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MEMORANDUM

TO: Midway City Council

FROM: Corbin Gordon

DATE: January 17, 2020

Re: General Training – City Council

INTRODUCTION

I have been asked to conduct training on the issues below at the City Council annual retreat.

ANALYSIS

I. CITY COUNCIL AUTHORITY

The City Council sits in primarily three capacities: a) legislative; b) land use (subdivision applications, etc.); and 3) quasi-judicial (appeals of administrative decisions, etc.)

Legislative: The City Council has the power to alter existing legislation and pass new legislation. Challenges to legislation normally involve: 1) constitutional claims (takings, equal protection); 2) violation of an existing federal statute (ADA, Federal Fair Housing Act); or 3) violation of an existing and controlling state law. In some instances, careful consideration must be given to the way certain proposals are presented and discussed, as well as the foundational information used to justify the statute. For example, discriminatory purposes

Land Use: These decisions are appealable, and careful consideration must be given in making findings of fact and conclusions of law that reference applicable codes and the Midway City General Plan. There are areas where the City Council has little discretion (a subdivision application that complies with the controlling statute); and where the City Council has vast discretion (annexations, zone changes, etc.). In all instances, detailed findings of facts and

conclusions of law need to be included in motions providing the basis for the decision. Decisions that do not contain findings and conclusion can be deemed “arbitrary and capricious” on their face. Most appeals of land use decisions involve some form of confusion over the record, and the reasons why the decision was made.

Quasi-judicial: Here the legislative body is sitting in a quasi-judicial role as both a fact-finder and as a judge. In this role the City Council is limited to the evidence presented to it, or the evidence that was presented in the decision below. In this capacity, the Council is not allowed to independently seek out facts. Further, decisions cannot be made based on public clamor. These decisions are reviewable under an “arbitrary and capricious” standard and must be supported by findings of fact and conclusions of law. On appeal, most times these decisions are limited to the record below, with the judge either reviewing them for being arbitrary and capricious (meaning there was insufficient reason and evidence in the record to justify the decision) or for the correct application of the law (which is de novo).

In most instances Mike will outline suggested findings and conclusions, and councilmembers need to remember to include in their motions reference to these findings, and to adopt them as part of the motion.

II. CONFLICT OF INTEREST

SEE MEMO ATTACHED

III. OPEN AND PUBLIC MEETINGS ACT

SEE UTAH CODE ANN. § 52-4-101 et. seq.

IV. STAFF REQUESTS FOR LEGAL OPINIONS OR ADDITIONAL INFORMATION

As staff we want to address all questions you have as councilmembers. Oft-times questions will come up in either Planning Commission meetings or in City Council meetings. Many times staff will have answers to these questions as asked. There will, however, be times when staff may not have a fully informed answer or does not desire to put conjecture or speculation on the public record. As such, if staff indicates that an issue will need to be looked into, that means it is of such import or uniqueness that additional time will need to be taken to answer the question. In these circumstances, if the information is salient to making a decision, the agenda item will need to be continued.

To avoid unnecessary delay of the public process, if you have legal questions you would like answered prior to the meetings, you can always e-mail me the questions, and if needed, set up a time to sit down and go over them prior to the City Council meeting. I am sure Mike is willing to do the same.

As possible, it is always best to have discussions about legalities of situations prior to meetings, and not in open session, as it can create the basis upon which an appeal of the decision can be made.