



Memo

Date: 26 April 2022
To:
Cc:
From: Brad Wilson, City Recorder
RE: Minutes of the 19 April 2022 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, 19 April 2022, 6:00 p.m.
Midway Community Center, 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, 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 6:14 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

Michael Henke, Planning Director
Wes Johnson, Engineer
Cory Lott, Public Works Crew Chief
Shane Owens, Public Works Assistant Crew
Chief
Brad Wilson, Recorder/Financial Officer

Staff Present:

Corbin Gordon, Attorney

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

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

2. Consent Calendar

- a. Agenda for the 19 April 2022 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 5 April 2022 City Council Work Meeting
- d. Minutes of the 5 April 2022 City Council Regular Meeting
- e. Minutes of the 5 April 2022 City Council Closed Meeting
- f. Resolution 2022-11 adopting an updated pre-disaster mitigation plan for Midway City

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

Motion: Council Member Payne moved to approve the consent calendar as provided.

Second: Council Member Dougherty 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.

Wasatch County Fire District / Deputy Fire Chief

Eric Hales introduced himself as the deputy fire chief for the Wasatch County Fire District. He indicated that he would be the interim fire chief until a new one was chosen.

No further comments were offered.

4. Department Reports

Wasatch County Housing Authority / Restructuring

Council Member Payne reported that the restructuring of the Wasatch County Housing Authority was ongoing.

Ice Rink / Season Report

Council Member Drury reported that the City's ice rink had closed for the season. He indicated that the season was successful with 15,000 skaters.

Water Quality Report

Council Member Dougherty reported that the water quality report for the City was completed. He indicated that the water quality was good.

Pressurized Irrigation / Ponds / Restrictions / Meters

Council Member Dougherty reported that the Midway Irrigation Company was trying to fill its ponds and had not yet turned on the pressurized irrigation system. He indicated that there would be immediate use restrictions and a letter would be sent out detailing them. He added that meters were being installed for each connection to the system. He said that the installation was simple.

Parks and Cemetery / Lawn Care / Water Conservation

Mayor Johnson reported that organic products would be used for lawn care at the City's parks and cemetery. She added that sensors might be added to the sprinkling systems to conserve water.

HL&P / Infrastructure / Fees / Availability

Council Member Dougherty reported on the new infrastructure being installed by the Heber Light & Power Company (HL&P). He indicated that HL&P was doing rate and impact fee studies. He added that the availability of electricity had been affected by the drought and the price of natural gas.

5. Resolution 2022-15 / Appenzell PUD Master Plan Amendment (City Planner – Approximately 45 minutes) – Discuss and possibly approve Resolution 2022-15 amending the master plan for the Appenzell PUD located at 700 South Center Street.

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

- Background
- Development agreement
- Land use summary
- Location of the development
- Landscaping plan
- Proposed landscaping plan
- Photograph of the property
- High Valley Ranch
- Open space plan
- Density
- Items for consideration

Mr. Henke also made the following comments:

- Had received inquiries from other HOAs regarding selling open space.

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

Wes Johnson explained how the \$21,000 bond amount, for landscaping, was determined. He made the following comments:

- Spoke to the City Attorney and thought that the bond money could not be transferred to the HOA.
- The bond money could be used if the infrastructure failed during the warranty period.
- A warranty period should not begin unless the infrastructure was installed correctly.
- The developer had not requested that the bond be released even though it had been three years since the warranty period began.
- Would recommend that the bond be released if the developer requested that the warranty period end.
- When the warranty period began, he determined that each zone of the sprinkling system was coming on and going off. A neighbor indicated that a landscaper damaged the system after that.

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

- Some of the landscaping was not installed correctly and did not work well over time.
- The City Attorney would review the relevant documents and prepare a memo.
- It was difficult and rare to use bond money.
- The sprinkling system was installed and then damaged when the houses were built.

David Tew, Appenzell HOA President, made the following comments:

- The goal was to amend the 2016 not the 2018 plat amendment.
- Selling the open space helped overcome the cost of remediation.
- The developer had not performed well.
- Had a revised plan for the vacation and sale of the open space.
- The homeowners had already contributed \$255,000 for the remediation. \$483,000 was still needed. The total cost per owner would be \$12,000 if the requested property was not sold.
- Proposed replacing the open space with property left when a barn was removed. This would mean that no open space was lost. This would also avoid precedence being set.
- The potential buyers would not purchase the property if it came with restrictions.
- The homeowners' destinies were in the hands of the Council.

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

- The Council had not seen the new proposal prior to the meeting.
- The item should be continued to give time for consideration.
- Could the City change the development agreement which was with the developer?
- The agreement was changed in 2016 but a relevant section of the Municipal Code was changed in 2018. The consequences would be different if the 2018 change was applied to the request.
- The open space along Center Street allowed more density in the development.
- The proposed amendment would change the overall size of the development.
- The City did not decide that the barn should be removed.
- One or two units still needed to be sold by the developer.
- The City had not done anything to limit the HOA's ability to sue the developer.

- The bond should not have a dollar limit but should pay to repair all deficiencies.
- The City Attorney should address the issue of liability greater than the bond amount.

Motion: Council Member Simonsen moved to continue the item until the May 17th meeting when all the council members could be present.

Discussion: Mayor Johnson made the following comments:

- Appreciated the neighbors coming to the City for help.
- The request would set precedence.
- Other people had already contacted the City wanting to do the same thing. This would happen again and again.
- Civil matters were not city matters.
- The HOA had the right to sue the developer.

Brenda Ford, who wanted to purchase the open space, made the following comments:

- Wanted to purchase the property.
- Was the only person who could purchase it.
- Could add nine feet from her existing lot to make the property a conforming lot.
- Would she have to do a subdivision to build on the property? Michael Henke indicated that she would have to do a two-lot subdivision after the property was vacated.
- Was there any other reason that she could not build a house on the property? Michael Henke responded that he would have to do further review to answer that question.

Second: Council Member Drury seconded the motion.

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

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|--------------------------|---------|
| Council Member Dougherty | Recused |
| Council Member Drury | Aye |
| Council Member Orme | Aye |
| Council Member Payne | Aye |
| Council Member Simonsen | Aye |

6. Springer Property / Water Rights (City Planner – Approximately 15 minutes) – Discuss and possibly approve the required amount of water rights for the Springer Property located at 65 North 200 West (Zoning is C-3). Recommended by the Midway Water Advisory Board.

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

- Project overview
- Location of the property
- Zoning
- Pictures
- Site plan for water rights
- Recommended water requirement

Mr. Henke also made the following comments:

- The Midway Bakery on Main was planned to be in the main building.
- The applicant would come back for a master plan for the rest of the property.
- The building would look like the old house but have a new design.
- There was a credit of 1.5-acre feet for the existing culinary connection.
- The second floor would be a transient rental unit.
- A long-term rental would require a conditional use permit and more water.

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

Motion: Council Member Payne moved to approve the Springer property water rights in the amount of an additional three-acre feet.

Second: Council Member Dougherty 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 |

7. The Village / M&I Water (City Attorney – Approximately 30 minutes) – Discuss and possibly approve the use of municipal and industrial (M&I) water to meet the needs of The Village located at 541 East Main Street (Zoning is C-2).

Corbin Gordon made the following comments regarding the water right:

- The Midway Water Advisory Board had reviewed the request. The Board did not recommend or oppose the use of the water right.
- The developer was short water for the project. He obtained a lease of M&I water that was approved by the Wasatch County Special Service Area #1. This could be transferred to the City’s well.
- The Midway Irrigation Company did not oppose using the right.
- There was sufficient capacity in the Alpenhof-Weber well for this and other water rights.
- Drafted a continuing lien, which would be in first position, to address non-payment of water fees to the City. The City could recover the fees when a property was sold or could foreclose on it. Legal costs would be covered.
- Needed to do more research to determine if a change in the point of diversion was needed.

Wes Johnson reviewed acre feet, capacity in the Alpenhof-Weber well, average usage, and peak usage. He made the following comments:

- All the M&I water rights in the City, including what was proposed that evening, would use less than 50% of the capacity in the well.
- Midway Irrigation Company water rights would come out of the existing springs. The well could be used for other water rights.
- The City had enough storage, in its existing water tanks, for buildout.
- It needed one more water source.
- The Alpenhof-Weber well was not test pumped to its maximum flow because there was no place to put the water.

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

- The City should monitor its capacity to determine the maximum usage that it could provide.
- The amount of water for approved but not built projects needed to be considered.
- Accepting foreign water obligated the City to provide the required potable water source.
- The Jordanelle Reservoir, where the M&I water was stored, was only at 50% capacity.
- The City should test the well to determine its maximum flow.
- The State now required that water conservation be part of a community's general plan.
- The Council should be provided an update on how its water sources were committed. This should include foreign water.
- The Council should also be provided an update of how its water would be allocated at buildout.
- The amount of water per source should be provided to the Council.
- Did the amount of water that the City agreed to provide match what was being provided?
- The Irrigation Company water rights would not meet total demand at buildout.
- The State Legislature might lower the amount of water required for development.
- Several council members would not be at the next meeting.

Motion: Council Member Drury moved to continue the item with the following specific concerns being addressed:

- The capacity of the Alpenhof-Weber well versus what had been promised but not consumed.
- Water for developments that had been approved but not yet built so the Council knew what had been committed in gallons per minute (gpm).
- The well had a capacity of 500 gpm and the Council should know if that capacity was being consumed. This should be done before the Council consider transferring additional rights into that source.

Second: Council Member Orme seconded the motion.

Discussion: Council Member Simonsen asked how much Irrigation Company water had been transferred into the well. Wes Johnson responded that none had been transferred into the well.

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

Motion: Without objection, Mayor Johnson recessed the meeting at 8:30 p.m. She reconvened the meeting at 8:36 p.m.

8. Animals on the Town Square / Discussion (Council Member Drury – Approximately 30 minutes) – Discuss sections 5.03.070(A)(5) and 6.04.010(B) of the Midway City Municipal Code regulating animals on the Midway Town Square located at 150 West Main Street.

Council Member Drury made the following comments:

- The Midway Boosters and Swiss Days Committee had concerns about animals on the Town Square during Swiss Days. They did not want the prohibition to go away.
- Some animals could be aggressive.
- It was not appropriate for Swiss Days volunteers to perform animal control.
- Heber Valley Animal Services did not have the resources to patrol the event.
- Law enforcement was busy with other responsibilities during the event.
- Midway City was not enforcing animal control on the Town Square.
- Paws for Life did not want to enforce it.

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

- The restriction on animals on the Town Square should be repealed.
- A repeal would reduce options for the City.
- The Municipal Code could be changed to allow those renting the Town Square to determine the restrictions for their event.
- The Code did not include any penalties for animals being on the Town Square.
- Violations could be a civil infraction like some parking issues.
- Swiss Days did not sufficiently publicize that no dogs were allowed on the Square. The restriction should be noted at each entrance and the parking lots.
- Swiss Days could hire a security company for enforcement.
- The City had immunity when it enforced its Code.
- Private citizens should not be able to write citations on behalf of the City.
- Swiss Days should ask Wasatch County to hire more deputies.
- City council members and employees had done enforcement during the event.
- Who could enforce the Code?

Corbin Gordon said that he would research who could enforce the Municipal Code. Mayor Johnson asked that be completed by the meeting on May 17th.

9. Lawn Care / Contract (Public Works Assistant Crew Chief – Approximately 5 minutes) – Discuss and possibly award a contract for lawn care for Midway City.

Council Member Drury asked why one of the bids was so low? Mayor Johnson responded that the same request for bids was sent to all the bidders.

Motion: Council Member Orme moved to award to Spectrum Landscaping Services the Midway City mowing contract for fiscal year 2023 and authorized the Mayor to sign it.

Second: Council Member Payne seconded the motion.

Discussion: Mayor Johnson indicated that she would determine why the low bid was so different from the others submitted.

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. HVAC Maintenance / Contract (Public Works Assistant Crew Chief – Approximately 5 minutes) – Discuss and possibly award a contract for heating, ventilation, and air conditioning (HVAC) maintenance for Midway City.

Council Member Orme explained that Abe Neerings was the low bidder and had been doing the maintenance for the City.

Motion: Council Member Drury moved to approve Abe Neerings for the HVAC maintenance contract for fiscal year 2023 for \$7,200 a year and authorized the Mayor to sign it.

Second: Council Member Dougherty 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. Holiday Lighting / Contract (Mayor Johnson – Approximately 5 minutes) – Discuss and possibly award a contract for holiday lighting on the Town Square and along Main Street.

Mayor Johnson made the following comments regarding the contract:

- Holiday lighting had gone up substantially because of the cost of labor and the trees had grown larger.
- Two companies had submitted bids which were close.
- Recommended contracting with the company that had been doing the lighting for the

City.

- The lights would be leased and the City would get credit for the existing lights.

Council Member Simonsen asked how long the City had contracted for hanging the lights. He wondered if the City should consider other options. Mayor Johnson and Council Member Dougherty opposed having the Public Works Department hang the lights.

Motion: Council Member Drury moved to approve the Christmas lighting contract for \$26,878 including a \$3,647 discount that would be honored as a condition of the approval

Second: Council Member Payne seconded the motion.

Discussion: Council Member Simonsen again asked that the City consider other options.

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 |

12. Ordinance 2022-03 / PUDs and Subdivisions (City Planner – Approximately 15 minutes) – Discuss and possibly adopt Ordinance 2022-03 amending Chapter 16.16 (Planned Unit Developments and Subdivisions) of the Midway City Municipal Code regarding planned unit developments and subdivisions. Recommended by the Midway City Planning Commission.

Michael Henke reviewed the highlights of the proposed ordinance and made the following comments:

- The proposal was one of three pending ordinances.
- It would prohibit re-subdividing a PUD.
- It would apply to any pending applications.
- Density had been reduced.
- The minimum acreage requirement for PUDs had been eliminated.
- The size of PUDs was now based on the number of units. Should the minimum number be 40 or reduced to 30? This would limit the zones where they could be built.
- PUD pads were allowed to have limited common area.
- The proposal required more clustering.

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

- State Code would not change provisions of a development agreement.
- House sizes and water requirements should be included in the proposal.
- The Council had three more months before the notice of pending ordinance ended.
- The ordinance should be adopted that evening knowing that it could be amended in the future.
- The regulations should change by zone because the core of Midway was different than its outer area.

- The term density determination plan should be used to avoid confusion.
- 16.16.12(B)(1) should state ten instead of five years.

Motion: Council Member Dougherty moved to continue the item until the May 17th meeting.

Second: Council Member Orme seconded the motion.

Discussion: Council Member Payne asked the deadline for adopting an ordinance. Mr. Henke responded that August was the deadline.

Council Member Dougherty indicated that the proposal was the most important pending ordinance and should not be rushed. He thought that a lot of applications would be submitted if it was approved that night. He recommended only adopting it if the Council had reached the deadline and no other code was ready for adoption.

Council Member Drury suggested further consideration only on the latest changes to the ordinance.

Council Member Payne recommended a separate ordinance for infill developments. He thought that this would take more than four months to prepare and adopt.

Council Member Dougherty wanted a limitation on the size of dwellings.

Council Member Dougherty stated that regulations had to be mandated because you could not incentivize someone to develop something the market did not want.

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 |

13. Closed Meeting to Discuss Pending or Reasonably Imminent Litigation and the Purchase, Exchange, or Lease of Real Property

A closed meeting was not held.

14. Adjournment

Motion: Council Member Drury moved to adjourn the meeting. Council Member Payne seconded the motion. The motion passed unanimously.

The meeting was adjourned at 10:13 p.m.

DRAFT