MIDVALE CITY COUNCIL MEETING
AGENDA
September 05, 2017

PUBLIC NOTICE IS HEREBY GIVEN that the Midvale City Council will hold a regular meeting on the 5th Day of September, 2017 at Midvale City Hall, 7505 South Holden Street, Midvale, Utah as follows:

6:30 PM
INFORMATIONAL ITEMS

I. DEPARTMENT REPORTS
II. CITY MANAGER BUSINESS

7:00 PM
REGULAR MEETING

III. GENERAL BUSINESS
A. WELCOME AND PLEDGE OF ALLEGIANCE
B. ROLL CALL
C. Honor students for winning the Presidential Youth Environmental Award
D. Recognition of Allen Litster, Planning Commission Member
E. Canyons School District Bonding Presentation

IV. PUBLIC COMMENTS
Any person wishing to comment on any item not otherwise on the Agenda may address the City Council at this point by stepping to the microphone and giving his or her name for the record. Comments should be limited to not more than three (3) minutes, unless additional time is authorized by the Governing Body. Citizen groups will be asked to appoint a spokesperson. This is the time and place for any person who wishes to comment on non-hearing, non-Agenda items. Items brought forward to the attention of the City Council will be turned over to staff to provide a response outside of the City Council meeting.

V. COUNCIL REPORTS
A. Councilmember Quinn Sperry
B. Councilmember Wayne Sharp
C. Councilmember Stephen Brown
D. Councilmember Paul Glover
E. Councilmember Paul Hunt

VI. MAYOR REPORT
A. Mayor JoAnn B. Seghini

VII. PUBLIC HEARING(S) - 7:00 PM
A. Public Hearing on Proposed Text Amendment to define and regulate an "amusement house" use
[Lesley Burns, City Planner]
VIII. CONSENT AGENDA
A. Consider Minutes of August 29, 2017 [Rori Andreason, H.R. Director/City Recorder]

IX. ACTION ITEMS
A. Consider Approval of Resolution No. 2017-R-32 authorizing the Mayor to enter into a Development Agreement with Gardner Jordan Bluffs, L.C. [Phillip Hill, Assistant City Manager/Community Development Director]

B. Consider Ord No 2017-O-13 Rezoning property at 475 East Fort Union Boulevard from Single Family Residential (SF-1) Zone/Duplex and 7200 South Overlays to Mixed Use Zone/7200 South Overlay [Lesley Burns, City Planner]

C. Consider a Final Subdivision Plat for Jordan Bluffs 2-Lot Subdivision, 8056 South Main Street (7800-8600 South and 700 West to Jordan River) [Phillip Hill, Assistant City Manager/Community Development Director]

D. Consider Resolution No. 2017-R-33 Authorizing the Mayor to enter into a Standstill Agreement between Midvale City and Crown Castle, a Wireless Communications Facility Provider [Lisa Garner, City Attorney]

X. ADJOURN

In accordance with the Americans with Disabilities Act, Midvale City will make reasonable accommodations for participation in the meeting. Request assistance by contacting the City Recorder at 801-567-7207, providing at least three working days advance notice of the meeting. TTY 711

A copy of the foregoing agenda was provided to the news media by email and/or fax; the agenda was posted in the City Hall Lobby, the 2nd Floor City Hall Lobby, on the City’s website at www.midvalecity.org and the State Public Notice Website at http://pmn.utah.gov. Council Members may participate in the meeting via electronic communications. Council Members’ participation via electronic communication will be broadcast and amplified so other Council Members and all other persons present in the Council Chambers will be able to hear or see the communication.

PLEASE MAKE SURE ALL CELL PHONES ARE TURNED OFF DURING THE MEETING

DATE POSTED: SEPTEMBER 1, 2017

RORI L. ANDREASON, MMC
H.R. DIRECTOR/CITY RECORDER
SUBJECT:

Public Hearing on proposed text amendment to define and regulate an “amusement house” use

SUBMITTED BY:  Lesley Burns, City Planner

SUMMARY:

Staff is proposing a text amendment to address some issues that led to the City Council adopting a temporary zoning regulation last year prohibiting residential properties being used for haunted house/maze attractions and similar activities which were being advertised to the public for patrons to tour and move through. The zoning ordinance does not currently contain specific language regarding this type of use. This use has periodically occurred over the past 4-5 years in a single-family residential neighborhood. It has created negative impacts on the immediate neighborhood of noise, parking, traffic and an influx of larger than normal crowds that are uncharacteristic of a residential area. The City Council directed staff to review this issue and provide a recommended long-term solution.

Based on the commercial nature of haunted house and similar seasonal type attractions, whether an entrance fee is charged or not charged, and the impacts of noise, traffic, parking and the influx of people in one location on a residential neighborhood, staff is recommending this type of use continue to be allowed in commercial areas, but be prohibited in residential areas. To clarify this intent, staff is recommending a new term and definition be created for this type of use in the zoning ordinance and the existing term for “entertainment center” be expanded to include this new term. In the past, the City has interpreted the definition for “entertainment center” to include haunted house and similar seasonal attractions, so this expanded definition is simply for clarity purposes.
17-2-1 “A” definitions.

“Amusement house” means any house, building, premises or any other structure or portion thereof, whether temporary or permanent, designed for the purposes of amusement, entertainment or fright that:

a. is advertised to the public for patrons to tour or move through; or
b. requires a building permit under the Building Code; or
c. violates health or safety codes, including but not limited to the Fire Code.

An “amusement house” use can be for either profit or non-profit. An “amusement house” use is allowed in zones allowing an “entertainment center” use, and in residential zones if it is part of a community event within a public facility or church.

17-2-1 “E” definitions.

“Entertainment center” means an establishment or enterprise for the purpose of amusing or entertaining persons for profit or nonprofit and generally contained within a structure. Such uses include, but are not limited to, theater, playhouse, cinema, performing arts, planetarium, discovery center, museum, amusement house, or bowling alley. This use does not include “sexually oriented business entertainment.”

With this proposed text amendment, the use tables in the residential zone districts do not designate “amusement house” as an allowed or conditional use, therefore making the use prohibited in the residential zones. The use tables currently allow “entertainment center” uses as a conditional use in the mixed use, commercial and industrial zones, and these uses would continue to be allowed through the conditional use process in these zones.

It is not the intent of this proposed language to prohibit holiday decorations and private social gatherings associated with the holidays and other life events, or that are part of a community event within a public facility or church designed to accommodate large groups of people.

Planning Commission Recommendation

The Planning Commission reviewed the proposed language and conducted a public hearing on August 23, 2017. There was no public comment. The Planning Commission forwarded the following motion to the City Council for its consideration:

“Based on the commercial nature of haunted house and similar seasonal type attractions and the impacts of noise, traffic, parking and the influx of people in one location on a residential neighborhood, I move that we forward a recommendation to the City Council to approve the text amendment to define and regulate an “amusement house” use as proposed in Attachment A.”
**FISCAL IMPACT:**

N/A

**STAFF RECOMMENDATION:**

Staff agrees with the Planning Commission’s recommendation.

**RECOMMENDED MOTION:**

“I move that we take under advisement the information presented tonight and schedule a decision to be made at the next City Council meeting.”

**Attachment:**

- Attachment A – Planning Commission’s Recommendation
Zoning Ordinance-Chapter 17-2
DEFINITIONS

17-2-1 “A” definitions.

“Allowed use” means a land use that is permitted in a specific zone without the necessity of any conditional use or other special use permit. Allowed uses are subject to review in accordance with Section 17-3-3 and may require business licenses and/or building permits and associated zoning approvals in accordance with the relevant sections of Midvale Municipal Code.

Alteration, building. See “Building alteration.”

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a. is advertised to the public for patrons to tour or move through; or

b. requires a building permit under the Building Code; or

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Mayor JoAnn B. Seghini called the meeting to order at 6:30 p.m.

I. INFORMATIONAL ITEMS
   A. DEPARTMENT REPORTS
Chief Jason Mazuran discussed recent incidents within the City. He expressed his appreciation for the neighborhood block parties held during Harvest Days. He felt they are very effective. He introduced Officer Matt Harper as the Officer of the Month for August. The officers are nominated by peers and selected by staff. Officer Harper does an unbelievable job and has been recognized before. The officers wanted to recognize him for the crosswalk sting. It took a lot of planning to make that happen and it was very effective.

Chief Scott McBride agreed with Chief Mazuran regarding Harvest Days. It was a lot of fun. He discussed the emergency services taking place in Texas right now due to the hurricane.

Laurie Harvey said there were 100 applications for the Communications Specialist position. Dalin Hackett recently obtained the Certified Fraud Detector Certification. She reviewed what was involved with taking the test and the certification.

Phillip Hill received a grant for $65,000 from Wasatch Front Regional Council to do small area plans for the Transit Oriented Development Zones. They went through a selection process and have selected GSB Architects. He asked if a few council members would like to serve on the steering committee. He announced that Matt Hilderman was selected as the GIS Administrator so the Associate Planner position is being filled.
Proceedings of Midvale City Council Meeting
August 29, 2017

Matt Dahl updated the Council on the projects the RDA is currently working on.

Rori Andreason introduced Jessie Stuart, new receptionist for Midvale City. She updated the Council on the quarterly meeting with the Midvale City Employees.

II. CITY MANAGER’S REPORT
Kane Loader reported on the block party comments and complaints. One of the comments was regarding Utopia. He will be talking about Utopia in a Council meeting in the near future. He reported that an area in Midvale is having problems with skunks. He has a commitment with Salt Lake County to fix this problem. He attended a demonstration on the VECC Dispatch System. They will start installation in the next few months, and hope to have it up and running by next year.

He reported that Harvest Days went very well, and the committee did a great job. He did receive a few complaints regarding the confederate flag so steps will be taken to not let this happen again. He discussed a meeting he had with a gentleman from the Federal Government regarding an initiative called Go-Rail. He sent the initiative to the Council for their review.

III. GENERAL BUSINESS
A. Welcome and Pledge of Allegiance

B. Roll Call – Council Members Paul Hunt, Wayne Sharp, Quinn Sperry, Stephen Brown, and Paul Glover were present at roll call.

C. Government Finance Officers Association Presentation
Kim Coleman, President of Utah GFOA, representing Utah and the National Association was there to present the Certificate of Achievement and Excellence in Government Financial Reporting to Midvale City. This Certificate is for the 2016 year for the CAFR. It is the second time Midvale City has received this award. It requires top down effort and a lot of extra work for staff. He congratulated Laurie Harvey, Assistant City Manager/Administrative Services Director and Dalin Hackett, Assistant Finance Director for this achievement.

IV. PUBLIC COMMENTS
Sophia Hawes-Tingey serving as a vice chair of the Community Council, invited everyone to attend the next meeting where they will be holding Meet the Mayor event.

Quincy discussed International Gang Awareness night which will be held in the Midvale City Park. They would like to bring gang awareness to the community and would like to publicize it as much as possible. She asked if the event could be advertised on the city website. They are also asking for donations of school supplies in order to put together in boxes for the kids. She would like to put a donation box at City hall. The Council agreed.

Mary Lou Damjanovich thanked the Council for starting the Pickleball courts. She expressed her enthusiasm for the courts.
Robert Hale expressed his appreciation for how well Harvest Days was run. He suggested including election candidates in attending the neighborhood block parties in the future. He said the parade was well organized as well as the Hall of Honors. He said it would be nice to have more food available on Saturday rather than just deserts.

Dustin Gettel asked if there was live audio for the meeting? Jarin Blackham said yes, he had sent out a tweet with the link to the audio.

Mr. Gettel said Bingham Junction and Tuscany Road is very dangerous. Phillip Hill said a traffic signal will be installed at that location.

V. COUNCIL REPORTS
   A. Councilmember Paul Hunt – thanked everyone who worked diligently on Harvest Days. It was a great program and he enjoyed the fireworks.
   
   B. Councilmember Quinn Sperry – also thanked everyone for Harvest Days. He agreed with Robert Hale and would like to include the candidates on the list for neighborhood block parties. He offered his condolences to Hillcrest High School for loss of the football coach.
   
   C. Councilmember Wayne Sharp – said the head football coach for Hillcrest High School that passed away. It’s being reported that he had West Nile virus, which can lead to meningitis which can be deadly. He reviewed the symptoms of West Nile virus and cautioned the residents to remove the stagnant water in their yards. He said there were more people at the hall of honors and attending the block parties than ever before. He thanked the staff and Council for attending the parties. He announced that he has withdrawn from the election race. He has heard that many residents in the district want someone new on the Council.
   
   D. Councilmember Stephen Brown – reported that the Jordan River Commission has an event going on in September called “Get in the River.” Their website is called getintheriver.org which has a schedule of the events. He also reported that there is a tree on Monroe and 8600 South that is blocking the stop sign.
   
   E. Councilmember Paul Glover – expressed his appreciation for Harvest Days as well. He also really likes the block parties and this year they were very positive.

VI. MAYOR REPORT
   Mayor JoAnn B. Seghini – said the Midvale Middle School has opened after two years of construction. She said it’s the most beautiful school she has ever seen.

MOTION: Councilmember Stephen Brown MOVED to open a public hearing. The motion was SECONDED by Councilmember Paul Glover. Mayor Seghini called for discussion on the motion. There being none she called for a vote. The motion passed unanimously.

VII. PUBLIC HEARING(S)
A. CONSIDER REZONING PROPERTY LOCATED AT 475 EAST FORT UNION BOULEVARD FROM SINGLE FAMILY RESIDENTIAL (SF-1) ZONE/DUPLEX AND 7200 SOUTH OVERLAYS TO MIXED USE ZONE/7200 SOUTH OVERLAY

Lesley Burns stated the applicant, James Rohbock, is proposing to convert the existing single family house at 475 East Fort Union Boulevard into a small office for their business under the Mixed Use/7200 South Overlay zones. The property is approximately 0.35 acres in size (0.24 acres outside an existing easement for the Jordan and Salt Lake City Canal) and includes a single-family house and detached garage. The proposed office use would encompass the entire house, approximately 700 square feet; the detached garage would be used for parking and storage. No expansion of the existing structures is being contemplated. As part of this conversion, the owners are proposing to construct four parking stalls in addition to the two spaces in the detached garage, and landscape the property.

Rezone
Currently the property is zoned Single-family Residential (SF-1) with a Duplex Overlay; it is also part of the 7200 South Overlay. The 7200 South Overlay was created to facilitate the transition of the 7200 South Corridor from residential to a mix of residential and commercial uses. To allow a general office use, the property needs to be rezoned to Mixed Use (MU) in conjunction with a proposed site plan that complies with the requirements of the Mixed-Use Zone and the 7200 South Overlay.

This proposal is consistent with the goals of the Midvale City General Plan 2016, which includes this property within the 7200 South Opportunity Area. One of the land use goals of the 7200 South area is to support new office uses west of 700 East (pg. 54 – Midvale City General Plan 2016).

Planning Commission Recommendation
The Planning Commission reviewed the rezone request along with the preliminary site plan for the parking and landscape improvements for the proposed house/office conversion on July 26, 2017. Following the public hearing, the Planning Commission forwarded a positive recommendation to the City Council to rezone the property to the Mixed-Use zone with the condition that the development on the property occur in a manner consistent with the preliminary site plan approved concurrently by the Planning Commission with the following conditions:

1. This approval is contingent upon the City Council approving the rezone of the property to Mixed Use.
2. The applicant shall obtain approval from Salt Lake City Public Utilities for any improvements that fall within the canal easement along the east side of the property.
3. The property owner shall record an easement for four additional feet of sidewalk width along Fort Union Boulevard for future sidewalk improvements.
4. A final site plan shall be prepared in accordance with Section 17-3-3 E of the Zoning Ordinance and shall be reviewed and approved by the City Engineer, Fire Marshal and City Planner.
Adoption of an ordinance is required for all rezones. If the City Council decides to approve the rezone as requested, an ordinance has been prepared to accomplish this. However, the legal description attached to the ordinance needs to be verified by the City Engineer to ensure the description is accurate before the ordinance becomes effective.

Staff agreed with the Planning Commission’s recommendation. Staff further recommended the City Council conduct the required public hearing for the rezone request and take the information and comment presented under advisement, with a decision to be made at the next City Council meeting.

Mayor Seghini opened the public hearing to comment. There was no one who desired to speak to this issue.

MOTION: Councilmember Wayne Sharp MOVED to close the public hearing. The motion was SECONDED by Councilmember Quinn Sperry. Mayor Seghini called for discussion on the motion. There being none she called for a vote. The motion passed unanimously.

MOTION: Councilmember Paul Glover MOVED to open a public hearing. The motion was SECONDED by Councilmember Stephen Brown. Mayor Seghini called for discussion on the motion. There being none she called for a vote. The motion passed unanimously.

B. CONSIDER FINAL SUBDIVISION PLAT FOR JORDAN BLUFFS 2-LOT SUBDIVISION, 8056 SOUTH MAIN STREET (7800-8600 SOUTH AND 700 WEST TO JORDAN RIVER)

Phillip Hill stated Gardner & Co. L.C. is requesting approval of a two-lot subdivision for the 263-acre Jordan Bluffs property. Lot 1 will consist of 38 acres and Lot 2 225 acres. An approved subarea plan, dividing the property into four areas for purposes of land uses and densities, is part of the Jordan Bluffs zoning for this property. For reference, Lot 1 will encompass sub-area 4, and Lot 2 will include sub-areas 1, 2, & 3. The purpose of this subdivision is to allow Gardner & Co. L.C. to sell Lot 1 to Wasatch Properties after closing on the property through the purchase agreement with the Midvale Redevelopment Agency (RDA).

Section 2.11 of the purchase agreement allows the “Purchaser” to apply to the City for approval to subdivide the property. Through Section 2.15 of the purchase agreement with the RDA, this allowance extends to Gardner & Co.

Staff has reviewed the general layout of the subdivision plat and finds that it meets the requirements of the Jordan Bluffs Zone and Title 16 of the Midvale Municipal Code. On August 9, 2017, the Planning Commission forwarded a positive recommendation to the City Council for approval of the subdivision plat for the Jordan Bluffs Subdivision with the following conditions:

1. The applicant shall prepare a final subdivision plat to be reviewed and approved by the City Engineer and City Council.
2. The applicant shall obtain duty to serve letters for water and sewer prior to the subdivision plat being recorded.
3. The applicant shall provide evidence that a courtesy notice has been sent to Dominion Energy, Rocky Mountain Power, Xfinity, Utopia and CenturyLink regarding the utility easements on the subdivision plat prior to final approval.

A final subdivision plat has been prepared and is being reviewing by the City Engineer to ensure the boundaries, legal descriptions and dimensions of the plat are accurate. Any required changes to the plat following this review will just be technical in nature and not affect the proposed lot layout.

Mayor Seghini opened the public hearing to comment.

Alyssa Hougland said they were told their view would never be obstructed. She expressed concern with building on the land since it was a superfund site. She would like to find another use for the property.

Phillip Hill said this is a former EPA Superfund Site. The City has been working over the last 14 years with EPA to come up with a way this site can be developed. Back in 2004 the City entered into a development agreement with a group. Uses and densities were memorialized in that agreement. The City is at the point now to work with entities to come up with some type of development that will work. Residential will take place on the uncapped portion only that doesn’t have the same environmental concerns.

Sophia Hawes-Tingey said the areas of concern are sub area 3 and sub area 4 where there are established residences. Those residents were unaware this development is about to occur. She suggested identifying the different types of development and reach out to the residents in this area to get their weigh-in on what they would like to see in the area.

Ken Harper said he was born and raised there. The cap is a good thing. On a daily basis, they see activities going on in area 4. There are homeless buildings in that area. It needs to be developed, it’s nothing but a big weed patch. Something is in the works and needs to be done. If we put the wrong kind of development there, it will promote the same kind of activities going on now.

Dustin Gettel said he’s not necessarily opposed but there is no buy in from the community. He has heard it’s just going to be another apartment complex. He said don’t let the developer scare you with money. It’s not a good or bad idea. He felt people feel let down by the Council because of the approval of the five-story apartment complex. It appears to be being done quickly even if it’s not.

Councilmember Quinn Sperry asked for clarification on Mr. Gettel’s comments regarding allowing the develop to scare the Council with money. He said his comment about the cost of the land being $16 million dollars is a true and accurate statement. The Developer is not scaring the City in any way.

Kevin Jorgensen thanked the Council for the service they provide. He was on the Council when the cap was started to be discussed. He said the City needs to stop building apartments.
Mike Atkins asked how the massive congestion on Main Street will be addressed. He cannot get out of his driveway now.

Phillip Hill explained the extension of Bingham Junction Blvd. Sandy City has planned to build two lanes in each direction from 700 West to 9000 South. The goal is to move traffic off main street.

Marilyn Stokes wanted to say thank you. She said it will be so nice to not deal with this mess that is there now. She thanked Wayne Sharp especially, she said could talk to Wayne at any time and he would answer her. If people aren’t informed, it’s their own fault. This development will be a good thing.

Lorene Butler said the developers have not talked to the surrounding areas. She doesn’t feel there is transparency between City staff and herself. She has been asking questions about what’s happening on State Street but doesn’t know who to talk to about it. She wants to know what’s going on in her neighborhood. She knows this area has been a huge concern for the City, however, words don’t always translate so visuals help. She said some staff have not responded to her nicely. She is concerned about what’s going on behind their backs. She would like to see less of a communication block so they understand what’s going on. She would like to know how many cars are too many cars on a certain street.

MOTION: Councilmember Wayne Sharp MOVED to close the public hearing. The motion was SECONDED by Councilmember Quinn Sperry. Mayor Seghini called for discussion on the motion. There being none she called for a vote. The motion passed unanimously.

VIII. CONSENT AGENDA
A. APPROVE MINUTES OF AUGUST 1, 2017

MOTION: Councilmember Quinn Sperry MOVED to approve the consent agenda. The motion was SECONDED by Councilmember Paul Hunt. Mayor Seghini called for discussion on the motion. There being none she called for a roll call vote. The voting was as follows:

Council member Stephen Brown  Aye
Council member Paul Glover  Aye
Council member Paul Hunt  Aye
Councilmember Wayne Sharp  Aye
Council member Quinn Sperry  Aye

The motion passed unanimously.

IX. ACTION ITEMS
A. CONSIDER RESOLUTION NO. 2017-R-31 ACCEPTING THE RESULTS OF THE MUNICIPAL PRIMARY ELECTION HELD ON AUGUST 15, 2017 AS SHOWN ON THE CANVASS REPORT

Rori Andreason stated the Mayor and City Council are the legislative body for Midvale City and comprise the Board of Municipal Canvassers pursuant to Utah Code §20A-4-301. Utah Code
requires the Board of Municipal Canvassers to meet to canvass the returns of the Municipal Primary Election no sooner than seven days and no later than 14 days after the election.

Salt Lake County has prepared the election results report for the Board of Canvassers to review and approve. Any valid ballots received by noon on the day of the official canvass and postmarked before election day will be opened and added to the election results.

The following candidates are declared to have received the number of votes indicated:

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<tr>
<th>Mayor (4-Year Term)</th>
<th>Council Member District #4 (4-Year Term)</th>
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<tr>
<td>Candidate</td>
<td>Votes</td>
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<tr>
<td>Andrea B Person</td>
<td>395</td>
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<tr>
<td>Matthew Hansen</td>
<td>270</td>
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<tr>
<td>Robert M. Hale</td>
<td>995</td>
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<tr>
<td>Sophia Hawes-Tingey</td>
<td>831</td>
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<tr>
<td>Phil Jankovich</td>
<td>371</td>
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<td>Mont L. Millerberg</td>
<td>510</td>
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The following candidates have qualified by number of votes to be listed on the ballot for the Municipal General Election to be held November 7, 2017:

Mayor (4-Year Term)          | Council Member District #4 (4-Year Term)
Robert Hale                  | Wayne Sharp – Withdrew
Sophia Hawes-Tingey          | Bryant Brown

Staff recommended the Board of Canvassers approve Resolution No. 2017-R-31 Accepting and Approving the Results of the Municipal Primary Election held August 15, 2017 as shown on the Canvass Report. The Board of Canvassers will be requested to sign the official canvass results indicating their approval.

MOTION: Councilmember Paul Hunt MOVED to approve Resolution No. 2017-R-31 approving the results of the Municipal Primary Election held on August 15, 2017 as shown on the Canvass Report. The motion was SECONDED by Councilmember Paul Glover. Mayor Seghini called for discussion on the motion. There being none the she called for a roll call vote. The voting was as follows:

Council member Stephen Brown  Aye
Council member Paul Glover    Aye
Council member Paul Hunt      Aye
Councilmember Wayne Sharp     Aye
Council member Quinn Sperry   Aye

The motion passed unanimously.
B. CONSIDER ORDINANCE NO. 2017-O-12 REZONING PROPERTY LOCATED AT 7575 SOUTH – 7601 SOUTH 700 EAST FROM SINGLE FAMILY RESIDENTIAL WITH A DUPLEX OVERLAY (SF-1 TO SF1/DO)

Matt Hilderman stated Brian McMullin, representative of the property owners, is proposing to rezone and develop property between 7575 South – 7601 South 700 East under the proposed Master Planned Development/Duplex Overlay zone district development standards. This proposal includes two (2) parcels totaling approximately 1.16 acres (50,529.6 sq. ft.) and currently has two, existing single-family residences on each property with associated accessory structures. The applicant is proposing, upon approval of the rezone request, to propose a ten-unit (10-unit), owner-occupied townhome development, accessible from a private, thirty-five-foot (35’) right-of-way, associated amenities, and landscaping elements.

In order for this development to proceed as proposed, the following approvals are required from the City:

1. A rezone of the entire property from SF-1 to SF1/DO.
2. Approval of a Conditional Use Permit for any proposed Master Planned Development.
3. Preliminary and Final Site Plan approval that complies with the requirements of the SF1/DO development standards.
4. Preliminary and Final Subdivision Plat approval for individual ownership of each unit and to allocate the common/limited-common areas of the proposed subdivision.

General Plan and Rezone

Under Section 17-3-1 of the Zoning Ordinance, the Planning Commission may recommend, and the City Council may grant, a rezoning application if it determines the rezoning is consistent with the goals and policies of the Midvale City General Plan and the following:

1. The proposed rezoning is necessary either to comply with the Midvale City General Plan Proposed Land Use Map, or to provide land for a community need that was not anticipated at the time of the adoption of the Midvale City General Plan;
2. Existing zoning was either the result of a clerical error or a mistake of fact, or that it failed to take into account the constraints on development caused by natural characteristics of the land, including but not limited to steep slopes, floodplain, unstable soils, and inadequate drainage; or
3. Land surrounding environs has changed or is changing to such a degree that it is in the public interest to encourage redevelopment of the area or to recognize the changed character of the area.

With the adoption of the Midvale City General Plan 2016, there is no longer a General Plan Proposed Land Use Map designating future uses of property. Under the new General Plan, these properties are identified as being within a Stability Area. The General Plan states there are relatively stable residential neighborhoods, throughout most areas of Midvale City, where little change internal to the neighborhood itself is expected. New development along major streets and in areas of underutilized properties is expected however; measures to protect and enhance the livability of stable residential neighborhoods should accompany the anticipated change (2016
Proceedings of Midvale City Council Meeting  
August 29, 2017

General Plan, Pg. 45). The General Plan further states the current overall land-use mix is desirable in these Stability Areas and the preservation of these areas character and function is the desired future condition. Some additional future land use goals for these Stability Areas include:

1. Support property maintenance and neighborhood stability.
2. Buffer uses in Stability Areas from more intensive land uses nearby, including adjacent Opportunity Areas.
3. Provide for better pedestrian/bicycle connections through and between neighborhoods.
4. Provide for access to parks, trails and recreation facilities.
5. Provide for appropriate transit opportunities.
6. Provide mechanisms for appropriate home remodeling to occur to accommodate today’s lifestyles and needs.

The General Plan identifies some future goals for Residential Development and Housing development (2016 General Plan, Pg. 56) that includes:

1. Maintain and strengthen stable neighborhoods. The goal includes preserving the quality and character of existing neighborhoods; providing neighborhoods with better connectivity and access to recreational amenities; and ensuring that infill and adjacent development is compatible with the existing neighborhoods.
2. Maintain and improve the quality of the existing housing stock in Midvale, and revitalize the physical and social fabric of neighborhoods that are in decline.
3. Expand the variety of housing opportunities to allow for more choices in types and locations of residences. This includes providing for a mixture of housing sizes, densities, types and affordability in each area of the City.
4. Support the development of more affordable housing in appropriate locations, i.e., near transit, retail commercial, schools and recreational amenities.

Staff believes the existing zone district was not the result of a clerical error or mistake of fact when the zoning designations for these properties were created however; there is evidence that the surrounding neighborhoods have changed and is continuously changing. Examples of these changes can include the following residential projects along 700 East:

- 700 East Townhomes; 7339 S – 7353 S 700 E; total size = 0.65 acres 4-unit twin home development (2006)
- Orchard Vista PUD; 7614 S 700 E; total size = 1.1 acres 13-unit twin home development and private right-of-way (2007)
- Midvale Townhomes; 7475 S – 7495 S 700 E; total size = 1.05 acres 10-unit twin home development and private right-of-way (2016 received use and preliminary approval)

This rezone request represents a slight, but important, change to the current zoning and land uses on these parcels of property. If the property receives approval of the rezone amendment, the applicant would then be required to receive approval of a Master Planned Development for the proposed Amara Court Subdivision which at the minimum, would require the following development requirements:

- Improved, nonmotorized vehicle trail linkages and access for general pedestrian use;
A minimum of fifteen percent (15%) of the land as improved, common open space to include such uses as mini-parks, picnic areas, playgrounds, recreation areas and structures such as club houses, pavilions, swimming pools, etc.;

A minimum of fifty percent (50%) of the site shall be open space (excluding streets, parking, driveways, and steep slopes);

A minimum of sixty percent (60%) of the structural facade and forty percent (40%) of the side facade shall be brick or equivalent material. The planning commission may grant a reduction to the forty percent side facade requirement based on design merit, or if it is demonstrated that all or portions of the facade cannot be seen from public or common areas;

A grant to the city of a permanent open space easement on and over all private open spaces to guarantee that the open space remains perpetually in recreational use, with the ownership and maintenance being the responsibility of the owners’ association; and Adopted articles of association and by-laws of such association that are satisfactory to the city.

Based on the initial, conceptual plan provided by the applicant, it appears the proposal is compliant with the requirements state above. The applicant would also be required to submit for and receive preliminary and final subdivision plat approval, complying with the subdivision process for Title 16, to allow individual ownership of each attached, single-family town home structure.

Planning Commission Recommendation
On July 12, 2017, this application was presented before the Planning Commission at their regularly scheduled meeting. During discussion and review of this application, including citizen testimonies, the Commission heard concerns related to; an increase in density for this area; use of the existing irrigation ditches/canals and water rights; and the amount of high-density users vs. single-residential users. After further discussion and review, the Commission forwarded a positive recommendation concerning the rezone request with the following motion:

“Based on the development patterns in the area and the configuration of the property, including compliance with the General Plan and Zoning Ordinance, I move we forward a positive recommendation to the City Council to rezone the properties located between 7575 South – 7601 South 700 East from Single-Family Residential to Single-Family Residential with a Duplex Overlay (SF-1 to SF1-DO).”

A roll call vote was taken with a unanimous vote of 3-0.

City Council Public Hearing
On August 1, 2017, this application was presented before the City Council at their regularly scheduled meeting. During discussion and review of this application, including citizen testimonies, the Commission heard concerns related to: location of new townhomes as related to the adjacent properties; no ample parking available in development; no off-street parking available along 700 East; water rights concerns; loss of privacy and view shed; increase in traffic; multifamily development not wanted in this area along 700 East; these properties are surrounded by single-family dwellings and zoning; is there a maximum saturation of duplex overlays; and the relationship between an economic benefit vs. a civic benefit. Adoption of an ordinance is required for all rezones. If the City Council decides to approve the rezone as requested, an ordinance has been prepared to accomplish this, proposed Ordinance No. 2017-O-12.
Councilmember Stephen Brown said he didn’t feel the area warranted a rezone.

Councilmember Glover said the parking is bad and felt they will have more problems.

Councilmember Hunt asked if they could have 5 units? Matt Hiderman said yes, whether it gets rezoned or not.

Councilmember Sperry agreed with Councilmember Brown and didn’t feel it warranted a rezone.

Councilmember Sharp said he looked at the project, and agreed with Councilmember’s Sperry and Brown.

MOTION: Councilmember Quinn Sperry MOVED that we deny the request to rezone the properties located between 7575 South – 7601 South 700 East for the following reasons:
1. Doesn’t meet the three criteria for a rezone under our city plan.
2. It’s not necessary to comply with the general plan.
3. The existing zoning does not result in a clerical error and the land surrounding the project has not changed to a degree of public interest to encourage redevelopment in the area.

The motion was SECONDED by Councilmember Stephen Brown. Mayor Seghini called for discussion on the motion. There being none the she called for a roll call vote. The voting was as follows:

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<th>Councilmember</th>
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<tr>
<td>Council member Stephen Brown</td>
<td>Aye</td>
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<tr>
<td>Council member Paul Glover</td>
<td>Aye</td>
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<tr>
<td>Council member Paul Hunt</td>
<td>Aye</td>
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<tr>
<td>Councilmember Wayne Sharp</td>
<td>Aye</td>
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<tr>
<td>Council member Quinn Sperry</td>
<td>Aye</td>
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</tbody>
</table>

The motion passed unanimously.

X. DISCUSSION ITEMS
A. DISCUSSION OF A DRAFT DEVELOPMENT WITH GARDNER JORDAN BLUFFS HOLDINGS, L.C.

Phillip Hill said this is an amended development agreement. The key points of the Amended Master Development Agreement for the Jordan Bluffs project are:

- The Amended development agreement recognized that the Original MDA dated December 1, 2004 remains in full force and effect except as specifically amended in this document. These amendments do not eliminate or modify any requirements of the Original MDA, merely supplement or clarify. Upon closing, elements of the Original MDA will be negotiated and memorialized in the Amended development agreement.
- The amended development agreement only becomes effective upon Master Developer closing on the purchase of the property.
- This amended development agreement acknowledges that the Master Developer and the City recognize that the current project will differ in several important respects from what was
contemplated by the Original MDA based on the geotechnical studies of the past 13 years. Open space sized and configuration, phasing of BJ Blvd., less residential;

- This amended DA will adopt by reference specific development standards (current JB zone), Design Guidelines and a Concept Plan;
- This amended DA recognizes that detailed ordinances will be crafted after closing, as anticipated by the JB zone, to be reviewed and adopted by the City Council following the appropriate process with the Planning Commission;
- This Amended DA recognizes the currently vested rights with respect to uses, density and the maximum number of residential units allowed across the entire site;
- The term of this Amended DA is 25 years unless buildout occurs earlier;
- This Amended DA shall automatically terminate if no substantial construction has been initiated within 5 years, absent any agreed extensions.

Councilmember Glover asked if the heights had been determined. Phillip said those are negotiable.

Councilmember Glover asked about the open space. Phillip said this will be in the negotiations that will happen after the closing. The maximum housing is 30 units per acre under the current ordinance.

Jody Burnett said he has represented local governments in the State of Utah for about 35 years and has worked on a lot of development agreements. This is an agreement to agree. The reason for this is for the closing of the sale. He said he feels comfortable with this agreement and there is no expiration for 25 years.

Phillip Hill said he would bring this item back at the next council meeting for approval.

B. DISCUSS INTERLOCAL COOPERATION AGREEMENT BETWEEN MURRAY CITY AND MIDVALE CITY FOR STORM WATER DETENTION AT THE BINGHAM JUNCTION DETENTION FACILITY

Kane Loader said there are two documents associated with this property located at 6700 South 700 West in Murray City. Murray City had some public hearings and decided to develop this land. There are two interlocal agreements being requested from Murray City for this development. One of the agreements is a storm water agreement, and the other is sewer easement agreement. They need to connect with a main sewer line which is located partially in Midvale City. The other easement is for storm water since Midvale City is providing for storm water in this location.

Councilmember Glover asked if Murray City is pay for maintaining the storm water. Kane Loader said they will pay their percentage of the costs. He said in the case of the sewer, Murray City will have to pay to maintain this.

Councilmember Glover asked if the sewer will go into Midvale City’s sewer system. Kane Loader said no it will not.

Kane Loader said it’s not common to have an interlocal agreement for an easement so he would like our legal team and the City Engineer to further review the agreements, and then we will bring these back to the City Council.
C. DISCUSS STANDSTILL AGREEMENT BETWEEN MIDVALE CITY AND CROWN CASTLE, A WIRELESS COMMUNICATION FACILITY PROVIDER

Lisa Garner stated the City has been receiving a lot of requests from telecommunication providers to enter the City rights-of-way to install small cell sites to enhance the cell towers or sites in the City. In May, the City received eight applications for road cut permits from Crown Castle who is a telecommunication provider. The have submitted permits to lay fiber to attach to seven Rocky Mountain Power Poles. In researching this, City ordinance did not allow for this. The City has retained outside counsel with attorneys that have great experience with telecommunications. They have looked though all of this and have given us opinions. They appealed our appeal. The City has 30 days to challenge the denial with Crown Castle, and come up with a telecommunication franchise agreement.

Councilmember Glover asked if the City is out of compliance. Lisa Garner said the FCC regulates all the telecommunication providers and should be recognized as a public utility. Current City’s ordinance does not allow cell towers in the right-of-way. The city ordinance would need to be updated with current information from the FCC standards and regulations. Once telecommunications are allowed in the city, which the FCC says must be done because they are to be treated as a utility, it could have a big impact on the City.

Kane Loader said City’s ordinance doesn’t have anything that allows this. It is a new technology that cities are going to have to figure out how to deal with. It’s difficult because they have no real customer base; they are wholesalers, so it’s difficult to treat them as a utility. The want to put in 32 of these devices, and this is for only one of these types of companies.

Councilmember Sperry asked if the number of companies that come in can be limited or does the FCC require all are allowed.

Lisa Garner said she is looking into this and wants to get ahead of it by amending the ordinance to limit the impact.

XI. ADJOURN

MOTION: Councilmember Wayne Sharp MOVED to adjourn the meeting. Councilmember Paul Hunt SECONDED the motion. Mayor Seghini called for discussion on the motion. Mayor Seghini called for discussion on the motion. There being none, she called for a vote. The motion passed unanimously.

The meeting adjourned at 9:48 p.m.

Rori L. Andreason, MMC
H.R. DIRECTOR/CITY RECORDER

Approved this 5th day of September 2017.
SUBJECT: Resolution authorizing the Mayor to enter into an Amended Master Development Agreement for the Jordan Bluffs Project with Gardner Jordan Bluffs, L.C.

SUBMITTED BY: Phillip Hill, Assistant City Manager/Director CD

SUMMARY:

Attached is Resolution 2017-R-32 which authorizes the Mayor to enter into an Amended Master Development Agreement for the Jordan Bluffs Project with the Master Developer. This amended agreement in no way eliminates or modifies any of the requirements in the Original MDA dated December 1, 2004, it merely supplements and clarifies that existing agreement.

Listed below are the key points of the Amended Master Development Agreement for the Jordan Bluffs Project:

- This Amended DA recognizes that the Original MDA dated December 1, 2004 remains in full force and effect except as specifically amended in this document. These amendments do not eliminate or modify any requirements of the Original MDA, merely supplement or clarify. Upon closing, elements of the Original MDA will be negotiated and memorialized in the Amended DA;
- This Amended DA only becomes effective upon Master Developer closing on the purchase of the property;
- This Amended DA acknowledges that the Master Developer and the City recognize that the current project will differ in several important respects from what was contemplated by the Original MDA based on the geotechnical studies of the past 13 years. Open space sizes and configuration, phasing of BJ Blvd., less residential;
- This Amended DA will adopt by reference specific development standards (current JB zone), Design Guidelines and a Concept Plan;
- This Amended DA recognizes that detailed ordinances will be crafted after closing, as anticipated by the JB zone, to be reviewed and adopted by the City Council following the appropriate process with the Planning Commission;
- This Amended DA recognizes the currently vested rights with respect to uses, density and the maximum number of residential units allowed across the entire site;
- The term of this Amended DA is 25 years unless buildout occurs earlier;
- This Amended DA shall automatically terminate if no substantial construction has been initiated within 5 years, absent any agreed extensions.

FISCAL IMPACT:

N/A
STAFF RECOMMENDATION (MOTION READY):

Staff recommends that the City Council “approve Resolution 2017-R-32, authorizing the Mayor to enter into an Amended Master Development Agreement for the Jordan Bluffs Project with Gardner Jordan Bluffs, L.C., subject to the Master Developer closing on the purchase of the property.”

Attachments:

- Resolution 2017-R-32
- Amended Master Development Agreement
A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DEVELOPMENT AGREEMENT BETWEEN MIDVALE CITY CORPORATION AND GARDNER JORDAN BLUFFS, L.C.

WHEREAS, pursuant to Section 10-9a-102 (2) of the Utah State Code the City is authorized as follows: “To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, and height and location of vegetation, trees, and landscaping, unless expressly prohibited by law”; and

WHEREAS, due to the unique circumstances involved in the development of the Jordan Bluffs property, as a former Superfund Site, the City has found it necessary and beneficial to both the Developer and the City to enter into a Development Agreement detailing improvements to be installed by both parties, time frames in which they must be completed and limits to the cost of those improvements; and

WHEREAS, both parties have negotiated such agreement and as of the date of this resolution agree to enter into said agreement; and

WHEREAS, the City Council has thoroughly reviewed said Development Agreement and agrees that entering into such agreement will help to further the development of Jordan Bluffs.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF MIDVALE CITY, STATE OF UTAH, AS FOLLOWS:

Section 1. The Midvale City Council has thoroughly reviewed the attached Development Agreement between Midvale City Corporation and Gardner Jordan Bluffs L.C.

Section 2. The Midvale City Council through its understanding of the development challenges associated with the development of the Jordan Bluffs property believe it in the best interest of both the Developer and the City to enter into such agreement.

Section 3. The Midvale City Council on this date hereby authorize the Mayor to enter into such agreement on behalf of the City.

Adopted by the City Council of Midvale, Utah, this 5th day of September, 2017.
Voting by the City Council:

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<td>Quinn Sperry</td>
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WHEN RECORDED, RETURN TO:

Gardner Jordan Bluffs, L.C.
201 South Main Street, Suite 2000
Salt Lake City, Utah 84111

AMENDED
MASTER DEVELOPMENT AGREEMENT
FOR
JORDAN BLUFFS PROJECT

September 05, 2017
AMENDED
MASTER DEVELOPMENT AGREEMENT
FOR
JORDAN BLUFFS PROJECT

THIS AMENDED MASTER DEVELOPMENT AGREEMENT (this “Amended MDA”) is made and entered effective as of the ___ day of ____________, 2017, by and among the Midvale City, a political subdivision of the State of Utah (the “City”), and [Gardner Jordan Bluffs, L.C.,] a Utah limited liability company (the “Master Developer”).

RECITALS

A. The capitalized terms used in these Recitals are defined in Section 1.2, below.

B. The City previously entered into that certain Master Development Agreement For The Jordan Bluffs Project dated December 1, 2004 (“Original MDA”). That Original MDA remains in full force and effect except as specifically amended herein.

C. Master Developer has entered into an agreement to purchase the Property that is subject to the Original MDA and this Amended MDA.

D. The Property is currently assigned the Jordan Bluffs (JB) Zone as set forth in §17-7-10 of the Midvale City Code, as amended by Ordinance 2017-O-10 adopted by the City on August 01, 2017 (collectively, the “JB Zone”).

E. Master Developer and the City desire that the Property be developed in a unified and consistent fashion pursuant to the provisions of the JB Zone as supplemented by the Concept Plan, Design Guidelines and this Amended MDA.

F. As provided for in 17-7-10.2(B)(1) of the Midvale Municipal Code, a zoning plan, to include detailed development requirements in an ordinance format, governing the development that implements the goals of the Concept Plan, Design Guidelines and this Amended MDA shall
be incorporated into and adopted as part of the JB Zone.

G. Development of the Property as a mixed used project pursuant to this Amended MDA is acknowledged by the Council and parties to be consistent with LUDMA, the JB Zone and to operate to the benefit of the City, Master Developer and the general public.

H. The parties acknowledge that development of the Property pursuant to this Amended MDA will result in significant planning and economic benefits to the City and its residents by, among other things requiring orderly development of the Property and increasing property tax, sales tax and other revenues to the City based on improvements to be constructed on the Property.

I. Development of the Property pursuant to this Amended MDA will also result in significant benefits to Master Developer by providing assurances to Master Developer that it will have the ability to develop the Property in accordance with this Amended MDA.

J. Master Developer and the City have cooperated in the preparation of this Amended MDA.

K. The parties desire to enter into this Amended MDA to specify the rights and responsibilities of Master Developer to develop the Property and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Amended MDA.

L. The parties understand and intend that this Amended MDA is a “development agreement” within the meaning of, and entered into pursuant to the terms of Utah Code Ann. §10-9a-102.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Master Developer hereby agree to the following:
TERMS

1. Incorporation of Recitals and Exhibits/ Definitions.

1.1. Incorporation. The foregoing Recitals and Exhibits “A” through and including “C” are hereby incorporated into this Amended MDA.

1.2. Definitions. As used in this Amended MDA, the words and phrases specified below shall have the following meanings:

1.2.1. Amended MDA means this Amended Master Development Agreement including all of its Exhibits.

1.2.2. Applicant means a person or entity submitting a Development Application for the Development of a Parcel.

1.2.3. Buildout means the completion of all of the development on the entire Property in accordance with this Amended MDA.

1.2.4. City means Midvale City, a political subdivision of the State of Utah.

1.2.5. Concept Plan means the concept plan for development of the Project, which has been approved by the City and which is attached as Exhibit “C”.

1.2.6. Council means the elected City Council of the City.

1.2.7. Default means a material breach of this Amended MDA as specified herein.

1.2.8. Design Guidelines means the intent statements as codified in Chapter 17-7-10 of the Midvale Zoning Ordinance and the general architectural renderings depicting height and massing of structures, attached as Exhibit “B”, and will inform the drafting and adoption of more specific development requirements in the JB Zone as it will be amended as addressed below.
1.2.9. **Development** means the development of a Parcel or a portion thereof pursuant to an approved Development Application.

1.2.10. **Development Application** means an application to the City for development of a portion of the Project including a Subdivision or any other permit, certificate or other authorization from the City required for development of the Project.

1.2.11. **LUDMA** means the Land Use, Development, and Management Act, Utah Code Ann. §§ 10-9a-101, *et seq.*

1.2.12. **Master Developer** means [Gardner Jordan Bluffs, L.C.], a Utah limited liability company, and its assignees or transferees as permitted by this Amended MDA (other than a Subdeveloper).

1.2.13. **Notice** means any notice to or from any party to this Amended MDA.

1.2.14. **Parcel** means a parcel of the Project that is created by the Master Developer to be sold to a Subdeveloper as a Subdivision.

1.2.15. **Phase** means the development of a portion of the Project at a point in a logical sequence as determined by Master Developer.

1.2.16. **Planning Commission** means the City’s Planning Commission.

1.2.17. **Project** means the total development to be constructed on the Property pursuant to this Amended MDA with the associated public and private facilities, Phases and all of the other aspects approved as part of this Amended MDA.

1.2.18. **Property** means approximately 263 acres of land located in Midvale City, and more particularly described on Exhibit “A” attached hereto.

1.2.19. **Public Infrastructure** means those elements of infrastructure that are planned to be dedicated to the City as a condition of the approval of a Development Application.
1.2.20. **Subdeveloper** means a person or an entity not “related” (as defined by section 165 of the Internal Revenue Code) to Master Developer which purchases, ground leases or leases all or a portion of a Parcel for development.

1.2.21. **Subdivision** means the division of any portion of the Property into developable lots pursuant to State Law and/or the Zoning Ordinance.

1.2.22. **Subdivision Application** means the application to create a Subdivision.

1.2.23. **Zoning** means the zoning for the Project

1.2.24. **Zoning Ordinance** means the City’s Land Use and Development Ordinance adopted pursuant to the Act that was in effect as of the date of this Amended MDA as a part of the City’s Vested Laws.

2. **Condition Precedent.** As a condition precedent to the obligations of the parties hereunder, this Amended MDA is contingent upon and shall only become effective at such time, and in the event that, the Master Developer closes on the purchase of the Property. In the event that the sale fails to close by November 27, 2017, this Amended MDA shall be of no further force or effect.

3. **Effect of Amended MDA.** This Amended MDA shall be the sole agreement between the parties related to the development of the Project except as it may be modified by agreement of the parties, which it is anticipated will occur after the process is completed of further amending the provisions of the JB Zone and the submission and approval of a large scale master plan for the Project as revised from what was approved by the Original MDA (excluding any separate agreements relating to development incentives). Master Developer and the City further acknowledge and agree that the current Project will be different in several important respects from what was contemplated by the Original MDA and therefore agree to cooperate in good faith to address the issues arising from those changes as part of the process described herein.
including, but not limited to, clarifying and confirming the intent of §3.4 of the Original MDA that the construction and conveyance of Bingham Junction Boulevard may be done in phases, the conveyance and preservation of open space, the initiation of construction on the Cap, road realignments and the installation of utilities.

4. Development of the Project

4.1 Project Development. Development of the Project shall be in accordance with the JB Zone to include specific development standards, the Design Guidelines, the Concept Plan, and this Amended MDA.

4.2 Adoption of Project Guidelines. The parties understand and acknowledge that the JB Zone, as amended as contemplated herein, currently contains intent statements regarding issues such as including, but not limited to, location of buildings, setbacks, lot coverage, building orientation, landscaping and other design features. The parties further understand that more specific, detailed standards addressing those issues will, pursuant to the JB Zone, need to be adopted in the future and shall apply to all applications for development as part of the Project. The adoption process of these specific, detailed standards shall require review and approval by the Council in the independent exercise of their legislative discretion following all required notice and public hearings before the Planning Commission and Council.

4.3 Approval Processes. Development approval of the Project shall follow the applicable review processes as set forth in the JB Zone and Section 17-3 of the Midvale Municipal Code and the Original MDA.

5. 4.4 Project Fees. The parties acknowledge that the City does not currently charge impact fees. The parties further acknowledge and agree that in the event the City adopts impact fees at any time in the future the Project is entitled to a credit, because Master Developer will be
providing the facilities necessary to service the propose Development under the terms of this Amended MDA, which might otherwise be financed by other means, and therefore no impact fees will be assessed in connection with future development approval for the Project. The City retains the right to assess all other fees which are chargeable by the City on all similar developments.

**Zoning, Vested Rights and Reserved Legislative Powers.**

5.1. **Design Guidelines and Concept Plan.** The City has approved the Zoning for the uses and density within the Project, the Concept Plan, and the Design Guidelines for the Project as a whole.

5.2. **Vested Rights Granted by Approval of this Amended MDA.** To the maximum extent permissible under the laws of Utah and the United States and at equity, the City and Master Developer intend that this Amended MDA grants Master Developer the right to develop and construct the Project consistent with the uses and density as provided in the JB Zone and this Amended MDA, including the Concept Plan and Design Guidelines, subject to compliance with the more detailed development standards of the JB Zone to be adopted in the future as set forth in §4.2 above. The Parties intend that the rights granted to Master Developer under this Amended MDA are contractual and also those rights that exist under statute, common law and at equity. The parties specifically intend that the JB Zone, this Amended MDA, and the Concept Plan, grant to Master Developer “vested rights” as that term is construed in Utah’s common law and pursuant to Utah Code Ann. § 10-9a-509. To the extent that any such conditions subsequent are not performed then vested rights shall be deemed to have lapsed. In the event that no substantial construction has been initiated as part of the Project within five (5) years of the date of this Amended MDA, absent any extensions by further agreement of the parties, then in that event this Amended MDA shall be automatically terminated.
5.3. **Reserved Legislative Powers.** Subject to the provisions of §4.2 above and consistent with the provisions of §6.2 of the Original MDA, Master Developer and the City acknowledge that any exception to the vested rights as set forth above must meet the compelling, countervailing public interest standard set forth in Utah Code Ann. §10-9a-509.

6. **Term of Agreement.** The term of this Amended MDA shall be until December 31, 2042. This Amended MDA shall also terminate automatically at Buildout.

7. **Tax Benefits.** The City acknowledges that Master Developer may seek and qualify for certain tax benefits by reason of conveying, dedicating, gifting, granting or transferring portions of the Property to the City or to a charitable organization for open space. Master Developer shall have the sole responsibility to claim and qualify for any tax benefits sought by Master Developer by reason of the foregoing. The City shall reasonably cooperate with Master Developer to the maximum extent allowable under law to allow Master Developer to take advantage of any such tax benefits.

8. **City Obligations for Improvements.** In connection with the Project, the City agrees that it will perform the following obligations:

   8.1. **Utilities.** The City shall permit Master Developer and each Subdeveloper to connect to the City’s utility lines, including, without limitation, water, sewer and storm drain. The City will supply, or cause to be supplied, to the Project, water in the amounts necessary to permit the Project to be used for the purposes set forth in this Amended MDA.

9. **Upsizing/Reimbursements to Master Developer.** The City shall not require Master Developer to “upsizes” any future Public Infrastructure (i.e., to construct the infrastructure to a size larger than required to service the Project) unless financial arrangements reasonably acceptable to Master Developer are made to compensate Master Developer for the incremental or additive costs of such upsizing. For example, if an upsizing to a water pipe size increases costs by
10% but adds 50% more capacity, the City shall only be responsible to compensate Master Developer for the 10% cost increase. Acceptable financial arrangements for upsizing of improvements include reimbursement agreements, payback agreements, pioneering agreements, and impact fee credits and reimbursements.

10. **Consent Decree.** In connection with the Project, Master Developer and each Subdeveloper, as applicable shall be required to comply with (a) the “Institutional Controls” set forth in Chapter 8.10 of the Midvale City Municipal Code, and (b) the Site Management Plan Former Sharon Steel Superfund Site Operable Unit 1, Midvale, Utah, dated May 19, 2017

11. **Notices.**

11.1. **Notice Addresses.** All notices required or permitted under this Amended MDA shall, in addition to any other means of transmission, be given in writing by certified mail and regular mail to the following address:

**To the Master Developer:**

Gardner Jordan Bluffs, L.C.  
Attn: Christian Gardner  
201 South Main Street, Suite 2000  
Salt Lake City, Utah 84111

**To the City:**

Midvale City  
Attn: Community Development Director  
7505 South Holden Street  
Midvale, UT 84047

11.2. **Effectiveness of Notice.** Except as otherwise provided in this Amended MDA, each Notice shall be effective and shall be deemed delivered on the earlier of:

11.2.1. **Hand Delivery.** Its actual receipt, if delivered personally, by courier service, or by facsimile provided that a copy of the facsimile Notice is mailed or
personally delivered as set forth herein on the same day and the sending party has confirmation of transmission receipt of the Notice). If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

11.2.2. **Electronic Delivery.** Its actual receipt if delivered electronically by email provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending party has an electronic receipt of the delivery of the Notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

11.2.3. **Mailing.** On the day the Notice is postmarked for mailing, postage prepaid, by First Class or Certified United States Mail and actually deposited in or delivered to the United States Mail. Any party may change its address for Notice under this Amended MDA by giving written Notice to the other party in accordance with the provisions of this

12. **Additional Development Agreements.** If required by the amended JB Zone, or requested by a Subdeveloper or an entity related to Master Developer which is an owner of a Parcel (a “**Related Developer**”), the City and such Subdeveloper or Related Developer shall enter into a separate development agreement relating only to the Parcel owned by such Subdeveloper or Related Developer (as applicable, an “**Additional Development Agreement**”), provided that (i) such Additional Development Agreement shall be fully subject to the terms of this Amended MDA but only to the extent related to the particular Parcel being developed and not the remaining portion of the Project, (ii) such Additional Development Agreement shall not be cross defaulted with this Agreement or any other Additional Development Agreement, and (iii) such Additional Development Agreement shall be modified to reflect specific construction approvals for such Parcel. Each Additional Development Agreement shall be entered into only after a Subdeveloper or Related Developer has obtained all approvals required by this Agreement.
for construction.

13. **Binding Effect.** If Master Developer sells or conveys Parcels of lands to Subdevelopers or related parties, the lands so sold and conveyed shall bear the same rights, privileges, and configurations as applicable to such Parcel and be subject to the same limitations and rights of the City when owned by Master Developer and as set forth in this Amended MDA without any required approval, review, or consent by the City except as otherwise provided herein.

14. **Appointment of Representatives.** To further the commitment of the parties to cooperate in the implementation of this Amended MDA, the City and Master Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Master Developer. The initial representative for the City shall be Kane Loader, City Manager and the initial representative for Master Developer shall be Christian Gardner, President. The parties may change their designated representatives by Notice. The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Amended MDA and the development of the Project.

15. **Mutual Drafting.** Each party has participated in negotiating and drafting this Amended MDA and therefore no provision of this Amended MDA shall be construed for or against either party based on which party drafted any particular portion of this Amended MDA.

16. **Applicable Law.** This Amended MDA is entered into in Salt Lake County in the State of Utah and shall be construed in accordance with the laws of the State of Utah irrespective of Utah’s choice of law rules.

17. **Venue.** Any action to enforce this Amended MDA shall be brought only in the Third District Court for the State of Utah, Salt Lake County.
18. **No Waiver.** Failure of any party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

19. **Severability.** If any provision of this Amended MDA is held by a court of competent jurisdiction to be invalid for any reason, the parties consider and intend that this Amended MDA shall be deemed amended to the extent necessary to make it consistent with such decision and the balance of this Amended MDA shall remain in full force and affect.

20. **Entire Agreement.** This Amended MDA, and all Exhibits thereto, is the entire agreement between the Parties and may not be amended or modified except either as provided herein or by a subsequent written amendment signed by all parties.

21. **Recordation and Running with the Land.** This Amended MDA shall be recorded in the chain of title for the Project. This Amended MDA shall be deemed to run with the land.

22. **Authority.** The parties to this Amended MDA each warrant that they have all of the necessary authority to execute this Amended MDA. Specifically, on behalf of the City, the signature of the Mayor of the City is affixed to this Amended MDA lawfully binding the City pursuant to Resolution No. 2017-R-32 adopted by the City on September 05, 2017.
IN WITNESS WHEREOF, the parties hereto have executed this Amended MDA by and through their respective, duly authorized representatives as of the day and year first herein above written.

CITY:

______________________________
JoAnn B. Seghini, Mayor

Attest:

_____________________________
Rori L. Andreason, MMC
City Recorder

Approved as to form:

_____________________________
Lisa Garner, City Attorney

STATE OF UTAH )
COUNTY OF SALT LAKE )

On this _____ day of September, 2017, personally appeared before me JoAnn B. Seghini, Mayor of Midvale City, who executed the foregoing instrument on behalf of Midvale City.

____________________________________
NOTARY PUBLIC
My Commission Expires:       Residing at:
DEVELOPER:

GARDNER JORDAN BLUFFS, L.C., a Utah limited liability company, by its manager

KC Gardner Company, L.C., a Utah limited liability company

By: ______________________________________________________________________

Name: Christian Gardner
Title: Manager

STATE OF UTAH )

COUNTY OF SALT LAKE )

On this _____ day of September, 2017, personally appeared before me Christian Gardner, a Manager of KC Gardner Company, L.C., a Utah limited liability company, the manager of Gardner Jordan Bluffs, L.C., a Utah limited liability company, who executed the foregoing instrument on behalf of said company.

____________________________________
NOTARY PUBLIC

My Commission Expires: Residing at:
## TABLE OF EXHIBITS

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit “A”</td>
<td>Legal Description of Property</td>
</tr>
<tr>
<td>Exhibit “B”</td>
<td>Design Guidelines</td>
</tr>
<tr>
<td>Exhibit “C”</td>
<td>Concept Plan</td>
</tr>
</tbody>
</table>
Exhibit “A”

Legal Description of Property

Beginning at a point being South 00°12′34″ West 1546.58 feet from the Northeast Corner of Section 35, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

thence South 00°12′34″ West 635.25 feet;
thence South 77°21′33″ West 407.54 feet;
thence South 39°54′40″ East 125.53 feet;
thence South 12°21′11″ East 52.85 feet;
thence South 08°28′42″ West 112.58 feet;
thence South 02°50′06″ East 70.43 feet;
thence South 14°03′34″ East 230.09 feet;
thence South 03°23′34″ East 140.14 feet;
thence South 20°38′28″ East 50.85 feet;
thence South 58°43′52″ East 280.30 feet;
thence South 00°29′40″ East 1,803.42 feet;
thence North 65°55′16″ West 317.16 feet;
thence South 24°04′44″ West 75.08 feet;
thence North 59°54′19″ West 55.73 feet;
thence South 23°47′27″ West 47.77 feet;
thence South 38°00′44″ West 59.69 feet;
thence North 75°55′41″ West 171.55 feet;
thence North 35°42′23″ West 85.29 feet;
thence North 18°07′28″ West 98.62 feet;
thence North 20°33′59″ West 64.11 feet;
thence North 80°30′01″ West 105.53 feet;
thence South 88°37′38″ West 1,286.49 feet;
thence North 24°58′40″ West 838.81 feet;
thence Northwesterly 1,395.88 feet along the arc of a 4,000.00 foot radius curve to the right (center bears North 65°01′20″ East and the chord bears North 14°58′50″ West 1,388.81 feet with a central angle of 19°59′40″);
thence North 05°00′36″ West 1,109.12 feet;
thence North 07°17′20″ East 282.82 feet;
thence North 03°53′39″ East 154.63 feet;
thence North 124.58 feet;
thence North 47°59′09″ West 30.66 feet;
thence North 37°43′31″ West 42.50 feet;
thence North 05°35′12″ West 145.43 feet;
thence North 15°41′49″ West 136.97 feet;
thence North 28°15′14″ West 307.98 feet;
thence North 04°52′14″ West 66.01 feet;
thence North 05°54′45″ East 189.03 feet;
thence North 74°43′59″ East 64.19 feet;
thence North 81°38′00″ East 249.51 feet;
thence North 74°46′34″ East 146.30 feet;
thence Northeasterly 195.95 feet along the arc of a 4,829.15 foot radius curve to the right (center bears South 15°12'57" East and the chord bears North 75°56'48" East 195.94 feet with a central angle of 02°19'30");
thence North 59°42'12" East 103.69 feet;
thence Northeasterly 494.28 feet along the arc of a 4,861.15 foot radius curve to the right (center bears South 11°49'30" East and the chord bears North 81°05'17" East 494.07 feet with a central angle of 05°49'33");
thence South 81°32'25" East 102.50 feet;
thence North 85°15'24" East 147.80 feet;
thence North 77°33'30" East 153.21 feet;
thence North 84°59'59" East 327.17 feet;
thence South 00°17'44" East 412.35 feet;
thence North 89°51'10" East 152.07 feet;
thence South 00°22'38" East 153.75 feet;
thence South 89°51'10" West 67.00 feet;
thence South 00°22'38" East 145.00 feet;
thence North 89°51'10" East 13.37 feet;
thence South 00°39'00" East 178.80 feet;
thence North 89°40'06" East 234.95 feet;
thence South 00°22'30" East 562.48 feet;
thence South 87°09'51" West 61.15 feet;
thence South 01°34'34" East 118.60 feet;
thence South 44°57'24" East 294.72 feet;
thence South 89°39'38" East 628.13 feet to the point of beginning.

Contains 11,494,170 Square Feet or 263.870 Acres
Exhibit “B”

Design Guidelines

(see attached – 11 pages)
Exhibit “C”

Concept Plan
SUBJECT:

Consider Ordinance No. 2017-O-13 rezoning property at 475 East Fort Union Boulevard from Single Family Residential (SF-1) with Duplex and 7200 South Overlays to Mixed Use (MU) with 7200 South Overlay

SUMMARY:

The applicant, James Rohbock, is proposing to convert the existing single family house at 475 East Fort Union Boulevard into a small office for their business under the Mixed Use/7200 South Overlay zones. The property is approximately 0.35 acres in size (0.24 acres outside an existing easement for the Jordan and Salt Lake City Canal) and includes a single-family house and detached garage. The proposed office use would encompass the entire house, approximately 700 square feet; the detached garage would be used for parking and storage. No expansion of the existing structures is being contemplated. As part of this conversion, the owners are proposing to construct four parking stalls in addition to the two spaces in the detached garage, and landscape the property.

Rezone

Currently the property is zoned Single-family Residential (SF-1) with a Duplex Overlay; it is also part of the 7200 South Overlay. The 7200 South Overlay was created to facilitate the transition of the 7200 South Corridor from residential to a mix of residential and commercial uses. To allow a general office use, the property needs to be rezoned to Mixed Use (MU) in conjunction with a proposed site plan that complies with the requirements of the Mixed Use Zone and the 7200 South Overlay.

Planning Commission Recommendation

The Planning Commission reviewed the rezone request along with the preliminary site plan for the parking and landscape improvements for the proposed house/office conversion on July 26, 2017. Following the public hearing, the Planning Commission forwarded a positive recommendation to the City Council to rezone the property to the Mixed Use zone with the condition that the development on the property occur in a manner consistent with the preliminary site plan approved concurrently by the Planning Commission. As part of its review, the Planning Commission found the proposal
complies with the intent of the 7200 South Overlay and is consistent with the goals of the Midvale City General Plan 2016, specifically the land use goal to support new office uses west of 700 East (pg. 54 – Midvale City General Plan 2016).

**City Council Public Hearing**

On August 29, 2017, the City Council held a public hearing on this request. No public comment was received.

**Proposed Ordinance**

Adoption of an ordinance is required for all rezones. If the City Council decides to approve the rezone as requested, an ordinance has been prepared to accomplish this. Proposed Ordinance No. 2017-O-13 is attached.

**FISCAL IMPACT:**

N/A

**STAFF RECOMMENDATION:**

Staff agrees with the Planning Commission’s recommendation and recommends the City Council approves Ordinance No. 2017-O-13.

**RECOMMENDED MOTIONS:**

Option 1 - Approve Rezone

“I move that we adopt Ordinance No.2017-O-13, rezoning the property at 475 East Fort Union Boulevard from Single Family Residential (SF-1) with Duplex and 7200 South Overlays to Mixed Use with 7200 South Overlay.”

Option 2 – Deny Rezone

“I move that we deny the request to rezone the property at 475 East Fort Union Boulevard.”

**Attachments:**

- Vicinity Map
- Zoning Map
- Preliminary Site Plan
- Proposed Ordinance No. 2017-O-13
ORDINANCE NO. 2017-O-13

AN ORDINANCE REZONING APPROXIMATELY 0.35 ACRES OF PROPERTY AT 475 EAST FORT UNION BOULEVARD FROM SINGLE FAMILY RESIDENTIAL (SF-1) ZONE WITH DUPLEX AND 7200 SOUTH OVERLAYS TO MIXED USE ZONE WITH 7200 SOUTH OVERLAY; ALSO PROVIDING A SAVING CLAUSE AND AN EFFECTIVE DATE FOR THE ORDINANCE.

WHEREAS, pursuant to Sections 10-9a-503 and 10-9a-505 Utah State Code, the City has the authority to make and amend a zoning plan which divides the City into zoning districts and within those districts to regulate and restrict the erection, construction, reconstruction, alteration, repair, and use of buildings and structures and the use of land to promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of the municipality; and

WHEREAS, a request has been made by the property owner for a change of zoning on the property described in Exhibit A to convert a residential structure into an office structure; and

WHEREAS, the 7200 South Overlay was created by Midvale City after the widening of Fort Union Boulevard between State Street and 700 East from a neighborhood road to a major collector road. The intent of the overlay is to facilitate the transition of this section of Fort Union Boulevard from residential uses to a mix of residential and commercial uses; and

WHEREAS, following appropriate notice to surrounding property owners and publication in the newspaper on July 12, 2017, the Planning Commission held a public hearing on July 26, 2017, to review the request to rezone the property; and

WHEREAS, after considering the proposal and public input, the Planning Commission found the rezone: (1) complies with the intent of the 7200 South Overlay; and (2) is consistent with the Midvale City General Plan 2016, specifically the land use goal to support new offices uses west of 700 East, and, thus, forwarded a recommendation to the City Council to approve the rezone; and

WHEREAS, following appropriate notice to surrounding property owners and publication in the newspaper on August 15, 2017, the City Council held a public hearing on August 29, 2017; and

WHEREAS, after considering the proposal, public input and the Planning Commission’s recommendation, the City Council found the rezoning of said property is appropriate and in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Midvale City, Utah as follows:

Section 1. The zoning ordinance, which sets forth the zone districts within Midvale City which portion of the said zoning ordinance is established by a zoning map, is hereby amended as follows:

Ordinance No. 2017-O-13
The property described in Exhibit A attached hereto and by this reference made a part hereof, which property is located at 475 East Fort Union Boulevard, Midvale, Utah, and is currently zoned Single Family Residential (SF-1) with Duplex and 7200 South Overlays, shall be zoned Mixed Use (MU) with a 7200 South Overlay.

ZONING PRIOR TO EFFECTIVE DATE OF THIS ORDINANCE:

Single Family Residential (SF-1) with Duplex and 7200 South Overlays

ZONING AFTER EFFECTIVE DATE OF THIS ORDINANCE:

Mixed Use with 7200 South Overlay

Section 2. If any part of this ordinance or the applications thereof to any person or circumstances shall, for any reason, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance or the application thereof to other persons and circumstances, but shall be confined to its operation to the section, subdivision, sentence or part of the section and the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the City Council that this section would have been adopted if such invalid section, provisions, subdivision, sentence or part of a section or application had not been included.

Section 3. This ordinance shall be effective upon publication of a summary thereof.

PASSED AND APPROVED this ____ day of _______________, 2017.

____________________________________
JoAnn B. Seghini, Mayor

ATTEST:

__________________________
Rori Andreason, MMC
City Recorder

Date of publication: ____________

Voting by City Council

<table>
<thead>
<tr>
<th>Name</th>
<th>“Aye”</th>
<th>“Nay”</th>
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<tr>
<td>Stephen Brown</td>
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<td>Paul Glover</td>
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<td>Paul Hunt</td>
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<td>Wayne Sharp</td>
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<tr>
<td>Quinn Sperry</td>
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Ordinance No. 2017-O-13
Legal Description of Rezone Property:

PARCEL 22-30-205-017
BEG S 76 RODS & W 1540.665 FT & N 226 FT FROM NE CORNER SEC 30, T 2S, R 1E, SALT LAKE BASE MERIDIAN; S 193 FT; E TO JORDAN & SALT LAKE CANAL; N 6°32' E 90 FT MORE OR LESS FROM PT OF BEG; W 90 FT MORE OR LESS TO BEG. 0.35 ACRES MORE OR LESS.
SUBJECT:

Action approving the Jordan Bluffs 2-Lot Subdivision Plat located at approximately 8056 S. Main St. (7800-8600 South and 700 West to Jordan River)

SUBMITTED BY:

Phillip Hill, Assistant City Manager/Director, CD

SUMMARY:

Gardner & Co. L.C. is requesting approval of a two lot subdivision for the 263-acre Jordan Bluffs property. Lot 1 will consist of 38 acres and Lot 2 225 acres. An approved subarea plan, dividing the property into four areas for purposes of land uses and densities, is part of the Jordan Bluffs zoning for this property. For reference, Lot 1 will encompass sub-area 4, and Lot 2 will include sub-areas 1, 2, & 3. The purpose of this subdivision is to allow Gardner & Co. L.C. to sell Lot 1 to Wasatch Properties after closing on the property through the purchase agreement with the Midvale Redevelopment Agency (RDA).

Section 2.11 of the purchase agreement allows the “Purchaser” to apply to the City for approval to subdivide the property. Through Section 2.15 of the purchase agreement with the RDA, this allowance extends to Gardner & Co.

Staff has reviewed the general layout of the subdivision plat and finds that it meets the requirements of the Jordan Bluffs Zone and Title 16 of the Midvale Municipal Code.

On August 9, 2017, the Planning Commission forwarded a positive recommendation to the City Council for approval of the subdivision plat for the Jordan Bluffs Subdivision with the following conditions:

1. The applicant shall prepare a final subdivision plat to be reviewed and approved by the City Engineer and City Council.
2. The applicant shall obtain duty to serve letters for water and sewer prior to the subdivision plat being recorded.
3. The applicant shall provide evidence that a courtesy notice has been sent to Dominion Energy, Rocky Mountain Power, Xfinity, Utopia and CenturyLink regarding the utility easements on the subdivision plat prior to final approval.
A final subdivision plat has been prepared and is being reviewing by the City Engineer to ensure the boundaries, legal descriptions and dimensions of the plat are accurate. Any required changes to the plat following this review will just be technical in nature and not affect the proposed lot layout.

On August 29, 2017, the City Council held a public hearing and took public comment.

**FISCAL IMPACT:** N/A

**STAFF RECOMMENDATION:**

Staff recommends the City Council conducts the required public hearing on this request. Provided no new issues are raised during the public hearing, Staff recommends the City Council approves the final subdivision plat for the Jordan Bluffs Subdivision with the following conditions:

1. The applicant shall obtain all required signatures on the subdivision plat Mylar.
2. The applicant shall obtain duty to serve letters for water and sewer, and provide evidence that a courtesy notice has been sent to Dominion Energy, Rocky Mountain Power, Xfinity, Utopia and CenturyLink regarding the utility easements on the subdivision plat prior to the subdivision plat being recorded.

**RECOMMENDED MOTIONS:**

“I move that we approve the final subdivision plat for the 2-lot Jordan Bluffs Subdivision with the following conditions:

1. The applicant shall obtain all required signatures on the subdivision plat Mylar.
2. The applicant shall obtain duty to serve letters for water and sewer, and provide evidence that a courtesy notice has been sent to Dominion Energy, Rocky Mountain Power, Xfinity, Utopia and CenturyLink regarding the utility easements on the subdivision plat prior to the subdivision plat being recorded.”

**Attachments:**

- Vicinity Map
- Proposed Subdivision Plat
ITEM: Approve Resolution No. 2017-R-33, authorizing the Mayor to enter into a Standstill Agreement with Crown Castle NG West LLC

SUBMITTED BY: Lisa A. Garner, City Attorney

SUMMARY:

As previously discussed with Council, Crown Castle has submitted applications to enter into the City’s Right-of-Way for the purpose of installing small cell facilities and equipment. Midvale City’s current ordinance does not allow for such use in its Right-of-Way. The City and Crown Castle believe that it is in their best interest to enter into a Standstill Agreement in order to allow time for the City to draft and enact an ordinance and to preserve Crown Castle’s legal rights granted under the Federal Telecommunications Act. A resolution has been prepared for Council consideration authorizing the Mayor to enter into a Standstill Agreement with Crown Castle NG West LLC.

Fiscal Impact: The fiscal impact to the City will involve the expense of consulting and legal fees in drafting the City ordinance.

STAFF’S RECOMMENDATION AND MOTION:

I move that we adopt Resolution No. 2017-R-33 a resolution authorizing the Mayor to enter into a Standstill Agreement with Crown Castle NG West LLC.
MIDVALE CITY, UTAH
RESOLUTION NO. 2017-R-33

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A STANDSTILL AGREEMENT WITH CROWN CASTLE NG WEST LLC

WHEREAS, on or about May 5, 2017, Crown Castle prepared an Application for 8 individual road cut/excavation permits, related facilities and equipment (the “Application”) which was received by the City on May 10, 2017;

WHEREAS, the City in its City Code contains detailed requirements for Wireless Communications matters and Applications which are submitted in connection therewith and the review and consideration thereof in Chapter 5.52, Section 12.12.020(F) and the Midvale Municipal Code Title 17 “Zoning”;

WHEREAS, Federal law contains detailed requirements in 47 U.S.C. Section 332 (c) (7) and applicable FCC Regulations and FCC Orders and certain standards, timeframes and procedures for review and approval or denial of an Application;

WHEREAS, the City has retained a consultant and may possibly retain an engineering firm to assist it in its review of the Application;

WHEREAS, the City is in the process of developing a Wireless Communication Facilities Ordinance and Franchise with respect to the potential provision of wireless facilities in City Right-of-Way subject to certain conditions;

WHEREAS, Crown Castle and the City are willing to agree to an extension of time for the City to develop a Wireless Communication Facilities Ordinance and Franchise with respect to the provision of wireless facilities in City Right-of-Way, review the Application and make its determination with respect to the Application;

WHEREAS, in order to facilitate an orderly discussion between the parties and in an attempt to avoid potentially unnecessary litigation and in consideration of the mutual promises and agreements made herein;

NOW THEREFORE BE IT RESOLVED, based on the foregoing, the Midvale City Council does hereby approve this agreement between Midvale City and Crown Castle NG West LLC, and authorizes the Mayor to sign the agreement.

APPROVED AND ADOPTED this 5th day of September, 2017.

JoAnn B. Seghini, Mayor

ATTEST:

Voting by the Council:

Stephen Brown
Paul Hunt
Quinn Sperry
Paul Glover
Wayne Sharp

Rori L. Andreason, MMC
City Recorder

Aye Nay
STANDSTILL AGREEMENT

This Standstill Agreement (hereinafter, the “Agreement”), dated this 25th day of August, 2017, is by and among Midvale City, Utah (“City”) and Crown Castle NG West LLC and its affiliates (“Crown Castle”).

WHEREAS, on or about May 5, 2017, Crown Castle prepared an Application for 8 individual road cut/excavation permits, related facilities and equipment (the “Application”) which was received by the City on May 10, 2017;

WHEREAS, the City in its City Code contains detailed requirements for Wireless Communications matters and Applications which are submitted in connection therewith and the review and consideration thereof in Chapter 5.52, Section 12.12.020(F) and the Midvale Municipal Code Title 17 “Zoning”;

WHEREAS, Federal law contains detailed requirements in 47 U.S.C. Section 332 (c) (7) and applicable FCC Regulations and FCC Orders and certain standards, timeframes and procedures for review and approval or denial of an Application;


WHEREAS, the City has retained a consultant and may possibly retain an engineering firm to assist it in its review of the Application;

WHEREAS, the City is in the process of developing a Wireless Communication Facilities Ordinance and Franchise with respect to the potential provision of wireless facilities in City Right-of-Way subject to certain conditions;

WHEREAS, Crown Castle and the City are willing to agree to an extension of time for Crown Castle to file any action under 47 U.S.C. § 332(c)(7), and for the City to develop a Wireless Communication Facilities Ordinance and Franchise with respect to the provision of wireless facilities in City Right-of-Way;

WHEREAS, in order to facilitate an orderly discussion between the parties and in an attempt to avoid potentially unnecessary litigation and in consideration of the mutual promises and agreements made herein;

NOW, THEREFORE, THE CITY AND CROWN CASTLE AGREE AS FOLLOWS:

1. The City and Crown Castle agree to toll the running of the time for Crown Castle to file any challenge to the City’s August 16, 2017 denial pursuant to 47 U.S.C. §
332(c)(7)(B)(v) until November 30, 2017. The City shall have until November 30, 2017 to develop a Wireless Communication Facilities Ordinance and Franchise with respect to the provision of wireless facilities in City Rights-of-Way, and reconsider the Application and make any amended determination with respect to the Application. If the City does not approve the Application by November 30, 2017, Crown Castle will have 30 days to file any action under 47 U.S.C. § 332(c)(7)(B)(v). For purposes of 47 U.S.C. § 332(c)(7)(B)(v), November 30, 2017 shall be considered the date of City final action on the Application unless the City takes a new action in writing on the Application prior to that date or unless the date is otherwise extended pursuant to paragraph 2 of this Agreement;

2. The November 30, 2017 date may be further extended by mutual agreement of Crown Castle and the City.

3. The Parties agree not to commence any litigation or other proceeding against each other in any Municipal (City or County), State or Federal Court, the FCC, the Public Service Commission of Utah or any other forum during the pendency of this Agreement.

4. Crown Castle will not during the pendency of this Agreement attach its wireless, small cell or DAS facilities or equipment in the City Right-of-Way to City poles or facilities or the poles or facilities of Rocky Mountain Power or any other company and will not construct any poles in the City Right-of-Way.

5. Neither Crown Castle nor the City is waiving any of their rights under Federal, State or Local Law regarding the Application. In addition, Crown Castle is not conceding the legality of any action by the City regarding the Application, or any Ordinance or Franchise that the City may adopt or require, and Crown Castle reserves all rights to challenge the City’s actions or inactions regarding the Application, or any Ordinance or Franchise that the City may adopt or require.

6. Each undersigned party represents that it is duly and properly authorized to execute this Agreement.

7. This Agreement may be signed in multiple counterparts each of which shall be deemed an original and which counterparts when taken together shall constitute this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the parties as set forth below.

MIDVALE CITY, UTAH

By: __________________________
Title: _________________________
APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

CROWN CASTLE NG WEST LLC

By: [Signature]
Title: Outside Counsel