

Midway City Planning Commission Regular Meeting March 21, 2018

Notice is hereby given that the Midway City Planning Commission will hold their regular meeting at 7:00 p.m., March 21, 2018, at the Midway City Community Center 160 West Main Street, Midway, Utah

Attendance

Jim Kohler – Chairman
Stu Waldrip – Vice Chairman
Natalie Streeter
Bill Ream
Jeff Nicholas
Kevin Payne
Rob Bouwhuis

Staff

Michael Henke – City Planner
Lindy Rodabough – Admin. Assistant
Wes Johnson – City Engineer
Corbin Gordon – City Attorney

Excused

Nancy O'Toole
Jason Jenkins

6:45 P.M. Work/Briefing Meeting

- City Council Liaison Report, no action will be taken and the public is welcome to attend.

7:00 P.M. Regular Meeting

Call to Order

- Welcome and Introductions; Opening Remarks or Invocation; Pledge of Allegiance
 - Invocation was given by Commissioner Waldrip
 - Chairman Kohler led the Pledge of Allegiance

Item: 1

Review and possibly approve the Planning Commission Work Meeting Minutes of November 29, 2017.

Motion: Commissioner Ream: I move that we approve the Midway City Planning Commission Work Meeting Minutes of November 29, 2017.

Seconded: Commissioner Streeter

Chairman Kohler: Any discussion on the motion?

There was none

Chairman Kohler: All in favor.

Ayes: Commissioners Streeter, Waldrip, Nicholas, Payne and Ream

Nays: None

Motion: Passed

Item: 2

Review and possibly approve the Planning Commission Meeting Minutes of February 21, 2018.

Motion: Commissioner Bouwhuis: I motion that we approve the minutes for the February 21st meeting.

Seconded: Commissioner Streeter

Chairman Kohler: Any discussion on the motion?

There was none

Chairman Kohler: All in favor.

Ayes: Commissioners Streeter, Waldrip, Nicholas, Payne, Ream and Bouwhuis

Nays: None

Motion: Passed

Item: 3

Midway City is proposing a Code Text Amendment of Midway City's Land Use Code of Title 16.13.10 regarding restrictions for utility poles. The City would like to adopt restrictions that would govern the height and other items of distribution and transmission lines built in the City.

Staff and commissioner's discussion

- Can't stop the power company from building the power lines
- The power company will have their standard base cost of running the poles through and if it's worth it to the City to invest additional money to put them underground then the City does at least have that option to make that decision, but that would be on the City's dime
- The City can choose to finance however they want for any additional costs
- The power company may be able to do condemnation and would have to pay fair market value for that property
- Much of the proposed line goes through prescriptive easements that are held by Heber Light & Power, and one of the questions that I had was. Can you expand that out to a use to Rocky Mountain Power if the prescriptive easement holder is Heber Light & Power? I'm guessing Heber Light & Power has researched that and so before I spend much time on that we'll wait to get some answers back from Heber Light & Power
- We've also posed questions about height and width and we are just waiting to get some answers back
- Right now, we don't know yet what the industry standards are for a 138kv line

- and a 46kv line, this is another question that has been posed
- The industry standards for powerlines already addresses the concern of health
 - Need to hold a work session on this issue
 - The proposed transmission lines are an increased use and burden of what is currently there
 - Is the power company looking at other routes through Midway?
 - In discussions with the power company no other routes are being looked at just these historical routes
 - Would like to explore alternative routes for these new proposed powerlines to see if another route would be more beneficial than the current route

Chairman Kohler opened the meeting to public comment

Chris Johnson had the following concerns:

- Condemnation
- Decreased property value
- Cost of burying the lines

Bengt Jonsson had the following concerns:

- The Promontory and Rocky Mountain case that Corbin Gordon has brought to our attention tonight is completely different than what we are dealing with here.
- Rocky mountain power had an existing 46kv line through Promontory and Promontory asked for that line to be moved.
- We don't have an existing line with Rocky Mountain in this valley, only Heber Light & Power has easements along this route

Gunther Branham:

- Put together ordinances that are a benefit to our community that provides a vision of what we want to be and where we want to go.
- Consider what the scope of what the planning committee is, what can we do to preserve the aesthetics of our valley.
- Think about what it would do if these large steel structures get put up and cut through our community, once those are up there is nothing we can do.
- Reasonable ordinances for our community.

Harold Wilson; Heber Light & Power representative:

- We look forward to working with this commission and staff on this ordinance and giving what sort of input that we can.
- Study session is an excellent idea, we'd be engaged in that study session. We'd like to work with this group and the citizens as much as we possibly can.
- Our goal as a service provider is to be a part of the community.
- When it comes right down to it, we just want to keep the lights on.

Ron Lowrey:

- The current 45kv line runs about 30 feet from my property line
- I bought that property five years ago knowing about that line and I was okay with that, I'm not okay with it being 115 feet tall.

- If this power is for Orem and Park City, why is it running right through the middle of Midway?

Don Watts; Rocky Mountain Power local regional business manager:

- We are more than willing to sit down with any community to talk and discuss what our obligations are to our customers.
- I second the comments made by Harold.

Marisha Johnson:

- This is the jewel of Utah.
- I do not trust the power companies. They want to do the cheapest thing possible and come right through our neighborhoods. They don't care about destroying individuals lives.
- This will lower property values.
- Not everybody that wanted to be here could come tonight.

Jeri Simms-Masters:

- My concern is the part that is not in Midway City the part that goes across 500 south, which is south of my home. I would encourage that whatever solution that you make applicable to the lines that are within the City limits also apply to that section.
- I would be very unhappy if the lines within the City limits get buried, but we allow a 140-foot powerline to come along on 500 south.

Will Dardis:

- The comment about keeping the lights on is B.S. and is a ridiculous understatement.
- It's ugly coming into Heber.

Bengt Johnson:

- We are dealing with industrial grade legal pressure from the power companies.
- We are dealing with a multimillion dollar company. I would advise this council and the City to consult an equivalent level of legal counsel that deals with utilities to get a clear accurate in depth and proper opinion to how to deal with this issue.

Chairman Kohler closed the public hearing

Staff and commissioner's discussion

- Right now, there is no ordinance in place. If they came in and applied tomorrow, there would not be much that we could do. I haven't heard of any indication that they are going to come in and apply. There is certainly a concern that if an application does get turned in then we couldn't say that we want the studies and the information, we would lose that opportunity.
- There is no type of regulation for this type of line in Midway. What we do have in the code is when a new subdivision comes into Midway those new lines are buried.
- There is a ton of research that needs to happen.
- Could we put this under a pending ordinance?

- Nothing is binding until passed at City Council
- Nobody would be interested in having power lines above ground versus underground, unless they were only interested in the cost factor.

Joe Dunbeck; General counsel for Heber Light & Power:

- We don't intend to turn in an application for the next 60 days
- We want to meet with staff and have a study session.
- We hate to see you rush into something that's not exactly right yet.

Heidi Gordon; In house council for Rocky Mountain Power:

- We will commit for not filing anything for 60 days.

Ben Clegg; Rocky Mountain Power; Project manager for the project that is being proposed for coming across the valley:

- There are pros and cons with either overhead or underground powerlines, we are willing to go either direction, it's a function of excess cost.

Commissioner Waldrip:

- Has your company looked at composite materials and lengthening the distance between the poles?
- There is a lot of new technology and new materials being used for new installations and replacement that enable greater distances between the poles and greater tension on the lines.

Ben Clegg:

- We have a standards department that goes through and selects appropriate conductors, we follow our codes and standards.
- We use both steel and some composite as far as carrying the load.

Commissioner Waldrip: That could potentially mitigate the impact of the above ground lines if that newer technology would work and is not prohibitively expensive.

Ben Clegg:

- Typically, when you increase bands you have to raise pole heights and that's the tradeoff. If you want shorter poles you get them closer together.

Nicole Kendall; Rocky Mountain Power; transmission engineer on this project:

- The National Electric Safety Code which governs the utility industry and how things are built in terms of safety and clearances and all that. There are five rules that limit the tension on the conductors on the wires and all five of them have to be met. So, you can only pull the wire so tight.

Commissioner Streeter:

- Have any of these rules and regulations that is governing all of this, changed in the past few years?

Nicole Kendall:

- There is a new code that comes out every five years, the newest code came out in 2017, those rules have not changed since 2012.
- Anytime a utility pole and lines are built it has to be built with the new code.

Commissioner Payne: Who would initiate the pending ordinance to put this on the City Council agenda?

Planner Henke: The Mayor is in charge of the City Council agenda.

Motion: Commissioner Waldrip: I move that we suggest to the Mayor informally that this ordinance that we are considering right here which is item three on the agenda be considered for the next City Council agenda as a pending ordinance. The second part of the motion is that we set a study meeting when our council and staff would believe it to be appropriate I'm not sure how far out to set that in the motion, but an appropriate time as we discuss it maybe we can amend the motion to set that time to a specific time for a study meeting or whatever we call that, work meeting. Invite key stake holders, participants, advisors to that meeting to give us legal input, to give us input from the power company's perspective and from the communities perspective so we can try to see how the ordinance that we are looking at here might be either left in its current form or adjusted a little bit to more perfectly accomplish the general goals that we have of preserving both the service by the utilities to our community and the beauty and environment of our community.

Commissioner Ream: I do like the idea of having some legal opinion that is from someone who specializes in this area. We need a specialist.

Corbin Gordon; City attorney: Let me help you simplify. What you are really doing is you're continuing. You've got a proposed ordinance this evening, you're moving to continue it, you're not going to take action on it tonight and you'd like to set up a meeting with the stake holders as soon as possible to meet with them and you have an informal recommendation to have this go before the City Council as a pending ordinance.

Commissioner Waldrip: And a recommendation to staff that we get the appropriate input from whatever sources are appropriate. I think it would be good to get some help from a specialist in this area, a utilities lawyer.

Mayor Johnson: I would like to assure the commission and our citizens that we will put this on the agenda for the next meeting.

Motion: Commissioner Waldrip: Mr. Chairman let me withdraw the last motion and restate it. I move that we encourage the Mayor to put the substance of this item number three on the next City Council agenda as a suggestion from the Planning Commission and that we also continue this matter and set a work meeting or a study meeting in which we invite appropriate stake holders and advisors to attend representing the community members affected most by this proposed power line project, the legal aspects of the proposed ordinance and the practical aspects of it from the view point of the public utilities involved and that we schedule that for a time in the near future to be determined by staff depending upon how much time they need to gather the people together. I don't know that we need to set a specific time tonight, but in the near future.

Seconded: Commissioner Nicholas

Chairman Kohler: Any discussion on the motion?

Commissioner Bouwhuis: One item that I recommend that we add to that is that we give a date that it will be heard at next month in this meeting. If we are to meet a 60-day time line. We need to be hearing that again here in Planning Commission in 30 days so that it can go on the City Council the following month to meet the 60-day.

Commissioner Waldrip: I think that is okay, I think we can do that. We can continue it to the next meeting with the idea that we'll have a work meeting between now and then. We can always push it next meeting if we have to, if we're not ready by then we can continue it again. I'm adopting that as a part of my motion that we continue the

consideration of this proposed ordinance to the next Planning Commission meeting with the idea before it becomes considered we will have the work meeting.

Seconded: Commissioner Nicholas: My second stands

Commissioner Bouwhuis: I'd like staff to look into other jurisdictions that have done similar ordinances like this. I know some jurisdictions require most everything underground. In the description where it talks about the different options are addressed that needs to be further defined in the ordinance, such as above ground, underground, heights and different routes as well.

Chairman Kohler asked if there were any further discussion on the motion.

There was none

Chairman Kohler: All in favor.

Ayes: Commissioners Streeter, Waldrip, Nicholas, Payne, Ream and Bouwhuis

Nays: None

Motion: Continued

Item: 4

Midway City is proposing a Code Text Amendment of Midway City's Land Use Code of Title 16 regarding Residential Treatment Facilities, Residential Facilities for Elderly Persons, Rest Homes, Nursing, and Convalescent Facilities. The City would like to review the current code and potentially amend the regulations for these facilities.

Staff and commissioner's discussion

- Discussed the Dan Jones survey and how staff came up with the number of eight (8) residents and two (2) employees
- Two parking spaces is the requirement
- Would like to address the maximum number of parking
- If the maximum number of parking is addressed, then it has to be equal across the board
- Many of the laws are already in place at the State and Federal level
- Would like the number to drop from eight (8) down to six (6) residents
- A certain amount of square feet is required per resident
-

Chairman Kohler opened the meeting to public comment

Caleb Cottle:

- I've run residential treatment facilities for the past 12 years.
- This comparison here takes some of the contents from the Fair Housing Act and applies them to residential treatment centers, it does not acknowledge all the requirements from the Americans with Disabilities Act.
- This is comparing a home for a residential treatment to other homes that are personal residents.
- A better comparison would be to look at other residential treatment facilities in

Utah.

- Utah has more residential treatment facilities than any other state in the country.
- Daniels Academy is licensed for 37 adolescents in a residential zone.
- If you restrict it to 8 individuals it's going to drive residential treatment facilities, which are very much needed into smaller residences.
- A better comparison would be the square footage of the home and the acreage of the property.
- In my personal research having 30 residents in a 10,000 square foot home is very common and can be found regularly. So, to create an ordinance that is so severely different from other ordinances from other counties within most of the state would be very concerning to me for discriminatory reasons for these people.
- I believe the goal is to help heal individuals and families.
- The facilities that house 30 plus residents have typically two (2) to three (3) acres, and the home is between 9,000 and 12,000 square feet.

Chairman Kohler closed the public comment period

Staff and commissioner's discussion

- Are we trying to encourage smaller resident facilities in the smaller residential zones? Or are we trying to encourage larger facilities in larger zones like the acre zones?
- Both scenarios can be accommodated.

Motion: Commissioner Payne: I move that we approve and make a recommendation to City Council, item #4, propose a Code Text Amendment that Midway City's Land Use Code of Title 16 regarding Residential Treatment Facilities, Residential Facilities for Elderly Persons, Rest Homes, Nursing, and Convalescent Facilities. We accept staff findings. I suggest one change, that the definition of the single housekeeping unit which currently reads as eight (8) we change to six (6).

Seconded: Commissioner Waldrip

Chairman Kohler: Any discussion on the motion?

Commissioners, Nicholas, Bouwhuis and Ream expressed that limiting to six (6) is too restrictive.

Chairman Kohler: All in favor.

Ayes: Commissioners Streeter, Waldrip, and Payne

Nays: Nicholas, Ream and Bouwhuis

Tie breaking vote by Chairman Kohler: Aye

Motion: Passed

Item: 5

Midway City is proposing a Code Text Amendment of Midway City's Land Use Code of Title 16 regarding permitted and conditional uses in the City. The City

would like to specify that if a use is not specifically stated as a permitted or a conditional use then it is not allowed.

Chairman Kohler opened the meeting up to public comment
No responses, it was closed

Motion: Commissioner Nicholas: I move that we recommend approval of the Code Text Amendment of Midway City's Land Use Code of Title 16 regarding permitted and conditional uses in the City. The change would be to specify that if the use is not specifically stated as a permitted or conditional use then it is not allowed. We accept the staff findings and the staff report. We accept staff findings as presented on the screen not in the packet.

Seconded: Commissioner Streeter

Chairman Kohler: Any discussion on the motion?

There was none

Chairman Kohler: All in favor.

Ayes: Commissioners Streeter, Waldrip, Nicholas, Payne, Ream and Bouwhuis

Nays: None

Motion: Passed

Item: 6

Midway City is proposing a Code Text Amendment of Midway City's Land Use Code of Title 16.16.4: Concept/Master Plan. The City would like to review the current code and potentially amend the regulations to require that water rights for the master plan are tendered to the City when the master plan is approved.

Staff and commissioner's discussion

- Need to wordsmith the language a little more before it goes onto City Council
- What is the City's interest in whether a land owner sells off the water or not?
- There is two ways to look at it, one is the irrigation company, they do not have any control whether a land owner sells off their water or not. If somebody asks for approval of a project that's when as a City, we are granting certain rights for that property owner to move forward with development and that is when we want to make sure that the water stays with that property.
- If a developer wants to abandon the master plan, then that developer gets the water shares back.

Chairman Kohler opened the meeting to public comment

Brett Walker:

- Some farmers take risk and don't leverage the bank.
- It should be the farmers decision whether to keep that water on the land or to dry

up the land and sell the water.

- Be cautious of those citizens of those trying to provide a living.
- The City should not receive the water, that land and water is still the farmers/developers. A different entity should receive and govern the water.

Athina Kourmarela:

- If the water is sold off the land, then it can't be developed unless more water is purchased and brought back to that land.
- What if the developer has put in the partial infrastructure and they are halfway through their development and they go belly up? Also, if it is on a loan basis from a bank, does the bank also have interest in the water rights?

Planner Henke:

- Yes, the bank would have interest. Usually they lend money on the property and the water.

Athina Kourmarela:

- How does that work with the City having equity in the water also?

City Engineer; Wes Johnson:

- If they've began construction most likely a plat has been recorded for them to do that, if that's the case the City owns the water.

Chairman Kohler closed the public hearing

Motion: Commissioner Bouwhuis: I move that we proposed the following language not as stated in the original staff report, but that the water rights be held jointly, all of this would be subject to staffs wording correctly, but that their wording meet these following criteria. That the water rights will be jointly held in the name of the property owner and the City at the time of Master Plan approval. At the time the Master Plan approval expires, or the developer abandons their right to the Master Plan or the future phases that the remaining shares will go back at that time solely to the property owner. The intent of that is that they could abandon at any phase that they want then those would be able to go back.

Planner Henke: Once there is one phase built it's not as simple as just abandoning.

Commissioner Bouwhuis: Could they not abandon the Master Plan?

Planner Henke: They could before they record phase one, but after phase one we would allow them to amend the Master Plan, but we wouldn't allow them to abandon it once phase one goes through.

Motion: Commissioner Streeter: I move that we approve the Code Text Amendment of Midway's Land Use Code Title 16.16.4: Concept/Master Plan. We accept the findings of staff. We allow staff to wordsmith the wording understanding that it will not affect the substance of the proposal, and we add the provision about returning the water rights if the Master Plan is either abandoned or expires.

Seconded: Commissioner Nicholas

Chairman Kohler: Any discussion on the motion?

Commissioner Bouwhuis: Are you stating the proposed code from what's in the plan or what has been presented on the screen, because they are totally different.

Commissioner Streeter: I was referring to what is up on the screen when I was making my motion.

Commissioner Bouwhuis: Is there a time sensitive nature to this?

Planner Henke: No.

City Engineer; Wes Johnson: I think that your concern is addressed. Let's say Remund Farms, they've got Master Plan approval for phase one, two and three. If they got to phase two and said that we don't want to finish. They would come back to the City and we would amend the Master Plan and we would make sure that it is a complete working subdivision. If for some reason we said we are going to amend the Master Plan, we couldn't abandon, because we've got phase one and two. But if we amended it then yes, we would give back the water rights that aren't being used. It could never be abandoned, but it could easily be amended.

Planner Henke: So, if they needed forty-acre feet for phase two and they amended that where it only needed thirty-five then yes that five would be returned if the plat has never been recorded. Once the plat has been recorded then we can never give the water rights back. Per state code we cannot give those water rights back.

Commissioner Waldrip: In a phased development those plats are recorded separately for each phase, so the water rights attach to each phase.

Commissioner Bouwhuis: I think there is enough in this that is not defined, that I would recommend that this isn't passed until it is looked into further.

Chairman Kohler: Any discussion on the motion?

There was none.

Chairman Kohler: All in favor.

Ayes: Commissioners Streeter, Waldrip, Nicholas, Payne, and Ream

Nays: Bouwhuis

Motion: Passed

Item: 7

Adjournment

Motion: Commissioner Streeter: I move that we adjourn.

11:03 pm



Chairman – Jim Kohler



Admin. Assistant – Lindy Rodabaugh

