



Memo

Date: 11 September 2020
To:
Cc:
From: Brad Wilson, City Recorder/Financial Officer
RE: Minutes of the 18 August 2020 City Council Regular Meeting

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)**

**Tuesday, 18 August 2020, 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 United States Post Office, 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; Pledge of Allegiance; Prayer and/or Inspirational Message

Mayor Johnson called the meeting to order at 6:01 p.m.

Members Present:

Celeste Johnson, Mayor
Steve Dougherty, Council Member
Jeff Drury, Council Member
Lisa Orme, Council Member
Kevin Payne, Council Member
JC Simonsen, Council Member

Staff Present:

Corbin Gordon, Attorney
Michael Henke, Planning Director
Wes Johnson, Engineer
Brad Wilson, Recorder/Financial Officer

Mayor Johnson led the Council and meeting attendees in the pledge of allegiance. Council Member Simonsen gave the prayer and/or inspirational message.

2. Consent Calendar

- a. Agenda for the 18 August 2020 City Council Regular Meeting
- b. Warrants
- c. Conclude the warranty period and release the remainder of the bond for the Epperson Subdivision located at 65 West and 200 North subject to the payment of all fees due to Midway City.
- d. Conclude the warranty period and release the remainder of the bond for the Watts Remund Farms PUD, Phase 1 located at 200 East and 600 North subject to the payment of all fees due to Midway City.

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

Motion: Council Member Dougherty moved to approve the consent calendar.

Second: Council Member Orme seconded the motion.

Discussion: None

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

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

3. Public Comment – Comments were taken for items not on the agenda.

Mayor Johnson asked if there were any comments from the public for items not on the agenda.

Aimee Armer for County Council

Ms. Armer introduced herself and indicated that she was running for the Wasatch County Council. She reviewed her qualifications and platform.

No further comments were offered.

4. Department Reports

Affordable Housing

Council Member Payne gave a presentation regarding area affordable housing and reviewed the following items:

- Groups that could benefit from affordable housing.
- Types of affordable housing.
- Paying for affordable housing.
- It could not be financed by developers.
- Long-term management of affordable housing.

Council Member Payne also made the following comments:

- Spend his entire career developing affordable housing.
- Affordable housing meant different things to different people.
- Certain types of affordable housing were in greater demand.
- Larger affordable housing projects were easier to manage.
- Affordable housing efforts in the area were more reactive instead of proactive.
- Developers alone would build the lowest cost type of affordable housing. This type was in the least demand.

- A comprehensive plan was needed.
- Did Midway want to address affordable housing or just meet state requirements?
- Affordable housing was more practical in Heber City because it was near transit, jobs, and essential services.

Town Hall / Community Center / Refresh

Council Member Orme reviewed projects to refresh the Town Hall and Community Center.

600 North Roundabout

Wes Johnson Reported on the construction of the roundabout at 600 North and River Road.

Trails and Parks Committee / Discussion Schedule

Michael Henke reported that the Midway City Trails and Parks Advisory Committee had adopted a schedule to discuss certain items each month.

Irrigation System

Council Member Dougherty reviewed ways to conserve water and increase water pressure for the irrigation system.

Water Rights Adjudication

Council Member Dougherty reported on the adjudication of water rights.

Foreign Water

Council Member Dougherty reported that the use of foreign water was being discussed.

COVID-19 Pandemic

Mayor Johnson reported on the pandemic and thanked residents for helping lower the case count.

- 5. Utah Clean City** (Mayor Johnson – Approximately 10 minutes) – Discuss and possibly approve becoming a Utah Clean City.

Mayor Johnson explained that the idling of vehicles should be reduced, and awareness of the issue increased. She asked if the Council objected to her signing such a pledge on behalf of the City. The Council did not object.

6. Mountain Spa Property / Financial Support (City Planner – Approximately 90 minutes) – Discuss and possibly approve \$1.5 million for the reduction of density on the Mountain Spa Property on the west side of River Road and the south side of Burgi Lane. **Public Hearing**

Michael Henke gave a presentation regarding the proposed donation and reviewed the following items:

- Previous open space preservation projects
- Land use summary
- Location of the property
- Development history and potential
- Concept plan proposed to the Planning Commission
- Proposed rezone
- General plan and open space
- Possible conditions
- Building heights
- Trails/Linear Park

Mr. Henke also made the following comments:

- The donation would not be used for areas that were buildable or sensitive lands.
- The proposal was recommended by the Midway City Open Space Advisory Committee.
- The number of lots had been reduced from 72 to five. The conserved open space would be tied to these lots. The lot owners could only utilize the open space for uses allowed by the conservation easements. All structures had to be on the lots and not the open space.
- The conditions of the City's contribution could be tailored for the project.
- The Lacy Lane HOA supported the proposal.
- Would like to have an east to west trail as well as the planned north to south trail.
- There should be a term limit on the contribution.
- A rezone was needed so some of the lots would not be in the resort zone.
- The lots would be part of a rural preservation subdivision.
- The property included 159-acre feet of water rights which would allow for significant development. None of these rights were from the Midway Irrigation Company.
- Large sections of the property had not been historically irrigated.

Note: A copy of Mr. Henke's presentation is contained in the supplemental file.

Courtland Nelson, Open Space Committee Chair, indicated that the Committee unanimously recommended the proposal, but it was more complex than the others considered by the City Council.

Woody Woodruff, Open Space Committee Member, gave a presentation regarding the proposal and made the following comments:

- The proposal had a lot of moving parts and was a partnership with a commercial developer.

- Would not talk about how the development would proceed.
- There would be a simultaneous closing on the property in early December. Two estate lots would be sold, and the conservation easements secured at that time.
- Two lots would be for single family homes with agricultural outbuildings.
- The other lots would also be single family homes.
- The lots could not be re-subdivided.
- The contribution by the City would be for the two large open space tracks totaling 34.6 acres.
- The wetlands and other sensitive lands would be protected as part of the proposal regardless of any future changes to the City's sensitive lands regulations.
- Density in the resort zone would be reduced.
- Over 50 acres would be preserved as open space.
- \$300,000 of open space bond money was being requested from Wasatch County.
- The planned resort would increase the City's transient rental capacity.
- The developer would do some clean-up around the old resort.
- None of the preserved open space would be in the resort zone.
- The proposal was better than hoping for something better in the future.
- Each open space proposal was different.
- You could not put a standard per acre amount on open space.
- The Albert Kohler Dairy was different because a portion of it was in the County and a larger County contribution was requested.
- The owner would not seek an IRS tax deduction because of the proposal.

Cheryl Fox, Summit Land Conservancy Executive Director, made the following comments:

- Summit Land Conservancy was a nonprofit land trust.
- Its goal was to facilitate what Midway wanted.
- It tried to purchase the property, but its offer was rejected.
- Wanted to project views, provide public trail access, and keep some of the look and feel of the area.
- The City's contribution would only be for the conservation easements.
- The Conservancy would be responsible to maintain the easements in perpetuity.
- Would fundraise after any governments had made their financial commitments.
- Wanted to protect wildlife and human habitat.
- There were buyers interested in the estate lots.
- Would hold the conservation easement on the section of land with the hotpots.
- Was in the process of understanding the water rights.
- The proposal did not lend itself to matching funds. The estate lots filled this purpose.

Public Hearing

Mayor Johnson opened the hearing and asked if there were any comments from the public.

Ken Mickelson

Mr. Mickelson made the following comments:

- Thanked the City Council and Open Space Committee.

- Water was the major impediment for the project. The property would have already been developed if it had sufficient water rights.
- The property would eventually be developed.
- There was a window of opportunity to preserve the open space.
- The number of homes would be reduced to five.
- The City's contribution should have a time limit.

George Hansen

Mr. Hansen made the following comments:

- There should be sufficient water for the proposal.
- Engineered excavation restrictions should be in place for the resort because of the geothermal activity in the area.
- Burgi Hill should also be preserved.

Robert Duncan

Mr. Duncan made the following comments:

- The proposal was a stunning opportunity.
- It preserved open space along an entry corridor.
- Midway was worth saving.
- Trails were important but should not derail the proposal.

Colleen Bonner

Ms. Bonner made the following comments:

- There should be sufficient water rights for the open space to be used as agriculture.
- There should be a letter from Grant Kohler that he would maintain the open space.
- The entire development plan including the resort should be shown as part of the proposal.

Michael Henke responded that there was not at that time a development plan for the resort.

Nora Lundin

Ms. Lundin made the following comments:

- The property had not sold because it lacked water rights. Could this already limit its development potential?
- Wasatch County required one share of water per acre before it would contribute to the Albert Kohler Dairy.

Mr. Henke responded that the owner could purchase additional water rights.

Don Symonds

Mr. Symonds supported the proposal because open space was disappearing. He asked the Council to focus on the open space and not become distracted by other issues.

Krista Clark

Ms. Clark supported the proposal and public access to the mineral pools.

Natalie Streeter

Ms. Streeter, Open Space Committee Member, made the following comments:

- The Conservancy could find people to farm the land if needed.
- Issues with the water should be resolved sooner rather than later.
- Development on the property would go through a separate approval process.

Paul Berg

Mr. Berg made the following comments:

- Other developments proposed for the property had maximized density.
- More area would be preserved as sensitive lands than required by the Municipal Code.
- A geotechnical study for the property had been prepared.
- Brigham Young University had mapped part of the property with ground penetrating radar.
- Walked the property with Linda Payne whose family was a previous owner.
- The water rights had been studied and would be considered during other meetings in the development process.

Bengt Jonsson

Mr. Jonsson made the following comments:

- Water rights was an important issue.
- The public should be able to use the open space.
- Sensitive lands were open for interpretation and the City should be careful when they were part of a propose development.

Chuck Heath

Mr. Heath, developer for the property, stated that he did not want to excavate into the potrock for underground parking. He would use the topography to create the parking.

Mayor Johnson closed the hearing when no further public comment was offered.

The Council, staff and meeting attendees discussed the following items:

- Funds should not be transferred until the plat map for the project was recorded.
- The City was purchasing development rights not land.

Note: Council Member Orme recused herself from discussion of the item. She left at 8:38 p.m.

Council Member Drury indicated that the Conservancy, not the City Council and staff, had been responding to some questions from the public using the chat feature in Zoom.

Motion: Without objection, Mayor Johnson recessed the meeting at 8:40 p.m. She reconvened the meeting at 8:48 p.m.

Note: Council Member Dougherty disclosed that his home was on the southern border of the proposal.

The Council, staff and meeting attendees discussed the following items:

- The City should not set a precedence with the proposal.
- Should open space money be used for rural preservation subdivisions?
- Was it appropriate that the sensitive lands dedicated to the City could only be used for passive uses? Should there be community access to the hot water? The public should be able to access this area.
- Would the resort want to use the hot water from the hotpots?
- The land planning would be done at a different time.
- The Council should not approve anything that varied from the concept or memorandum of understanding presented that evening.
- The Conservancy and developer needed a commitment from the City to proceed.
- The City would eventually enter into an agreement with the Conservancy and the developer.
- Some items would be addressed later in the process.
- The City would be liable for the land that it received.
- Areas of the property that were historically irrigated should continue to be irrigated.
- The memorandum of understanding was between the Conservancy and the developer not the City.
- The City's contribution would not be made until the conservation easements were in place.
- The land would continue to be protected by the easements even if the developer changed.
- The letter of commitment should be prepared before the Council made a decision.

Motion: Council Member Drury moved that staff prepare a letter of commitment, that captured the issues discussed that evening, for review at the September 1st meeting.

Second: Council Member Payne seconded the motion.

Discussion: Council Member Dougherty asked if the delay would affect the timeline for the project. Mr. Heath responded that September 1st was a couple of days before the relevant deadline.

Council Member Dougherty asked to see the draft letter as soon as possible.

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

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

Note: Council Member Orme returned at 9:37 p.m.

7. Transfer Water Right (Luann Kohler – Approximately 10 minutes) – Discuss and possibly approve transferring a water right to Midway City in exchange for a culinary water connection and sufficient water to irrigate 0.23 acres.

Note: Corbin Gordon disclosed that Luann Kohler worked for him and he would recuse himself from consideration of the item if needed.

Michael Henke gave a presentation regarding the request and reviewed the following items:

- Location of the property with the well.
- Midway Place Subdivision

Mr. Henke also made the following comments:

- The house was already connected to the City's culinary water system.
- The well had not been used for several years.
- The applicant wanted to petition the Utah State Engineer to transfer the water rights from the well to the Midway Place Subdivision.
- The lot in the Midway Place Subdivision was in the R-1-7 zone which allowed an additional house.
- The Midway Water Advisory Board felt that the application would have a better chance of approval if it was endorsed by the City. The Midway Irrigation Company would also sign the application.
- The City had approved similar applications if the property was within the city limits.

Note: A copy of Mr. Henke's presentation is contained in the supplemental file.

Motion: Council Member Orme moved to approve the petition to transfer the water right from the well at 624 South Center Street to the Midway Place Subdivision, and to approve a change application to transfer the applicable amount into the City’s Alpenhof-Weber well with the remainder transferred into a Midway Irrigation Company water source.

Second: Council Member Payne seconded the motion.

Discussion: None

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

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

8. Town Square Master Plan / RFP (Council Member Simonsen – Approximately 30 minutes)
– Discuss and possibly approve releasing a request for proposals to master plan the Town Square.

Council Member Simonsen introduced the item. He said that it would create a vision and plan for the Town Square. He added that the improvements would not be done immediately. Mayor Johnson added that the public would be involved in the planning process.

Ken Mickelson, Midway City Trails and Park Advisory Committee Member, reviewed the proposed RFP and made the following comments:

- Volunteers would prepare the RFP.
- A professional would prepare the plan.
- The Town Square was a focal point and defined Midway. It could also be an engine for economic development and tourism.

Council Member Payne suggested obtaining at least three concepts.

Council Member Dougherty asked that the RFP be brought back to the Council for review.

Motion: Council Member Drury moved to create the RFP and that it be brought back to the Council for review.

Second: Council Member Orme seconded the motion.

Discussion: None

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

Council Member Dougherty	Aye
Council Member Drury	Aye

Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

9. 2020 Striping Project / Award Contract (City Engineer – Approximately 10 minutes) – Discuss and possibly award a contract for the 2020 striping project.

Wes Johnson explained the project and made the following comments:

- Heber City was struggling to get a contractor to stripe its roads.
- Combined Heber’s and Midway’s projects and got one bidder.
- The bid was good and recommended that the contract be awarded for \$19,392.34.

Motion: Council Member Drury moved to award the 2020 striping project to Peck Stripping in the amount of \$19,392.34 and authorize the Mayor to sign the documents.

Second: Council Member Payne seconded the motion.

Discussion: None

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

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

10. Resolution 2020-26 / Property Exchange Agreement (City Attorney – Approximately 30 minutes) – Discuss and possibly approve Resolution 2020-26 adopting a property exchange agreement for an easement at 600 North and River Road.

Corbin Gordon presented the proposed agreement and made the following comments:

- The Miller family owned property that was needed for the 600 North roundabout.
- The Millers submitted a landscaping bid for \$18,000. The City countered with a bid of \$4,350.
- Had send the agreement to the Millers but had not received a response.
- The agreement could be approved and then reconsidered if the Millers did not accept it.

Wes Johnson said that the proposed trail was on the Millers’ property but thought that the curb and gutter was in the City’s right-of-way.

Motion: Council Member Dougherty moved to adopt Resolution 2020-26 with the property exchange agreement as included in the packet and drafted by the City Attorney, with the addition of a mutual release of any claims between the Millers and the City, and authorizing the

City Engineer, City Attorney, and Mayor to present it, sign it, and carry it out if it was accepted.

Second: Council Member Payne seconded the motion.

Discussion: None

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

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

11. Resolution 2020-27 / Statement of Intent (Council Member Simonsen – Approximately 30 minutes) – Discuss and possibly approve Resolution 2020-27 adopting a statement of intent for the use of proposed transmission line bond proceeds.

12. Resolution 2020-24 / Special Bond Election (Bond Counsel – Approximately 30 minutes) – Discuss and possibly adopt Resolution 2020-24 providing for a Special Bond Election to be held on 3 November 2020, for the purpose of submitting to the qualified electors of Midway City, Utah, a proposition regarding the issuance of not to exceed \$4 million General Obligation Bonds to finance the burial of a transmission line and all related improvements; and related matters.

Council Member Simonsen read the statement and made the following comments:

- The statement established an agreement on the limitations and guidelines for burying the proposed transmission line along 970 South, Stringtown Road, and Wards Lane.
- There were portions of the statement that the Council may or may not agree with.
- It could be amended.
- It restated key elements and updated some of the conditions of the conditional use permit for the transmission line.
- The line should only be buried if there was a payment agreement with the utility companies that included a cap on the amount owed by the City.

Note: A copy of the draft statement is contained in the supplemental file.

Council Member Drury asked that the authorizing resolution for the bond election be considered with the statement.

The Council, staff and meeting attendees discussed the following items:

- The proceeds would not be the full \$4 million because some or all the bond would not be tax exempt.
- The bond amount should be \$4.2 million to generate \$4 million in proceeds.

- Residents could pay for more, than just the bond, if the utility company raised its rates to pay for any overruns. This was out of the control of the City.
- The voters could authorize the bond but there still might not be sufficient funds to bury the line.
- Should the City propose the bond if it knew that the project might not be done?

Council Member Orme made the following comments:

- The City had spent a lot of money on the issue.
- Had been contacted by a lot of residents regarding the issue.
- Had a lot of concerns about burying the line and bonding for its cost.
- There were a lot of unanswered questions and misinformation.
- The line was approved to go above ground through the areas not in the City.
- No other transmission lines in the area would be buried.
- The actual cost of the project was not known.
- No one had agreed in writing to provide the needed easements at no cost.
- There would be an attempt for the residents to pay any additional cost over the bond amount.
- Rocky Mountain Power (RMP) would not pay to bury the line.
- The property owner, RMP, and Wasatch County all had to agree to move the dip poles away from Hwy 113.

Council Member Dougherty made the following comments:

- The state statute regarding the burial of lines was the reason for all the problems.
- There was an opportunity for the City and utilities to work around the statute and come to an agreement.
- The utility companies should be responsible for the unknowns.
- The utility companies had no reason to value engineer the project because of the statute.
- Should the Council or the voters make the decision? The City should help educate the voters on the issue.
- Negotiating avoided the courts making the decision or someone else telling the City what to do.
- The City could not tell Heber Light & Power Company (HL&P) where to set its rates.
- The line would go overhead if an agreement was not reached and the bonds not issued.
- An agreement would not be reached until the bond was passed.

Council Member Payne made the following comments:

- None of the issues were insurmountable and they could be resolved before the line was buried.
- The CUP, easements, and potrock were nonissues.
- The appeal, which VOLT helped fund, created opportunities including the utility companies now wanting to negotiate and reduce costs.
- The Council should not artificially narrow its choices.
- The project would not move forward if it was not as discussed.
- The CUP was approved unanimously by the Council with a fixed monthly fee for HL&P customers.
- A bond was more equitable than a fixed fee.

- The fixed fee by HL&P was still an option.
- Taxes for primary homes were reduced.
- VOLT's donation totaled \$1.4 million if you included the easements.

Council Member Simonsen made the following comments:

- The voters should participate in tax decisions.
- The City acted in good faith when it polled the residents on the issue. The poll showed that residents were interested in burying the line.
- A buried line was more pleasing.
- An overhead line would discourage tourism and the purchase of second homes which would financially impact the City.
- Had concerns about the proposal.
- Residents needed to understand that the line would go overhead through the rest of the valley.
- Voters needed to be informed if they made the decision. They did not need to know everything but should know the cost, the section that would be buried, etc.
- Was concerned about the location of the dip poles and the financial impact on the residents.
- It was fair to ask was this the best use of the money. Would it be better to spend it on open space?
- The City had worked hard to reduce the cost for burying the line. There should be an absolute limit on the cost.
- The statute put the City in a difficult position.
- The issue could be challenging but should not be divisive.
- The City needed to move on to other issues.
- A value could not be put on beauty.

Council Member Drury made the following comments:

- The City might not have the opportunity to educate the voters. If it could not, then the Council should make the decision.
- The Council had to best represent the interests of the residents.
- Had made decisions that were best for the residents but contrary to his beliefs.
- At some point a cost had to be determined.
- Additional charges could be put on rate payers which would be outside of the City's control.
- There were at least eight things that needed to happen for the bond amount to be sufficient to cover the cost of the burial.
- The line might still be overhead even if the voters approved the bond. There was no easy way to explain that to the voters. Was not comfortable with a simple yes or no question on the ballot.
- Low income did not mean lower taxable property values in Midway. Low income residents who owned land would see significant tax increases.
- Property taxes had increased substantially in Midway.
- Was it wise to spend money on burying the line or on open space where it would be matched by other donors?
- Could the City get another open space bond approved if this bond was approved?
- The Council had spent many hours and had not been able to resolve all the concerns.
- There was no decision that everyone would like.

Mayor Johnson thanked the Council for putting so much thought and care into the issue. She noted that a super majority was needed for the authorizing resolution.

Council Member Dougherty asked that a motion on the statement of intent be made first.

Motion: Council Member Dougherty moved to adopt Resolution 2020-27 adopting the statement of intent as drafted subject to the following conditions:

- The market value of a primary residence would be the same as in the authorizing resolution.
- The authorizing resolution was approved.
- It referred to the “bond proceeds” instead of the “bond amount.”

Second: Council Member Simonsen seconded the motion.

Discussion: None

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

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Nay
Council Member Payne	Aye
Council Member Simonsen	Aye

Motion: Council Member Dougherty moved to adopt Resolution 2020-24 subject to the clarification of the market value of a primary residence.

Second: Council Member Payne seconded the motion.

Discussion: None

Vote: The motion was not approved by the required two thirds majority with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Nay
Council Member Orme	Nay
Council Member Payne	Aye
Council Member Simonsen	Aye

Mayor Johnson noted that the issue would not go on the ballot. She added that the status of the appeal, related to the transmission line, still needed to be decided by the Council. Corbin Gordon noted that consideration of the appeal was not on the agenda.

13. Adjournment

Motion: Council Member Dougherty moved to adjourn the meeting. Council Member Orme seconded the motion. The motion passed unanimously.

The meeting was adjourned at 11:42 p.m.

Celeste Johnson, Mayor

Brad Wilson, Recorder

DRAFT