

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

**Tuesday, 7 June 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 6:10 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 (Left at 11:12 p.m.)
Michael Henke, Planning Director (Left at 11:12 p.m.)
Wes Johnson, Engineer
Brad Wilson, Recorder

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

2. Consent Calendar

- a. Agenda for the 7 June 2022 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 3 May 2022 City Council Work Meeting
- d. Minutes of the 3 May 2022 City Council Regular Meeting
- e. Minutes of the 11 May 2022 City Council Meeting
- f. Minutes of the 17 May 2022 City Council Work Meeting
- g. Minutes of the 17 May 2022 City Council Regular Meeting
- h. Minutes of the 26 May 2022 City Council Meeting
- i. Release the construction bond, minus 10% and any amount for landscaping, and begin the one-year warranty period for the Haven Farms Rural Preservation Subdivision located at 1700 South Center Street (Zoning is RA-1-43).

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

Brad Wilson indicated that the minutes for May 17th and 26th had not been completed.

Council Member Drury asked about the public facilities deposits on the agenda. Michael Henke explained the deposits.

Council Member Dougherty asked if there was any landscaping in Haven Farms that was related to the bond. Wes Johnson responded that there was no related landscaping.

Motion: Council Member Drury moved to approve items 2a through 2e and 2i removing the wording “and any amount for landscaping”.

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.

The Kantons at Village Green PUD / Landscaping

Fred Pease gave a presentation regarding the landscaping and reviewed the following items:

- Aerial view of the PUD
- Organization of the Kantons at Village Green
- Common area landscaping

Mr. Pease made the following comments:

- Previously brought the issue before the Council.
- The Council talked about delaying the release of the bond until the development was completed.
- The landscaping was dying because the developers were not maintaining it.
- The developers did not cut the weeds until the City sent them a violation letter.
- Construction had destroyed some of the sod.
- There was time to fix the problems unlike in the Appenzell PUD.

- How could the developers transfer financial responsibility to the HOA?
- The developers had no incentive to complete the common area landscaping if the landscaping bond was release as each unit was completed.

Mayor Johnson responded that the City would consider what it could do legally. Corbin Gordon said that he would review the development agreement for the project.

Wes Johnson indicated that \$63,670 was being held for landscaping and would not be released until the entire project was completed.

Council Member Payne said that the City should explore whatever it could do to eliminate the problems and give property owners more influence.

No further comments were offered.

4. Department Reports

Stringtown Road / Culvert

Wes Johnson reported that the new culvert was being installed in Stringtown Road.

Main Street Trees / Grant

Mayor Johnson reported that some remaining grant money would be used to replace trees along Main Street.

Arborist / Training

Mayor Johnson reported that the Public Works Department would be trained by an arborist.

Sod / Organic Treatment

Mayor Johnson reported that the City's sod would be treated organically that year.

HVSSD / Fee Increases

Mayor Johnson reported that the Heber Valley Special Service District (HVSSD) would increase its fees.

Founders' Day / Gardner Land Donation

Mayor Johnson reported that Founders' Day was successful. She added that Kem Gardner, at the event, signed the paperwork for his land donation.

5. Heber Valley Corridor Environmental Impact Statement (UDOT – Approximately 30 minutes) – Received an update from the Utah Department of Transportation (UDOT) regarding the Heber Valley Corridor Environmental Impact Statement.

The item was not considered.

6. High Valley Arts / Temporary Use Permit (City Planner – Approximately 15 minutes) Discuss and possibly deny, continue, or grant a temporary use permit, and waive the application fee, for High Valley Arts to exceed the allowed sound levels for a musical production at 200 South and 400 East.

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

- Summary
- Noise limit chart and map
- Decibel levels at the event

Mr. Henke also made the following comments:

- The request was from mid-June to mid-July.
- Some neighbors supported the request because it kept the property as a vacant field.
- The applicant asked for a waiver of the application fee.

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

Stu Waldrip, applicant, made the following comments:

- Requested the variance until 10:30 p.m. each evening.
- Was still working on moving performances to Soldier Hollow.
- High Valley Arts was a 501(c)(3) charitable institution.
- Was trying to save money by requesting the fee waiver.
- The financial benefit to the City outweighed the expense of the application.
- Would use the same sound equipment.
- Neighbors heard the performances but supported them being at that location.

Motion: Council Member Drury moved to approve the temporary use permit but not to waive the application fee.

Second: Council Member Orme seconded the motion.

Discussion: Mayor Johnson noted that the City had a policy and system for waiving fees for its buildings. She said that the denial of the waiver was not directed at the organization.

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. Vincent Annexation / Further Consideration (Berg Engineering – Approximately 30 minutes) – Discuss and deny, continue, or approve for further consideration the Vincent Annexation located at 1315 South Stringtown Road (Zoning is RA-1-43).

Council Member Payne recused himself from consideration of the annexation because he had a financial conflict.

Note: Council Member Payne left at 6:46 p.m.

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

- Summary
- Location
- Zoning map
- Location in relation to the Kay's Landing Annexation
- Definition of an unincorporated peninsula
- Concept plan
- Easement on the north
- Annexation plat map
- Discussion items
- Peninsula code language
- Possible findings

Mr. Henke also made the following comments:

- The annexation was in the City's growth boundary.
- Wasatch County would want Midway to maintain Stringtown Road along the annexation. Could trade the maintenance of this portion of road for a section further north.
- There would not be a road between the proposed annexation and the Kay's Landing Annexation.
- Kay's Landing would be deed restricted.
- A public system was required if more than six houses were on the same well.
- Wasatch County required that any lot on a well be at least five acres.
- There were no internal roads
- There was a mobile home and a separate house on one parcel. That would need to be address during the process. The petitioner wanted to keep the mobile home on the parcel as long as her son lived in it.
- The petitioner wanted to sell the connections for the mobile home when it was removed. It was worth the water rights and the impact fees.

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

Note: Council Member Payne returned.

Council Member Payne indicated that 0.33 acres in the annexation would be added to his lot on the north. He indicated that the acreage was not an easement.

Council Member Simonsen was open to the mobile home staying on the property

Motion: Council Member Simonsen moved to proceed with the annexation request for further consideration with the following findings:

- The proposed annexation complied with the intent of the annexation code.
- The application was complete to consider for further consideration.
- Further consideration of the petition by the City Council did not guarantee the property would be approved for annexation by the City Council.

Second: Council Member Orme seconded the motion.

Discussion: Council Member Drury noted that the City did not have procedures or a mechanism to sell connections. He needed a strong reason to consider that request. Michael Henke indicated that connections had been sold in the past.

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	Recused
Council Member Simonsen	Aye

8. Ordinance 2022-17 / Zone Map Amendment (Mark and Shanna Nelson, Scot and Jan Lythgoe, and Darin and Nancee Heckel – Approximately 30 minutes) – Discuss and possibly deny, continue, or approve Ordinance 2022-17 amending the Midway City Land Use Map to include three parcels located at 85 South 100 West, 70 West 100 South, and 60 West 100 South in the Transient Rental Overlay District (Zoning is R-1-7). **Public Hearing**

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

- Land use summary
- Location of the parcels
- Land use map
- Property left outside of the Transient Rental Overlay District (TROD)
- Possible findings

Mr. Henke also made the following comments:

- A portion of one of the parcels was already in the TROD.
- The zone would not be changed. Transient rentals would require conditional use permits because the zone would remain residential. Both the business license and the permit could be revoked.
- A different process would be needed to include the entire block in the TROD.
- The City's transient rental code worked well. No complaints had been received for years. Only one license had been put on probation. The required property managers did a good job.
- Some municipalities restricted transient rentals because they competed with affordable housing.
- Only one of the houses on the parcels was a primary home. The other two were long-term rentals.
- The State's internal accessory dwelling unit code did not allow for transient rentals.
- Parking could be a problem.
- The property owners to the north had been noticed twice but had not responded.

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

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

- Transient rentals were less problematic if the owner also lived in the house.
- The Planning Commission recommended approval because it helped maintain the resort communities tax.
- The Council should be provided the minutes from the Planning Commission's meetings.

Council Member Orme noted that her sister was one of the applicants. She asked if she needed to recuse herself. Corbin Gordon responded that she did not need to recuse herself.

Public Hearing

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

Alan Giles

Mr. Giles made the following comments:

- Owned the red barn and property south of Café Galleria.
- Requested that the commercial zoning for his barn not change.
- Insufficient affordable housing was a problem.

Jeff Kelly

Mr. Kelly made the following comments:

- Lived in the neighborhood, which had been part of his life for 57 years, where the

- change was proposed.
- Now lived in his grandparents' house.
 - A neighborhood was its people.
 - Had wonderful neighbors.
 - Opposed nightly rentals.
 - 100 South was already a busy street. Was concerned about the safety of the road which was use by children to get to and from Midway Elementary.
 - Progress should be controlled.

Lynette Wilson

Ms. Wilson made the following comments:

- She and other neighbors opposed the amendment.
- Moved to the neighborhood and knew that it was residential and did not want to change that.
- People who wanted transient rentals should have them on their own street.
- Was concerned about safety.
- Several people said the City would not consider their opinion.
- Because the City had not heard from law enforcement did not mean there were not problems.
- Parking for Café Galleria was a problem.
- The neighborhood did not have any sidewalks or streetlights.
- There were other places in the City that were better suited for transient rentals.

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

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

- There had not been any recent problems with transient rentals. The amendment should not be considered if there had been any problems.
- Doubted that transient rentals were competing with affordable housing in this case.
- Some communities had become transient rental towns.
- Transient rentals were allowed throughout Heber City. That should not be the case in Midway.
- Renters had to check in with the property manager for accountability.
- It was awkward to expand the TROD but leave out a section of the same block.
- Parking was a separate issue from the amendment.
- The resort tax was 25% of the City's revenue.
- There was a drastic undersupply of affordable housing.
- Some of the zoning boundaries created confusion.
- Should transient rentals and their locations be considered as a whole instead of with individual requests?
- Residents did not expect transient rentals in well-established neighborhoods.
- Hoped that Midway would retain some farming but that might be eco farming.
- The City needed revenue.
- Average citizens should be able to have transient rentals.
- Midway should not become a transient rental town.

- Residents were afraid that over time what they liked about Midway would be lost.
- The transitions between some zones were a problem.

Motion: Council Member Orme moved to approve Ordinance 2022-17 with the following findings:

- One of the proposed properties was contiguous to the TROD.
- Three-fourths of block four was currently within the TROD boundary.
- The applicants would need to apply for a Conditional Use Permit if the zone amendment was successful.
- Renting the property would generate more transient rental taxes for the City.
- The City Council was under no obligation to approve the request but could do so if they felt it would benefit the community.

Second: Council Member Dougherty seconded the motion.

Discussion: Council Member Simonsen asked if the rest of the block should be included in the TROD. Michael Henke responded that would require a separate process. Council Member Simonsen suggested continuing the item and asking the applicants to consider including the entire block. Council Member Drury did not think that was fair. Council Member Dougherty indicated that there would always be transition issue between zones. He added that the City needed to enforce its transient rental regulations.

Council Member Simonsen noted that no one wanted transient rentals with street parties. He asked if the Council needed good reasons to revoke a license or permit. Mr. Henke responded that it did.

Council Member Simonsen asked if the regulations could be refined. Mr. Henke responded that they could be refined and even made stricter.

Council Member Payne asked if the request could be conditional for a period of time. Mr. Henke responded that conditional use permits had been provisional in the past. Council Member Orme noted that was part of the CUP process and not a zone map amendment.

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

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

9. The Village, Phases 1 and 2 / Final Approval (Midway Heritage Development, LLC – Approximately 30 minutes) – Discuss and possibly deny, continue, or grant final approval for Phases 1 and 2 of The Village located at 541 East Main Street (Zoning is C-2).

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

- Land use summary

- Location of the development
- Sensitive lands
- Site plan
- Phasing
- Open space
- Trail plan
- Landscaping plan
- Mitigation measures
- Commercial
- Retention basins
- Road profiles
- Proposed plat maps
- Main Street improvements
- Irrigation plan
- Discussion items
- Renderings of buildings
- Lighting plan
- Station Park
- Letter from the City Attorney
- Letter from the Wasatch County Solid Waste Special Service District
- Water board recommendation
- Possible findings
- Proposed conditions

Mr. Henke also made the following comments:

- Midway Automotive had been purchased and would be razed.
- There was a request that the masonry wall continue along the west side to mitigate light trespass.
- UDOT would not give final approval until the Council granted its own final approval.
- The required water rights had been reduced because of the needed hard surface.
- The County Recorder requested that the name of the project be changed.
- Temporary parking in a future phase would accommodate parking for Phase 1.
- Did not know if there would be extra parking. More intense uses could require more parking and water.
- The Vision Architecture Committee (VAC) approved of the theming.
- Individual buildings would be reviewed by the VAC.
- All the conditions of the rezone had been met.
- The west side wall was discussed with Inez Wilde.
- The amount of water would be broken out by phase and by commercial building.
- A plat map amendment would be needed to change the amount of water between phases or commercial buildings.
- The commercial would have to be at least 20% of the development. The square footage comparison provided to the Council was incorrect.

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

Paul Berg, Berg Engineering Resource Group and representing the applicant, made the following comments:

- The flower boxes and walls would be back ten feet to accommodate the public utility easement.
- The garbage dumpsters would be next to but not in parking spaces.
- The culinary and sewer lines were shallow at Main Street and would be close together. The State Division of Water Quality would have to approve a mitigation plan for closeness of the lines. The City had to make the request.

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

- Could the masonry wall be a thick hedge?
- UDOT found funding to put in the signal light at Main Street and River Road. It would not be installed that year.
- The TROD map could become out-of-date. The units that could be transient rentals should be listed and referenced on a map with a date. Any changes should be an amendment to the development agreement.
- The development agreement should create a mechanism for the City's final approval to not be effective until UDOT also granted final approval.
- The plat map or any document should not lead someone to believe that enough water had been provided for any possible uses in the project.
- Should the exhibit, listing the water rights by phase, be part of the development agreement?
- The shape of the retention ponds should be more free form with a natural change in grade.
- The proposal for the Daybell Garage was continued because it did not have approval from UDOT.
- The language in the development agreements did not match the UDOT approval process.
- Minutes from UDOT regarding a project should be provided to the Council.
- The UDOT permit matched the approved plans stamped by the City.
- More time was needed to finalize the approvals and the development agreements. There was nothing major that needed to be changed.
- The Council needed to be confident that all necessary items had been addressed and included in the agreements.
- All questions should be answered for the next meeting.
- The Council should not discuss again the issues covered that night.
- Any new issues before the next meeting could be addressed in the development agreements.
- The Council should have the final versions of the agreements before any approvals were granted.
- The Council was not trying to delay the project.

Dan Luster, applicant, made the following comments:

- Wanted to start work on the project that summer.
- Requested that final approval be granted that night and that the development agreements be finalized at the next meeting.

Motion: Council Member Simonsen moved to continue the item to the next meeting, knowing that it was close to getting final approval, with all the edits discussed that night, any other concerns that the Council might bring up, and with the edits from the following list:

- A condition on Phase 2 for a masonry wall on the west parking lot boundary, with a landscaping barrier in Phase 3.
- Exhibit C from the staff report, with the water calculations, would be added to the development agreement.
- Adjust the retention ponds to show a natural shape and grade change from Main Street as discussed in the meeting.
- Create a table that listed unit numbers that would be in the TROD and tie it to a dated map that showed the location of the units specific to the TROD line as it existed that evening.

Second: Council Member Drury seconded the motion.

Discussion: Council Member Simonsen recommended that the Water Board review the revised amount of water rights for the project. Council Member Dougherty indicated that the Board would not meet until August. He noted that the Board was only a recommending body. Mayor Johnson also noted that the revised amount was based on the formula used by the Board.

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 9:28 p.m. She reconvened the meeting at 9:35 p.m.

10. Resolution 2022-21 / The Village, Phase 1 Development Agreement (City Attorney – Approximately 5 minutes) – Discuss and possibly deny, continue, or approve Resolution 2022- adopting a development agreement for Phase 1 of The Village located at 541 East Main Street (Zoning is C-2).

11. Resolution 2022-22 / The Village, Phase 2 Development Agreement (City Attorney – Approximately 5 minutes) – Discuss and possibly deny, continue, or approve Resolution 2022- adopting a development agreement for Phase 2 of The Village located at 541 East Main Street (Zoning is C-2).

Council Member Drury requested the following changes to the agreements:

- Section 3, A, ii, e - Fire and snow storage locations were mentioned as shown on a map, dumpster locations should be referenced in the same manner.

- Section 3, A, ii, f – Changed to address the circular approvals from UDOT and the City.
- Section 3, A, ii, o - Provide a list of the unit numbers allowed in the TROD as defined on a specific, dated map to remove any ambiguity.
- A condition on Phase 2 for a masonry wall on the west parking lot boundary
- Exhibit C from the staff report, with the water calculations, would be added to the development agreement.
- Parking needed to be shown per phase and commercial building.

Motion: Council Member Drury moved to continue Items 10 and 11 with the changes that he, the applicant, and anyone else mentioned at that evening’s meeting and before the next meeting. He further moved that the agreements should state the traffic study and access started in Phase 3.

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

12. RAP Tax / Notice to Place on Ballot (City Recorder – Approximately 5 minutes) – Discuss and possibly approve a letter notifying the Wasatch County Council that Midway City intends to place a RAP Tax on the 2022 general election ballot.

Brad Wilson gave a presentation on the RAP tax and notification letter.

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

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

- How the tax revenue would be spent.
- Would Wasatch County put it on the ballot that year?
- How the revenue would be allocated if the County adopted the tax.

Motion: Council Member Orme moved to proceed with sending the letter, as provided to the City Council, to the County for the RAP tax to be placed on the ballot.

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

13. Ordinance 2022-02 / Setbacks in Residential Zones / Reconsideration of Adoption

Motion (City Attorney – Approximately 30 minutes) – Reconsider and possibly amend the motion adopting Ordinance 2022-02 amending Chapters 16.7, 16.8, 16.9, 16.10, 16.11, and 16.12 of the Midway City Municipal Code regarding setbacks for residential zones.

Motion: Council Member Dougherty moved to go into a closed meeting to discuss pending or threatened litigation.

Second: Council Member Drury 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

Note: Closed meeting minutes are sealed and strictly confidential. Access to such minutes must be obtained through a court of law.

Motion: Council Member Dougherty moved to go out of the closed meeting.

Second: Council Member Drury 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

Mayor Johnson made the following comments:

- The council member who made the motion adopting Ordinance 2022-02 asked that the motion be reconsidered.
- The request had been withdrawn after a discussion by the Council.
- The City Attorney would respond to specific questions that he had received.
- The City Attorney would also speak with anyone regarding the issue after the meeting.

Note: Corbin Gordon and Michael Henke left at 11:12 p.m.

14. Pine Canyon Storm Drain, 100 North, & Main Street Project / Award Contract (City Engineer – Approximately 5 minutes) – Discuss and possibly award a contract for the Pine Canyon Storm Drain, 100 North, and Main Street Project.

Wes Johnson made the following comments:

- The project included two roads and a storm drain on Pine Canyon Road.
- Recommended that the contract be awarded to JB Gordon Construction, who was the low bidder, and the Mayor be authorized to sign the documents.
- The only detour would be for Pine Canyon Road.

Council Member Payne indicated that bundling the projects saved money.

Motion: Council Member Drury moved to award the contract for the Pine Canyon Storm Drain, 100 North, and Main Street Project to JB Gordon Construction and authorized 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

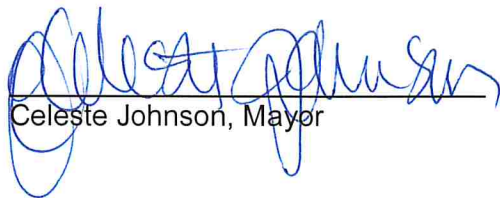
15. Closed Meeting to Discuss Pending or Reasonably Imminent Litigation and the Purchase, Exchange, or Lease of Real Property

An additional closed meeting was not held.

16. Adjournment

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

The meeting was adjourned at 11:18 p.m.



Celeste Johnson, Mayor



Brad Wilson, Recorder