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**Date:** 19 October 2016  
**To:**  
**Cc:**  
**From:** Brad Wilson, City Recorder/Financial Officer  
**RE:** Minutes of the 12 October 2016 City Council Regular Meeting

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Please note that the following minutes are awaiting formal approval and are in draft or unapproved form.

**MINUTES OF THE  
MIDWAY CITY COUNCIL  
(Regular Meeting)**

**Wednesday, 12 October 2016, 6:00 p.m.  
Midway Community Center, City Council Chambers  
160 West Main Street, Midway, Utah**

**Note:** Notices/agendas were posted at 7-Eleven, Ridley's Express, the Midway City Office Building, and the Midway Community Center. Notices/agendas were provided to the City Council, City Engineer, City Attorney, Planning Director, Public Works Assistant Crew Chief, and The Wasatch Wave. The public notice/agenda was published on the Utah State Public Notice Website and the City's website. A copy of the public notice/agenda is contained in the supplemental file.

**1. Call to Order; Opening Remarks or Invocation; Pledge of Allegiance**

Mayor Bonner called the meeting to order at 6:00 p.m.

**Members Present:**

Colleen Bonner, Mayor  
Ken Van Wagoner, Council Member  
Karl Dodge, Council Member  
Kent Kohler, Council Member  
Lisa Christen, Council Member  
Bob Probst, Council Member

**Staff Present:**

Michael Henke, Planning Director  
Kraig Powell, Attorney  
Wes Johnson, Engineer  
Brad Wilson, Recorder/Financial Officer

**Note:** A copy of the meeting roll is contained in the supplemental file.

Mayor Bonner asked if a Midway City resident in attendance would like to give the opening remarks or invocation. Council Member Dodge gave the opening remarks or invocation. Mayor Bonner led the Council and meeting attendees in the pledge of allegiance.

**2. Consent Calendar**

- a. Agenda for the 12 October 2016 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 26 September 2016 City Council Special Meeting
- d. Minutes of the 28 September 2016 City Council Regular Meeting
- e. Minutes of the 28 September 2016 City Council Closed Executive Session

- f. Conclude the Warranty Period and Release the Remainder of the Bond for the Farm Springs Subdivision Located at Farm Springs Way and Center Street Subject to the Payment of all Fees Due to Midway City

**Note:** Copies of items 2a, 2b, 2c, 2d, and 2f are contained in the supplemental file.

Wes Johnson asked that a partial payment to VanCon for \$66,327.48 be added to the warrant list. He said that the payment included a change order for \$18,339.20 for the Alpenhof well house and piping project. He explained the changes.

**Motion:** Council Member Dodge moved to approved the consent calendar with the payment for the well house project as described by the City Engineer.

**Second:** Council Member Kohler seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Van Wagoner	Aye
Council Member Dodge	Aye
Council Member Kohler	Aye
Council Member Christen	Aye
Council Member Probst	Aye

- 3. **Public Comment** – Comments will be Taken on Any Item Not on the Agenda, as Well as on Any Other City Business. Comments are Limited to Two Minutes per Speaker. The Council Cannot Act on Items Not Listed on the Agenda, and Therefore, the Council may or may not Respond to Non-Agenda Issues Brought up Under Public Comment. Those Wishing to Comment Should use the Podium, State Their Full Name and Address, Whom They Represent and the Subject Matter to be Addressed. Total Time Allocated to Public Comments will be no More than 10 Minutes.

Mayor Bonner asked if there were any comments from the public for items not on the agenda. No comments were offered.

- 4. **Ordinance 2016-15/Commercial Setbacks and Uses (City Planner)** – Discuss and Possibly Adopt Ordinance 2016-15 Amending Section 16.5 (Commercial C-2 and C-3 Zones) of the Midway City Municipal Code Regarding Setbacks, Uses and Other Regulations. Recommended without Conditions by the Midway City Planning Commission.

Michael Henke gave a presentation on the proposed ordinance and reviewed its history. He

explained that the Council previously held a work meeting and public hearing on the proposal. He indicated that the proposed tourism overlay zone (TOZ) would be considered separately.

Mayor Bonner asked about the use for vehicle parking. Council Member Dodge clarified that it was for parking not associated with another use.

Mr. Henke indicated that most of the City was zoned residential and the remaining commercial corridor should be preserved. He explained that many cities only allowed mixed use residential in their commercial zones.

Mr. Henke stated that many land use experts recommended against conditional uses because they created public uproar and put city councils in difficult situations. He asked if the Council wanted to reconsider the conditional uses in the proposed ordinance. He added that such uses were especially problematic when denied or associated with unreasonable restrictions.

Wes Johnson thought that adding an engineering component to conditional uses would better protect the City.

Mr. Henke said that the review by the Vision Architecture Committee (VAC) also prevented problems. Council Member Dodge asked if the decisions of the VAC were enforceable. Mr. Henke responded that they were only recommendations to the planning director. Mr. Johnson added that the director's decisions could always be appealed to the City Council. Mr. Henke indicated that the architectural elements in the Municipal Code were enforceable because they were specific.

Kraig Powell acknowledged that attorneys advocated against conditional uses. However, he said that this advocacy was based on worse case scenarios, a one size fits all approach, lack of good staff, and limited training of officials. He pointed out that if conditional uses were removed then more decisions would be made by staff rather than the Council. Mr. Henke added that planning commissions considered conditional uses in some local governments.

Mr. Powell explained that the City had never been sued over a conditional use permit because it was understood they could not be denied if reasonable conditions were met. He thought that conditional uses encouraged discretion and political accountability.

Mr. Powell asked why plumbing shops were a conditional use. Mayor Bonner responded that outside storage for such businesses should be inside or behind a building. Mr. Powell indicated that carpentry and woodworking could also be problematic because of smells, etc.

Mr. Powell said that permitted uses created less liability, avoided confrontation with neighbors, and were business friendly.

Mr. Powell thought that the conditional use process publicized a new business.

Council Member Van Wagoner recommended reviewing all the conditional uses in the proposed ordinance.

The Council recommended changing plumbing shops (no outside storage), electrician shops (no outside storage), private academies/studios (education, art, dance, sports, etc.), veterinarian and pet grooming services (no outside kennels), and repair shops (no outside storage) to permitted uses.

Council Member Dodge suggested requiring the Council's approval for outside storage. He gave Midway Adventure Company as an example of a business with such storage.

Council Member Van Wagoner recommended that outside storage be better defined in the Municipal Code. Mr. Powell suggested that such storage could be a conditional use. Mr. Henke responded that the Council could not deny outside storage if it was a conditional use and met reasonable conditions.

Mr. Powell explained that local consent was needed before a conditional use could be considered for an alcohol dispensing establishment. He suggested that clarification be added to the proposed ordinance.

Mayor Bonner asked the disadvantages of a residential facility for elderly persons. Mr. Henke responded that the size of such a facility could be a problem. Council Member Christen added that they negatively affected the surrounding property values.

Mr. Henke indicated that the City had to allow residential facilities in its residential zones. Council Member Dodge asked if the City wanted to encourage them in the commercial instead of the residential zones.

Mr. Powell asked the difference between residential facilities for elderly persons and rest homes/nursing/convalescent facilities. Mr. Henke responded that the former was a retirement community while the later required some type of care. Mr. Powell asked if a PUD for people over 55 would be allowed. Mr. Henke responded that it could be allowed. The Council recommended eliminating residential facilities for elderly persons as a use in the commercial zones.

Mr. Henke asked if rest homes should be a permitted use. Council Member Van Wagoner suggested adding "assisted living" to the use.

Mr. Henke reported that he received the most complaints about daycares because of noise and traffic. Council Member Dodge preferred them in the commercial rather than the residential zones. The Council recommended permitting them in commercial zones with no restrictions.

Council Member Van Wagoner recommended separating mortuaries and wedding chapels as uses.

Mayor Bonner suggested that recreational vehicles (RV's) be added to the use for new and used vehicle sales. She added that their sale should be prohibited in the C-3 Zone and allowed as a conditional use in the C-2 Zone.

Council Member Van Wagoner asked if boat sales were allowed. Mr. Henke responded that they

were allowed as part of new and used vehicle sales.

Mayor Bonner asked if apartments would be considered a residential or commercial use. Council Member Van Wagoner indicated that they would have to be part of a mixed-use development, under the proposed ordinance, to be included in a commercial zone. Mayor Bonner added that they would have to be built as part of a larger project.

Mayor Bonner asked if apartments should be above or attached to a commercial use. Mr. Henke pointed out that covered breezeways could circumvent the requirement to be attached.

Mayor Bonner asked if apartments could be separate from a commercial use. She noted that there were long narrow lots in the commercial zones. Council Member Dodge struggled with a house being converted to a commercial use just to facilitate apartments. Mayor Bonner did not want weed patches on the rear sections of the lots. Council Member Christen added that the rear sections could also become storage for junk.

Council Member Van Wagoner said that alleyways, going back to apartments on the rear of lots, were problematic.

Council Member Christen preferred to see houses along Main Street instead of apartments.

Council Member Dodge suggested requiring five acres or more for mixed use developments. He thought that deep lots did not lend themselves to such projects. He asked if there should be a minimum frontage requirement.

Mr. Henke suggested that mixed use projects on less than an acre should have the residential above or below the commercial use.

Mayor Bonner thought that a frontage requirement encouraged a quality project. Council Member Dodge suggested 250 feet for one acre projects. Mr. Henke suggested 200 feet for projects larger than one acre.

Council Member Christen was concerned a long-time property owner, in the commercial zones, would not be able to build a home on their land. Mr. Henke responded that the land was worth more as commercial and helped build the tax base for the City. Council Member Dodge shared Council Member Christen's concern but wanted to preserve the existing commercial land.

Mr. Henke noted that the proposal being discussed would prohibit businesses, like Spoiled Rotten Children's Boutique, which had attached housing. Council Member Dodge did not want apartments associated with such a business. He suggested allowing only a single-family house. Mr. Henke also suggested that a dwelling be attached if the lot was under an acre. Wes Johnson questioned if a single-family dwelling even needed to be attached. Mayor Bonner indicated that there could be a yard or parking lot between the commercial and residential structures.

Council Member Dodge worried that the back portion of the lot, which included the house, could be sold. Mayor Bonner responded that the property could not be split.

Council Member Christen said that the City should be fair to all property owners in the commercial zones. She recommended that all residential be attached to the commercial use or separate residential be allowed with any use.

Council Member Dodge asked if there were mixed use businesses, like the Spoiled Rotten Children's Boutique, in other cities. Mr. Henke said there were such businesses in Heber City. Council Member Van Wagoner said Santa Clara also had them.

Council Member Dodge suggested allowing detached residential only with the Council's approval.

Council Member Van Wagoner asked what the setbacks should be for the residential uses. Mr. Powell suggested no setback for commercial buildings in the same development.

Council Member Dodge pointed out that there could be no setback on one lot and an eight-foot setback on an adjoining lot. Mayor Bonner responded that was the risk of building residential in a commercial zone.

The Council recommended a ten-foot setback for a building that contained just residential. Mayor Bonner recommended eight feet for commercial or ten feet for residential.

Council Member Van Wagoner recommended allowing the parking for attached residential and commercial uses to be combined.

**Motion:** Without objection, Mayor Bonner recessed the meeting at 7:42 p.m. She reconvened the meeting at 7:49 p.m.

Mr. Henke recommended the following setbacks and other requirements for mixed use developments in the commercial zones:

- Eight foot setbacks for commercial buildings.
- Ten foot setbacks for residential buildings.
- A minimum of 200 feet of frontage for one acre or more.
- A minimum of 70 feet of frontage for less than one acre.
- Residential could be above or detached from the commercial use but had to meet the setbacks.
- One side would have to remain open.
- Would remain a conditional use.

Mayor Bonner suggested that driveways be side by side. Mr. Henke responded that would be difficult if adjoining lots developed at different times. He said that side by side driveways could be suggested but not required.

Mr. Henke reviewed the proposed landscaping requirement.

**Motion:** Council Member Van Wagoner moved to table consideration of the ordinance until the meeting on November 2<sup>nd</sup>.

**Second:** Council Member Dodge seconded the motion.

**Discussion:** None

**Vote:** The motion was approved with the Council voting as follows:

Council Member Van Wagoner	Aye
Council Member Dodge	Aye
Council Member Kohler	Aye
Council Member Christen	Aye
Council Member Probst	Aye

## 5. Department Reports

### Colleen Bonner, Mayor

**General Plan** – Mayor Bonner asked the timeline for adopting the revised general plan. Mr. Henke responded that the General Plan could be reviewed again in December and adopted in January.

**TOZ** – Mayor Bonner asked the timeline for adopting the Tourism Overlay Zone (TOZ). Mr. Henke responded that he still needed to prepare a performance based code for the TOZ.

**Swiss Christmas** – Mayor Bonner reported that Swiss Christmas would not be held that year because it was difficult to find volunteers.

### Michael Henke, Planning Director

**Canyon View PUD, Plat B/Barrels** – Mr. Henke reported that the dirt in the barrels, in Plat B of the Canyon View PUD, had been tested and it was harmless. He said that it had been dumped on site then leveled. He indicated that the empty barrels had been removed.

**Station Park** – Mr. Henke gave a presentation on the Station Park development in Farmington and made the following comments:

- The project represented a high standard.
- It was impossible to write a code that would insure such a project in Midway.
- This type of project had to be the will of the developer.
- The City might get an anchor store with boutiques and upper floor offices.
- It would take several months to prepare the related performance based code.

Bob Probst, Council Member

**Town Hall/Stage** – Council Member Probst reported that the new stage, in the Town Hall, would be sealed the following week. He asked if there was a trip hazard on the front of the stage. Mayor Bonner responded that there was not a trip hazard. She added that tint would be added to the sealer.

Lisa Christen, Council Member

**Valais Park/Water Line for Dog Park** – Council Member Christen reported that a water line was being installed for the dog park at the Valais Park.

Kraig Powell, Attorney

**Midway Ranches/Water** – Council Member Van Wagoner asked why the development agreement, for the Midway Ranches, did not require that all necessary water be turned in for Lot #2. Kraig Powell responded that the outside water requirement was not addressed at the Midway Water Advisory Board. He explained that the Board's recommendation only addressed the water for a home and one acre. He noted that the proposed lots were not for development.

Council Member Van Wagoner pointed out that the development was short 20 shares of water. Mr. Powell responded that the Higginson family was just creating a lot and not developing.

Wes Johnson thought that the water requirement, as proposed, was guaranteeing that the entire property would be short of water.

Mr. Powell said that the water requirement was the most contentious item with the Higginsons and that was a fight he did not want to have.

Wes Johnson indicated that the City was only responsible for the indoor water. Council Member Van Wagoner pointed out that water for both indoor and outdoor use was turned over to the City.

Council Member Dodge thought that a shrewd developer would try to sell the parcels without water. He noted that a smart developer would not buy a parcel without water.

Mr. Powell asked how many shares of water the Higginsons owned. Mr. Henke indicated that they owned 45.

Mr. Henke noted that Walker Ranch only had to turn in enough water for one house.

Mr. Johnson asked why the 30 shares could not be required on Lot #2. Mr. Powell questioned if the City could make that requirement and thought that the Higginsons would fight it.

Mr. Johnson indicated that the Water Board recommended that the pressurized irrigation be metered. He said it could be determine if the Higginsons were using too much water. Council Member Dodge questioned if the City could do anything about them using too much water.

**Provost Subdivision** – Mr. Henke reported that the applicants, for the Provost Subdivision located on 600 North, were reassessing the project because of the cost of the infrastructure. He said that they might sell the entire five acres without subdividing.

## 6. Adjournment

**Motion:** Council Member Kohler moved to adjourn the meeting. Council Member Probst seconded the motion. The motion passed unanimously.

The meeting was adjourned at 8:35 p.m.

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Colleen Bonner, Mayor

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Brad Wilson, Recorder