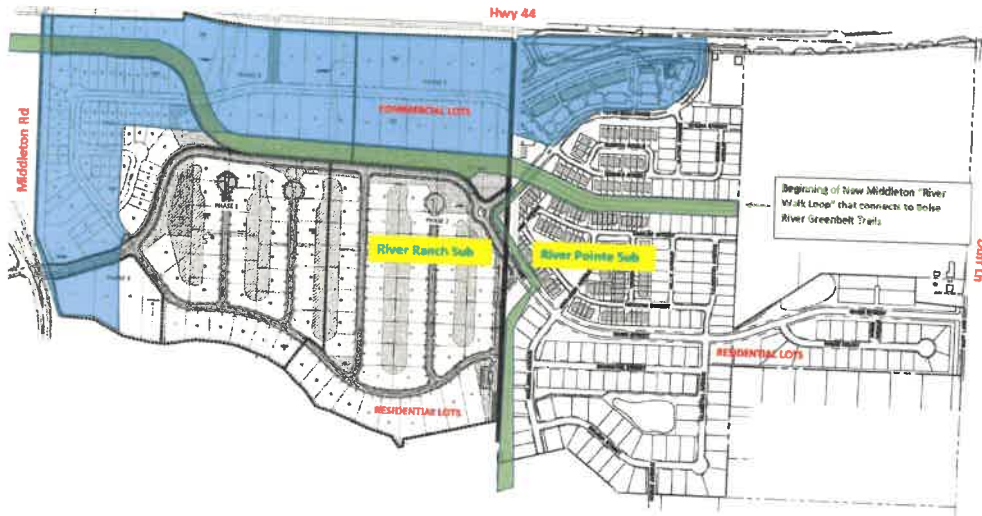




As to the surrounding property, property to the south of the 14 acre Duff parcel is a County Subdivision known as River Bend Place. This newer subdivision began development around 2018/2019. It should be noted that River Pointe's M-U zoning and intensive land uses had already been planned and set in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

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

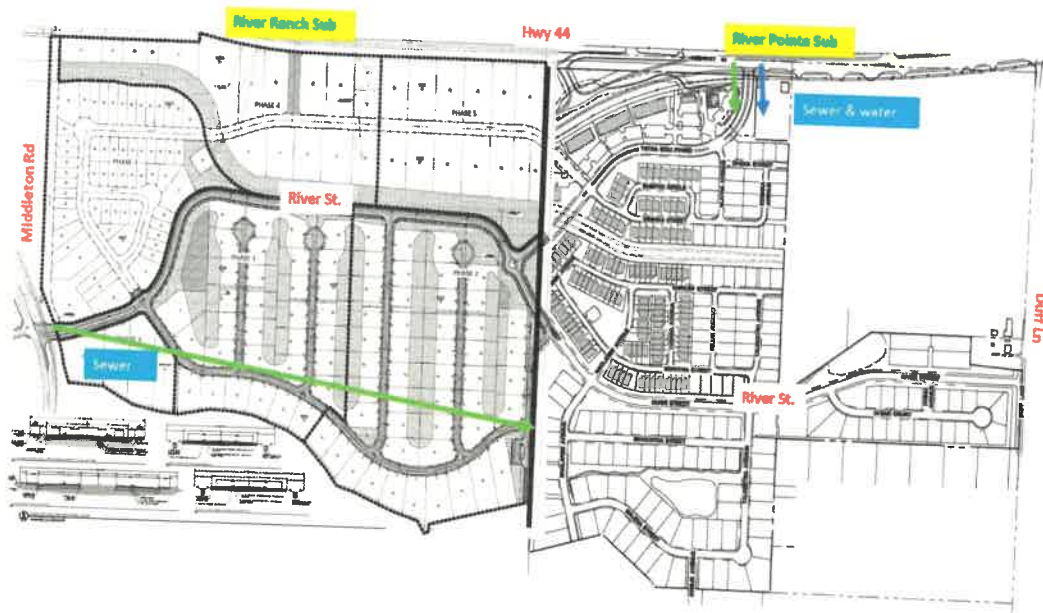




River Pointe is being developed in collaboration with another large subdivision to the west known as River Ranch Crossing. River Ranch Crossing is a 118 acre project with 43 acres of commercial property and 75 acres of single-family home sites. River Ranch Crossing is finalizing plans, and the annexation and preliminary plat for that project should come before this Commission in a few weeks.

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



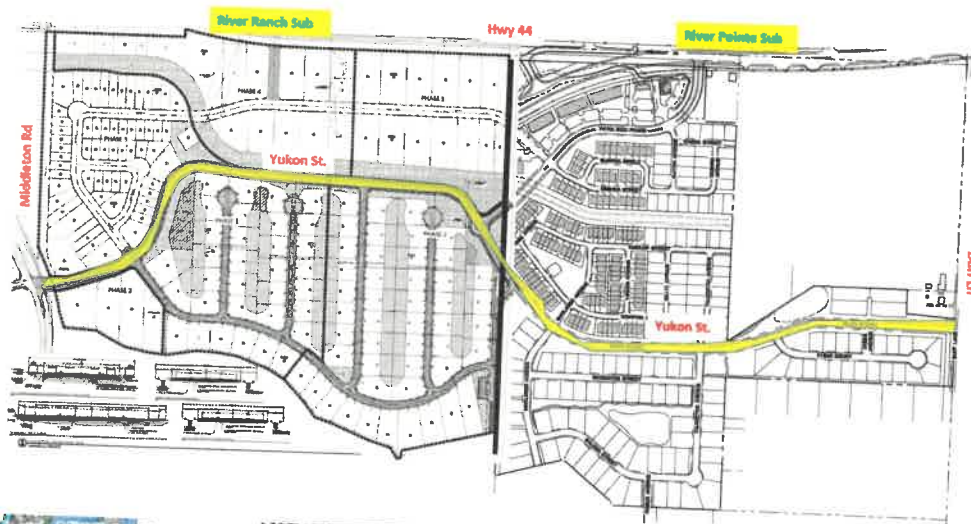


**City Services:**

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

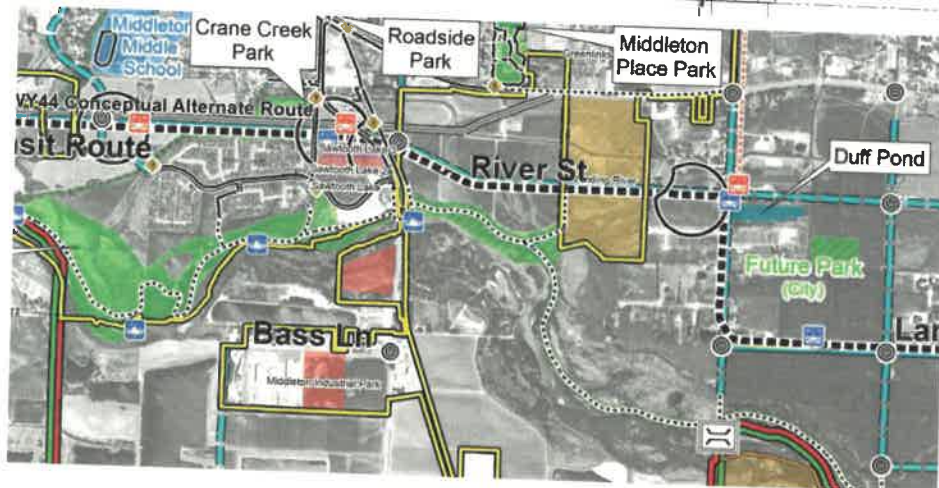
*Planning Staff finds that City water and sewer services are adequate to serve the proposed project.*





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

Yukon Street is a collector street that is required by the Comprehensive Plan "Transportation, Schools & Recreation Map", and it is critical to Middleton's long-term transportation planning and circulation. (You can see this east/west collector on the Transportation map shown in the lower left corner of this slide. On the Map, the street is named "River Street". (Canyon County recently asked that the name "River Street" not be used. That is why the street is named "Yukon Street" on the preliminary plat.)



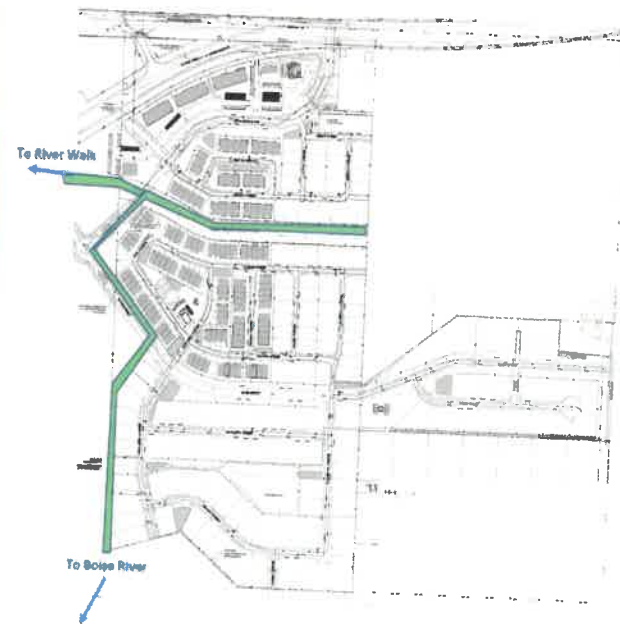
It is important to recognize that Yukon Street has been required by the Comprehensive Plan since 2016, which is a date prior to some of the growth in the surrounding area such as River Bend Place Subdivision.

Additionally, CHD4 and ITD have reviewed the Preliminary Plat and have set forth pro-rata share fees and road improvements that should be required. City Engineer is considering the recommendations, and Planning Staff recommends that Developer be required by the Development Agreement and/or conditions of approval to construct all City required street improvements and pay all City required traffic pro-rata fees.

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

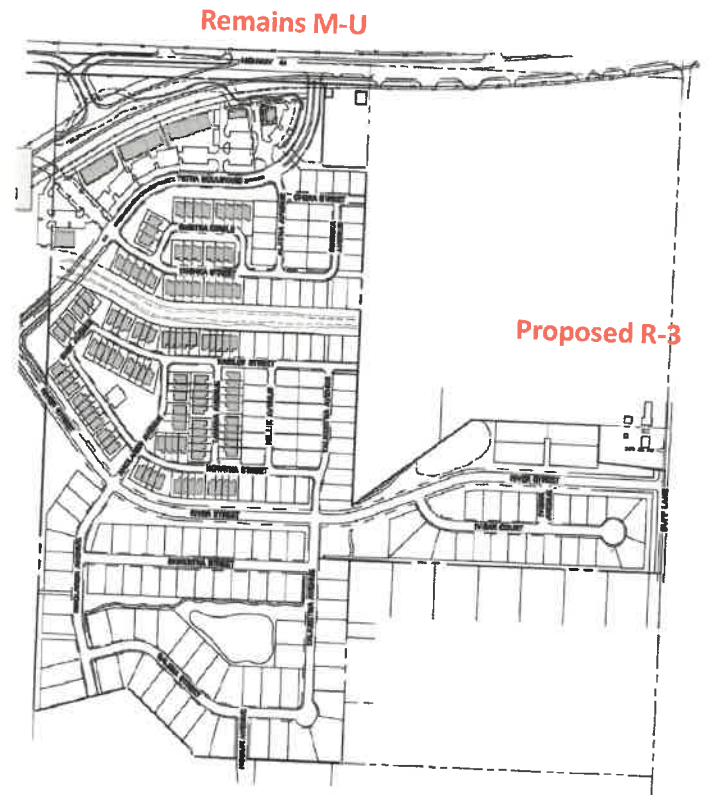


**Open Space & Amenities:** Applicant has exceeded the 5% Open Space requirement by providing 14.86 acres (or 16.79%) of open space in the form of a swimming pool facility, five pickle ball courts, large common area park with play facility, community ponds, extensive 10' wide pathways, and open grassy common lots with shade structure. The 10' asphalt pathways from the Applicant's project will be part of the intricate "River Walk Loop" design that will follow the Kennedy lateral across Middleton Road to intersect with two large parks on the west side of Middleton Road. This pathway will create a public recreational "River Walk" loop with multiple plazas and parks that will wind through Middleton City and along the Boise greenbelt. PLAZA / PARKS



**Annexation/Rezone Application:** Only the 14 acre Duff parcel is the subject of the Annexation & Rezone application. Applicant is requesting a rezone from County "Agricultural" to City of Middleton R-3, which allows 3 single family homes per acre. Applicant's request complies with the following requirements of annexation/rezone: (1) property is contiguous, (2) City sewer and water are available and can be extended to the project site, (3) the property is in the Area of Impact, and (4) annexation/rezone is in the best interest of the City and does not adversely affect the Public's health, safety & welfare. *Therefore, Planning Staff finds that Applicant's request complies with the required criteria.*

**Preliminary Plat Application:** As to the Preliminary Plat application, the 14-acre Duff parcel shows a design that is in compliance with all dimensional standards of R-3 Zoning and the rest of the Middleton City Code. Applicant is not requesting any variances with respect to this portion of the project. The 74 acre M-U portion also complies with the dimensions and standards of the current Code except for those items set forth in the proposed Development Agreement. *Therefore, Planning Staff finds that the preliminary plat (1) is in compliance with the Code and Standards of Middleton, (2) is not materially detrimental to the public health, safety and welfare, and (3) is in harmony with the Comprehensive Plan.*



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

1. Duff Parcel is zoned R-3
2. 14 Acre Duff Parcel is to be added to the DA with legal description attached. (Missing from Staff Report)
3. Density for the 74 acre M-U parcel to be in compliance with current M-U zoning of 12 dwelling units per acre.
4. A concept plan generally matching the current preliminary plat shall be attached to the DA and incorporated by reference.
5. In the townhome section, minimum lot size and frontage width shall be in compliance with Middleton City Code 5-5-1, Table 2.
6. Townhomes may have no more than five units per townhome structure. Any structure with more than four units must have fire sprinklers.
7. Parking for Townhomes and Garden/Patio homes must meet the current code standard of 3 spaces per dwelling unit.
8. The 55+ homebuyer requirement for all townhomes and Garden/Patio homes shall be created by deed restriction in compliance with the laws of the State of Idaho.
9. Developer shall not be required to comply with MCC 5-4-10-7 regarding an 8' berm between the commercial lots and residential lots. Instead, Developer shall provide a 20' wide landscaped buffer between the commercial lots and residential lots.
10. Garden homes may have a minimum lot width of 60 feet and minimum lot size of 6,000 s.f. (Please note this 6000 s.f. lot size was already allowed in the old DA for garden homes and also the ordinary single-family homes. Applicant has agreed to bring the ordinary single family homesites up to 8000 s.f., in keeping with the current code rather than the 6000 s.f. size Developer is actually entitled to.
11. Because the Garden Homes are adjacent to the townhome lots and integrated to some degree in the 55+ community, the 36' wide Townhome Road Section may also be constructed through the Garden Home portions of the plat. Parking will not be allowed on the 36' roadway, and parking signs to that effect must be posted.
12. Developer may develop the lots in Phases 1 through 3 above the Kennedy Drain without providing a second access. The 2<sup>nd</sup> access off of Duff Lane must be completed with Phase 4 as part of the Phase 4 final plat. (Deputy Fire Chief Victor Islas has verbally indicated approval of this variance.)
13. Developer will construct all City required road improvements.
14. Developer shall obtain an approach permit from ITD for access on to Highway 44..



**Development Agreement Application con't:**

14. Developer to complete a Traffic Study and shall pay all City required traffic pro-rata or proportionate share fees.
15. Developer will be allowed a minimum centerline radius of 90'.
16. Developer shall provide an east/west collector connecting to Duff Lane. Parking shall not be allowed on this collector, and signs to that effect must be posted. No driveway access shall be allowed on the collector. (Please note that Developer has met this provision by designing "Yukon Street" as shown on the proposed preliminary plat.)
17. Developer shall dedicate a 50' right of way on the western perimeter to be able to complete Yetna Avenue and Yukon Street in the event the River Ranch project to the west is not ultimately developed. Alternatively, Developer may enter into an agreement with the Developer of River Ranch Crossing to complete the off-site portions of Yetna Avenue and Yukon Street in the event the River Ranch project does not develop.
18. If the River Ranch project to the west is not developed, Developer will design and construct a sewer lift station to allow sewer service to the southern portion of the project.
19. Developer shall provide a swimming pool facility, five pickleball courts and park facilities as generally shown on the concept plan.
20. All 10' pathways and sidewalk sections needed to connect the 10' pathways along the Kennedy Drain to the Boise River greenbelt trail and River Walk Loop shall be encumbered with a public access easement.
21. All sidewalks along Yukon Street must have a public access easement noted on the final plat to ensure public pedestrian access to Duff Lane and Duff Pond.
22. Developer must execute and record a cross-access easement for all commercial lots and all residential lots abutting a private lane to ensure access to the public and to avoid any land-locked parcels.



**Development Agreement Modification con't:**

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

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

The proposed setbacks are as follows:

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

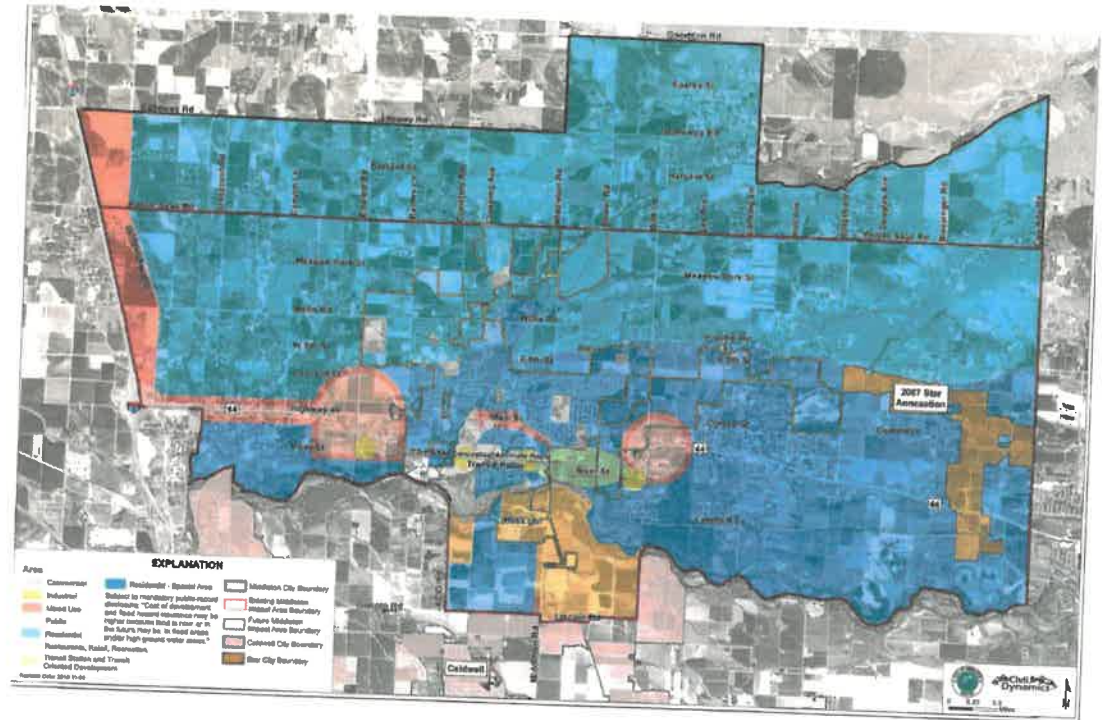
*Planning Staff finds that the Development Agreement Modification application is in compliance with City Code, which requires that the DA be in the form required by the City & Idaho State Code sec. 67-6511A and undergoes a public hearing with proper notice.*



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

Applicant is requesting through this Comp Plan Map Amendment to bring that intensity down to the less intensive use under the "Residential" designation. If the Commission is not inclined to recommend approval of this application, then the more intensive use for "Transit-Oriented Development" shall remain in place.

As to be shown on the next slide, Planning Staff finds that the change to "Residential" from "Transit-Oriented Development" on the Future Land Use Map is still in "harmony" with the Middleton Comprehensive Plan.



### Comprehensive Plan Findings

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

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

1. First and foremost, the Project completes the east/west collector street shown on the Transportation, Schools & Recreation Map. Applicant's design of Yukon Street completes a critical piece of Middleton's long term transportation planning goals.
2. As shown in more detail in the Staff Report, which, by the way, will be made part of the FCO, Applicant's project and applications comply with Goals 3, 4, 6, 7, 8, 10, and 16. TO BE APPENDED TO FCO



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

- a. Project will increase traffic
- b. Project is too dense and intensive for a "rural area."
- c. Developer should pay fair share of impacts on community
- d. Developer's gravel pit is a nuisance.

\*Additional comments have been received since the Staff Report was uploaded for public review. (Add to record as Exhibit "A")

**Comments from Agencies:** As already shown above, comments from CHD4 and ITD have been received. Staff is still waiting for written comments from Middleton Rural Fire District.

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

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

**Applicable Codes and Standards:**

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





**Notices & Neighborhood Meeting:**

Newspaper Notification

Radius notification mailed to  
Adjacent landowners within 300'

Circulation to Agencies

Sign Posting property

Neighborhood Meeting

**Dates:**

05/23/2021

05/19/2021

05/19/2021

05/19 & 20/2021

08/18/2020, 3/8/2021 &  
4/12/2021

You'll see that Applicant completed 3 Neighborhood Meetings. That is abnormal and more than is usually required. Applicant's first Neighborhood Meeting was sufficient for this public hearing, but Planning Staff, nevertheless, requested Applicant to conduct a 2<sup>nd</sup> Neighborhood Meeting because of the passage of time since the initial meeting and because Staff had received numerous telephone calls from nearby residents about the project. A third meeting occurred about one month later because a neighboring landowner raised a claim that the mailing list was incomplete for the 2<sup>nd</sup> Meeting. So, in an over abundance of caution, Planning Staff requested Applicant to complete a 3<sup>rd</sup> neighborhood meeting to ensure there were no irregularities or controversy remaining at the time of this Public Hearing.



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The Planning & Zoning Commission is tasked with considering four separate applications for Annexation/Rezone, Preliminary Plat, Development Agreement Modification, and Comprehensive Plan Map Amendment.

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1. City of Middleton municipal domestic water, fire flow and sanitary sewer services are to be extended to serve the subdivision.
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3. All Planning Staff review comments are to be completed and approved.
4. All requirements of the Middleton Rural Fire District are to be completed and approved.
5. All Floodplain Administrator review comments are to be completed and approved.
6. Revise Notes 8 and 9 on the preliminary plat to state that the M-U Parcel is subject to setbacks and dimensions set forth in the DA, but the R-3 portion of the preliminary plat will be subject to dimensions and standards set forth in the Middleton City Code at the time of building permit issuance.
7. Developer shall comply with all terms of the proposed Development Agreement as summarized in the Staff Report for the public hearing date of June 7, 2021 except.... (if the Commission is not inclined to recommend portions of the DA for approval, those discrete portions can be removed from the DA via a motion calling out the specific provision in issue.)

Prepared by Middleton City Planner, Robert Stewart

Dated: 6/7/2021

Rachel Speer

Exhibit 1A

**From:** Nancy Cannetti <necannetti@gmail.com>  
**Sent:** Friday, June 4, 2021 6:03 PM  
**To:** Rachel Speer  
**Subject:** Public Hearing Notice - Annexation/Rezone, Preliminary Plat, Development Agreement (Sterling Lakes Subdivision)

Good Afternoon:

My family recently relocated to Middleton in August 2020. We wanted a simpler life to retire, start anew, and leave the congestion of the city. Middleton seemed perfect and offered that rural lifestyle. When purchasing my home my realtor assured me that the lovely mountain and pasture views from my backyard was zoned agricultural and was expected to remain undisturbed for quite some time as the land was family-owned. Furthermore, Middleton is one of those few towns that strongly supports family values and maintains a true small town community spirit among the residents.

I am very saddened to be advised that these wonderful small town values will be compromised. If Middleton allows the development of this land, Middleton will incur a tremendous increase in traffic which will necessitate additional road construction, traffic signals, and unfortunately additional and increased taxes and utility costs. The small hometown community I moved into will no longer exist, and sadly, I do not think I may wish to remain here in Park Place. In addition, I may not be able to afford living here on a limited income.

In addition, I wish to express my concerns with regard to the presentation during the informational "neighborhood" meeting held on February 26, 2021. The representatives from Sterling Land Development were very pleasant; however, did not have any concrete answers to any of the residents' questions or concerns. We were told "geological" studies were being completed and they assured us that nothing would jeopardize our property's structure/integrity or affect the flood plain on which parts of the homes along the proposed subdivision are located. We (the residents) have concerns that the water which would be in the proposed ponds might leach under our properties and possibly cause sinkholes. Sterling responded that this could not happen due to their using riverbed water (still a concern for us as it was not explained sufficiently). Concerns were also voiced about mosquitoes accumulating around the so-called ponds and were told that they know what they are doing and would ensure steps were taken to avoid these kinds of problems. I also alerted the representatives to an extremely large cottonwood tree between my property and my neighbor's property located on the edge of the proposed development and my fear of the pond structure compromising the root integrity of the tree thus a potential for the tree to fall on my house. I was told they would look into it and that they would have an arborist evaluate the situation. We have not been advised that this has occurred.

I realize a summary of the meeting is included in the application, however, I would like to ensure that we, the residents, will be advised that our concerns will be addressed and an appropriate solution will be required and communicated prior to commencement of the proposed construction project. Also, I do not recall anyone stating that they did not want any kind of fence between their property and the pond.

I wish to go on record that I do not support the application for rezoning submitted by Sterling Land Development Inc. and David Sterling. I respectfully request that the Middleton Planning and Zoning Commission consider denying the application for rezoning the subject property in order to preserve that small hometown character of Middleton.

Thank you for your time and consideration.

## Rachel Speer

---

**From:** Mike Walker <mwjw1960@gmail.com>  
**Sent:** Monday, June 7, 2021 3:41 PM  
**To:** Rachel Speer  
**Subject:** Sterling Lakes Subdivision

Looking at the map, it doesn't appear that there is a connection to Duff or other feeder roads. If the intent is to have the main access from Greenlinks Ave, we will have to object to the addition and rezone. Greenlinks Ave. is already overwhelmed with the addition of the LDS Church on Cornell. Hundreds of cars 2 times a day that were never in the traffic plan.

In addition, what is the construction access to the Sterling Lakes Subdivision?  
Large semi construction trucks will damage the (2) roundabouts on Greenlinks Ave.

Growth is inevitable but putting current residents' comfort/ security at risk is not acceptable.  
Mike and Joan Walker  
1537 Fairway St. (corner Greenlinks and Fairway).

## River Pointe Subdivision

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

### Project Description:

Subdivision with (a) up to 7 commercial lots, (b) 92 single family homes, (c) 67 "Garden/Patio homes" for 55+ homebuyers, (d) 30 single story townhomes for 55+ homebuyers, and (e) 84 two-story townhomes for 55+ homebuyers on 88.5 acres of vacant land located at 10481 Highway 44 and 0 Duff Lane (Tax Parcel Nos. R33935010A0, R3392 & R3392001).

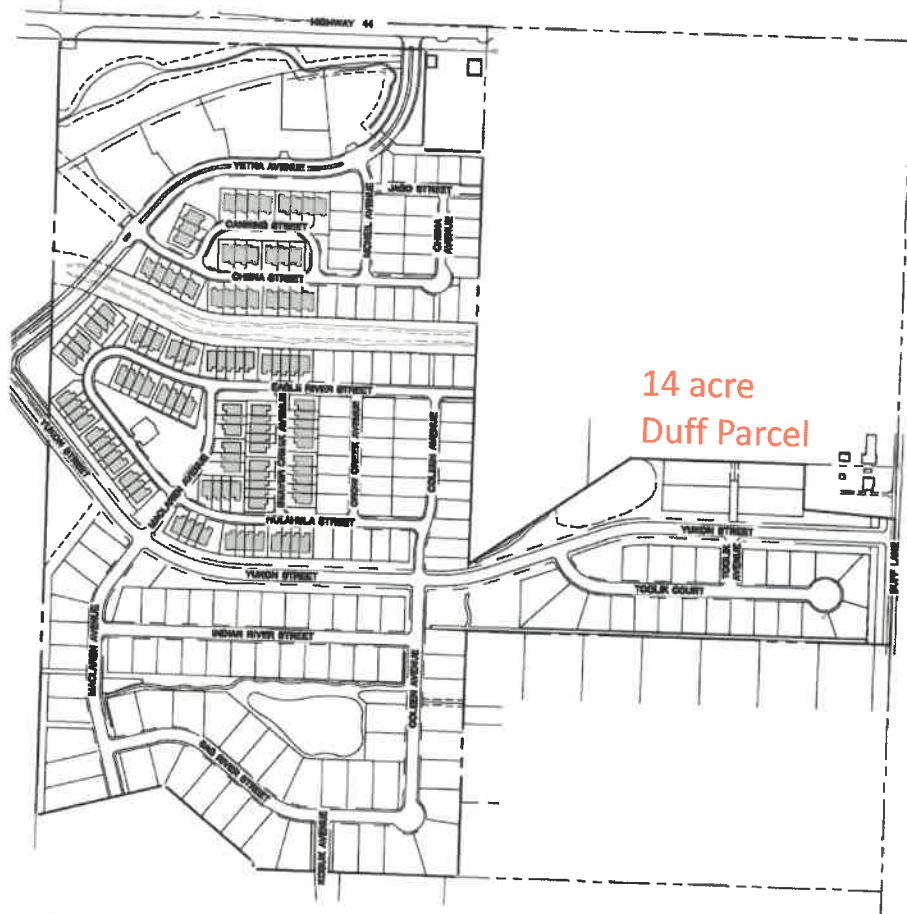
The project will include numerous amenities such as swimming pool facility, five pickleball courts, large playground, community ponds, large greenspace common lots, and lengthy 10' wide pathways that will connect to a large city-wide "River Walk Loop" planned for the City of Middleton.

Applicant is proposing 8 phases to build out the development.

Applicant has submitted four applications to be considered by the Commission: (1) Annexation/Rezone, (2) Preliminary Plat, (3) Development Agreement Modification, and (4) Comprehensive Plan Map Amendment



## M-U Zone



14 acre  
Duff Parcel

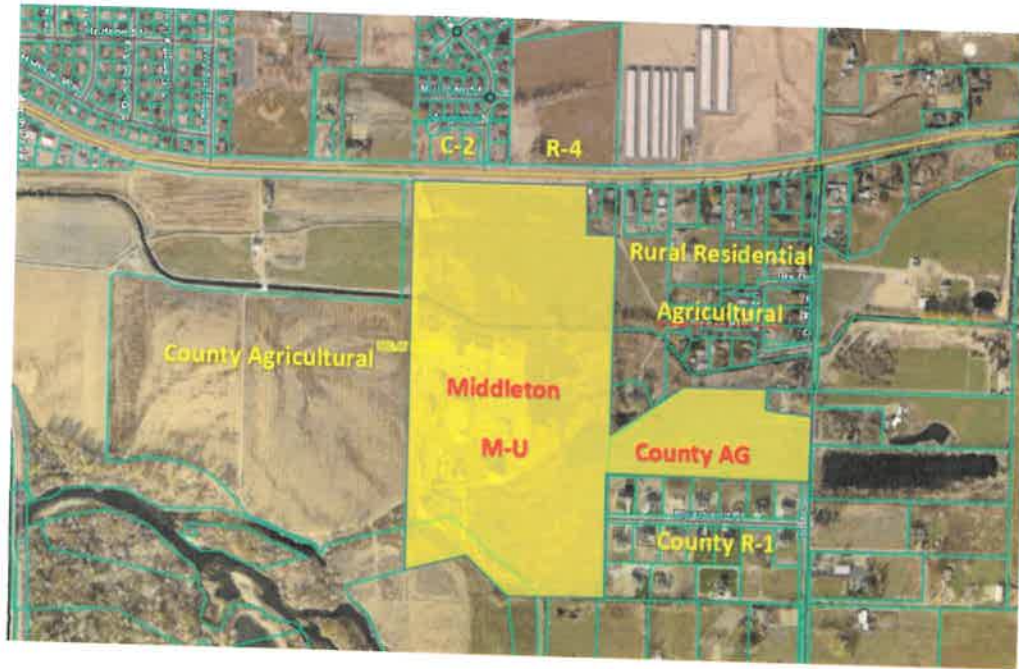
↑ OVERALL SITE PLAN  
0 200 400 600

### History & Condition of Property:

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

The second component is a 14-acre parcel located off Duff Lane. It is currently in Canyon County and zoned "Agricultural," and it is the subject of the annexation/rezone application before the Commission. Over 5 years ago, the P&Z and City Council designated this 14 acre project site "Transit Station" and "Transit Oriented Development" on the Future Land Use Map. The Comprehensive Plan defines "Transit-Oriented Development" as "high density residential and light commercial uses in close proximity to a high capacity public transportation network system...etc.". Again, it appears that earlier governing bodies intended this area near the intersection of Duff Lane and Hwy 44 to be an intensive project site that would serve numerous needs and uses.

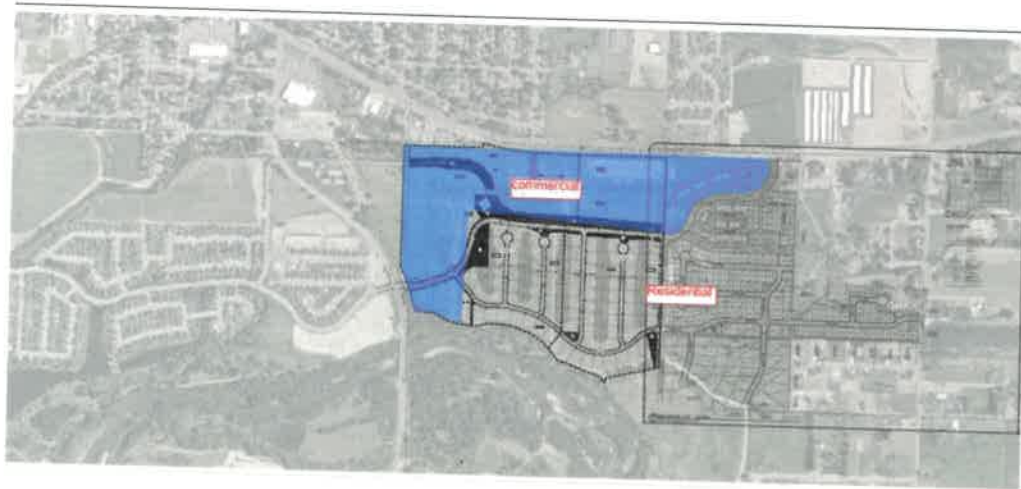
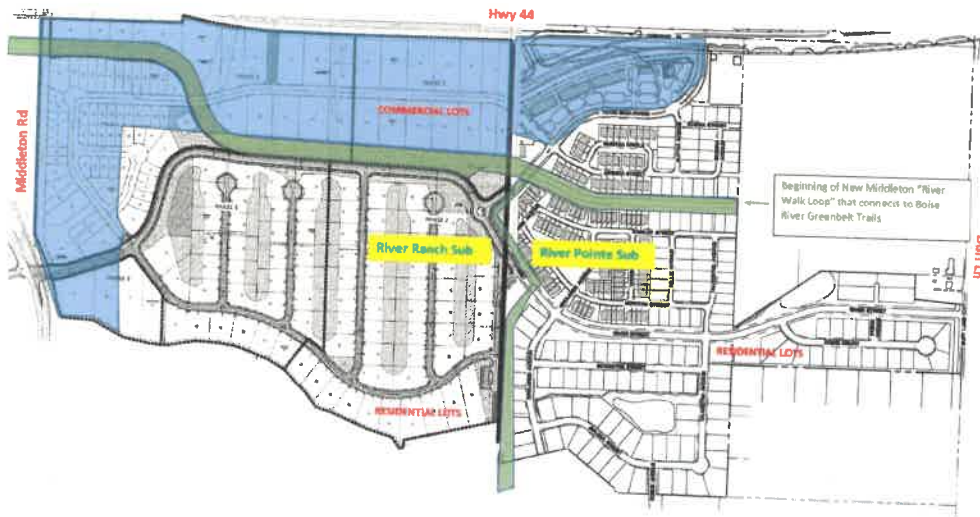




As to the surrounding property, property to the south of the 14 acre Duff parcel is a County Subdivision known as River Bend Place. This newer subdivision began development around 2018/2019. It should be noted that River Pointe's M-U zoning and intensive land uses had already been planned and set in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

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



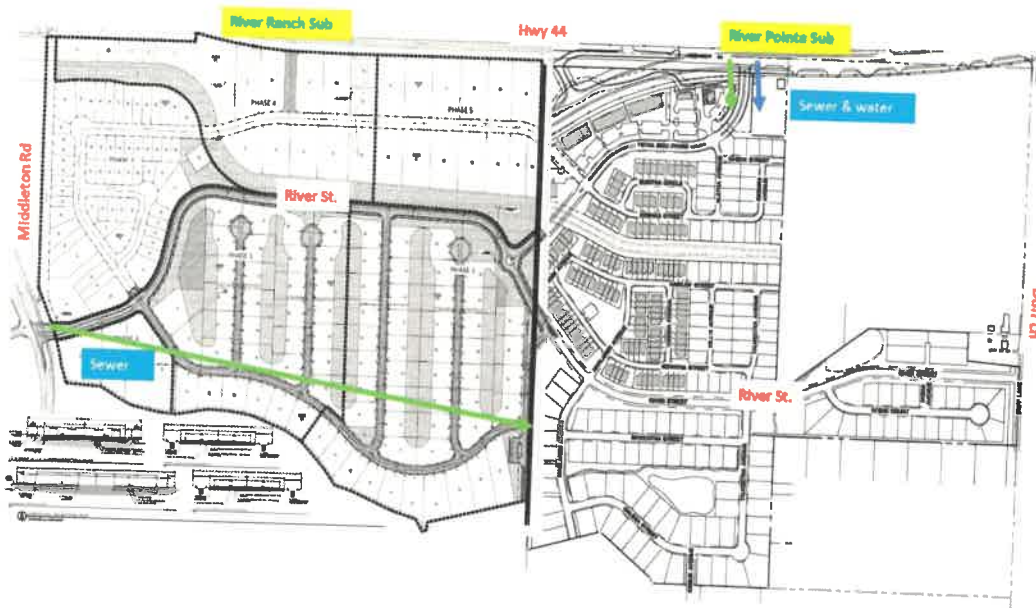


River Pointe is being developed in collaboration with another large subdivision to the west known as River Ranch Crossing. River Ranch Crossing is a 118 acre project with 43 acres of commercial property and 75 acres of single-family home sites. River Ranch Crossing is finalizing plans, and the annexation and preliminary plat for that project should come before this Commission in a few weeks.

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





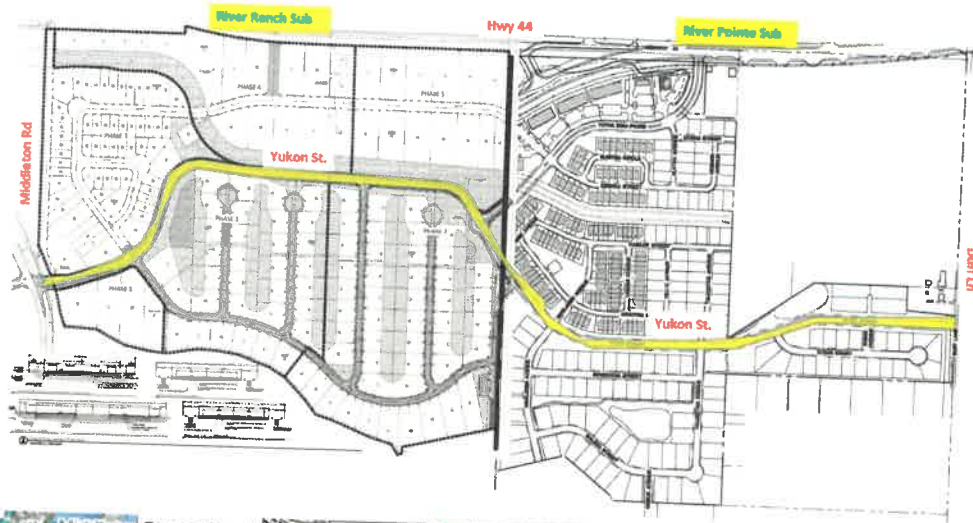


**City Services:**

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

*Planning Staff finds that City water and sewer services are adequate to serve the proposed project.*





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

Yukon Street is a collector street that is required by the Comprehensive Plan "Transportation, Schools & Recreation Map", and it is critical to Middleton's long-term transportation planning and circulation. (You can see this east/west collector on the Transportation map shown in the lower left corner of this slide. On the Map, the street is named "River Street". (Canyon County recently asked that the name "River Street" not be used. That is why the street is named "Yukon Street" on the preliminary plat.)

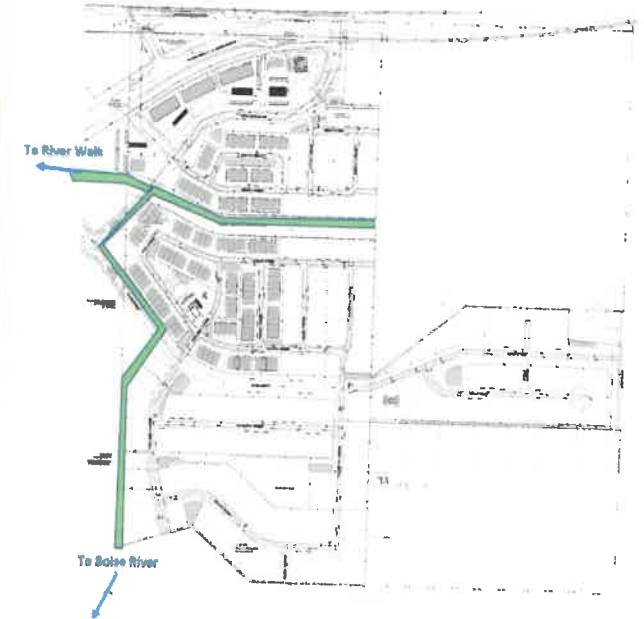
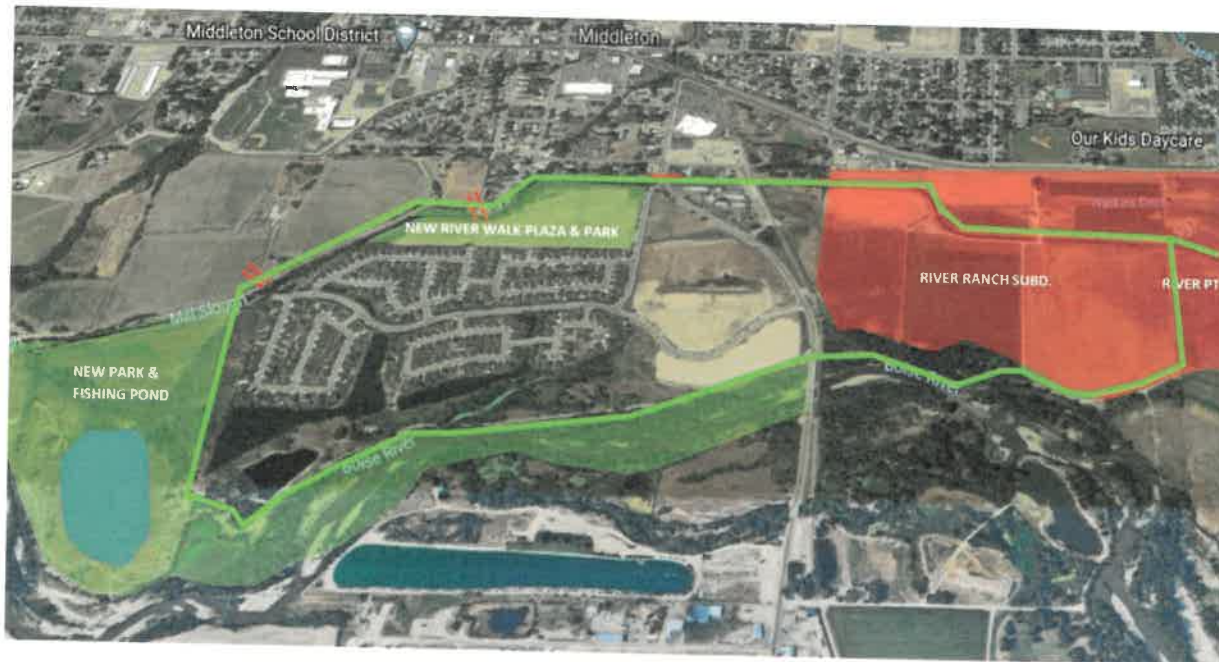


It is important to recognize that Yukon Street has been required by the Comprehensive Plan since 2016, which is a date prior to some of the growth in the surrounding area such as River Bend Place Subdivision.

Additionally, CHD4 and ITD have reviewed the Preliminary Plat and have set forth pro-rata share fees and road improvements that should be required. City Engineer is considering the recommendations, and Planning Staff recommends that Developer be required by the Development Agreement and/or conditions of approval to construct all City required street improvements and pay all City required traffic pro-rata fees.

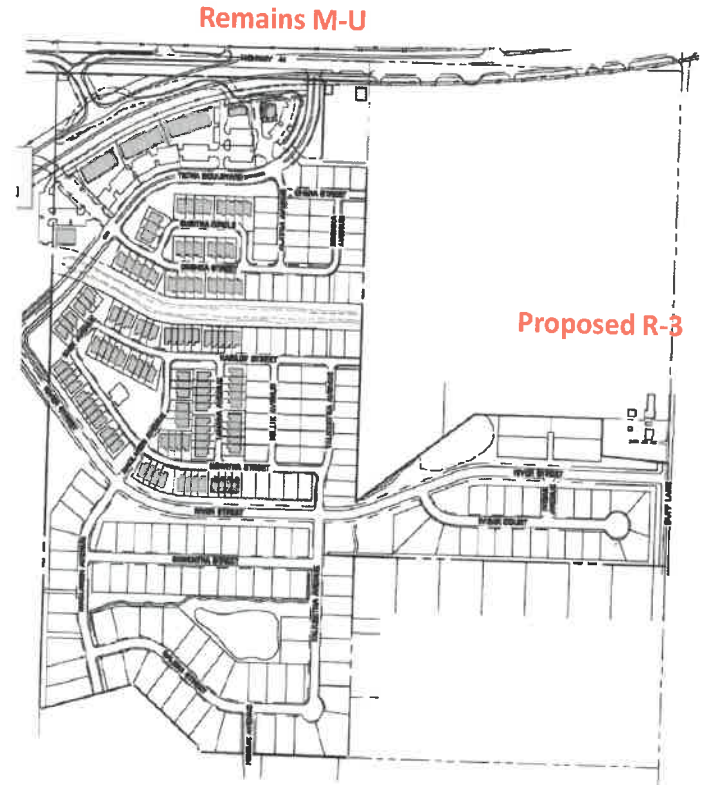
*Planning Staff finds that Applicant's transportation design & access in the preliminary plat is in the best interest of the City of Middleton and in harmony with the Comprehensive Plan.*

**Open Space & Amenities:** Applicant has exceeded the 5% Open Space requirement by providing 14.86 acres (or 16.79%) of open space in the form of a swimming pool facility, five pickle ball courts, large common area park with play facility, community ponds, extensive 10' wide pathways, and open grassy common lots with shade structure. The 10' asphalt pathways from the Applicant's project will be part of the intricate "River Walk Loop" design that will follow the Kennedy lateral across Middleton Road to intersect with two large parks on the west side of Middleton Road. This pathway will create a public recreational "River Walk" loop with multiple plazas and parks that will wind through Middleton City and along the Boise greenbelt. PLAZA / PARKS



**Annexation/Rezone Application:** Only the 14 acre Duff parcel is the subject of the Annexation & Rezone application. Applicant is requesting a rezone from County "Agricultural" to City of Middleton R-3, which allows 3 single family homes per acre. Applicant's request complies with the following requirements of annexation/rezone: (1) property is contiguous, (2) City sewer and water are available and can be extended to the project site, (3) the property is in the Area of Impact, and (4) annexation/rezone is in the best interest of the City and does not adversely affect the Public's health, safety & welfare. *Therefore, Planning Staff finds that Applicant's request complies with the required criteria.*

**Preliminary Plat Application:** As to the Preliminary Plat application, the 14-acre Duff parcel shows a design that is in compliance with all dimensional standards of R-3 Zoning and the rest of the Middleton City Code. Applicant is not requesting any variances with respect to this portion of the project. The 74 acre M-U portion also complies with the dimensions and standards of the current Code except for those items set forth in the proposed Development Agreement. *Therefore, Planning Staff finds that the preliminary plat (1) is in compliance with the Code and Standards of Middleton, (2) is not materially detrimental to the public health, safety and welfare, and (3) is in harmony with the Comprehensive Plan.*



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

1. Duff Parcel is zoned R-3
2. 14 Acre Duff Parcel is to be added to the DA with legal description attached. (Missing from Staff Report)
3. Density for the 74 acre M-U parcel to be in compliance with current M-U zoning of 12 dwelling units per acre.
4. A concept plan generally matching the current preliminary plat shall be attached to the DA and incorporated by reference.
5. In the townhome section, minimum lot size and frontage width shall be in compliance with Middleton City Code 5-5-1, Table 2.
6. Townhomes may have no more than five units per townhome structure. Any structure with more than four units must have fire sprinklers.
7. Parking for Townhomes and Garden/Patio homes must meet the current code standard of 3 spaces per dwelling unit.
8. The 55+ homebuyer requirement for all townhomes and Garden/Patio homes shall be created by deed restriction in compliance with the laws of the State of Idaho.
9. Developer shall not be required to comply with MCC 5-4-10-7 regarding an 8' berm between the commercial lots and residential lots. Instead, Developer shall provide a 20' wide landscaped buffer between the commercial lots and residential lots.
10. Garden homes may have a minimum lot width of 60 feet and minimum lot size of 6,000 s.f. (Please note this 6000 s.f. lot size was already allowed in the old DA for garden homes and also the ordinary single-family homes. Applicant has agreed to bring the ordinary single family homesites up to 8000 s.f., in keeping with the current code rather than the 6000 s.f. size Developer is actually entitled to.
11. Because the Garden Homes are adjacent to the townhome lots and integrated to some degree in the 55+ community, the 36' wide Townhome Road Section may also be constructed through the Garden Home portions of the plat. Parking will not be allowed on the 36' roadway, and parking signs to that effect must be posted.
12. Developer may develop the lots in Phases 1 through 3 above the Kennedy Drain without providing a second access. The 2<sup>nd</sup> access off of Duff Lane must be completed with Phase 4 as part of the Phase 4 final plat. (Deputy Fire Chief Victor Islas has verbally indicated approval of this variance.)
13. Developer will construct all City required road improvements.
14. Developer shall obtain an approach permit from ITD for access on to Highway 44..



**Development Agreement Application con't:**

14. Developer to complete a Traffic Study and shall pay all City required traffic pro-rata or proportionate share fees.
15. Developer will be allowed a minimum centerline radius of 90'.
16. Developer shall provide an east/west collector connecting to Duff Lane. Parking shall not be allowed on this collector, and signs to that effect must be posted. No driveway access shall be allowed on the collector. (Please note that Developer has met this provision by designing "Yukon Street" as shown on the proposed preliminary plat.)
17. Developer shall dedicate a 50' right of way on the western perimeter to be able to complete Yetna Avenue and Yukon Street in the event the River Ranch project to the west is not ultimately developed. Alternatively, Developer may enter into an agreement with the Developer of River Ranch Crossing to complete the off-site portions of Yetna Avenue and Yukon Street in the event the River Ranch project does not develop.
18. If the River Ranch project to the west is not developed, Developer will design and construct a sewer lift station to allow sewer service to the southern portion of the project.
19. Developer shall provide a swimming pool facility, five pickleball courts and park facilities as generally shown on the concept plan.
20. All 10' pathways and sidewalk sections needed to connect the 10' pathways along the Kennedy Drain to the Boise River greenbelt trail and River Walk Loop shall be encumbered with a public access easement.
21. All sidewalks along Yukon Street must have a public access easement noted on the final plat to ensure public pedestrian access to Duff Lane and Duff Pond.
22. Developer must execute and record a cross-access easement for all commercial lots and all residential lots abutting a private lane to ensure access to the public and to avoid any land-locked parcels.



**Development Agreement Modification con't:**

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

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

The proposed setbacks are as follows:

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

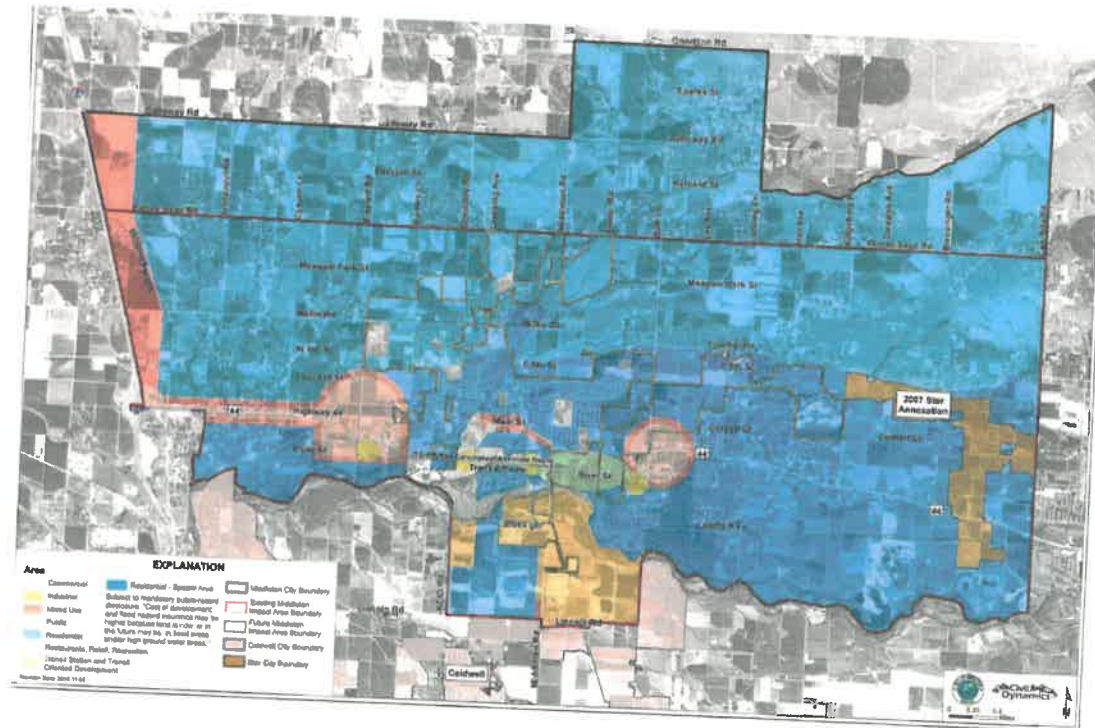
*Planning Staff finds that the Development Agreement Modification application is in compliance with City Code, which requires that the DA be in the form required by the City & Idaho State Code sec. 67-6511A and undergoes a public hearing with proper notice.*



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

Applicant is requesting through this Comp Plan Map Amendment to bring that intensity down to the less intensive use under the "Residential" designation. If the Commission is not inclined to recommend approval of this application, then the more intensive use for "Transit-Oriented Development" shall remain in place.

As to be shown on the next slide, Planning Staff finds that the change to "Residential" from "Transit-Oriented Development" on the Future Land Use Map is still in "harmony" with the Middleton Comprehensive Plan.





### Comprehensive Plan Findings

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

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

1. First and foremost, the Project completes the east/west collector street shown on the Transportation, Schools & Recreation Map. Applicant's design of Yukon Street completes a critical piece of Middleton's long term transportation planning goals.
2. As shown in more detail in the Staff Report, which, by the way, will be made part of the FCO, Applicant's project and applications comply with Goals 3, 4, 6, 7, 8, 10, and 16. TO BE APPENDED TO FCO



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

- a. Project will increase traffic
- b. Project is too dense and intensive for a "rural area."
- c. Developer should pay fair share of impacts on community
- d. Developer's gravel pit is a nuisance.

\*Additional comments have been received since the Staff Report was uploaded for public review. (Add to record as Exhibit "A")

**Comments from Agencies:** As already shown above, comments from CHD4 and ITD have been received. Staff is still waiting for written comments from Middleton Rural Fire District.

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

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

**Applicable Codes and Standards:**

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



**Notices & Neighborhood Meeting:**

Newspaper Notification

Radius notification mailed to  
Adjacent landowners within 300'

Circulation to Agencies

Sign Posting property

Neighborhood Meeting

**Dates:**

05/23/2021

05/19/2021

05/19/2021

05/19 & 20/2021

08/18/2020, 3/8/2021 &  
4/12/2021

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Prepared by Middleton City Planner, Robert Stewart

Dated: 6/7/2021

Exhibit A

ANNEXATION-EXHIBIT MAP  
PART OF THE NE 1/4 OF THE SE 1/4 OF  
SEC. 8, T. 4 N., R. 2 W., B.M.  
CITY OF MIDDLETON, CANYON COUNTY, IDAHO



1 inch = 150 ft.

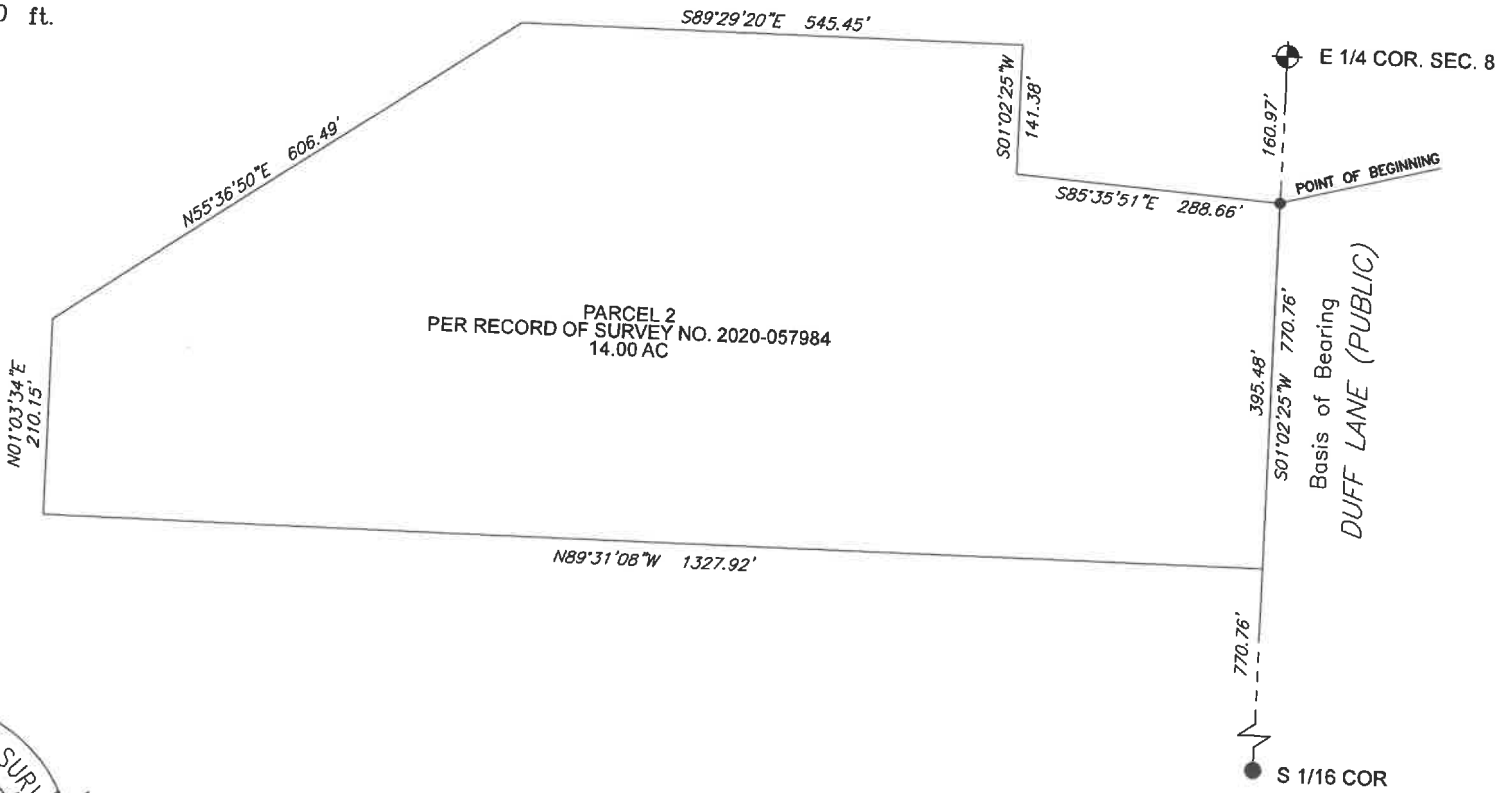


Exhibit "A"



EAGLE LAND SURVEYING, LLC.

106 W MAIN ST UNIT D, MIDDLETON, ID 83644  
(208) 861-7513; pls12220@yahoo.com

Exhibit B

McCabe

approved development agreement

Recording Requested By and  
When Recorded Return to:

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

For Recording Purposes Do  
Not Write Above This Line

**DEVELOPMENT AGREEMENT**

This Development Agreement (this "Agreement") is made and entered into this 12 day of June, 2006 (the "Effective Date"), by and between the CITY OF MIDDLETON, a municipal corporation in the State of Idaho (the "City"); and WINDING RIVER PROPERTIES, L.L.C., an Idaho limited liability company ("Developer"); and CLARITY INVESTMENTS, L.L.C., an Idaho limited liability company ("Purchaser").

**RECITALS:**

**WHEREAS**, the Purchaser and Developer have applied to the City for annexation and rezone to MU of property more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property").

**WHEREAS**, Purchaser holds an enforceable contract to purchase the Property, and the current owner of the Property has consented to the application for annexation and rezone.

**WHEREAS**, the City, pursuant to Idaho Code Section 67-6511A, 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.

**AGREEMENTS:**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and in consideration of the recitals above which are incorporated herein, and in consideration of the undertakings and agreements hereinafter contained, the parties agree as follows:

**ARTICLE I  
LEGAL AUTHORITY**

1.1 This 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.

REC'D, MEO  
JUN 28 2006

D.4

## **ARTICLE II ZONING ORDINANCE AMENDMENT**

2.1 The City shall adopt an ordinance annexing the Property and amending the Middleton Zoning Ordinance to rezone the Property to M-U (the "Ordinance"). The Ordinance will become effective after its passage, approval, and publication and the execution and recordation of this Agreement.

## **ARTICLE III CONDITIONS ON DEVELOPMENT**

3.1 Developer shall develop the Property subject to the conditions and limitations set forth in this Agreement, the M-U zoning classification and the City's Design Review Ordinance, as they exist in final form at the time the preliminary plat application is submitted, 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 overall Conceptual Plan (the "Conceptual Plan"), attached as Exhibits "B-1" and "B-2," shall dictate the type and density of development to be constructed in each of the components of the Project. Residential densities shall not exceed twelve (12) dwelling units per gross acre within the residential components of the Project. Developer shall be allowed to construct those other uses allowed under the M-U zoning classification and the City's Design Review Ordinance, as they exist in final form at the time the preliminary plat application is submitted, except as otherwise provided in this Agreement, and Developer shall apply for Conditional Use Permits when required under the same M-U zoning classification.

3.3 It is understood that the proposed State Highway 44 Alternate Route project could be constructed through the Project as shown on the Conceptual Plan. Developer shall cooperate with the City and the Idaho Transportation Department for the purchase from Developer of Right of Way sufficient for the proposed City Alternate Route project. Developer will reserve the right of way for the Alternate Route for a period of sixty (60) months from the date this Agreement is approved. If the Right of Way has not been contracted to be purchased within the sixty (60) month period, Developer shall be allowed to develop the proposed Right of Way for its use within the Project for its own use as allowed under the M-U zoning classification and the City's Design Review Ordinance. The City and Developer hereby endorse the location of the traffic signal at the Project entry as depicted on the Conceptual Plan attached as Exhibit B-2. Developer shall comply with the conditions recommended in the letter dated March 24, 2006, from Idaho Transportation Department to the City, a copy of which is attached hereto as Exhibit "D" and incorporated herein by reference.

3.4 Developer shall provide one major east/west connector road through the Project south of the canal as shown on the Conceptual Plan, or a similar road acceptable to the City and Developer in an alternate location to be determined as necessary.

**3.5** Developer shall provide one major east/west connector road through the Project north of the canal as shown on the Conceptual Plan, or a similar road acceptable to the City and Developer in an alternate location to be determined as necessary.

**3.6** Developer shall provide one major north/south connector road through the Project along the west boundary. Although not shown on the Conceptual Plan, the north/south connector shall be built as a divided boulevard, for fire equipment access, from Highway 44 to south of the commercial entry street, with a left turn refuge and break to permit access in and out of the commercial entry street, or a similar road acceptable to the City and Developer in an alternate configuration and location to be determined as necessary.

**3.7** Developer shall be allowed to construct within the Project sufficient sewer lines, lift station(s) and connections to the main sewer line under development by the City along State Highway 44. Developer's sewer lines, lift station(s) and connections shall serve the entire Project until such time in the future that alternate sewer service is available to the west of the Project. When such sewer service is available west of the Project and south of State Highway 44, Developer shall construct sewer lines and connections necessary to convert to and utilize the new main sewer line to service the components of the Project south of the canal. Developer shall cooperate with adjacent land owners and the City to provide access to the main sewer line along State Highway 44 and the planned main sewer line to the west of the Project south of State Highway 44.

**3.8** The Project shall comply with the Middleton Comprehensive Plan and City Code, as they exist in final form at the time the development application was submitted, except as otherwise provided in this Agreement. As to the number of lots and lot dimensions detailed in the Conceptual Plan, the following conditions shall be satisfied:

**3.8.1 Set Backs.** Developer shall maintain minimum set backs on both the commercial and residential portions of the Project in accordance with Section 5-2-4, Table 2 of the Middleton City Code, except as otherwise modified herein.

**3.8.2 Improvement & Maintenance of Common Areas.** Developer shall install an automatic sprinkler irrigation system in common areas, plant landscaping, and construct sidewalks and trails in conformance with the Project approval issued by the City. The common areas in the residential portion of the Project shall be maintained by the residential homeowners' association, to be formed by Developer. The common areas in the commercial portion of the Project shall be maintained by a common area maintenance director and funded through assessments charged to the owners of the Commercial Lots.

**3.8.3 Conceptual Plan.** All development within the Project shall be substantially consistent with the Conceptual Plan, unless otherwise approved by the City and the Developer.



**3.9 Design Standards Applicable to All Commercial Lots.**

**3.9.1** All retail and office buildings on Commercial Lots contiguous to the proposed Highway 44 Alternate Route shall have their primary entrance facing the Alternate Route. Such buildings shall be permitted to have parking areas between the building and the Alternate Route.

**3.9.2** Developer shall provide at least one (1) parking stall for every 300 SF of floor area in retail and office buildings. Such parking may be averaged across all Commercial Lots located within a single block and not separated by a public street, provided that a recorded, reciprocal access and parking easement permits shared and reciprocal use of such parking by all building owners and occupants on said block.

**3.9.3** Each retail and office building and other structure on the Commercial Lots shall be of first quality construction and architecturally designed so that its exterior elevations (including signs and color) will be architecturally compatible and harmonious with all other buildings on the Commercial Lots. Each building on the Commercial Lots shall initially be constructed so the exterior of such building conforms to building design drawings approved by Developer.

**3.9.4** No retail building, office building, restaurant, entertainment facility or other structure shall be constructed or erected upon any Commercial Lot, nor shall any exterior alteration, addition or improvement be commenced, until complete plans and specifications thereof have been reviewed and approved in writing by the City's Design Review Board and the Developer's Architectural Review Committee ("ARC").

**3.10 Design Standards Applicable to All Residential Lots.**

**3.10.1 Exterior Elevations & Siding**

(a) No residence, garage, barn, outbuilding, fence, swimming pool, recreation facility, driveway, paving, gravel, antennae, satellite dish, or other Building or Improvement shall be constructed or erected upon any residential lot, nor shall any exterior alteration, addition or improvement be commenced, until complete plans and specifications thereof have been reviewed and approved in writing by the Developer's ARC.

(b) The front walls of garages and columns on the front of the residences shall be wrapped with brick, stone or stucco, which shall be generally full height and total a minimum of 100 square feet on the front elevation of each home and shall wrap around the side walls not less than two (2) feet on each end.

(c) Exterior siding materials may be of natural or synthetic wood (Hardi-Plank or equal), natural or synthetic stone, brick or stucco.

(d) No vinyl, T-111 or metal siding, concrete block, "Z-brick" or stamped concrete shall be permitted on buildings or structures.

### **3.10.2 Roofing and Projections**

(a) Roofs shall be tile or Architectural Grade Composition Shingles – 25 year minimum. Exterior roof construction of tarpaper, metal or gravel shall be prohibited.

(b) Approved Roofing Colors: Antique Black or Charcoal Gray. All roof flashing, vents, gutters and downspouts must be treated with non-glare color harmonious with the roof or upper wall surfacing.

(c) Minimum 6/12 roof pitches on all single level homes; 5/12 roof pitch permitted on two-story homes for entry roofs only; all other roofs on two-story homes must be a minimum of 6/12 pitch.

(d) Roof overhangs of less than 12 inches shall be prohibited.

(e) Vinyl and metal-clad vents, fascias and soffits shall be permitted if the color and materials proposed are non-reflective and compatible in color and texture with the remainder of the structure. A combination of ridge, soffit and dormer vents is preferred, and metal vents and vent caps projecting from the roof surface are discouraged.

(f) All fascias shall be a minimum of one (1) inch by eight (8) inches in width.

### **3.10.3 Garages & Driveways**

(a) Minimum three-car garage shall be required on lots with area of 8,500 square feet or greater, and minimum two-car garage required on lots less than 8,500 square feet in area.

(b) Driveways shall provide off-street parking for at least two (2) vehicles per residential unit.

(c) At least twenty five percent (25%) of all residences in the Project shall feature either a side entry garage or an alley-loaded garage. Of the residences with front entry garages (i.e., the remaining seventy five percent (75%) of the residences), at least twenty percent (20%) shall feature a garage set back at least ten (10) feet behind the front elevation of the house

living area, and at least twenty percent (20%) shall feature the garage set back at least twenty (20) feet behind the front elevation of the house living area.

#### **3.10.4 Landscaping**

- (a) Front sidewalks or driveways shall be concrete or masonry pavers and are encouraged to have curved lines or a stamped pattern or accent masonry pavers at the edge.
- (b) Landscaping of the front yard and side lots adjacent to the street must be completed by the builder no more than thirty (30) days after substantial completion of and prior to occupancy of the home, and must include rolled sod in the front yard and both sides of the driveway.
- (c) Developer shall plant, at its cost, one (1) street tree in the parking landscape strip in front of each residential Lot. Developer and Purchaser shall require, through CC&Rs for the commercial area, the planting of one (1) street tree at a maximum interval of thirty (30) feet on center in all perimeter landscape strips adjoining public streets.

#### **3.10.5 Fences**

- (a) Any fencing must be either (a) Vinyl Privacy Fences, not to exceed six feet in height; or (b) Common Area Fences of black wrought iron, not to exceed five (5) feet in height in rear or side yards or (three) 3 feet in height in front yards.
- (b) Where residential lot lines abut other residential lot lines, the owners of said lots may construct a Vinyl Privacy Fence. Fences shall not be built closer to the street than five feet behind the front corner of the house on each side, except for 3 foot high Common Area Fences or 3 foot high hedges, which shall be permitted in front yards.
- (c) Fences shall not extend closer than twenty feet to the front street right-of-way.
- (d) Except as otherwise specifically provided herein, rear or side yard fences on corner lots shall not be built closer than twenty feet to any side or rear street right-of-way.

**3.11 Home Product Types & Designs.** Developer agrees to construct homes in four product categories, each comprised of at least two design categories, featuring variations in garage location as specified in Section 3.10.3(c), building materials and home styles as follows:

**3.11.1 High Density Attached**

(a) Located north of the primary residential entry, as shown on the Conceptual Plan.

(b) Zero side yard setbacks shall be permitted on one or both sides of each lot, subject to building and fire code compliance.

(c) Minimum front yard setback of 20 feet, except side-entry garages and covered front porches shall be permitted front yard setback of 10 feet.

(d) Minimum rear yard setback of fifteen (15) feet, unless the lot abuts an open space area, in which case the rear yard may be reduced to a minimum of ten (10) feet.

(e) Maximum of four (4) residential units per attached structure. Front elevations shall contain wall and roof modulations, windows and architectural details to avoid long, monolithic walls.

(f) At least one-half of the homes shall be either Victorian or another Early American townhome style, containing design elements from the sample elevations for each architectural style attached hereto as Exhibit "C."

**3.11.2 High Density Detached**

(a) Located north of the primary residential entry, as shown on the Conceptual Plan.

(b) Zero side yard setbacks shall be permitted on one side of each lot, subject to building and fire code compliance.

(c) Minimum front yard setback of 20 feet, except side-entry garages and covered front porches shall be permitted front yard setback of 10 feet.

(d) Minimum rear yard setback of fifteen (15) feet, unless the lot abuts an open space area, in which case the rear yard may be reduced to a minimum of ten (10) feet.

(e) At least one-half of the homes shall be either English cottage style or Charleston rowhouse style, containing design elements from the sample elevations for each architectural style attached hereto as Exhibit "C."

**3.11.3 Medium Density**

(a) Located south of the primary residential entry, as shown on the Conceptual Plan.

(b) Developer agrees to construct homes of the following minimum floor areas:

- i. Forty percent (40%) of homes to be 1,500 square foot minimum;
- ii. Thirty percent (30%) of homes to be 1,650 square foot minimum; and
- iii. Thirty (30%) of homes to be 1,800 square foot minimum.

(c) Minimum front yard setback of 25 feet, except side-entry garages and covered front porches shall be permitted front yard setback of 15 feet. Minimum rear yard setback of fifteen (15) feet, unless the lot abuts an open space area, in which case the rear yard may be reduced to a minimum of ten (10) feet.

(d) Minimum lot size of 6,000 square feet.

(e) At least one-half of the homes shall be either northwest contemporary or Craftsman, containing design elements from the sample elevations for each architectural style attached hereto as Exhibit "C."

#### **3.11.4 Low Density**

(a) Located south of the primary residential entry, as shown on the Conceptual Plan.

(b) Developer agrees to construct homes of the following minimum floor areas:

- i. Forty percent (40%) of homes to be 1,800 square foot minimum;
- ii. Thirty percent (30%) of homes to be 2,100 square foot minimum; and
- iii. Thirty (30%) of homes to be 2,400 square foot minimum.

(c) Minimum front yard setback of twenty five (25) feet, except side-entry garages and covered front porches shall be permitted front yard setback of fifteen (15) feet. Minimum rear yard setback of twenty (20) feet, unless the lot abuts an open space area, in which case the rear yard may be reduced to a minimum of fifteen (15) feet.

(d) Minimum lot size of 7,000 square feet.

(e) Homes shall be either northwest contemporary, Craftsman or European Classic in style, containing design elements from the sample elevations for each architectural style attached hereto as Exhibit "C."

**3.12 Sidewalk.** The collector roads detailed in the Conceptual Plan shall each feature a detached and meandering sidewalk positioned approximately four to five feet behind the curb line.

**3.13 Fencing.** Developer shall construct a six-foot fence around the perimeter of the residential portion of the Property, including, but not limited to, the portion of the south boundary adjoining the Gabica Subdivision, pursuant to the Middleton City Code.

**3.14 Compliance with City Code.** Developer agrees that all development will comply with the Middleton City Code, except as otherwise provided in this Agreement, and will require a complete set of plans which shall include:

**3.14.1** Site plan including street, curb and gutter, and sidewalk and site lighting;

**3.14.2** Landscape plan, including access, egress and parking;

**3.14.3** Foundation plan;

**3.14.4** Underground utility plan including water, sanitary sewer, storm drainage, irrigation and fire protection;

**3.14.5** 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; and

**3.14.6** Review and approval by the City Engineer or Building Official of site, utility and landscape plans before a building permit is issued.

**3.15 Conditions for Completion.** All of the conditions set forth herein shall be complied with or Developer shall provide City with sufficient security for the completion of such conditions in the form of a letter of credit, or other sufficient security, before signature of the Final Plat or Certificate of Occupancy will be granted. Failure to complete or provide such security 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 Developer. Developer may be allowed to provide security for completion of such conditions at one hundred and fifty percent (150%) of the estimated cost to complete the condition.

**3.16 Commencement of Construction.** Developer shall commence construction within two (2) years of the date the Ordinance becomes effective pursuant to Section 2.1 above. In the event Developer fails to commence construction within this time period, Developer shall be in default 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).

3.17 City Council Adoption. The Middleton City Council hereby adopts this Agreement pursuant to Middleton City Code § 5-7-4(B).

#### ARTICLE IV

##### AFFIDAVIT OF PROPERTY OWNERSHIP

4.1 An affidavit of all owners of the Property agreeing to submit the Property to this Agreement and to the provisions set forth in Idaho Code Section 67-6511A and the 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 Remedies. Developer, by entering into this Agreement, does hereby agree that, in the event there shall be a default in the terms and conditions of this Agreement, this Agreement shall serve as consent to a reversion of the Property to City R-3 zoning.

#### ARTICLE VI

##### UNENFORCEABLE PROVISIONS

6.1 If any term, provision; commitment or restriction of this 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.

#### ARTICLE VII

##### ASSIGNMENT

7.1 After its execution, this Agreement shall be recorded in the office of the Canyon County Recorder at the expense of Developer. Each commitment and restriction on the Project 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 Agreement shall be binding on the City and Developer, and their

respective agents, legal representatives, successors and assigns; provided, however, that if all or any portion of the Property is divided, each owner of a legal lot shall only be responsible for duties and obligations associated with the owner's parcel and shall not be responsible for duties and obligations or defaults as to other parcels of lots within the Property. A 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 VIII

### GENERAL

**8.1 Amendments.** Any alteration or change to this 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 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 Agreement. As used in this 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 Agreement shall be construed in accordance with the laws of the State of Idaho in effect at the time of the execution of this Agreement. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Canyon County, Idaho.

**8.4 Conveyance of Development Tracts within the Property.** The City hereby agrees that Purchaser may convey to Developer, or vice versa, or to other participants in the Project, development tracts within the Property which have been surveyed and described by metes and bounds, prior to recordation of a final plat creating buildable lots within the Property, provided such conveyances are in compliance with and to the extent they are permitted by Idaho state law.

**8.5 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.

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

**Developer:** Winding River Properties, L.L.C.  
c/o Vision First, LLC  
661 S. Rivershore Lane, Suite 120  
Eagle, ID 83616



**Purchaser:** Clarity Investments, L.L.C.  
777 Brookwood Drive  
Eagle, Idaho 83616

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.

**8.6 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.

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


Dated this 12 day of June, 2006.

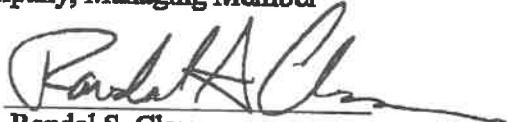
**CITY:**  
**CITY OF MIDDLETON,**  
an Idaho municipal corporation

**DEVELOPER:**  
**WINDING RIVER PROPERTIES, L.L.C.,**  
an Idaho limited liability company

  
Frank McKeever, Mayor


By: **Vision First, L.L.C.,**  
a Washington limited liability  
company, Managing Member

  
Attest: \_\_\_\_\_  
City Clerk

By:   
Randal S. Clarno,  
Managing Member



**PURCHASER:**  
**CLARITY INVESTMENTS, L.L.C.,**  
an Idaho limited liability company

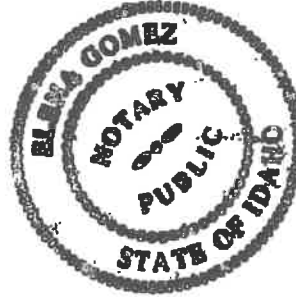
By:   
Michael McCabe,  
Managing Member

STATE OF IDAHO )  
 )ss.  
County of Canyon )

On this 12 day of June, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared **FRANK MCKEEVER**, known or identified to me to be the **MAYOR** of the **CITY OF MIDDLETON**, the municipal corporation that executed the instrument or the person who executed the instrument on behalf of said municipal corporation, and acknowledged to me that such municipal corporation executed the same.

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

By: Elena Gomez  
Notary Public for the State of Idaho  
Residing at Middleton  
My commission expires on 3-14-11



STATE OF IDAHO )  
 )ss.  
County of Ada )

On this 5 day of June, 2006, before me, the undersigned, a Notary Public in and for the State of Idaho, duly commissioned and sworn, personally appeared **RANDAL S. CLARNO**, known to me to be the **MANAGING MEMBER** of **VISION FIRST L.L.C.**, a Washington limited liability company, which is **MANAGING MEMBER** of **WINDING RIVER PROPERTIES L.L.C.**, the limited liability company that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument by the Operating Agreement of said limited liability company.

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

By: Shannon Beck  
Notary Public for the State of Idaho  
Residing at Middleton  
My commission expires on 4/28/10

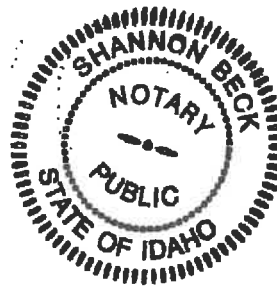


STATE OF IDAHO )  
                                 )ss.  
 County of Ada     )

On this 5 day of June, 2006, before me, the undersigned, a Notary Public in and for the State of Idaho, duly commissioned and sworn, personally appeared **MICHAEL McCABE**, known to me to be the **MANAGING MEMBER** of **CLARITY INVESTMENTS, L.L.C.**, the limited liability company that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument by the Operating Agreement of said limited liability company.

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

By: Shannon Beck  
 Notary Public for the State of Idaho  
 Residing at Middleton  
 My commission expires on 4/28/10



**EXHIBIT "A"**

**Legal Description of the Property**

**Lot 2, and the Southwest quarter of the Northeast quarter, all in Section 8, Township 4 North, Range 2 West, Boise Meridian**

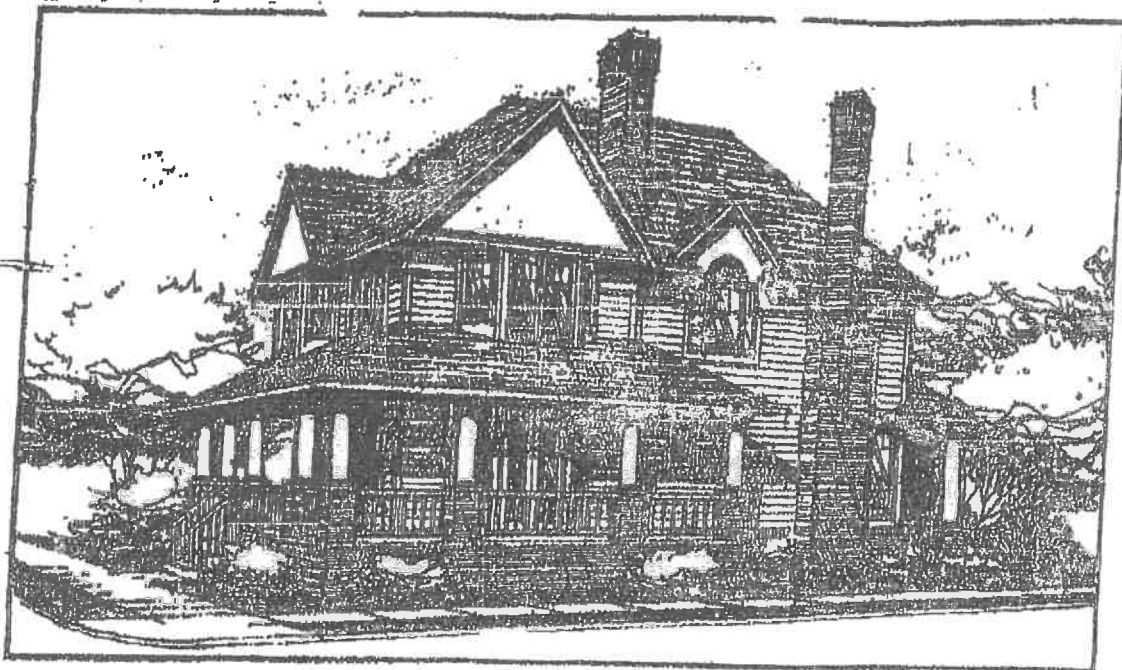
**EXCEPTING THEREFROM a parcel described as follows: Beginning at the Northeast corner of the said Southwest quarter of the Northeast quarter, and running thence South 390 feet, thence West 190 feet; thence North 390 feet; thence East 190 feet to the place of beginning;**

**ALSO EXCEPTING THEREFROM a strip of land conveyed to the State of Idaho by deed recorded as Instrument No. 416655, Records of Canyon County, Idaho, and a strip of land 100 feet in width, being 50 feet on either side of the center line of the Oregon Short Line Railway.**

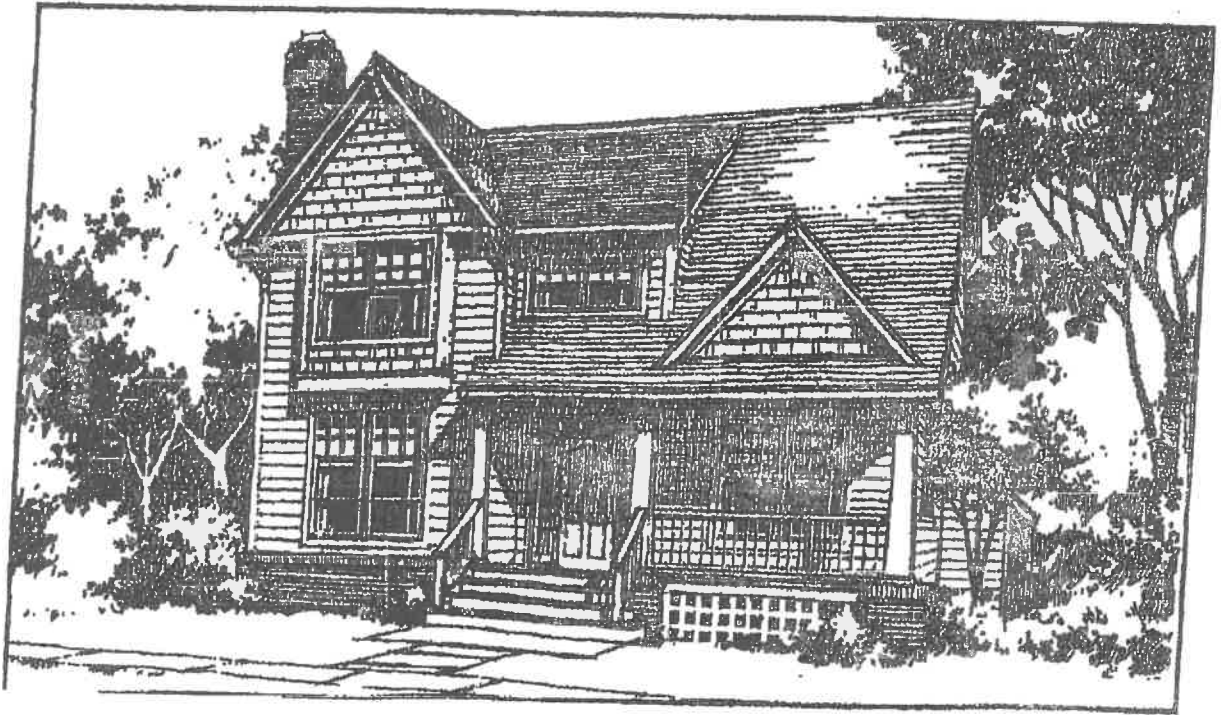
**EXHIBIT "C"**

**Representative Exterior Elevations for Architectural Styles in Project**

**VICTORIAN**

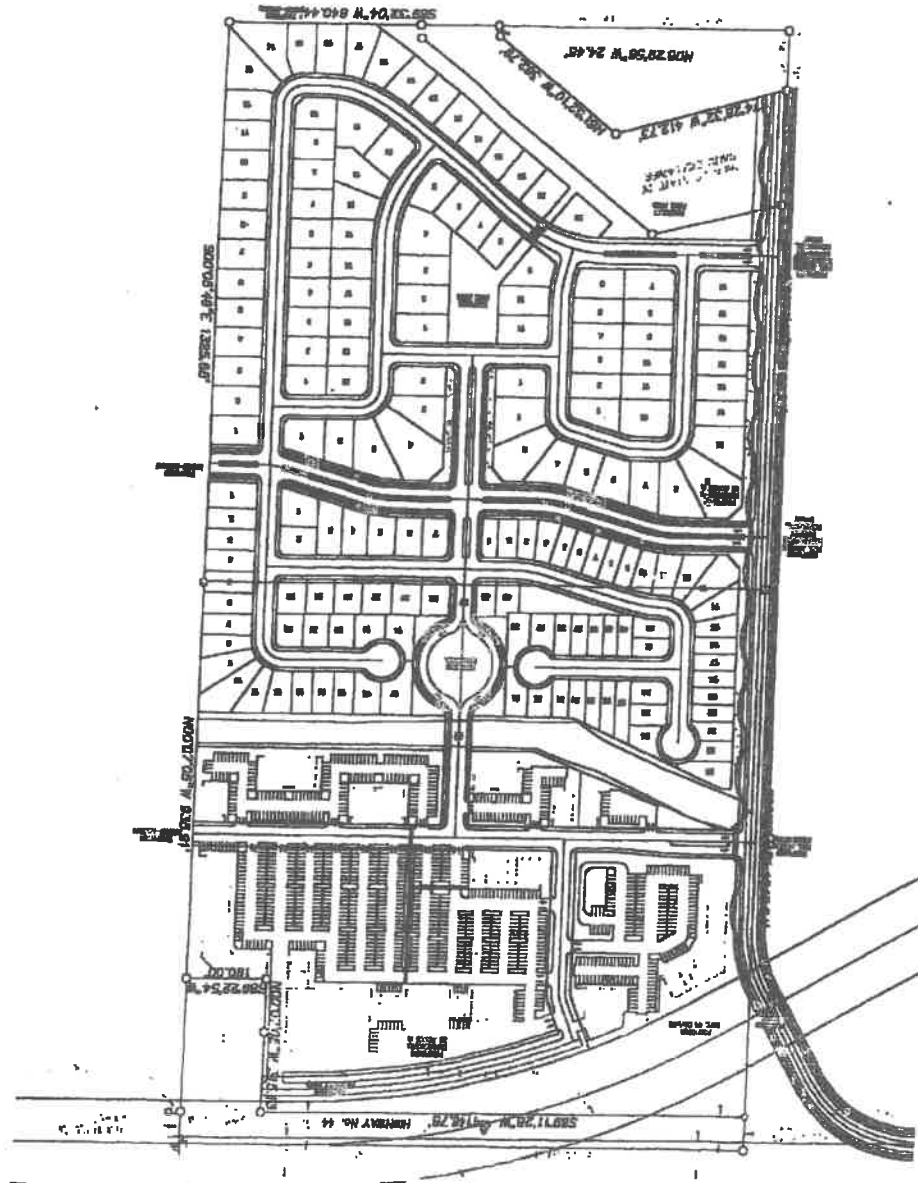


**EARLY AMERICAN**



**CHARLESTON ROWHOUSE**





Total Acres

- 2.146666 AC / 7.743 AC
- COMMERCIAL ZONING 74.3 AC
- RESIDENTIAL ZONING 74.3 AC
- SPRING TANK (S) 3.3 AC
- SPRING LAND TANK (S) 3.3 AC
- CANAL AREA TANKS (S) 3.3 AC

01-18-2008



EXHIBIT "B" - 2

Conceptual Plan

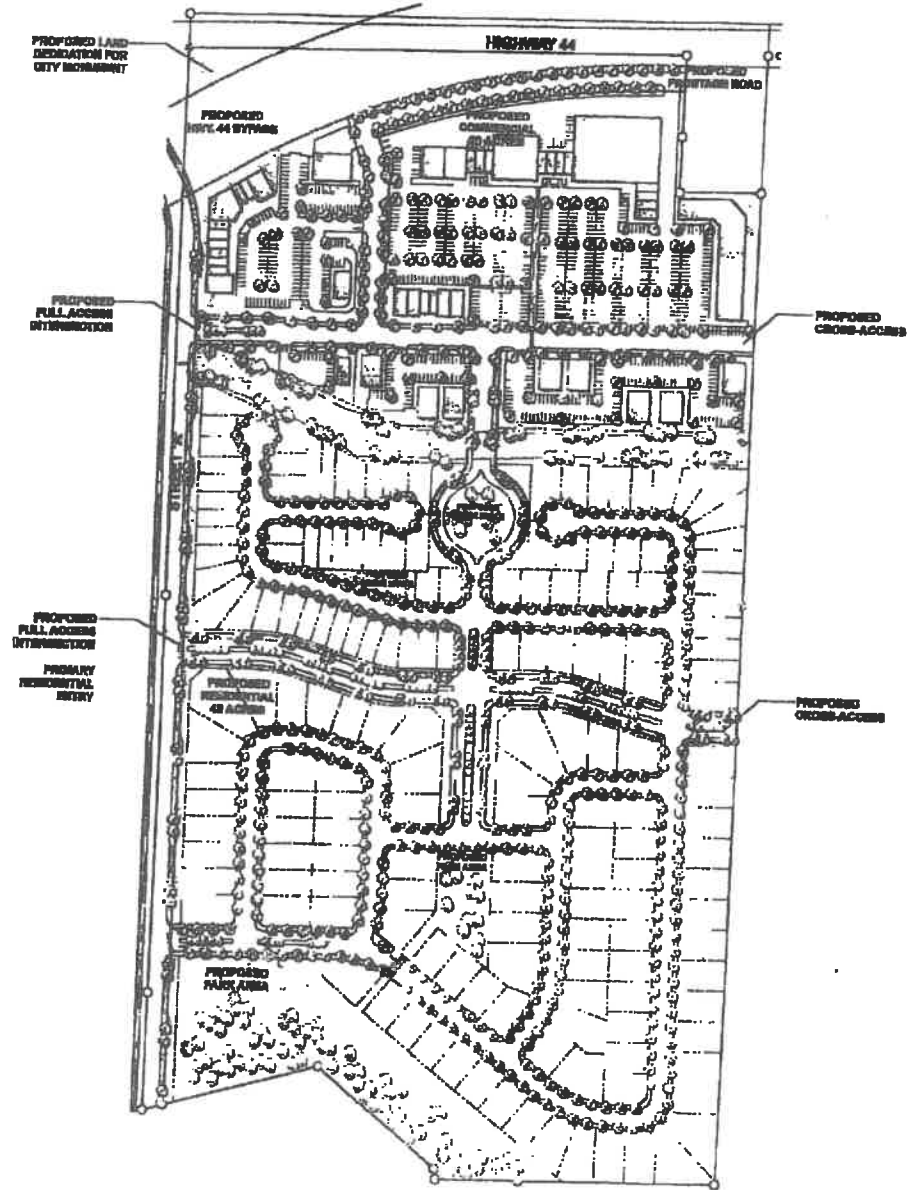
**McCabe Property**  
Vision First, L.L.C.

Concept Plan 1



# EXHIBIT "B-1"

## Conceptual Plan



**The Woodlands**  
A "Vision First" Development

December 26, 2005

Scale 1"=100'



0 80 160 240

DESIGN INC.

DESIGN INC.



IDAHO TRANSPORTATION DEPARTMENT  
P.O. Box 8028  
Boise, ID 83707-8028

(208) 334-8800  
id.idaho.gov

March 24, 2006

VIA FAX: 208-385-9601

Middleton City Council  
c/o Middleton City Hall  
PO Box 487  
Middleton, ID 83644

TRANSPORTATION BOARD  
Chadwick Winder  
Chairman

John X. Dornan  
Vice Chairman  
District 6

John Skellogg  
District 1

Bruce Stearns  
District 2

Monte McClure  
District 3

Gary Wick  
District 4

Neil Miller  
District 5

David Stone, PE  
Developer

Sue Higgins  
Board Secretary

Re: Location: Southwest Corner of State Highway 44 and Duff Lane  
Route: State Highway 44 (SH-44)  
Name: McCabe Properties (Applicant)  
Case: NA

Dear City Council Members:

The Idaho Transportation Department (ITD) appreciates the opportunity to comment on the above referenced application. Per the city's April 5, 2006 Public Hearing notice (dated March 14, 2006), regarding the application to annex approximately 74.51 acres located near the southwest corner of SH-44 and Duff Lane in Middleton, ID; ITD offers the following comment(s):

**General Comments:**

- This property is located adjacent to SH-44. ITD and COMPASS have begun a corridor preservation project to be prepared for future widening needs on this corridor.
- As part of the SH-44 corridor preservation project, the City of Middleton has asked ITD and COMPASS to identify possible locations for an alternate highway route around the city of Middleton. The above mentioned parcel is in the vicinity of the proposed location of the alternate route.
- We request to hold a meeting with the developer, the City of Middleton and COMPASS prior to plat approval to discuss the corridor preservation project.
- We had some initial discussions with the developer. The developer was very cooperative but I don't believe we closed the loop on what we agreed. I would like to see drawings of the developer's proposal for preserving the alternate route corridor proposed by the City of Middleton. This includes the setbacks for the main alternate route corridor and for the future intersection with SH-55. We would also like to see a general schematic for the local circulation system through the parcel with an emphasis on connectivity to adjacent parcels and collector facilities that will allow short local trips to stay off the highway.
- As I recall, we also had some tentative problems with the parcels across the street related to the future intersection. I would like to determine if/how we resolved that issue. This discussion would be with the City engineer.

We ask the City of Middleton to consider the following as conditions of approval:

Notice Abatement for Residential Development. Should the development include residential buildings, please require the following:

EXHIBIT "D"

1. The applicant shall provide traffic noise abatement by constructing a berm or a berm and wall combination approximately parallel to the state highway and off the state right of way.
2. The top of the berm, or berm and wall in combination, shall be a minimum of ten feet higher than the elevation at the centerline of the state highway.
3. If a wall is proposed, the wall shall meet the following standards:
  - a. Wall materials shall be impervious concrete or stucco, unless otherwise approved by the Idaho Transportation Department as a sound attenuating material.
  - b. Intermittent breaks in the berm or berm and wall in combination will degrade the function and should not be allowed.
4. Alternative noise abatement designs that meet Federal Highway Administration guidelines may be proposed by the developer. The applicant should contact Greg Vitely, Environmental Section Manager.

Work on the State Highway: A permit will be required for any work on the highway. See contact below.

Contacts

Sue Sullivan  
Kevin Sablan  
Greg Vitely  
Matt Ward

Senker Finmer  
Traffic Engineer  
Environmental Section Manager  
Permits Coordinator

334-8933  
334-8340  
334-8932  
334-8341

Sincerely,

*Sue Sullivan*

Sue Sullivan  
Sr. Transportation Planner

cc:th

200846456

HUDSON

2006 JUN 13 PM 4 44

Ch... in...  
Caitlin CRITCHELDER  
BY *[Signature]* 7:20 PM

REQUEST Middleton  
TYPE: *[Signature]* 07

2007015495

Recording Requested by and  
When Recorded, Mail to:  
**WINDING RIVER PROPERTIES, L.L.C.**  
c/o Vision First, LLC  
661 S. Rivershore Lane, Suite 120  
Eagle, Idaho 83616

RECORDING REQUEST  
BY *WINDING RIVER PROPERTIES, L.L.C.*  
CANYON COUNTY RECORDER  
2007 FEB 2 PM 3 55  
REQUEST *Clarity Investments*  
TYPE *Map Fee*

First Amendment to Dev Agmt (12-20-06 Clean)

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

**THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT** ("First Amendment") is made and entered into this 12 day of February, 2007 (the "Effective Date"), by and among the **CITY OF MIDDLETON**, a municipal corporation in the State of Idaho (the "City"); and **WINDING RIVER PROPERTIES, L.L.C.**, an Idaho limited liability company ("Residential Developer"); **THE ORCHARDS, LLC**, an Idaho limited liability company ("The Orchards Developer"); and **CLARITY INVESTMENTS, LLC**, an Idaho limited liability company ("Commercial Developer").

**RECITALS:**

**WHEREAS**, Residential Developer and Commercial Developer applied to the City for annexation and rezone to MU of property more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property").

**WHEREAS**, Commercial Developer is the current owner of the Property.

**WHEREAS**, the City, pursuant to Idaho Code Section 67-6511A, 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 City Council, following a public hearing on April 5, 2006, approved annexation and conditional rezoning of the Property, and the text of a Development Agreement by and among the City, Residential Developer and Commercial Developer (the "Development Agreement").

**WHEREAS**, the Development Agreement was fully-executed and dated effective June 12, 2006, and was recorded June 13, 2006, as Instrument No. 200646456, with the Canyon County Recorder.

**WHEREAS**, following execution of the Development Agreement, Commercial Developer has entered into a purchase and sale agreement for the sale of a portion of the Property to The Orchards Developer, which portion of the property is identified as "The Orchards Parcel" on Exhibit B-1.

**WHEREAS**, Residential Developer and Commercial Developer applied for preliminary plat approval for the Property, the City Planning & Zoning Commission recommended approval of the preliminary plat, following a public hearing on August 21, 2006, and the City Council ordered approval of the preliminary plat, following a public hearing on September 19, 2006.

**WHEREAS**, Residential Developer, Commercial Developer and The Orchards Developer, in drawing the preliminary plat, were required to modify the Conceptual Plan attached as Exhibit B-1 to the Development Agreement, primarily as a result of development restrictions on land in the flood plain of the Boise River and contiguous wetlands.

**WHEREAS**, the Development Agreement requires City approval of an amendment to ratify modification of the Conceptual Plan.

**WHEREAS**, Residential Developer, Commercial Developer and The Orchards Developer have applied for City approval of this First Amendment, including adoption of the modified Conceptual Plan, a new Exhibit "D" depicting exterior elevations for The Orchards Development (as defined in Section 6), and certain other textual revisions, following review by the Planning & Zoning Commission and City Council at regularly scheduled and noticed public hearings.

#### **AGREEMENTS:**

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants contained herein, and other valuable consideration received, the parties hereby agree that the Development Agreement shall be amended as follows:

1. Capitalized terms used but not defined herein shall have the meanings given them in the Development Agreement.
2. The Exhibit "B-1" Conceptual Plan attached to the Development Agreement is deleted and the Exhibit "B-1" attached to this First Amendment is substituted therefor. All references to Exhibit "B-1" in the Development Agreement or in this First Amendment shall refer to Exhibit "B-1" attached to this First Amendment.
3. WINDING RIVER PROPERTIES, L.L.C., is referenced throughout the Development Agreement as Developer and CLARITY INVESTMENTS, L.L.C., is referenced throughout the Development Agreement as Purchaser. For clarification and accuracy, WINDING RIVER PROPERTIES, L.L.C., will henceforth be referenced as Residential

Developer, THE ORCHARDS, LLC, will henceforth be referenced as The Orchards Developer and CLARITY INVESTMENTS, LLC, will henceforth be referenced as Commercial Developer. All references to "Developer" in the Development Agreement, unless the context requires a sole reference to WINDING RIVER PROPERTIES, L.L.C., shall be revised to read: "Residential Developer, Commercial Developer and The Orchards Developer."

4. A new fourth sentence shall be added to Section 3.3, to read:

"The sixty (60) month period may be extended, on a year-to-year basis for up to three (3) additional years, based upon the City's reasonable request for each one-year extension."

5. The renumbered fifth sentence of Section 3.3 shall be revised to read:

"If the Right of Way has not been contracted to be purchased within the sixty (60) month period (as may be extended in accordance with this Section 3.3), Developer shall be allowed to develop the proposed Right of Way for its use within the Project for its own use as allowed under the M-U zoning classification and the City's Design Review Ordinance."

6. The following sentences shall be added to the end of the Section 3.3:

"At the time of signal installation, the cost therefore shall be equitably allocated among the Residential Developer, Commercial Developer and other owners of land adjoining the intersection. The cost-sharing obligations shall be imposed by the City as conditions of development approval as such adjoining properties seek such approvals. Following the date the First Amendment is approved, the Developer shall cause the Right of Way for the proposed Highway 44 Alternate Route to be improved with landscaping. Developer hereby grants to the City a license utilize the Alternate Route Right of Way for purposes of public recreation until the earlier of the expiration of the sixty (60) month period (as may be extended in accordance with this Section 3.3) or the closing of the purchase of the Alternate Route Right of Way; provided, however, that the City shall indemnify, defend and hold harmless Developer from and against any and all loss, claims, damages or costs arising from or related to any such use of the Alternate Route Right of Way, except to the extent any such loss, claims, damages or costs are caused by the willful or negligent act or omission of Developer, its officers, agents, contractors or employees; and provided, further, that the Commercial Developer shall be responsible for the irrigation and maintenance of Alternate Route Right of Way."

7. New sentences shall be added at the end of Section 3.8.1 **Setbacks**, to read:

"All retail and office buildings, including associated parking, on commercial lots contiguous to the proposed Highway 44 Alternate Route shall have a minimum

setback requirement of not more than fifteen feet (15'), measured from the interior boundary of the Right of Way for the proposed Highway 44 Alternate Route. Commercial Developer shall condition its sale of the Highway 44 Alternate Route Right of Way to the State of Idaho on ITD's agreement to set aside and landscape the southerly twenty-five feet (25') of such right-of-way for Commercial Developer to improve, at its cost, as a landscape buffer which, taken together with Commercial Developer's 15-foot landscape setback, shall comply with the City's 40-foot wide setback requirement for principal arterials, as shown on the Conceptual Site Plan attached as Exhibit B-1 ."

8. Section 3.9.1 shall be revised to read:

3.9.1 All retail and office buildings on Lots north of the Lawrence-Kennedy Lateral and contiguous to the proposed Highway 44 Alternate Route shall have a primary or secondary customer entrance facing or located on a wall perpendicular to and visible from the Alternate Route. Such buildings shall be permitted to have parking areas between the building and the Alternate Route.

9. Section 3.10.3(c) shall be revised to read:

(c) At least twenty five percent (25%) of all residences in the Project shall feature a side entry garage. Of the residences with front entry garages, at least twenty percent (20%) shall feature a garage set back at least ten (10) feet behind the front elevation of the house living area, and at least twenty percent (20%) shall feature the garage set back at least twenty (20) feet behind the front elevation of the house living area.

10. In Section 8.5 Notices, the address for Clarity Investments, LLC (Commercial Developer) shall be revised to read:

372 S. Eagle Road  
Box #378  
Eagle, ID 83616

and the address for The Orchards, LLC (the Orchards Developer) shall be:

802 W. Bannock, Suite 801  
Boise, ID 83702

11. **The Orchards Developer.** The Orchards Developer intends to develop a project on the Orchards Parcel that will include approximately 68 residential condominium units, consisting of thirty four (34) 2-unit buildings with a community clubhouse and pool (the "Orchards Development"). All of the construction in the Orchards Development will be wood frame on concrete slab, with primarily stone exteriors and wood siding. The exterior appearance

of each building in the Orchards Development will be similar to a large family home, including high-pitched roofs and round top palladium windows with brick trim above the windows and shall be substantially similar to one of the exterior elevations attached hereto as Exhibits D-1 and D-2 attached to this First Amendment. Each unit in the Orchards Development will have a private entry with an enclosed four-season veranda and may have an optional patio as depicted in Exhibits D-3 and D-4, attached to this First Amendment. Each unit in the Orchards Development will have a gas log fireplace and an attached 2-car garage. The Orchards Development will include substantial landscaping.

Amenities for the Orchards Development will include a stone- and wood-sided clubhouse with heated swimming pool. The clubhouse will consist of approximately 2,700 sf, with a vaulted great room, fireplace and kitchen. In addition, the clubhouse will include a large exercise room with equipment, sales office, men's and women's restrooms, and pool pump and equipment room.

The residential buildings, including associated parking, in the Orchards Development contiguous to the proposed Highway 44 Alternate Route shall have a minimum setback requirement of not more than fifteen feet (15'), measured from the interior boundary of the Right of Way for the proposed Highway 44 Alternate Route.

The Orchards shall provide for a secondary, emergency-only vehicular access to the Orchards Development in addition to the vehicular access shown on the Conceptual Site Plan attached hereto as Exhibit B-1, with the specifications and location of such secondary emergency-only vehicular access to be determined during the permitting and entitlement process for the Orchards Development.

Notwithstanding anything to the contrary contained in this First Amendment or the Development Agreement, the Orchards Development shall not be subject to the terms and conditions adopted by Residential Developer and applicable to residential development on the Patio Home Lots and the Custom Home Lots depicted on Exhibit B-1 attached to this First Amendment, it being the intent of the parties that the sole restrictions applicable to the Orchards Parcel and the Orchards Development shall be those set forth in this Section 10 of the Amendment, illustrated in Exhibit D and any imposed through the City's Design Review. Except as otherwise specifically provided or modified in this First Amendment, the Orchards Developer hereby ratifies and the Orchards Development shall be bound by the terms and conditions of the Development Agreement.

**12. City Council Adoption.** The Middleton City Council hereby adopts this First Amendment pursuant to Middleton City Code § 5-7-4(B).

**13. Effect of Amendment.** In the event of a conflict between the Development Agreement and this First Amendment, the terms of this First Amendment shall govern. The terms of the Development Agreement, as modified by this First Amendment, shall continue in full force and effect.



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

Dated this 12 day of February, 2007.

**CITY:**  
**CITY OF MIDDLETON,**  
an Idaho municipal corporation

Frank McKeever  
Frank McKeever, Mayor

Attest: Elles Smith  
City Clerk



**RESIDENTIAL DEVELOPER:**  
**WINDING RIVER PROPERTIES, L.L.C.,**  
an Idaho limited liability company

By: **Vision First, L.L.C.,**  
a Washington limited liability  
company, Managing Member

By: Randal S. Clarno  
Randal S. Clarno,  
Managing Member

**THE ORCHARDS DEVELOPER:**  
**THE ORCHARDS, LLC,**  
an Idaho limited liability company

By: Michael Dixon  
Michael Dixon,  
Manager

**COMMERCIAL DEVELOPER:**  
**CLARITY INVESTMENTS, LLC,**  
an Idaho limited liability company

By: Michael McCabe  
Michael McCabe,  
Manager

STATE OF IDAHO )  
 )ss.  
County of Canyon )

On this 12 day of February, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **FRANK MCKEEVER**, known or identified to me to be the **MAYOR** of the **CITY OF MIDDLETON**, the municipal corporation that executed the instrument or the person who executed the instrument on behalf of said municipal corporation, and acknowledged to me that such municipal corporation executed the same.

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

By: Brandy Lammy  
Notary Public for the State of Idaho  
Residing at Caldwell  
My commission expires on 11-3-12

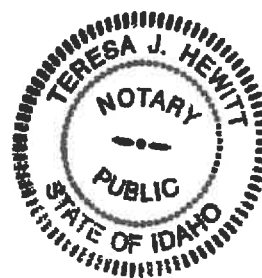


STATE OF IDAHO )  
 )ss.  
County of Ada )

On this 5<sup>th</sup> day of February, 2007, before me, the undersigned, a Notary Public in and for the State of Idaho, duly commissioned and sworn, personally appeared **RANDAL S. CLARNO**, known to me to be the **MANAGING MEMBER** of **VISION FIRST L.L.C.**, a Washington limited liability company, which is **MANAGING MEMBER** of **WINDING RIVER PROPERTIES L.L.C.**, the limited liability company that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument by the Operating Agreement of said limited liability company.

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

By: Teresa J. Hewitt  
Notary Public for the State of Idaho  
Residing at Engle, Idaho  
My commission expires on 9/30/2011



STATE OF IDAHO )  
 )ss.  
County of Ada )

On this 12 day of February, 2007, before me, the undersigned, a Notary Public in and for the State of Idaho, duly commissioned and sworn, personally appeared **MICHAEL DIXON**, known to me to be the **MANAGER** of **THE ORCHARDS, LLC**, the limited liability company that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument of said limited liability company.

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

By: Elena Gomez  
Notary Public for the State of Idaho  
Residing at Middleton  
My commission expires on 3-14-11

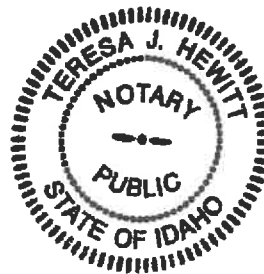


STATE OF IDAHO )  
 )ss.  
County of Ada )

On this 5<sup>th</sup> day of February, 2007, before me, the undersigned, a Notary Public in and for the State of Idaho, duly commissioned and sworn, personally appeared **MICHAEL McCABE**, known to me to be the **MANAGER** of **CLARITY INVESTMENTS, LLC**, the limited liability company that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument of said limited liability company.

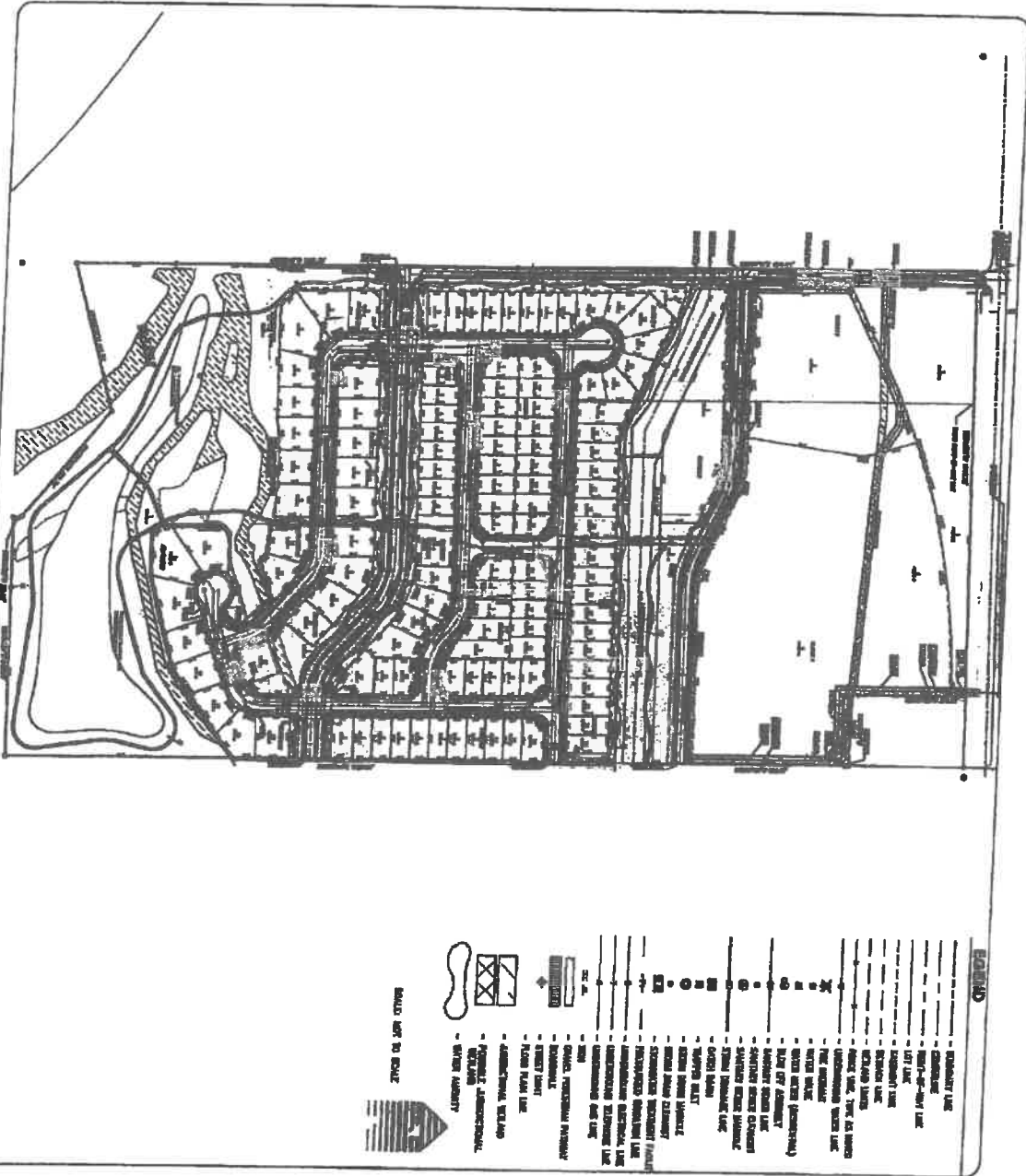
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

By: Teresa J. Hewitt  
Notary Public for the State of Idaho  
Residing at Edge, Idaho  
My commission expires on 9/30/2011



**EXHIBIT B-1**

**CONCEPTUAL PLAN (City-Approved Preliminary Plat)**



PRELIMINARY  
 PLAT  
 C000

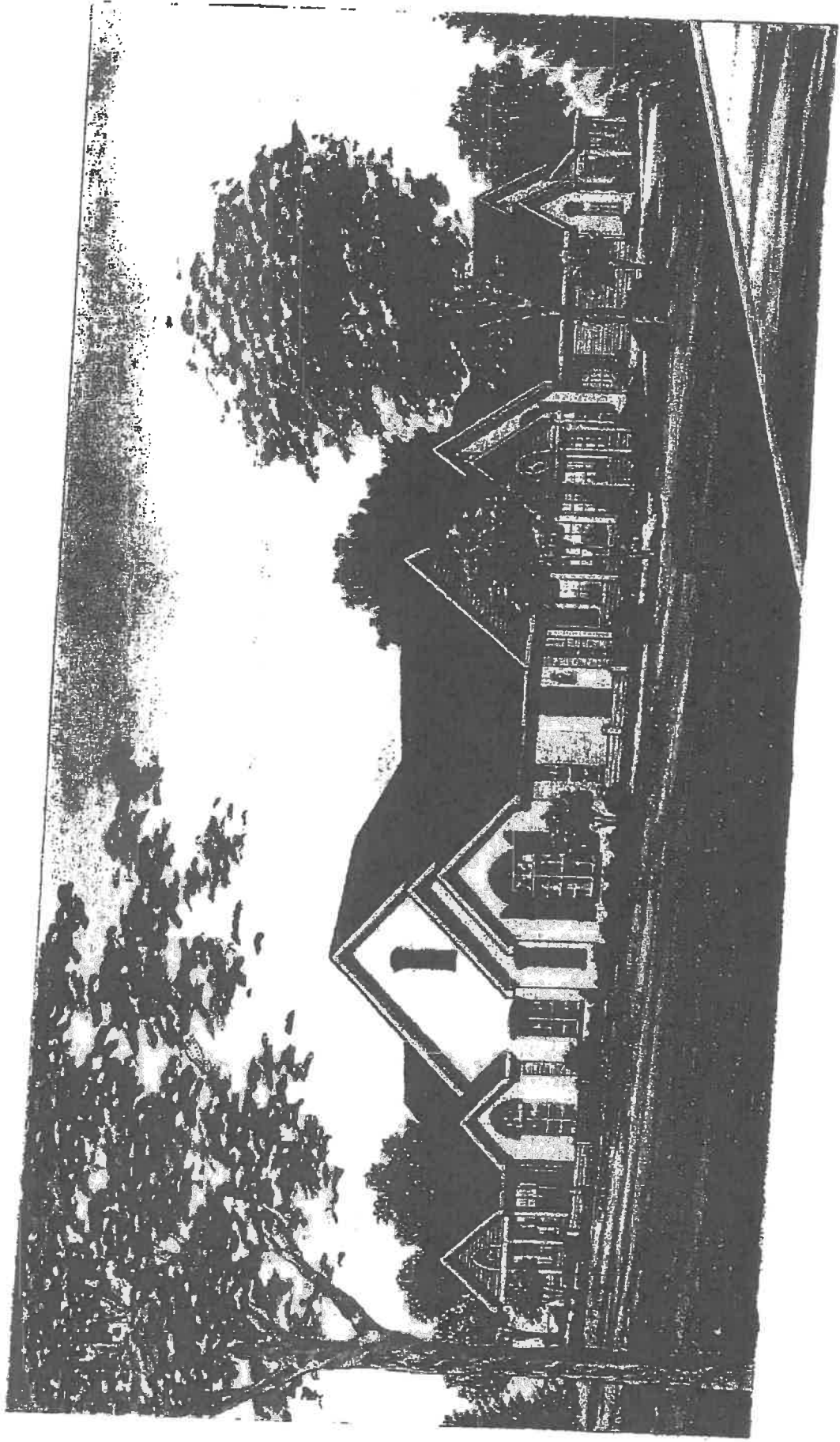
**PRELIMINARY PLAT**  
**Winding River Subdivision**  
 Vision First LLC/Clarity Investments LLC.  
 City of Middleton, Idaho

**DESIGNING**  
 400 S. Pioneer Place      Boise, ID 83725  
 Tel. 208-333-8200      Fax. 208-333-8201  
 Builders • Architects • Surveyors • Engineers

**EXHIBIT D-1**

**The Orchards Elevation Cathedral II**

# Cathedral II



**EXHIBIT D-2**

**The Orchards Elevation Classic III**

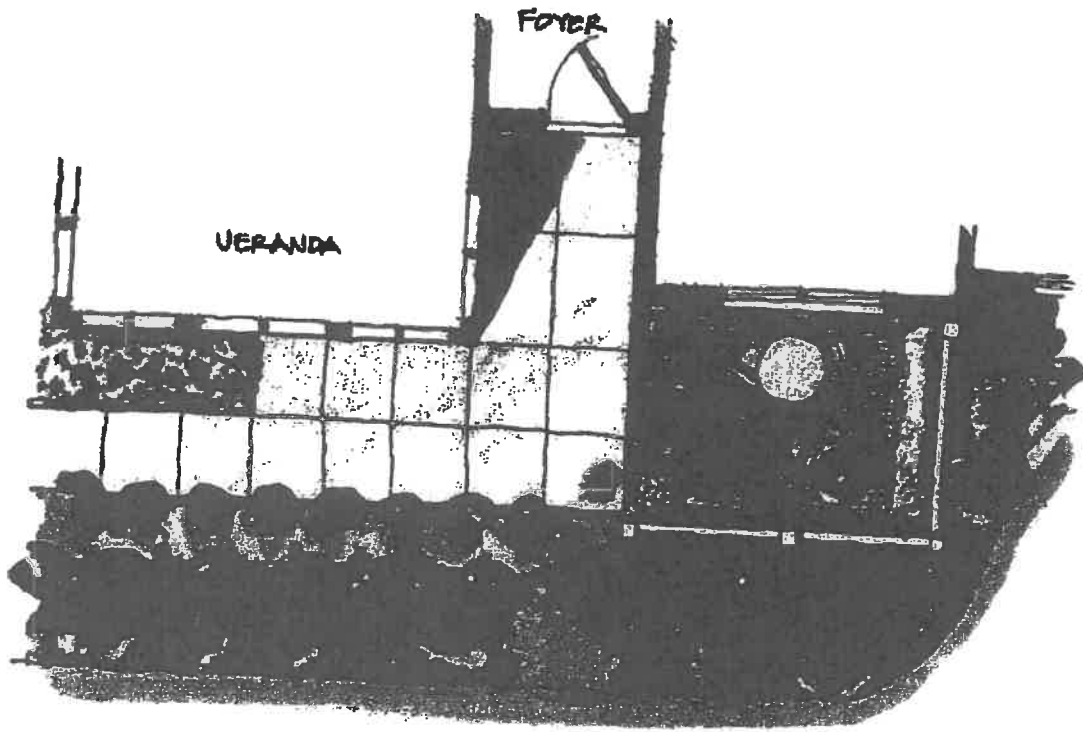


# Classic III



**EXHIBIT D-3**

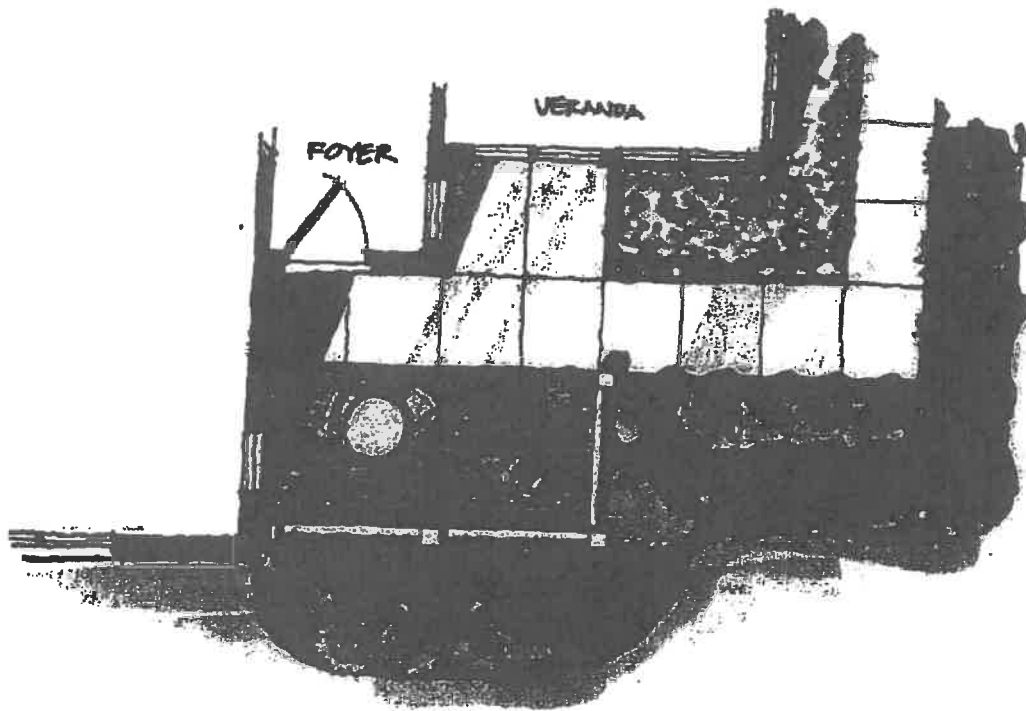
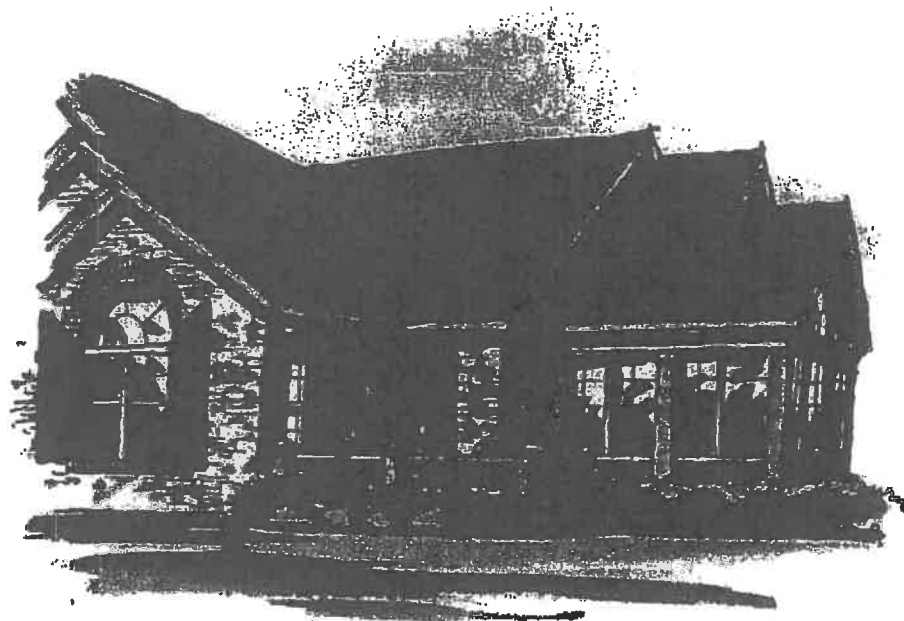
**The Orchards Patio Option #1**



CANTERBURY  
OPTIMAL PATIO WITH FENCE

**EXHIBIT D-4**

**The Orchards Patio Option #2**



**ABBEY**

**OPTIONAL PATIO WITH FENCE**

Exhibit "E"

WHITE PETERSON

ATTORNEYS AT LAW

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

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

PHILIP A. PETERSON  
WILLIAM L. PUNKONEY

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

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

June 7, 2021

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

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

Dear Commissioners,

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

**At Minimum, the Public Hearing and Deliberation Should be Continued to a Later Date**

There are multiple reasons these Applications are not yet ready for final deliberation and this matter should be continued to a later date.

*There is no presentation of a development agreement as required by City Code.*

Idaho Code §67-6511A ties a development agreement into the land use process at the zoning stage. Middleton City Code 5-2-1 (B) requires that when the Commission determines a development agreement is necessary that "the commission shall retain jurisdiction of the matter, defer consideration of the rezone requested and set a time limit for submittal of the development agreement."

Under the Applications at hand, there is an existing development agreement tied to previous annexation and zoning of the 75-acre MU property. However, one of the Applications is specifically requesting substantial modifications to that development agreement. Additionally, there is an application for annexation and zoning of the 14-acre parcel, which should necessitate its own development agreement or substantial further addition/modification to the existing development agreement.

The staff report, as was just recently posted last Friday afternoon, contains some proposed conditions for a development agreement, but presents no actual draft development

agreement. Applicant is requesting modifications and additions to an existing 2006 development agreement. The staff report also makes clear that the existing development agreement is “outdated,” “old,” and requiring “outdated provisions . . . [to] be entirely removed and replaced with the DA provisions that are more relevant . . . “ See *Staff Report, p. 10, sect. L.*

Staff is recommending conditions for a development agreement. Yet, there is no presentation of a draft development agreement for the full consideration of the Commission or in a manner that allow the public a meaningful opportunity comment on such at the required public hearing.

Of further concern, the lack of a draft Development Agreement means there is no ability to see or review the timing commitments of the Project. Development agreements, because they often allow for some latitude on standards and also lock in place the standards of a particular time, should not be open-ended and allow to exist in perpetuity. In particular, for large phased developments such as what is proposed, it is critical that the City apply and incorporate into the DA a clear timeline and schedule of deadlines that is enforceable to ensure the project is moving forward (or goes through a deliberative amendment process to show good cause for amending the DA’s schedule).

Therefore, pursuant to Middleton City Code 5-2-1(B), the appropriate step at this time is for the Commission to “retain jurisdiction . . . defer consideration. . . and set a time limit for submittal” of a full and complete draft development agreement. This is a necessary step for substantial and meaningful review and comment by affected parties. As of now, affected parties can only guess at what the development agreement may actually look like.

*There is substantial missing and incomplete information on the Applications.*

The absence of an actual draft development agreement is the most substantial concern, but there are other key missing or incomplete pieces of information necessary for appropriate hearing and deliberation on the Applications.

The Staff Report, at Section T, presents a concise list of the missing and incomplete information. However, it is inappropriate to simply overlook the absence of this key information and make the submission of such a condition of approval (as the Staff Report seems to suggest). The missing information is not simply minimal technical details of minor relevance to the Commission’s deliberations. Instead, the missing and incomplete information is substantial in scope and directly relevant to questions and deliberation the Commission needs to hold in evaluating the Applications.

For example, the Staff Report explicitly notes that the Middleton Rural Fire District has not yet completed its review and submitted comments. The ability to adequately provide public safety services is a key consideration the Commission must take into account in reviewing the Applications.

Similarly, the Staff Report explicitly notes pending and incomplete information from the City Engineer – information which should be presented and under consideration at the P&Z level, not simply deferred to the Council. See *Staff Report, p. 6, sect. E.*

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

Prior to last Friday, the City had only made available on the website the River Pointe Master Land Use Application, dated May 5, 2021. Prior to that Application, there had been

multiple and different conceptual plans presented by the Applicant to neighboring property owners. This is one of the reasons that there ended up needing to be three neighborhood meetings. The shifting goalposts of the project is also a concern the Commission can see throughout many of the public comments submitted to date.

The Staff Report, including substantial additional new information related to the Application, was not posted and made available to the public until late afternoon on Friday, June 4, 2021. It is completely understandable that this is a complicated project that would require substantial time for City staff to review. However, the complexity and significance of this Project also are a reason there can be no rush in deliberations.

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

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

#### **Annexation of 14-Acre Parcel Should be Denied and/or Require a Fiscal Impact Analysis**

In evaluating whether or not to annex property, this Commission is guided by Idaho Code §50-222, which asks whether the lands “are reasonably necessary to assure the orderly development of Idaho’s cities in order to allow efficient and economically viable provision of tax-supported and fee-supported municipal services, to enable the orderly development of private lands which benefit from the cost-effective availability of municipal services in urbanizing areas and to equitably allocate the costs of public services in management of development on the urban fringe.”

The Applicant has provided no analysis or information supporting a finding that annexation of the 14-acre parcel is efficient and economically viable. There is a blanket statement in the application letter that the 14-acre development would pay for itself, but no financial impacts analysis is provided actually evidencing such. A similar statement is included in the Staff Report, despite any supporting information or analysis showing such to be true.

This lack of evidence should of major concern for the City. The 14-acre annexation would create a jutting out “dagger” of the city into the midst of the County. This means the ability to provide city services may be more challenging. In particular, the ability to provide public safety services is unknown in the absence of completed comments from the fire district. Similarly, there is no direct analysis of the provision of utility services to this 14-acre dagger.

As an additional concern, the fiscal impacts of annexation on city budgets has been worsened by the Idaho Legislature’s passage of House Bill 389 in the recent session. This new law, which was made effective immediately, limits and caps the City’s ability to capture new growth in assessments. This means that annexation and growth must be carefully evaluated to determine if it will even support itself and not be a drag on existing City



property owners. Cities across the state are currently struggling with HB389 and what it means for budget and services. No doubt, the Commission is aware of other cities in the Treasure Valley who are putting pauses, moratorium, and more stringent review of any annexations until the full impacts of HB389 can be understood.

For the application at hand, this is further reason the Commission should require a fiscal impacts analysis before proceeding to a recommendation on annexation of the 14-acre parcel.

### **Zoning of 14-acre Parcel**

The Applicant's request that the 14-acre parcel be zoned R-3 is a major jump in land use intensity, is not orderly, and is not in line with the nature of the surrounding area. An R-1 designation would be more appropriate for the character and development of this area.

It is important to note that this area is at the rural interface into the county. The property to the north and east is agricultural. The Riverbend residential development to the south is low density, one-acre plus lots. This area should preserve an orderly transition from rural. Instead, Applicant's proposed zoning designation creates a dagger of higher density single-family residential – drastically altering the nature and character of this interface area.

Our clients are especially frustrated in that at the neighborhood meetings, the Applicant's representatives at multiple times indicated that lower density residential development was their intent – more similar in nature and characteristics to the Riverbend development to the south. As can be seen in the submitted comment letters, many of the neighbors are upset about the reversal of position with the higher-density zoning now proposed by the Applicant. Such frustration is justified when looking at the nature of this area and the type of density and development that would be more appropriate for this area. A look at the plat figures in the Staff Report, where the new housing would abut the Riverbend residential lots to the south, illustrates how the proposed 14-acre development creates somewhere in the range of four lots for every one Riverbend lot – a substantial and impactful increase in density.

Applicant relies on the Comprehensive Plan to suggest that this area was designated on the Future Land Use Map as Transit-Oriented, which would justify higher density development. However, Applicant in their own submittal letter, admits that City staff have already informed them that the transit-focus on the Comp Plan for this area is now obsolete and no longer applicable. This further supports that the characteristics of this area are more appropriately preserved as R-1 or similar to appropriately buffer and transition. An R-1 designation also keeps the orderly development of the City more in line with the future projections for this area, which neighboring properties relied upon in their own planning.

Similarly, the Staff Report recommendations on this issue rely on an outdated and no longer applicable Comprehensive Plan approach that was developed for a very different time with a very different future anticipation for this area. The higher density and mixed-use approach of the 75-acres should require some re-evaluation since it has been fifteen years, with substantial changes, since its original approval. And even more important, the addition of the 14-acre dagger should be very carefully contemplated and scrutinized for suddenly creating higher density housing in the middle of what essentially is today clearly anticipate to remain a rural-residential buffer area.

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

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

We strongly recommend the Commission fully exhaust these contingencies, in particular the impacts if River Ranch does not proceed. The Commission should also more fully evaluate and ask for study on the impact of the River Street connector road,<sup>1</sup> and particularly its interface with Duff Road and then on north to 44 or south to other potential routes or future routes. Many of the public comments submitted as of the date of this letter already have referenced these concerns, particularly as to Duff Lane and Duff Pond. The traffic analysis must go beyond simply looking at how River Street will connect with Duff Lane, and instead be more comprehensive in evaluating the impact and improvements to Duff Lane itself. For efficiency we will simply refer to such again here and add our voice in support of those concerns as a reason for denial or delaying of deliberation on these Applications until these traffic issues are better analyzed and resolved.

If this project does move forward, the traffic situations are also a significant concern that needs to be clearly conditioned and approached in the development agreement – another reason why the current absence of a development agreement draft is very concerning.

### **Additional Platting and Development Comments**

The following are additional platting and development comments identified at this time within the short review time from the posting of the more complete applications, supporting information, and staff report.

- More appropriate buffering as to noise, light, and visibility needs to be incorporated in between any residential development on the 14-acre parcel and the Riverbend properties to the south so as to mitigate impacts. This should be incorporated into the Development Agreement with specific timing and appropriate security/bonding to ensure such improvements are constructed prior to any development of the 14-acre parcel (even just road).
- A Comprehensive Plan is merely a guidance document and does not “require” anything. The Staff Report comment that Yukon Street is “required” by the Comprehensive Plan is therefore not accurate. *Staff Report, p. 5, sect. E.*
- It is alleged that there will be no driveway access to Yukon Street. A review of the plat for the 14-acres though reveals that Lot 16 is essentially just a shared driveway, which does indeed interface substantially more similar to a driveway than a public road onto Yukon.
- Phasing was a new concept introduced with the Staff Report on Friday, and not clearly included in the Master Land Use Application previously available. The phases, and in particular where such phasing may be tied to the timing of required conditions, requires much more time to reasonably evaluate and comment. This again supports the argument for a continuation of the hearing and to better incorporation as conditions in the DA.

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<sup>1</sup> As another example of the problematic nature of such late availability of supporting information, it was not known until the Friday before this hearing that River Street was now being referred to as Yukon Street.

- The Staff Report references “variances.” See *Staff Report Sections K and L* in particular. However, there were no applications for variances as part of the Master Land Use Application; nor is there any analysis in the Staff Report of how the City Code on variances should be applied to this situation. This raises major concerns about whether variances are being adopted without appropriate procedure.
- In addition, Section L of the Staff Report is troubling in that it seems to suggest that these variances are an issue of compromise whereby the City settles for lower setbacks than standards require. It is the Developer who is bringing forward these new applications and seeking approvals for modifications and additions, including a substantial new 14-acre annexation and development. This is not a situation where the City should compromise on its standards, but instead should be looking to improve the Project and its impacts by using the opportunity to bring the Project up to current standards after a fifteen-year delay.<sup>2</sup>
- It should be clarified how the development recreational facilities are being made available for public use. In particular, how are things like pickleball courts and swimming pools being maintained and made available on an ongoing basis. Will ownership be transferred to the City? How will the City pay for such if that is the case? Or how will the public access/use be preserved if the facilities are owned/maintained by a private entity or entities?

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

For the many reasons and questions stated above, as well as the many submitted in other public comments to date, we hereby request that this Commission deny the Applications, in particular the annexation and zoning of the 14- acre parcel. In the alternative, based on the timing issues highlighted above we strongly recommend that this Commission continue this matter for complete submission of required materials, further development of the Record, and full and appropriate deliberations.

Respectfully submitted,

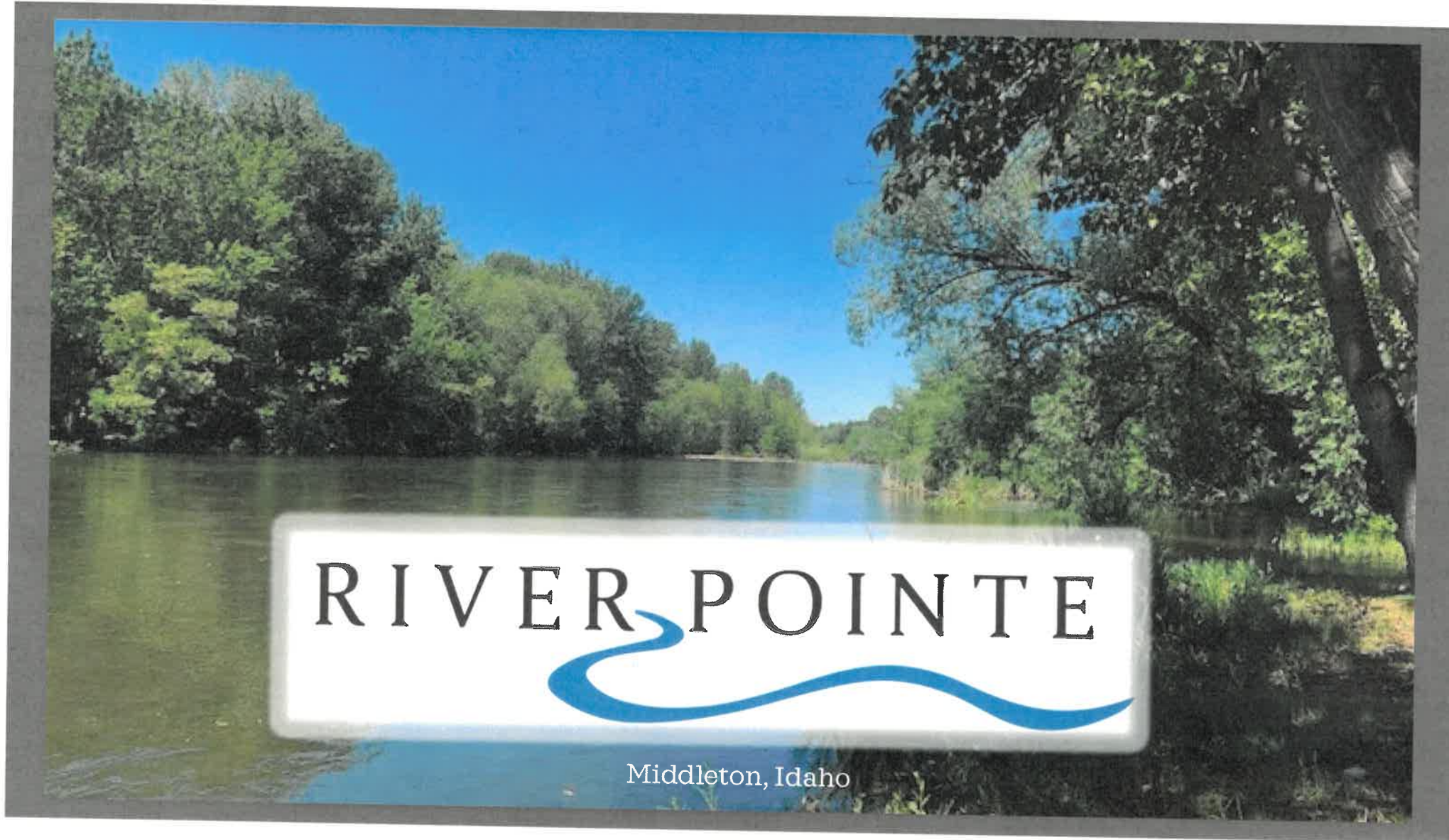


Matthew A. Johnson

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<sup>2</sup> Or perhaps in limited situations recognize and explain where the City Code standards may also need some updating.

Exhibit D



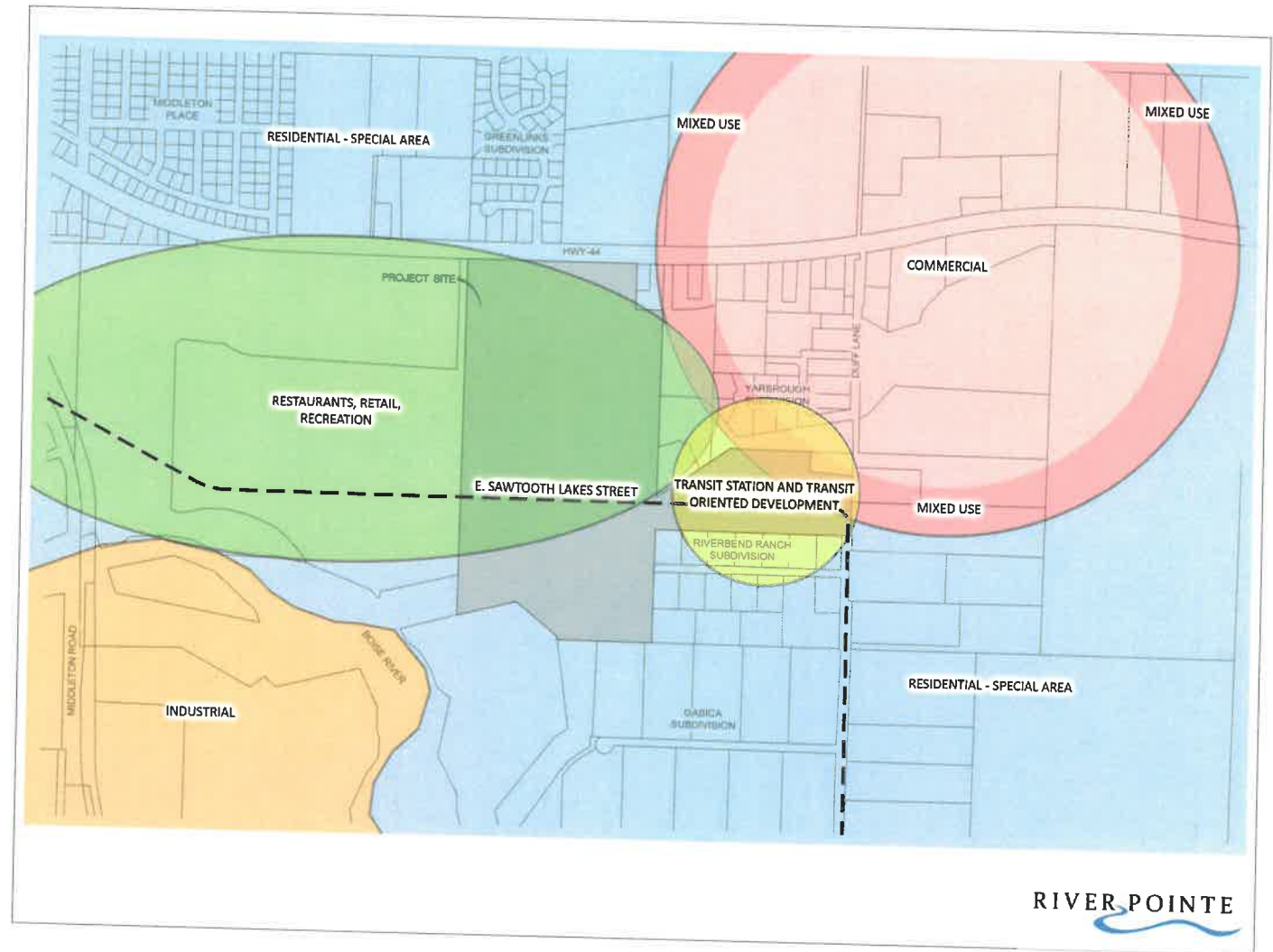
RIVER POINTE



Middleton, Idaho

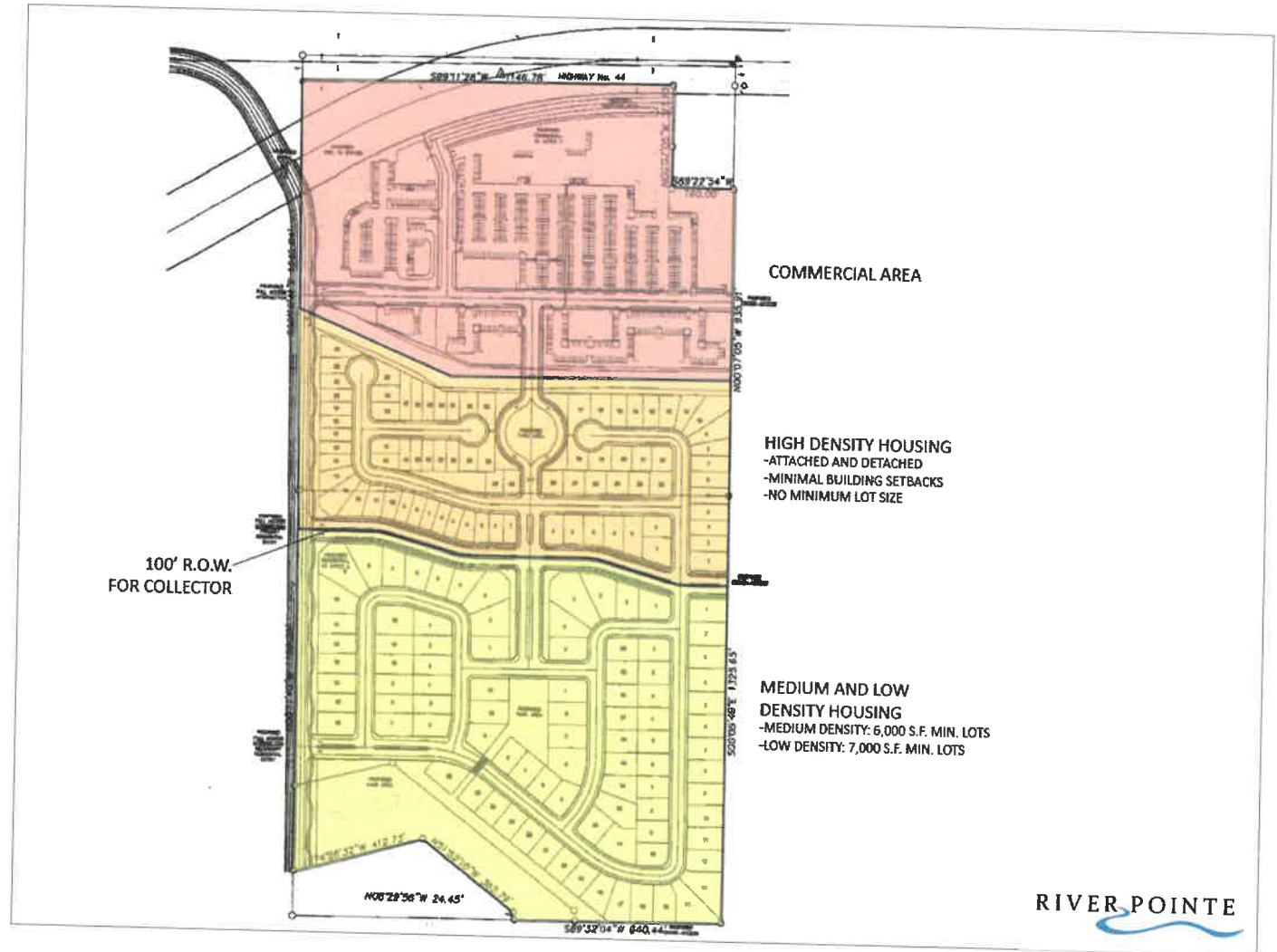
# Middleton Future Land Use Map

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



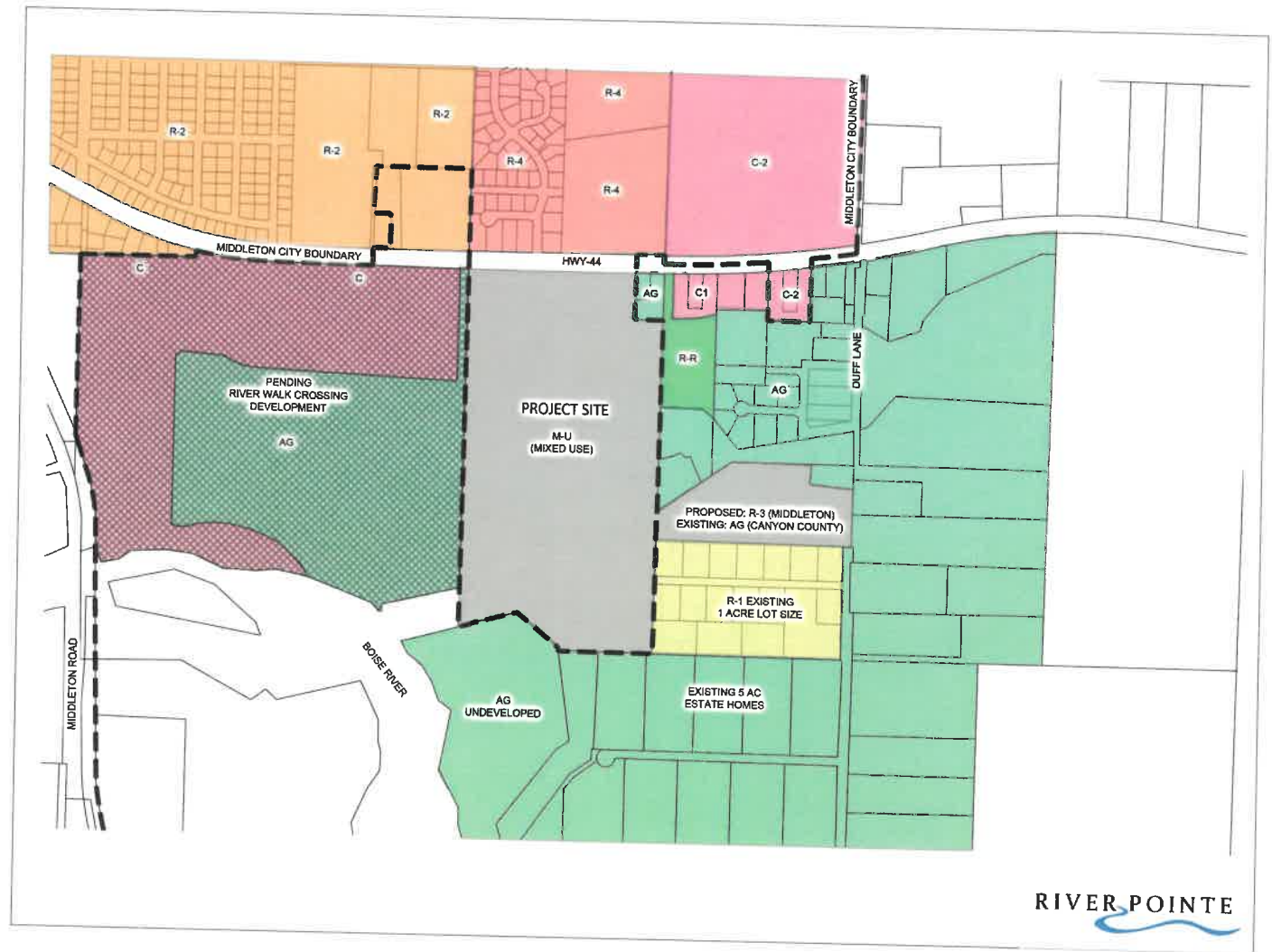
## Approved Plan from Original Development Agreement

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



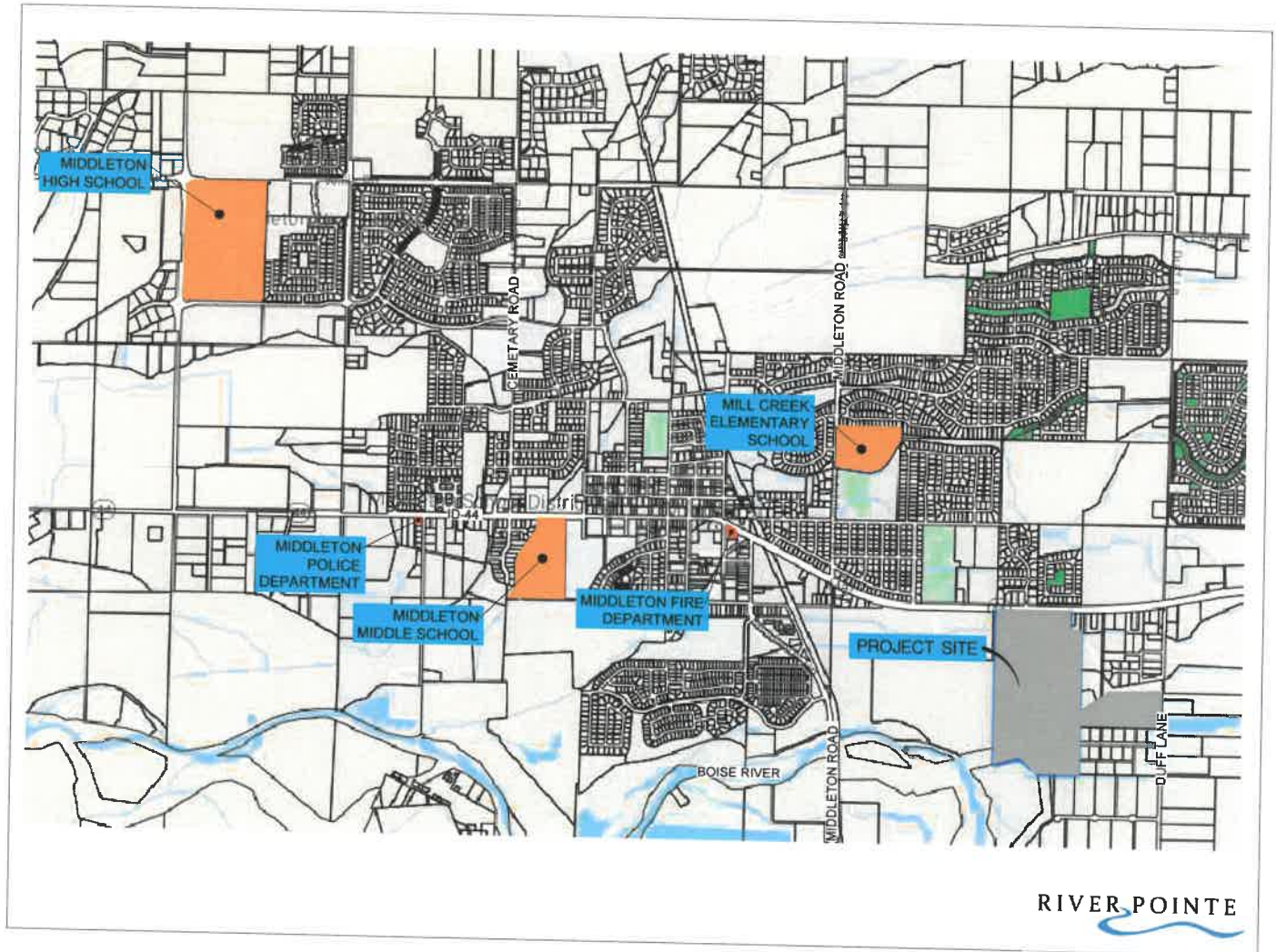
# Zoning Map

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



# Middleton Schools and Emergency Services

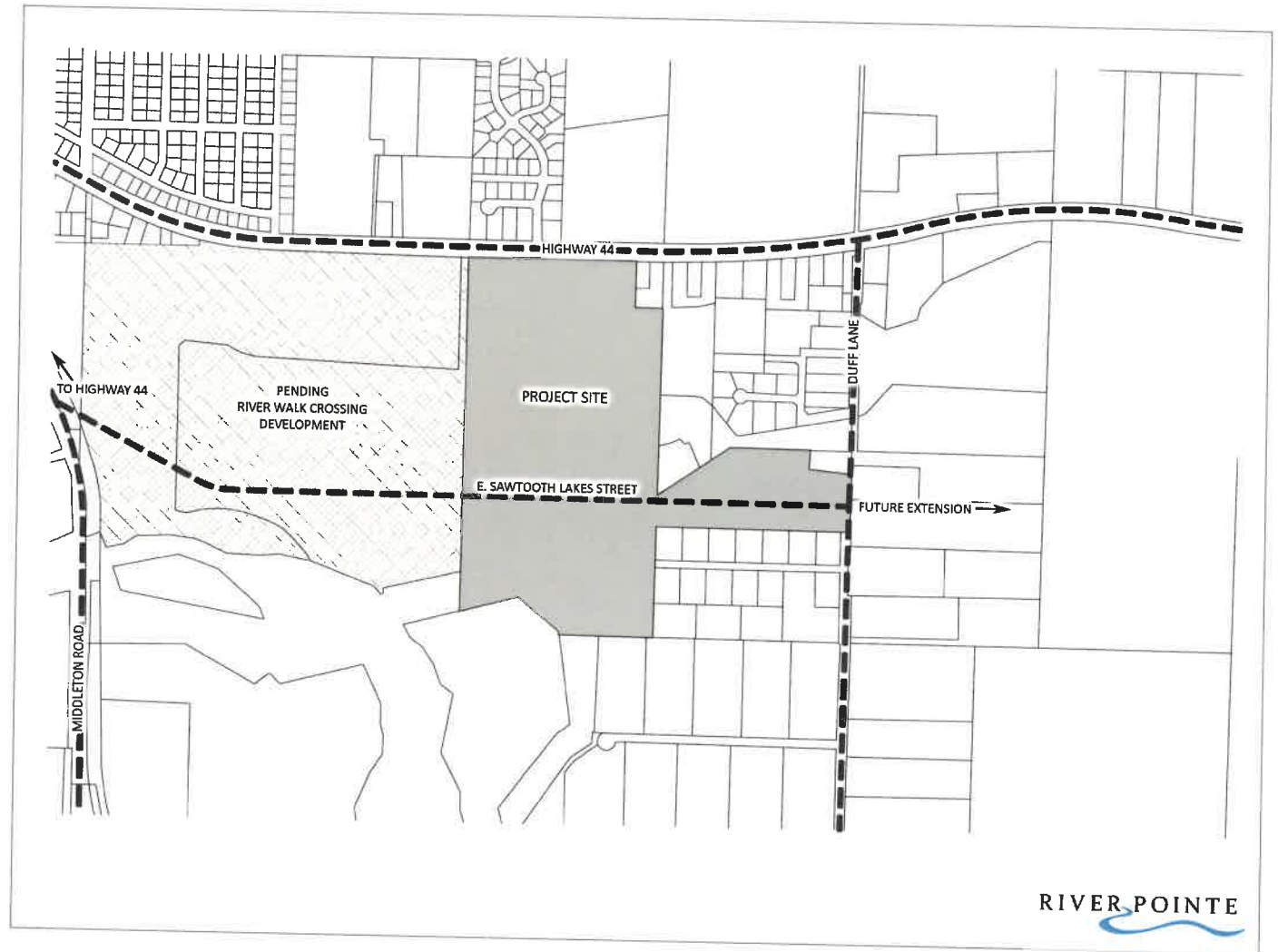
- Mill Creek Elementary - 1.3 miles
- Middleton Middle School 1.6 miles
- Middleton High School 3.6 miles
- Middleton Fire : 1.1 miles
- Middleton Police: 2 miles





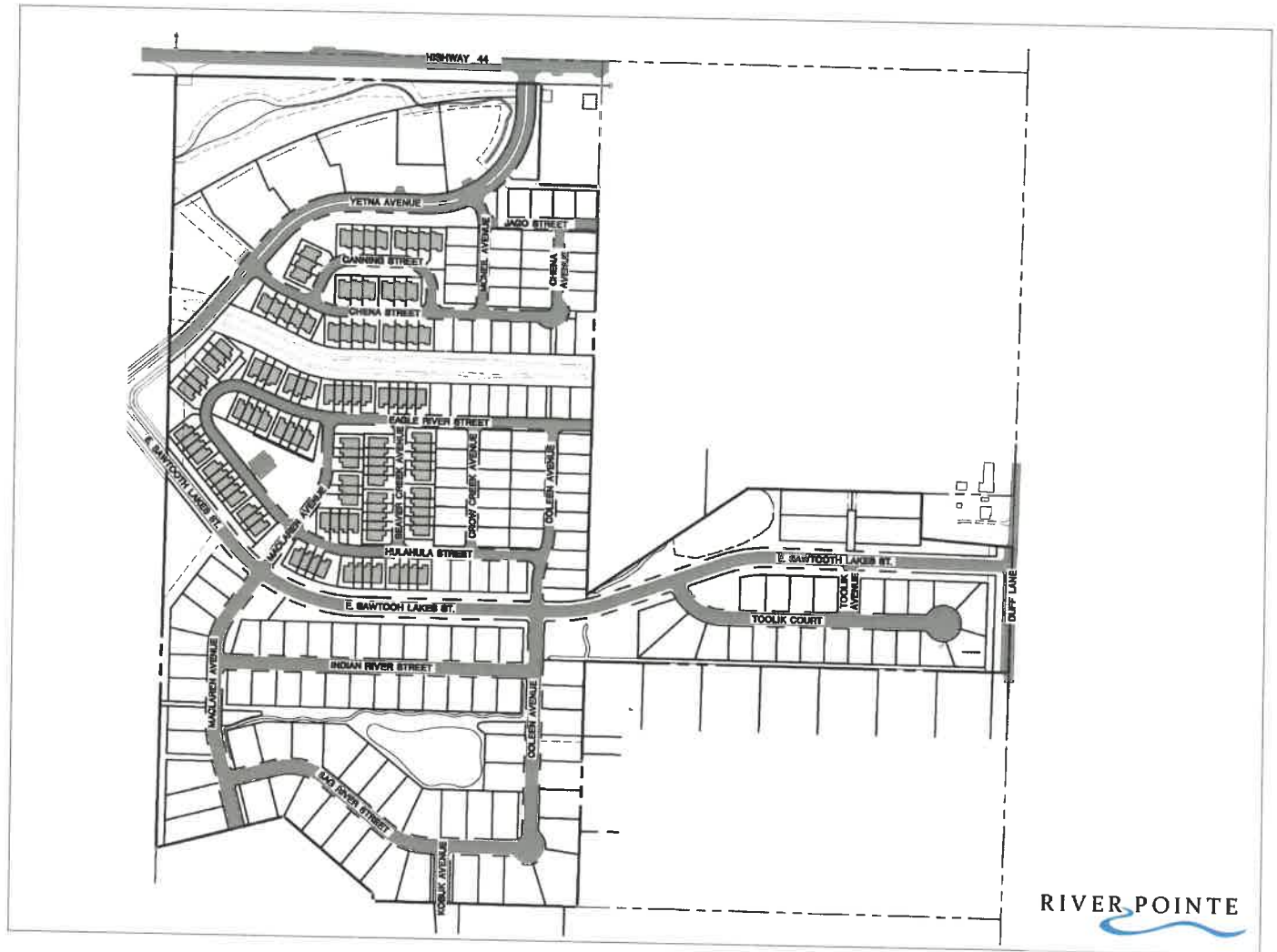
## Middleton Traffic Circulation Plan

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

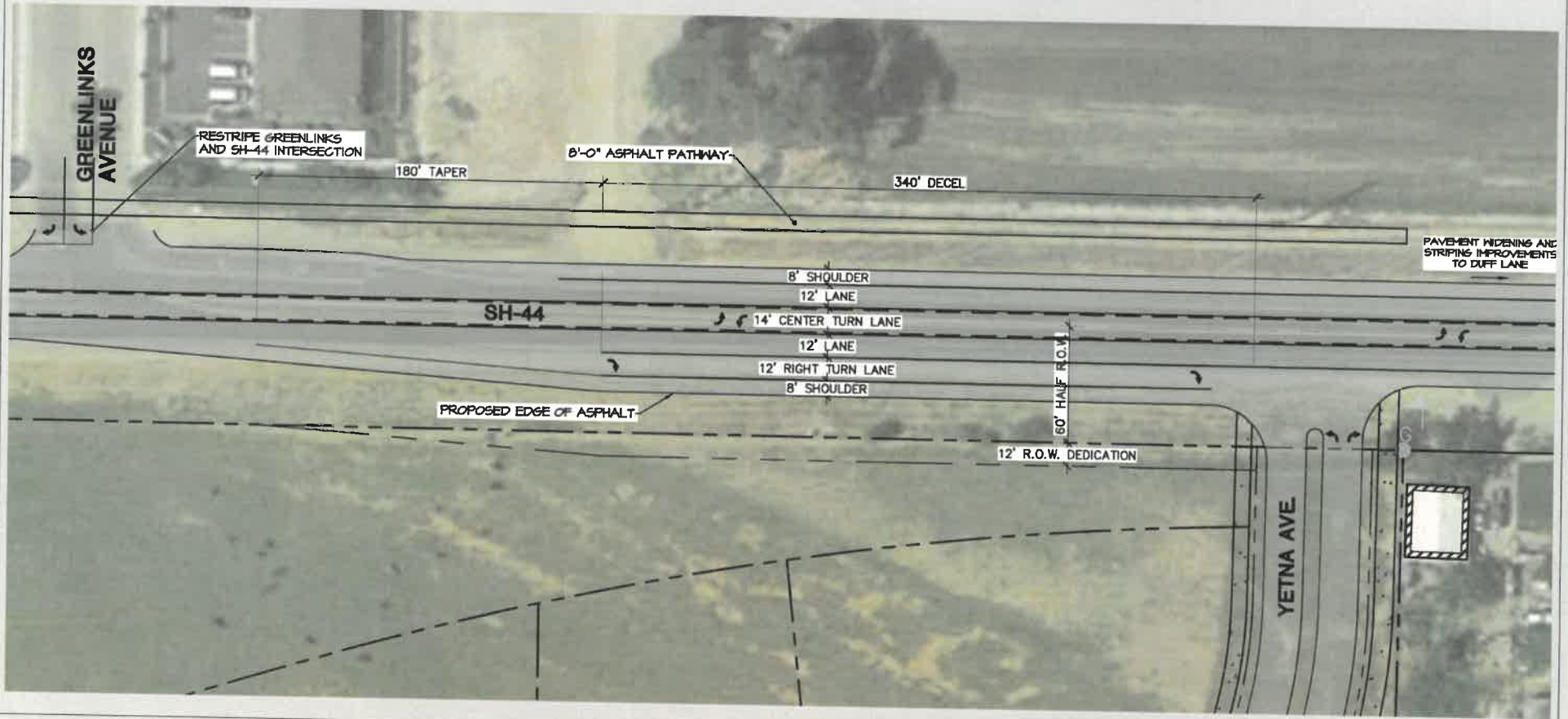


## Proposed Circulation Plan

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



# Planned Improvements to Highway 44



# Planned Improvements to Highway 44



## Proposed Development Layout

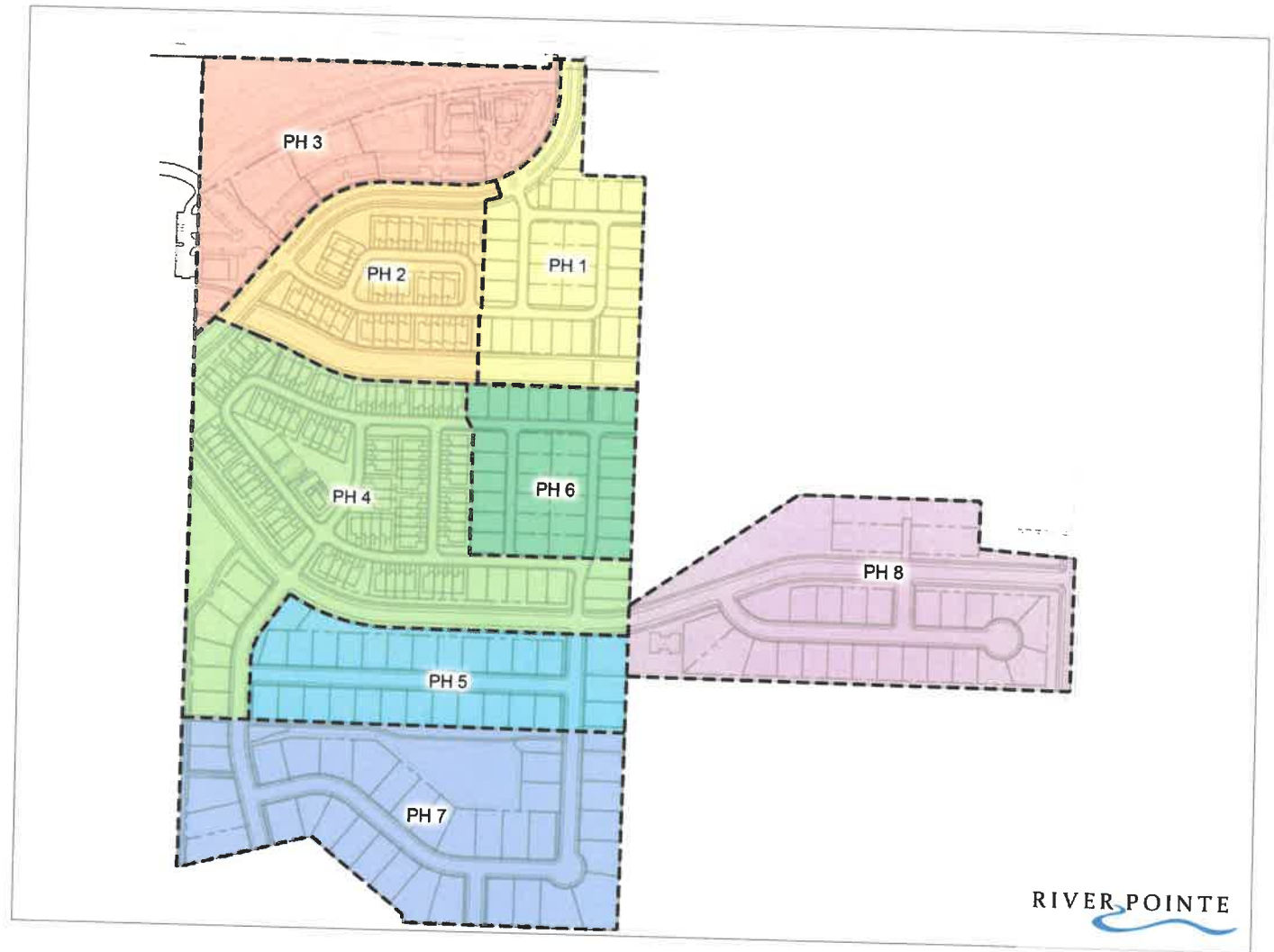
- Commercial lots at north end
- 55+ Townhomes and garden homes north of Kennedy Drain
- Townhomes and garden homes transition between the 55+ community and the traditional residential
- R-3 compliant residential lots south of Sawtooth Lakes Drive and on 14-acres
- Residential lot sizes are largest at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



RIVER POINTE

# Proposed Phasing Plan

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





## GARDEN HOMES AT RIVER POINTE

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

RIVER POINTE



## GARDEN HOMES AT RIVER POINTE

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

RIVER POINTE





## SOUTH RIVER POINTE

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

RIVER POINTE

# SOUTH RIVER POINTE



RIVER POINTE

# SOUTH RIVER POINTE



RIVER POINTE

# SOUTH RIVER POINTE



RIVER POINTE

# THE VILLAS AT RIVER POINTE

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



RIVER POINTE

# THE TOWNHOMES AT RIVER POINTE

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



RIVER POINTE











## COMMERCIAL DEVELOPMENT

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



RIVER POINTE

## COMMERCIAL DEVELOPMENT

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RIVER POINTE

# AMENITIES AND COMMON AREAS



Community Pool



Children's Play Area

# AMENITIES AND COMMON AREAS



Pathway along Kennedy Drain

Pickleball Courts



# AMENITIES AND COMMON AREAS

Landscaped Pathways  
and Community Pond



# AMENITIES AND COMMON AREAS



Landscaped Boulevard Entry  
from Highway 44





# Thank You

from the  
River Pointe Team



RIVER POINTE

Testimony for River Pointe Subdivision

I am Jack Connell I live at 10255 Gabica St. Middleton

We have lived here for 22 years.

I moved into the valley in 1964 to attend Boise Junior College.

In 1973 I started working for Idaho Power installing power lines to new development and went on to design power service to residential and commercial.

The Duff Street area is similar to east Boise Avenue in Boise. In the 50's a lot of small parcels were sold consisting of one to 10 acre parcels. In the late sixties and early 70's the three area dairies sold or developed into subdivisions. That was followed in the 80's with infill development of the smaller parcels. The beauty of this development is that the size allows for a master plan that can provide amenities such as path ways for foot traffic to the commercial area and the river which the infill developments cannot. The mixed density provides for homes for a variety of owners.

On the traffic side this follows what has been established along HW 44. Just look at Eagle east of Eagle Road. In early 2000 this area began to develop and access to the Eagle bypass was to be controlled so as not to slow traffic. Riverside drive was designed to collect traffic in the I area from Eagle Rd and eventually Hwy 55 and the three cities crossing.

I support this development because I think it is a very special opportunity for orderly growth of Middleton that takes advantage of the river area with green belt access and walking distance to commercial area.

When we moved out here Willard Stevens wintered his draft horses back by the river and fed from a wagon pulled by his draft horses. But we could see the chevron gas station lights and we always knew that Watkins and Stevens properties would be developed at some point. This is a better project than we ever imagined and it will have a very positive effect for the city.

The only thing I question is the designation of age preferences on some of the units. I just cannot see the value of the city sponsoring discrimination.

**From:** [Debbie Hundoble](#)  
**To:** [Roberta Stewart](#)  
**Cc:** [Robert Burnett](#)  
**Subject:** 90 Acre Development-River Pointe  
**Date:** Monday, June 7, 2021 11:31:31 AM

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Hi Roberta,

I am writing this note on behalf of the proposed River Pointe Community.

My husband Dennis and I live at 10043 Riverbend Place in Middleton, we are aware that we are on the path of growth for Middleton. We were in favor of having the proposed small active adult community just north of us on the 15 acre parcel with a cul de sac and not a through street onto Duff Lane. Now, we are all faced with a new plan that ITD and other agencies are requiring, which is a proposed collector road onto Duff Lane which will move traffic onto small country roads. We are already challenged with the danger of crossing Hwy 44 from Duff Lane and Lansing onto Hwy 44. There are accidents at these two roads on a regular basis. My question regarding this is, why doesn't ITD widen Hwy 44, widen Middleton Rd. widen Chinden and widen Star Rd. to better move traffic vs. moving traffic onto these small country roads ?

The benefits of this proposed master planned community is the beauty of the development plan. Instead of simply building production homes to fill in the land, it offers lakes to support high end custom homes, a river trail system, open space areas, a mixture of lot sizes, a large active adult component and a much needed commercial area that will change the face of Middleton.

The owner Brian Burnett has a vested interest in creating an upscale community, he owns the gorgeous riverfront property that connects to this proposed development.. His full intention has always been to create a master planned community to improve the city. Growth is coming, it is happening everywhere in the Treasure Valley, as a Realtor I admire smart growth where parks, trail systems, commercial and recreational amenities are included in development plans.

--

Debbie Hundoble  
208-488-0615  
Silvercreek Realty Group

**From:** [Michael Kelley](#)  
**To:** [Roberta Stewart](#)  
**Subject:** Oppresion to existing plan for 14 ac plot west of Duff In south of Riverbend Pl.  
**Date:** Wednesday, June 2, 2021 12:54:02 PM

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We are opposed to the current plan which has 26 lots. the current density in this area is 1 to 5 ac lots. this plan does not match the current density. we are also very concerned with the increased traffic which will be generated as Duff La is a narrow road and this would compromise the safety of the current and future residents

**To:** Middleton Idaho Planning and Zoning

**From:** William R. Kopp, 10205 Gabica St, Middleton, ID 83644

**Subject:** *Planning & Zoning Commission Public Hearing Date: June 7, 2021 regarding Riverpoint Subdivision*

I'm an Idaho native of 59 years and a neighbor to Brian Burnett's development just south of Gabica St. and writing this in support of Mr. Burnett.

Being the first house build on Gabica Street ~23 years ago, I have see a lot of development in and around the City of Middleton. Development and growth will happen, we've seen it happen over 40 years starting in Eagle and moving west to Star and Middleton. Having a developer that cares about the community, works with government jurisdiction and has a history of developing with quality is the best a community can hope for.

My experience with Brian is he is a man of character. A hard worker from dusk till dawn and with positive energy every running step. He has shown me that he cares about the land and the people he impacts with his development. I respect and trust what he tells me. The subject land will be developed and I support having someone I know and that cares about the community develop locally than someone I don't know or trust.

The high density of home appears to be a point of conflict for some. I want development of entry-level, affordable homes. Surrounding ourselves with families of similar income level creates boundaries based on income and social status and can be harmful to societal growth. Our first home in the North End of Boise was a postage stamp lot with a mix of old and young and all income levels. I'm grateful for the neighbors I had and the lessons I learned in how to peacefully coexist a community. Lastly, some versions of the development is noted to be for 55+ only. I support inclusion and want this development to be open to all, enabling citizens that are not high to middle income wage earners to own a home, regardless of age.

Kind regards,

William R Kopp

## Roberta Stewart

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**From:** Robert Burnett <invest1977@yahoo.com>  
**Sent:** Monday, June 7, 2021 1:45 PM  
**To:** Roberta Stewart  
**Subject:** Fwd: 90 Acre Development-River Pointe

**From:** Melody DenBeste <melodydenbeste@yahoo.com>  
**Date:** June 7, 2021 at 1:37:19 PM MDT  
**To:** Robert Burnett <invest1977@yahoo.com>  
**Subject:** Re: 90 Acre Development-River Pointe

Dear Roberta,

Re: River Pointe Community Proposal

I live at 22473 Duff Lane, I reside next to proposed above project. I am in favor of the small adult community Brian Burnett is proposing. I believe this project would be an improvement to our community.

Melody DenBeste  
22473 Duff Lane  
Middleton, ID 83644

Sent from my iPhone



## 2) Sterling Land Development - Annex/PP/Variance/DA

June 7, 2021 - Planning & Zoning Public Hearing

Please check

Name	Address	Phone or Email	Please check			
			In Favor	Neutral	Opposed	Testify
✓ George & Shaleen Stevens	78 Greenlinks Ave	two retired people @ hotmail			✓	✓
✓ Roberto Valdez	21977 Duff Lane	208 971 7623	X			
✓ Wally Swann	21977 Duff Lane	(651) 301-9395	X			
✓ JAKE JAMES	21977 DUFFLANE	208-348-9011	X			
✓ Steven Bryant	21977 Duff Lane	208-918-5542	X			
✓ Nico Hardman	21977 Duff Lane	208-866-9305	X			
✓ Brian Gibson	21977 DUFF Lane	208-310-0208	X			
✓ Travis Matheson	21977 Duff Ln	541-948-5541	X			
✓ Brian Anderson	2257 Pilgrim way	201-315-2924	X			
✓ Shane Plummer	12051 W. Kuna Rd Kuna ID	208 921-2879	X			
<del>Maria Hernandez</del>	<del>10076 Riverbend Place</del>	<del>907 24</del>				
✓ Cliff Becht	208 Atlantic Ave	_____		X		✓
✓ Jesse Valdez	21977 Duff Lane	_____		X		
✓ Jim Grey	23557 Duff Ln	208 250-2324	X			
Douglas Briggs	292 Atlantic Ave					







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

June 7, 2021 - Planning & Zoning Public Hearing

Please check

Name	Address	Phone or Email	Please check			
			In Favor	Neutral	Opposed	Testify
✓ Matt Hoffman	19851 Dominion Way	208-283-3767			X	X
✓ Lori & Sterling Smith	10079 RIVERBEND PL.	208-372-8743			X	✓ Lori
✓ Brian Burnett	21977 DUFF LN	208 994 1607	X			
✓ Kapri Maupin	21977 DUFF LN	208 870 0595	X			
✓ KETTY FULFORD	21977 DUFF LN	208 870 5991	X			
✓ Larry Belden	21977 DUFF LN	208 243 1848	X			
✓ Justin Foster	21977 Duff LN	208 559-2590	X			
✓ Jacoby Foster	21977 Duff LN	208 703 3428	X			
✓ Kellen Tierney	21977 Duff LN	208 703 5709	X			
✓ Joe Logan	21977 Duff LN	208 407 3983	X			
✓ Angel Villanueva	21977 Duff LN	208-514-8151	X			
✓ Bob Wilson	385 21977 Duff LN	208-340-0206	X			
✓ Maria Fernandes	10076 Riverbend Place	707-246-5914			X	
✓ Kathleen Kelley	10073 Riverbend Pl	831-801-7758			X	
✓ Marc Bybee (Attorney for Riverbend HOA)	5700 E Franklin #200, Nampa	(208) 466-9272			X	X
✓ ARMANDO FERNANDES	10076 RIVERBEND PL	707-656-9191			X	
✓ Todd Campbell	13856 Inwooddale	941 9107				

In Fare  
X Angel V.

21977 DJFF Lw 208.514-8151



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

June 7, 2021 - Planning & Zoning Public Hearing

Please check

Name	Address	Phone or Email	Please check			
			In Favor	Neutral	Opposed	Testify
MICHAEL KELLIEU	10073 RIVERBEND PL.	408-961-3323				
Regina Henley	10055 Riverbend PL.	408-429-9164		X		
Paul Leeuan	10055 Riverbend PI	408 455 8253		X		
DEBBIE CONNELL	10255 GABICA ST	208 860 0303	X			
Jack Connell	10255 Gabica st.	208-576-9948	X			✓
Peter Cadding	10031 Riverbend	907-494-9223		X		
GREG STARKJOHANLI	10049 RIVERBEND PL	208-697-7447		X		
DOUGLAS L BRIGGS	292 ATLANTIC AVE	208 585 3332.		X		
Robin Allen	9374 Blue Heron DR	208 585-2666		X		
DAN Allen	9374 Blue Heron DR	208 585-2666		X		
Shane Plummer	12051 W. Kuna rd Kona	208 921-2879	X			
Mico Hardman	21977 Duff Ln	208-866-9305	X			
Brian Anderson	2257 Pilgrim way	208-315-2924	X			
Roberto Valde	2257 Duff Ln	208-977-5275				

Francis Masterson 21977 Duff LV 541-948-5541 (in favor)  
JAKE JAMES 21977 DUFF LN 208-398-9011 (IN FAVOR)  
Wesley Swann 21977 Duff Ln (651) 301-9395 (infava)  
WATSON 10105 Duff Ln.







# Public Comment Sign In

June 7, 2021 - Planning & Zoning Meeting

	Name	Address	Phone or Email	Topic/Agenda Item #
11	Tim Hanahan	10055 GABICA ST	208-409-9177	B Barnett
12	RON WATSON	10105 GABICA ST	559 250 6323	P T BARNETT
13	MIKE GRBEFF	1889 RIDGE WAY	208-527-5227	
14	Jack Connell	10255 Gabica	208-576-9948	River Pointe
15	JON BRECKON	6661 Glenwood Street Garden City ID	208-376-5153	Riverpointe
16	<del>Rick FRANCIS</del>	<del>10028 Riverbend PL</del>		
17	Grace Davis	22493 Duff Ln	026-372-0284	River Pointe
18	MATT WILKE	MIDDLETON, ID PO Box 7	208 412 9803	RIVER POINTE
19	Michael Giacalone	9918 LANDROFF LANE MIDDLETON 83644	208 250-4122	RIVER Pointe
20				