



Memo

Date: 9 August 2022
To:
Cc:
From: Brad Wilson, City Recorder
RE: Minutes of the 2 August 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, 2 August 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 6:16 p.m. She excused Council Member Orme.

Members Present:

Celeste Johnson, Mayor
Steve Dougherty, Council Member
Jeff Drury, 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

Members Excused:

Lisa Orme, Council Member

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. Council Member Payne gave the prayer and/or inspirational message.

2. Consent Calendar

- a. Agenda for the 2 August 2022 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 19 July 2022 City Council Work Meeting
- d. Minutes of the 19 July 2022 City Council Regular Meeting
- e. Minutes of the 19 July 2022 City Council Closed Meeting
- f. Conclude the warranty period and release the remainder of the bond for Watts Remund Farms, Phases 2 and 3, located at approximately 250 East 600 North, subject to the payment of all fees due to 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.

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	Excused from the Meeting
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.

Swiss Days / Animals on the Square / Town Square Improvements

Josh Wright, Swiss Days Committee Chair, asked if the Committee could put up signs on the Town Square prohibiting animals during Swiss Days. Mayor Johnson agreed. Council Member Drury noted that the City did not have the capacity to enforce the prohibition. Mr. Wright added that the prohibition would be promoted before the event.

Mr. Wright invited the Council to attend the set up for Swiss Days. He said this would better inform them as they were considering improvements to the Town Square.

No further comments were offered.

4. Department Reports

Swiss Days / Application

Council Member Drury indicated that Swiss Days needed to complete a city application for the event.

Pressurized Irrigation / Restrictions

Council Member Drury reminded everyone about the restrictions on the use of the pressurized irrigation system.

HL&P / Fee Study / Capital Plan / New Building

Council Member Dougherty reported that Heber Light & Power Company (HL&P) was doing an impact fee study, updating its capital plan, and still working on a new building.

Welcome Binder

Mayor Johnson reviewed the welcome binder for new residents.

Performance / Horse of Many Colors

Mayor Johnson reported that a performance was held on the Town Square with the profits donated to a Horse of Many Colors.

Land Use Book

Michael Henke reviewed a book, regarding land use, that was provided to the Council and Planning Commission by the State.

5. Health Department (Jonelle Fitzgerald – Approximately 15 minutes) – Receive a report from the Wasatch County Health Department.

Dr. Neal Burton, Wasatch County Board of Health Chair, and Jonelle Fitzgerald, Wasatch County Health Department Health Officer, gave an annual report and reviewed the following items:

- COVID-19 pandemic
- Health equity
- FOG agreement
- Mobile WIC Clinic
- Children's clinic
- Board of Health
- Monkeypox
- Sampling of wastewater
- Community health needs assessment
- Food pantries

6. Ameyalli Resort / Master Plan (Midway Mtn Spa LLC – Approximately 45 minutes) – Discuss and possibly deny, continue, or approve a proposed master plan for the Ameyalli Resort (Formerly the Mountain Spa Resort) located at approximately 800 North 200 East (Zoning is resort). Recommended with conditions by the Midway City Planning Commission.

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

- Project overview

- Master plan requirements
- Location of the development
- Master plan
- Open space
- Highest points of construction
- Parking
- Water rights
- Roads
- Sensitive lands protection
- Phasing
- Items of discussion
- Density
- Building area
- Access
- Traffic study
- Public participation meeting
- Public trails
- Setbacks
- Height of the structures
- Geotechnical report
- Architectural theme
- Building area dimensional limitations
- Proposed parking plan
- Requirements of the memorandum of understanding (MOU)
- Public access
- Conservation maps
- Motion items
- Possible findings
- Proposed conditions
- Light mitigation

Mr. Henke also made the following comments:

- Moving people from parking to the cottages needed to be addressed.
- The applicant wanted the minimum design width for the roads and not have any on-street parking.
- The proposal had the required amount of parking with no extra spaces.
- The same shared parking formula was used for the Homestead Resort.
- Other uses had not been discussed for the project. Water, etc. would be reevaluated if the uses changed.
- The main road had to be built when the initial phase was constructed.
- It would depend upon the Wasatch County Fire District if a crash gate was installed to Sunflower Farms. Crash gates could be problematic.
- There was not a required setback from geological features.
- No sensitive land features would be disturbed.
- 100 feet was required between certain structures. Land but not hard surface counted towards the requirement.
- Any phase could be built first.
- A requirement for a certain number of transient rentals was hard to enforce.

- Only one building in Phase One had kitchens.
- It was easier to live in a unit with a kitchen.
- Phase One had duplexes except for two buildings.
- The Municipal Code did not prohibit fractional ownership.
- Approving plat maps for each phase would be the next step in the process.
- The Council had to approve the architectural theme.
- The master plan agreement protected certain areas for public access and amenities.
- He and Wes Johnson would monitor the distance between structures and geological features throughout the process.
- The Municipal Code did not allow the number of kitchens to be restricted because they were a permitted use. The number could only be limited if the applicant agreed.
- Summit Land Conservancy did not have to approve the proposal because they already had an MOU and conservation easement that they could enforce. Had met with them multiple times and they did not raise any concerns.

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

Wes Johnson made the following comments:

- The traffic group in his company reviewed the traffic study and said it was common and included nothing unusual. He was comfortable with the study.
- The fire access might not be asphalt.
- The asphalt for 200 East would be widened but remain in the current right-of-way. The right-of-way was limited by an already recorded plat map.

Corbin Gordon made the following comments:

- The number of transient rentals could not be mandated if the units were sold.
- The applicant could not be required to retain a certain number of units because the project was an allowed use.
- The Municipal Code did not allow the City to restrict vehicles on private roads.
- The City should not give its approval authority to Summit Land Conservancy.

Chuck Heath, applicant, made the following comments:

- There would be a fire access from the resort to Sunflower Farms.
- The number of kitchens also determined the required amount of water.
- Units would have fractional ownership.
- Did not intent to allow ATVs on the property except for those that were street legal and owned by guests. Could regulate them in the recreational areas.
- ATVs would only be rented from third-party vendors who were off-site. Would limit them to improved roads.
- Wanted a five-star resort.
- There would be at least ten feet between any structures and geological features. The exact location of the structures would be shown at later phases of approval.
- Did not want the City to restrict him by telling him what he could build. That had too much risk. Did not know what could happen in the future.
- Wanted rental income.

- Summit Land Conservancy had seen the proposed plan.

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

- A 10-foot setback from geological structures was not required in the Municipal Code.
- There was a process established by the Code and other items that determined more precise boundaries.
- There was already a conservation easement which was a buffer outside of the sensitive lands boundary.
- The Council needed to approve the diagram that included the sensitive lands boundary and conservation easement.

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

- Crash gates were acceptable in the resort zone but not between subdivisions.
- A conservation easement protected some of the land in the project.
- The nightly rentals should be built first with the restaurant coming later.
- The project was not being subdivided with the master plan.
- ATVs should not be allowed in the recreational areas of the project. They were out of control in Midway. The Municipal Code allowed street legal ATVs. The issue could be discussed but one side should not dominate the other.
- The owner could not deviate from the plan approved by the Council without an amendment.
- The applicant wanted all the flexibility, and the proposal was based on his intent.
- Could the applicant change the plan? The Council was approving what was presented that evening. Some information only had to be provided at preliminary approval.
- The map showing the location for the public amenities should be included in the master plan agreement.
- The City could not alter the MOU or the conservation easement.

Motion: Council Member Simonsen moved to grant approval for the Ameyalli resort master plan as submitted by Midway Mtn Spa LLC as discussed that evening with the following findings and conditions:

- The master plan agreement was approved.
- The proposal would benefit the City financially by creating a greater tax base.
- The proposal would help the City better comply with State requirements regarding the ability to collect the resort tax.
- The public trails system in the development would benefit the entire community by creating public trails across the property.
- Amenities would be created that would be accessible year-round which would invite more tourists to visit the resort in all seasons.
- The required parking must be verified.
- The exact amount of water rights required per phase had yet to be determined.
- Note the presentation and discussion from that evening and include it in the record.
- The Vision Architectural Committee (VAC) and Planning Commission approved the architecture.
- The architecture was researched and did have some Swiss elements.

- The applicant had a secondary goal for the architecture to match the environment and have a low profile.
- The Council accepted the architecture.
- Accepted the parking analysis based on different uses acknowledging that those staying at the resort would also use the amenities.
- The water would be determined in detail per phase.
- Light mitigation would be dealt with per phase.
- The cottages and hotel would not include kitchens, as part of the master plan agreement, to help meet the City’s goal of additional transient rentals.
- Accepted the master plan layout as proposed because it respected the sensitive lands, orientation, and distances in the plan that the Council looked at.
- Distances from the actual structures would not change.
- Parking would be evaluated per phase.

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	Excused from the Meeting
Council Member Payne	Aye
Council Member Simonsen	Aye

7. Resolution 2022-24 / Ameyalli Master Plan Agreement (City Attorney – Approximately 10 minutes) – Discuss and possibly deny, continue, or approve proposed Resolution 2022-24 adopting a master plan agreement for the Ameyalli Resort (Formerly the Mountain Spa Resort) located at approximately 800 North 200 East (Zoning is resort).

Corbin Gordon made the following comments:

- A subsection “x” should be added regarding the amenities in the conservation easement. He read the entire language for the subsection.
- The map with the yellow conservation easement would be added to the agreement.
- The directions would be corrected.
- The motion items would be added.

Council Member Dougherty asked that the first sentence in 4a and 5a be removed.

Motion: Council Member Simonsen moved to approve Resolution 2022-24 adopting a master plan agreement for the Ameyalli Resort with the following adjustments:

- Remove the sentence in 4a and 5a as mentioned by Council Member Dougherty.
- Fix the numbering.
- Include all the items specified in the master plan so they were represented in the agreement.
- Accept Section 4(a)(ii)(x).

- Correct the issues with the directions.
- Include an Exhibit “D” with the map showing the yellow conservation easement.

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	Excused from the Meeting
Council Member Payne	Aye
Council Member Simonsen	Aye

Motion: Without objection, Mayor Johnson recessed the meeting at 8:36 p.m. She reconvened the meeting at 8:44 p.m.

8. Ordinance 2022-02 / PUDs & Subdivisions / Landscaping Bond (City Attorney – Approximately 60 minutes) – Discuss and possibly deny, continue, or adopt proposed Ordinance 2022-20 amending Title 16 (Land Use) of the Midway City Municipal Code regarding planned unit developments, subdivisions, and to require a bond for certain landscaping.

Mayor Johnson indicated that the proposed ordinance could still be changed after it was adopted.

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

- Revisions since the 19 April 2022 council meeting
- Proposed revisions
- Perimeter and exterior setbacks
- Possible findings

Mr. Henke also made the following comments:

- The next step was to refine the subdivision regulations.
- Nothing had come up in the general plan revision that would affect the ordinance.
- The density would not change the number of units.
- Small strips of open space were only allowed in the resort zone.
- The proposed ordinance would not really encourage affordable housing. A separate type of development that did not require open space was needed.
- Additional landscaping bond language was not needed because it was already in the Municipal Code.

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

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

- Reducing the maximum square footage would increase the number of units.
- Did the ordinance increase the setbacks in a contrary direction?
- It was discrimination against PUDs by keeping people away from their neighbors.
- PUDs had been in low density zones to have enough acreage.
- The proposal accommodated higher density zones.
- Was a 100-foot setback functionally the right scale for more dense zones? PUDs in these zones might have just the setback. A lesser setback should be considered for these zones. There could be a tiered system.
- Shared parking allowed for higher density.
- The City should do more incenting and less restricting.
- The City needed multiple tools to create affordable housing.
- The setbacks for the R-1-15 through RA-1-43 zone should be 100 and 150 feet.
- The ordinance needed to clarify that state law superseded local law.
- No amount of the landscaping bond should be released until all the landscaping was completed.

Motion: Council Member Payne moved to adopt Ordinance 2022-02 amending Title 16 (Land Use) of the Midway City Municipal Code, regarding planned unit developments and subdivisions, with the following findings and conditions:

- The proposed amendments would help fulfill goals in the General Plan such as creating openness in PUDs and using smart growth planning tools such as clustering.
- The building pad area would be limited which in turn would limit the size of dwellings.
- Setbacks would increase in the R-1-15 through RA-1-43 zones to create more buffer around the periphery of PUDs from units in the PUD to surrounding properties.
- Areas that qualified as required open space would increase in width, in the R-1-15 through RA-1-43 zones, to create more openness in a PUD.
- A two-tiered system would be established where the R-1-7 through R-1-11 zones would have a minimum 60-foot perimeter setback that would count as open space. All other open space would have to be a minimum of 100 feet. The R-1-15 through RA-1-43 zones would have 100-foot perimeter and 150-foot internal setbacks as drafted.
- State that state law superseded local law.
- A policy would be written stating that none of the landscaping bond would be released until the entire project was completed.

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	Excused from the Meeting
Council Member Payne	Aye
Council Member Simonsen	Aye

9. Ordinance 2022-12 / Dark Sky Preservation (City Planner – Approximately 45 minutes) – Discuss and possibly deny, continue, or adopt Ordinance 2022-12 amending the Midway City Municipal Code regarding dark sky preservation.

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

- Background
- Light pollution
- Proposed amendment
- Effect of elevation
- Examples
- Effect of fully shielding
- Shielding and safety
- Permanent holiday lighting
- Possible findings

Mr. Henke also made the following comments:

- The proposal focused on new construction, but some provisions would apply to all structures.
- Existing structures would be addressed later.
- The light cut-off would be measured horizontally.
- Soffit lights would be limited to over entrances and decks.
- Carriage lights were not considered soffit lights.
- Lights that were designed to light up a house, including landscaping lights, would be prohibited.
- It was difficult to enforce a limit on lumens.
- The lighting restrictions would only be enforced if a complaint was made.
- How much did the Council want to regulate permanent holiday lighting?
- In the future, wanted to consider lighting for commercial structures.

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

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

- Soffit lights on a second story over a deck could be problematic.
- Light shining on a house could be defused and bounced around.
- The proposal would avoid contractors deciding on lighting during construction.
- Small, dim deck lights were nice. Should they be prohibited unless the owner could prove that they were not a nuisance? The owners who left the lights on all the time were the problem.
- Permanent and temporary holiday lighting should be combined.
- Information on the regulations should be given to everyone when they applied for a building permit.
- Permanent holiday lighting could be required to be turned off at 10 p.m. They were nice because they did not need to be hung every year.

- The ordinance could be changed in the future.

Alison Hart was concerned about the ambient light from Watts Remund Farms. She liked to sleep with her shades and windows open. Supported the proposal.

Motion: Council Member Simonsen moved to adopt Ordinance 2022-12, amending the Midway City Municipal Code regarding dark sky preservation as presented, with the following findings and conditions:

- The proposed adjustment could help curb the ever-increasing issue of light pollution as Midway continued to grow and residential properties were developed.
- The proposed adjustment would prohibit the use of un-shielded fixtures and limit the use of partially shielded fixtures.
- The proposed adjustment would create many non-conforming lighting fixtures.
- The proposed adjustment would require proof of compliance at building permit and development application.
- Consolidate the permanent and temporary holiday lighting lists.
- Deck and porch low intensity, constant, non-flashing, non-strobing string lights were not allowed unless the owner proved that the lumen level was low. The Planning Director would determine that level.
- Strobing changed from flashing every second to flashing up to every half second.

Second: Council Member Dougherty seconded the motion.

Discussion: Council Member Payne asked if strobing should be left at one second to maintain flexibility. Council Member Simonsen worried that this could affect some common blinking lights. Council Member Payne suggested that the City research lighting and adjust the ordinance in the future.

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

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Excused from the Meeting
Council Member Payne	Aye
Council Member Simonsen	Aye

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

A closed meeting was not held.

11. 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 10:09 p.m.

Celeste Johnson, Mayor

Brad Wilson, Recorder

DRAFT