



Memo

Date: 29 September 2022

To:

Cc:

From: Brad Wilson, City Recorder

RE: Minutes of the 20 September 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, 20 September 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 6:08 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

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 Orme gave the prayer and/or inspirational message.

2. Consent Calendar

- a. Agenda for the 20 August 2022 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 16 August 2022 City Council Work Meeting
- d. Minutes of the 16 August 2022 City Council Regular Meeting
- e. Minutes of the 6 September 2022 City Council Meeting
- f. Diann Glenn to a second 4-year term on the Midway City Vision Architectural Committee
- g. Steve Stevens to a second 4-year term on the Midway City Open Space Advisory Committee
- h. Katie Villani to a second 4-year term on the Midway City Open Space Advisory Committee

- i. Sharka Fabian to a 4-year term on the Midway Historic Preservation Committee
- j. Diann Glenn to a 4-year term on the Midway Historic Preservation Committee
- k. Michael Glenn to a 4-year term on the Midway Historic Preservation Committee
- l. Jim Kohler to a 4-year term on the Midway Historic Preservation Committee
- m. Athina Koumarela to a 4-year term on the Midway Historic Preservation Committee
- n. First One Year Extension of the Final Approval for the Farm Meadows Subdivision Located at 550 North Pine Canyon Road (Zoning is R-1-15).

Note: Copies of items 2a through 2n are contained in the supplemental file.

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

- The timing of council meetings should not prevent bills from being paid.
- The City should avoid late fees.
- Some vendors waited for some time to be paid because council meetings had been cancelled.
- Bills should be paid weekly.
- Both paid and unpaid bills would appear on the warrant list submitted to the Council.
- Several warrants were labeled just as “ice rink”. They were for upgrading a panel box in the chiller building and purchasing sealer for the roofs of the ticket and warming trailers. The Mayor approved upgrading the panel box.
- Should certain bills not be paid until they were approved on a warrant list? How would these bills be determined?
- Each council member should be made aware of expenditures proposed for their departments.
- Mayor Johnson requested law enforcement at the Hamlet Park for the Independence Day fireworks.

Brad Wilson reviewed a change to the approval motion in the 6 September 2022 council meeting minutes.

Motion: Council Member Payne moved to approve the consent calendar as presented including the edit recommended by Mr. Wilson.

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.

Parks and Recreation Special Service District / Pickleball Courts MOU

Ken Mickelson, Heber Valley Pickleball Club, gave an update on the six new pickleball courts, at the Southfield Park, and made the following comments:

- The courts were a good example of a public/private partnership.
- Asked all donors to sign a memorandum of understanding (MOU) to prevent any miscommunication.
- The Pickleball Club met its fundraising goal.

Tom Bonner, Wasatch County Parks and Recreation Special Service District Director, made the following comments:

- Engineering for the courts had been completed.
- A request for bids would be released soon so that a contractor could begin work the following spring.
- Some of the work would be done by the Wasatch County Public Works Department.
- The MOU would be revised to specify that Midway would contribute \$20,000 in FY 2022 and another \$20,000 in FY 2023.

Mayor Johnson asked that the revised MOU be placed on the consent calendar for the next council meeting.

No further comments were offered.

4. Department Reports

Wasatch County Housing Authority / Interlocal Agreement

Council Member Payne reported that the board for the Wasatch County Housing Authority was working on a revised interlocal agreement.

Planning Commission / New Members

Michael Henke reported that two members were needed for the Midway City Planning Commission. He indicated that usually alternate members were moved into the vacant full positions and then new alternates appointed.

Swiss Days / Wrap-Up Meeting

Council Member Drury reported that a wrap-up meeting would be held for Swiss Days. Council Member Dougherty asked for a report on dogs on the Town Square during the event and how

the City could assist with the issue. Council Member Simonsen added that the improvements to the Town Square, as they related to the event, also needed to be discussed.

Midway Irrigation / Valais Pipe and Pump

Council Member Dougherty reviewed an email from the Midway Irrigation Company regarding a block in its pipe and pump in Valais.

Midway Business Alliance / Meeting

Council Member Dougherty reported that the Midway Business Alliance needed to start meeting again.

HL&P / Budget / Financing Capital Expenditures / Rate Increase

Council Member Dougherty reported that Heber Light and Power Company (HL&P) would hold a public meeting regarding a draft budget and future financing for capital expenditures. He added that HL&P had also increased its rates.

- 5. RAP Tax / Funding** (Dallin Koecher – Approximately 15 minutes) – Discuss and possibly help fund a campaign to pass a recreation, arts, and parks (RAP) tax on the ballot for the 2022 General Election.

Dallin Koecher, Heber Valley Tourism and Economic Development (HVTED) Executive Director, and Don Taylor, Mountainland Association of Governments (MAG) Trail Planner, gave a presentation regarding the proposed trails, arts, and parks (TAP) tax and reviewed the following items:

- Trails and maintenance
- Activities that could be funded
- How the tax worked
- How it would be collected
- What was being done
- Plan
- Goal
- Supporters

They also made the following comments:

- The tax would not apply to food and gas.
- It would be less of a burden to residents on a fixed income.
- The tax was being collected in Summit and Utah counties.
- 46% of the area sales taxes were paid by visitors.
- Wanted to hire Election Hive to promote the tax.
- Requested \$5,000 from Midway for promotion. No more would be asked for.
- Increasing the number of voters could help pass the tax.
- It was the same as a recreation, arts, and parks (RAP) tax but with a different name.

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

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

- The \$5,000 could be reimbursed from the tax if it passed.
- The tax would have passed previously if just Midway and Heber City residents voted. The focus of the promotional campaign should be on the unincorporated area and other municipalities.
- Residents were concerned about the increase in property taxes. It should be emphasized that TAP was not a property tax.
- Previously, an MOU had been prepared for how RAP revenue would be distributed. It was never signed. The Council wanted an MOU for the TAP tax.
- The tax would apply to prepared food.
- The City spent approximately \$6,000 to promote the open space bond.
- The City contributed \$2,000 for promotion the last time a RAP tax was on the ballot.
- Promotion needed to begin immediately because of mail-in voting. Election Hive had a timeline.
- The tax on a ten-dollar purchase would be one cent.

Motion: Council Member Orme moved to contribute \$5,000 to fund TAP education.

Second: Council Member Payne seconded the motion.

Discussion: Council Member Simonsen estimated that the City would contribute \$5,000 for a return of \$50,000.

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

6. Resolution 2022-28 / Budget Amendment / Leasing Vehicles (Public Works – Approximately 15 minutes) – Discuss and possibly deny, continue, or approve proposed Resolution 2022-28 amending the Fiscal Year 2023 Midway City Budget to lease vehicles.

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

- An agency rather than a leasing relationship should be explored with the vendor.
- Leasing had too many risks.
- What were the reasons to have all new vehicles?
- A contract for an agency relationship could be quickly prepared.
- Would a request for bids or proposals be needed for an agency relationship, especially if

- the fee for each vehicle was less than \$5,000?
- What were the risks of an agent versus leasing?
- An agency relationship needed to be explored. What would be the finder's fee? Would the vehicles be bought back from the City? Who maintained the vehicles? Who insured the vehicles?
- A lease was being considered because the City could not get new vehicles, would not have to repair leased vehicles, and would get new vehicles each year.
- Could the City purchase a service contract from the dealers that sold it the vehicles?
- The City should not get new vehicles just to have new vehicles.
- The same make of truck could change over time and need a different utility bed, etc.
- The City currently had vehicles and the necessary utility beds, etc.
- It was funding a vehicle replacement program.

Motion: Council Member Simonsen moved to continue the item to further investigate options.

Second: Council Member Payne seconded the motion.

Discussion: Mayor Johnson indicated that legal issues and an agent versus leasing needed to be further understood.

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. Ordinance 2022-24 / Kay's Landing Annexation** (Berg Engineering – Approximately 20 minutes) – Discuss and possibly deny, continue, or adopt Ordinance 2022-24 approving the Kay's Landing Annexation located at 1591 South Stringtown Road (Zoning would be RA-1-43). Recommended for approval with conditions by the Midway City Planning Commission.
Public Hearing

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

- Annexation process
- Summary
- Location
- Land use map
- Vincent annexation
- Annexation plat map
- Concept plan
- Stringtown road maintenance
- Land use summary
- Discussion items
- Possible findings
- Proposed conditions

Mr. Henke also made the following comments:

- Received no negative comments regarding the annexation.
- The applicant was annexing to obtain culinary water.
- The annexation did not create an unincorporated peninsula.
- Doubted that the annexation could meet the criteria to be able to force other properties into the City.
- The street in the proposed development would be public. It was required to be public because it was in a standard subdivision.
- Private roads boarding few property owners were difficult to maintain.
- Usually a will-serve letter from the Midway Irrigation Company was not required until approval of the development.
- The concept plan should be part of the annexation agreement.

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

Public Hearing

Mayor Johnson opened the hearing and asked if there were any comments from the public. She closed the hearing when no public comment was offered.

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

- The easement to an adjoining property would be moved when the subdivision approval was requested. Mr. Henke responded that private easements should not be shown on plat maps.

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

- The easement would be used for large farming equipment.
- It was not right that the City usually gave but did not receive during an annexation.
- All the properties along Stringtown Road were serviced by the City's culinary water system.
- The annexation agreement should more explicitly limit the property to five lots.
- Exhibits would be added to the agreement.
- The City would lose negotiation leverage if maintenance of Stringtown Road was required in the agreement.

Motion: Council Member Simonsen moved to approve Ordinance 2022-24, approving the Kay's Landing Annexation, with the following findings and conditions:

- The City would gain control over land use and zoning if the area was annexed.
- The proposal was a legislative action.
- The proposal would increase density and traffic to the area.

- The density of the project was relatively low at five dwellings on almost eleven acres. This would help promote the vision of the General Plan to preserve more open area and a rural atmosphere.
- Development on the parcel was limited to five lots. The five lots would be deed restricted and no further subdividing would be allowed.
- A parks annexation donation fee of \$6,368.82 would be paid before the recording of the annexation plat.
- The associated annexation agreement would be approved, signed, and completed.

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

- 8. Resolution 2022-30 / Kay’s Landing Annexation Agreement** (City Attorney – Approximately 10 minutes) – Discuss and possibly deny, continue, or approve Resolution 2022-30 adopting an annexation agreement for the Kay’s Landing Annexation located at 1591 South Stringtown Road (Zoning would be RA-1-43).

Motion: Council Member Simonsen moved to approve Resolution 2022-30, adopting an annexation agreement for the Kay’s Landing Annexation, with the following adjustments:

- The concept plan was included as an exhibit with the private easement not shown.
- Strengthen the language limiting the property to five lots.
- Only the first sentence was needed regarding road maintenance.
- The Midway Irrigation Company will-serve letter was not included as an exhibit.

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. Ordinance 2022-25 / Vincent Annexation** (Berg Engineering – Approximately 20 minutes) – Discuss and possibly deny, continue, or adopt Ordinance 2022-25 approving the Vincent

Annexation located at 1315 South Stringtown Road (Zoning would be RA-1-43).
Recommended for approval with conditions by the Midway City Planning Commission.

Public Hearing

Mayor Johnson explained that Council Member Payne was associated with the next five items. She indicated that he would leave the rostrum but would remain in the room to answer any questions.

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

- Summary
- Location of the annexation
- Kay's Landing Annexation
- Annexation plat map
- Concept plan
- Property to be added to the Whimsy Willow Subdivision
- Discussion items
- Possible findings
- Proposed conditions

Mr. Henke also made the following comments:

- The property would be restricted to three lots.
- The petitioner would like flexibility to reduce the amount of land added to Whimsy Willow.
- The mobile home on the property would be removed if the owner or her son, who lived in it, moved. The petitioner wanted it to remain until that happened.
- The mobile home was affordable housing.
- If the mobile home was removed, could its water connection be sold? The Midway Water Advisory Board recommended that it not be sold. The Water Board recommended that the square footage be subtracted from the water calculation to compensate.
- Was there some way to ensure that the trailer would be moved?
- The Irrigation Company had provided a will-serve letter.
- Water rights were required for the entire property including the portion that would be transferred to Whimsy Willow.

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

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

- Agreed to record a boundary line agreement even though it was not necessary if the related plat maps were recorded simultaneously.

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

- The mobile home violated the Municipal Code. The request would annex a prior non-conforming use. The annexation agreement should detail the conditions in which the use could terminate.

- The City would have to track a cash bond that it received.
- A boundary line agreement was needed even with the proposed plat map amendments. The boundary was not decided. Kevin Payne, petitioner, responded that he intended to do the amendment and add 1/3 of an acre to his lot in Whimsy Willow. He indicated that he had done this before in the City.

Public Hearing

Mayor Johnson opened the hearing and asked if there were any comments from the public. She closed the hearing when no public comment was offered.

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

- The mobile home was not a concern because it was clean, old, and had limited life.
- The person living in the mobile home should not lose their home if an accident happened to the owner of the other house on the lot.
- The use of the mobile home should terminate if the person living in it moved out.
- A lot of mobile homes had been put on properties in the past when there was no zoning or oversight.

Motion: Council Member Drury moved to adopt Ordinance 2022-25, approving the Vincent Annexation, with the following findings and conditions:

- The City would gain control over land use and zoning if the area was annexed.
- The proposal was a legislative action.
- The proposal would increase density and traffic to the area.
- The density of the project was relatively low at three dwellings on almost eleven acres. This would help promote the vision of the General Plan to preserve more open area and a rural atmosphere.
- Development on the parcel was limited to three lots. The three lots would be deed restricted and no further subdividing would be allowed.
- The existing trailer was allowed to remain until the current resident stopped living in it.
- A parks annexation donation fee of \$5,749.71 would be paid before the recording of the annexation plat.
- Approval of the related annexation agreement.

Second: Council Member Orme seconded the motion.

Discussion: None

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

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

10. Resolution 2022-31 / Vincent Annexation Agreement (City Attorney – Approximately 10 minutes) – Discuss and possibly deny, continue, or approve Resolution 2022-31 adopting an annexation agreement for the Vincent Annexation located at 1315 South Stringtown Road (Zoning is RA-1-43).

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

- The agreement should exclude the irrigation company will-serve letter and the language for the mobile home should be adjusted.
- The mobile home was connected to the sewer through the house.
- The last sentence, in the paragraph about the water connection, should be removed.

Motion: Council Member Simonsen moved to approve Resolution 2022-31, adopting an annexation agreement for the Vincent Annexation, with the edits as discussed.

Second: Council Member Drury seconded the motion.

Discussion: None

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

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

11. Whimsy Willow Subdivision / Plat Amendment (Berg Engineering – Approximately 10 minutes) – Discuss and possibly deny, continue, or grant a plat map amendment for the Whimsy Willow Subdivision located at 405 West 1120 South (Zoning is RA-1-43). Recommended for approval without conditions by the Midway City Planning Commission.
Public Hearing

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

- Proposal
- Location of the development
- Area added
- Recorded plat map
- Proposed plat map
- Concept plan for the Vincent Annexation
- Possible findings

Mr. Henke also made the following comments:

- The request was a lot line adjustment.

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

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

- An approval should allow up to 0.33 acres to be added to the development.

Paul Berg, Berg Engineering Resource Group and representing the applicants, reviewed the following items:

- Annexation plat map
- Boundary line adjustment
- Whimsy Willow

Public Hearing

Mayor Johnson opened the hearing and asked if there were any comments from the public. She closed the hearing when no public comment was offered.

Motion: Council Member Simonsen moved to approve the Whimsy Willow Subdivision plat amendment request with the following findings and conditions:

- The applicant followed the right procedure in statute as Council Member Dougherty outlined and that a boundary line agreement was handled in the right sequence to avoid creating a remnant parcel.
- Approved the request to add up to 0.33 acres based on the recommendation of staff.
- Lot 2 would continue to conform to the requirements of the RA-1-43 zone.
- State law required a land use authority to approve a lot line adjustment if the exchange would not result in a violation of any land use ordinance, no violations had been identified.
- State law stated that a plat amendment may be considered by the land use authority at a public meeting.
- No public street, right-of-way, or easement would be vacated or altered.
- The Vincent parcel was not currently in the city limits so the plat amendment should not be recorded until the annexation was recorded.

Second: Council Member Dougherty seconded the motion.

Discussion: Council Member Dougherty indicated that the applicant might want to square up the south boundary line, for Whimsy Willow, all the way to Stringtown Road. Kevin Payne responded that would no longer happen.

Council Member Dougherty was concerned about approving a plat map that could change or be configured differently. Mr. Payne responded that the only change might be adding less property to the development. Mr. Henke responded that up to 0.33 acres could be added. Mr. Payne said he would keep the south boundary line straight and move it up as needed.

Council Member Dougherty recommended a reference that water rights were provided for the area, being transferred to Whimsy Willow, and that they transferred with the land.

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

12. Vincent Fields Subdivision / Preliminary and Final Approval (Berg Engineering – Approximately 20 minutes) – Discuss and possibly deny, continue, or grant preliminary and final approval for the Vincent Fields Subdivision located at 1315 South Stringtown Road (Zoning is RA-1-43). Recommended for approval with conditions by the Midway City Planning Commission. **Public Hearing**

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

- Land use summary
- Location of the development
- Discussion items
- Water board recommendation
- Possible findings
- Proposed conditions

Mr. Henke also made the following comments:

- Two 8,000 square foot sections had not been included in the water calculation to balance out for not being able to sell an existing culinary connection.

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

Council Member Dougherty recommended that the development agreement have the same language, regarding the mobile home, as the related annexation agreement.

Public Hearing

Mayor Johnson opened the hearing and asked if there were any comments from the public. She closed the hearing when no public comment was offered.

Motion: Council Member Drury moved to grant preliminary and final approval for the Vincent Fields Subdivision with the following findings and conditions:

- The proposed lots met the minimum requirements for the RA-1-43 zoning district.
- The proposal met the intent of the General Plan for the RA-1-43 zoning district.
- The subdivision would contribute to the master trails plan by adding funds to the general

trails fund that would be used to help accomplish the master trails plan.

- The applicant would be required to install or bond for all unfinished improvements before the plat was recorded.
- The duration of Preliminary/Final Approval would be for one year from the date of approval of the development by the City Council. If the Final Plat was not recorded with the County Recorder within the one-year period of time, the development's approval would be voided, and both Preliminary and Final Approvals would have to be re-obtained to reinstate the project, unless, upon request by the applicant and on a showing of extenuating circumstances, the City Council extended the time limit for plat recording, with or without conditions. No more than three one-year extensions would be allowed. The granting or denying of any extension, with or without conditions, was within the sole discretion of the City Council, and an applicant had no right to receive such an extension.
- Prior to the recording of the plat, the applicant would add \$20,490 to the general trails fund so that the bike lane could be completed in the future as part of a larger improvement project that would complete the bike lanes along the entirety of Stringtown Road where bike lanes were planned.
- The associated development agreement would also need to be approved.
- A will-serve letter from the Midway Irrigation Company was also provided.

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	Recused
Council Member Simonsen	Aye

13. Resolution 2022-32 / Vincent Fields Subdivision Development Agreement (City Attorney – Approximately 10 minutes) – Discuss and possibly deny, continue, or approve Resolution 2022-32 adopting a development agreement for the Vincent Fields Subdivision located at 1315 South Stringtown Road (Zoning is RA-1-43).

Council Member Simonsen recommended that the agreement mirror the language in the annexation agreement regarding the mobile home and occupancy.

Council Member Dougherty recommended that the agreement acknowledge the mobile home as a prior nonconforming use.

Kevin Payne asked that the agreement be with him or the associated limited liability company.

Motion: Council Member Drury moved to approve Resolution 2022-32, adopting a development agreement for the Vincent Fields Subdivision, with the changes discussed and that it applied to Mr. Payne or the limited liability company.

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	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

14. Rising Heights Subdivision / Preliminary and Final Approval (Berg Engineering – Approximately 20 minutes) – Discuss and possibly deny, continue, or grant preliminary and final approval for the Rising Heights Subdivision located at approximately 950 East Michie Lane (Zoning is R-1-11). Recommended for approval without conditions by the Midway City Planning Commission. **Public Hearing**

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

- Land use summary
- Location of the development
- Existing driveway
- Contour map
- Drainage map
- Site plan
- Water board recommendation
- Possible findings

Mr. Henke also made the following comments:

- The property proposed for the subdivision needed to be a lot of record or recorded as a plat map to be developed.
- Did not recommend any conditions.
- The proposed school on the property could be up to 35 feet high.

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

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

- Residents in the Hamlet were fine with the proposed school but worried about trees being planted that would block their views.
- The neighbors were concerned about the traffic and speeding on Michie Lane. The entrance to the development would be on a blind corner on Michie Lane. A plan should be done to address these issues. The entrance exceeded the standards for sight distance. Speed bumps should be installed near all schools. There could be a marked turn lane on Michie Lane into the development. Michie Lane could also have a double

- yellow line in the middle of the road.
- Was there enough room for all the cars waiting to drop off and pick up children at the school? There could be a dedicated right hand turn lane into the development.
 - The City did not have the right-of-way to widen the narrow section of Michie Lane. It would be obtained when the property to the south was developed.
 - Children from outside of Midway would go to the school.
 - Waiting drivers stopped under trees for shade and did not pay attention because they were using their cell phones.
 - Dropping off and picking up worked well when properly organized.

Rob Bouwhuis, inForm Architecture and representing the applicants, made the following comments:

- The school would be 21 feet high.
- There would be 900 feet of road for picking up and dropping off children.

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

- The development would be built that spring.
- The entrance to the development had the require separation from the entrance to the Hamlet. It also met the sight distance requirements for a curve.
- Striping on Michie Lane would help.
- Michie Lane was very wide along the proposed entrance.
- 36 vehicles could be waiting at any one time.
- Dropping off and picking up could be staggard to reduced traffic.
- The development met all the criteria for good design.

Public Hearing

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

Glenn Bandley

Mr. Bandley asked if the section of Michie Lane would qualify as a 20-mph school zone. Wes Johnson responded that it would because of the proposed school.

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

Council Member Simonsen indicated that he owned a unit in the Hamlet. He asked if he needed to recuse himself from considering the item. Corbin Gordon responded that he did not need to recuse himself unless the ownership would affect his vote.

Motion: Council Member Simonsen moved to approve the requests for the Rising Heights Subdivision with the following findings:

- The proposed lot met the minimum requirements for the R-1-11 zoning district.
- The proposal met the intent of the General Plan for the R-1-11 zoning district.
- Review for access, road connectivity, and water rights had been considered for a future school and not any other uses.
- The applicant would be required to install or bond for all unfinished improvements previous to the plat being recorded.
- The duration of Preliminary/Final Approval would be for one year from the date of approval of the development by the City Council. If the Final Plat was not recorded with the County Recorder within the one-year period of time, the development's approval would be voided, and both Preliminary and Final Approvals would have to be re-obtained to reinstate the project, unless, upon request by the applicant and on a showing of extenuating circumstances, the City Council extended the time limit for plat recording, with or without conditions. No more than three one-year extensions would be allowed. The granting or denying of any extension, with or without conditions, was within the sole discretion of the City Council, and an applicant had no right to receive such an extension.

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

15. Resolution 2022-33 / Rising Heights Subdivision Development Agreement (City Attorney – Approximately 10 minutes) – Discuss and possibly deny, continue, or approve Resolution 2022-33 adopting a development agreement for the Rising Heights Subdivision located at approximately 950 East Michie Lane (Zoning is R-1-11).

Council Member Simonsen indicated that the development agreement was basic and just for the subdivision.

Motion: Council Member Simonsen moved to approve Resolution 2022-33, adopting a development agreement for the Rising Heights Subdivision, and to require 8.98 acre feet of water rights for the project.

Second: Council Member Drury seconded the motion.

Discussion: Council Member Payne noted that the development would have several unirrigated areas that did not require water rights. He indicated that other developments had similar areas. He asked what would happen if the owners tried to irrigate them. Mayor Johnson responded that pressurized irrigation was now metered. She added that irrigation water could be shut off to the property. Council Member Dougherty recommended that the plat map include a note prohibiting the areas from being irrigated.

Council Member Dougherty asked if the school could be replaced by a large house. Michael Henke responded that was possible because the approval was administrative. He added that the required amount of water would have to be reevaluated.

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

16. Rising Heights Academy / Conditional Use Permit (Berg Engineering – Approximately 45 minutes) – Discuss and possibly deny, continue, or grant a conditional use permit for the Rising Heights Academy located at approximately 950 East Michie Lane (Zoning is R-1-11). Recommended for approval with conditions by the Midway City Planning Commission.
Public Hearing

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

- Conditional use permits
- Project overview
- Location of the proposed school
- Site plan
- Landscaping
- Water board recommendation
- Fire zone
- Parking
- Vehicle stacking
- Discussion items

Mr. Henke also made the following comments:

- The property had never been irrigated.
- There were more parking spaces than required at a public school.
- The existing driveway was a secondary access to a lot.
- The entrance would have three lanes.
- Striping on Michie Lane would improve the intersection.
- A bond would not be required for the landscaping.

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

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

- There was no obligation to irrigate the property since it had never been irrigated.

- The areas that would not be irrigated could be designated.
- The City and County had a longstanding policy on property that had never been irrigated.
- There was an existing fence on the south boundary of Hamlet.

Rob Bouwhuis, inForm Architecture and representing the applicants, made the following comments:

- The neighbor to the west wanted trees planted along the west property line.
- The easement for the existing driveway would not be fenced but would have some landscaping as a barrier.
- The area where the kids would play would be fenced.
- The number of parking spaces had been reduced by 15 but the length of the driveway was increased.
- There would be less irrigation behind the school.
- The applicants wanted a more natural feel so that the schoolchildren could connect with nature.
- The shortest setback in the development would be 15 feet.

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

- The areas in the City that did not need to be watered were limited.
- The City should encourage water conservation through areas not being irrigated.
- The applicants should be good neighbors and address the concerns with trees and views.
- The trees were for security and not to block any views.
- The school was not a single-family home and should have greater setbacks.
- There was a stormwater system for the paved areas and the buildings.

Public Hearing

Mayor Johnson opened the hearing and asked if there were any comments from the public. She closed the hearing when no public comment was offered.

Motion: Council Member Simonsen moved to approve the request for a conditional use permit for the Rising Heights Academy with the following findings and conditions:

- The proposed use was a conditional use in the R-1-11 zoning district.
- The applicant had not provided engineered drawings for utilities or storm water facilities.
- The project would increase traffic to the area, but traffic counts would be within standards for the classification of the roads in the area.
- The duration of approval would be for one year from the date of approval of the development by the City Council. If the use was not acted on within a year of approval, the development's approval would be voided, and a conditional use approval would need to be re-obtained to reinstate the project.
- The applicant would need to provide a will-serve letter from the Midway Irrigation Company before the president of the Company would sign the plat map.
- The utility and other engineering plans would need to be submitted and reviewed by the

City Engineer before he would sign the plat map.

- The requested approval was for up to 100 students.

Discussion: Council Member Payne asked if striping should be required in the motion. Wes Johnson responded that it would be easier for the City to stripe the road.

Council Member Simonsen clarified that the City would stripe a double yellow line in the middle of Michie Lane, there would be a turn lane or shoulder to turn into the development, and a right and left turn lane going onto Highway 113.

Council Member Dougherty asked if there needed to be a condition for split drop-offs and pick-ups. Rob Bouwhuis asked that only be addressed if it became an issue.

Revised Motion: Council Member Simonsen moved to approve the request for a conditional use permit for the Rising Heights Academy with the following findings and conditions:

- The proposed use was a conditional use in the R-1-11 zoning district.
- The applicant had not provided engineered drawings for utilities or storm water facilities.
- The project would increase traffic to the area, but traffic counts would be within standards for the classification of the roads in the area.
- The duration of approval would be for one year from the date of approval of the development by the City Council. If the use was not acted on within a year of approval, the development's approval would be voided, and a conditional use approval would need to be re-obtained to reinstate the project.
- The applicant would need to provide a will-serve letter from the Midway Irrigation Company before the president of the Company would sign the plat map.
- The utility and other engineering plans would need to be submitted and reviewed by the City Engineer before he would sign the plat map.
- The requested approval was for up to 100 students.
- Staggard drop-off and pick-up times would be implemented if queuing went onto Michie Lane.

Second: Council Member Dougherty seconded the motion.

Discussion: Mr. Berg asked if a new conditional use permit was needed if the school expanded. Mr. Henke responded that a new permit would be needed.

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: Council Member Drury moved to continue the meeting to consider the next item on the agenda.

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

17. Resolution 2022-34 / Watts Remund Farms Master Plan Agreement Third Amendment
(Berg Engineering – Approximately 30 minutes) – Discuss and possibly approve Resolution 2022-34 adopting a third amendment of the master plan agreement for the Watts Remund Farms PUD located at 200 East 600 North.

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

- Land use summary
- Location of the development
- Amending a master plan
- Master plan approval
- Proposed amendments
- Approved master plan
- Council motion from 7 September 2021
- Water issues
- Possible findings
- Proposed conditions

Mr. Henke also made the following comments:

- The minimum setback would be 42 feet.
- The amendment would change the size of some of the units and the distances from the wetlands buffer.
- A perforated equalization pipe was used to try to bring the water levels back to predevelopment levels.

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

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

- The cul-de-sac was the same distance from the west property line.
- A storm drain system and retention pond would handle runoff from the street.
- Had waited a year to request the amendment so that the City would have more information on the water.

JB Brown, Loughlin Water Associates, gave a presentation and reviewed the following items:

- Equalization pipe
- Drop in the water table
- Water Flows
- Water levels shown with contours

Mr. Brown also made the following comments:

- Some water levels had fallen one to two feet since the equalization pipe was installed.
- Data showed that water levels had gone back to predevelopment levels.
- More piezometers and data could be helpful.
- The irrigation ditch should be maintained.
- Approving Phase Four should not affect the water levels.
- It would be more difficult to extend the drainage to the east because of the shallow grade.

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

- What was the purpose of the wetlands buffer? How did the City Engineer determine if the buffer could be violated? Wes Johnson responded that the buffer was the City being more cautious. He indicated that he would only allow a driveway or other limited common area to encroach into the buffer. He added that the Council should approve a unit encroaching.
- The neighbors wanted the units further from their property. The units were allowed to encroach to meet the request.
- The wetlands, not the buffer, had been fenced to prevent equipment from encroaching.
- The equalization pipe would be cleaned by the Midway Sanitation District every five years along with its sewer lines. The HOA would reimburse the District for the cleaning.
- The equalization pipe did not affect the wetlands.
- There were still humidity issues for some neighbors.
- In the fifth phase there would be no excavation below the water levels.
- Most of the underground work for the phase had been completed.
- No other measurements needed to be added.
- The neighbors did not have a chance to look at all the new data.
- Another neighbor wanted a piezometer on his property.
- The equalization pipe produced 300 gallons per minute of water.
- The water problem had been moved to the ditch.
- Cleaning the irrigation ditch would remove the natural seal.
- The water levels on the southeast side of Watts Remund Farms were below predevelopment levels. This was affected by unplugging a drainpipe in Swiss Paradise.
- The irrigation ditch could not be piped because of the minerals in the water.

Doug Engfer made the following comments:

- The irrigation ditch, which carried the water from the equalization pipe, was higher than his property.
- The area should continue to be monitored.
- Spent a lot of time cleaning the portion of the irrigation ditch on his property.
- The ditch would have to be actively maintained.

Cathy Philpot made the following comments:

- Could not tell the difference when the irrigation ditch was cleaned.
- The equalization pipe had lowered the water level on her property but was not sure it was at predevelopment levels.
- There was no longer standing or seeping water in the irrigation ditch.
- Still had a lot of humidity under her house. New paint in her house was already bubbling.
- Did not have a chance to review the data and a proposed agreement with the developer.
- Had not seen a full year of data.
- Somethings still needed to be watched.
- The area was in a drought.
- Appreciated the avenue to fix the problem.

Russ Watts, applicant, made the following comments:

- Had given a proposal to Ms. Philpot that whatever happened in the next ten years would be taken care of by him or the HOA.
- The City would not be responsible for any of the water damage.
- There would still be a lot of meetings regarding the project.

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

- Progress had been made.
- A change to a master plan was discretionary.
- The City could require future remediation for water problems to protect health and safety.
- The City should not be a party to the agreement between the developer and Ms. Philpot.

Motion: Council Member Drury moved to approve Resolution 2022-34, adopting a third amendment of the master plan agreement for the Watts Remund Farms PUD, with the following findings and conditions:

- The proposed master plan appeared to meet the requirements of the code.
- The building pads for seven of the ten units would change in size creating an overall increase in building square footage and a reduction in open space.
- Some setbacks from the proposed building pads to the peripheral boundaries in Phase Five would decrease.
- One public trail would be paved as part of the subdivision. The trail would benefit members of the community.
- Amending the master plan was discretionary and the City was under no obligation to approve the proposal even if it complied with the land use code.
- The applicant would survey the boundaries of the wetlands and then install temporary construction fencing when the site improvements began for Phase Five as well as when homes were constructed in Phase Five.
- The developer would accept all liability for water table level variations associated with the development.

Discussion: Council Member Dougherty recommended that the final condition be eliminated because the City could not impose liability under state law.

Revised Motion: Council Member Drury moved to approve Resolution 2022-34, adopting a third amendment of the master plan agreement for the Watts Remund Farms PUD, with the following findings and conditions:

- The proposed master plan appeared to meet the requirements of the code.
- The building pads for seven of the ten units would change in size creating an overall increase in building square footage and reduction in open space.
- Some setbacks from the proposed building pads to the east peripheral boundaries in Phase Five would decrease.
- One public trail would be paved as part of the subdivision. The trail would benefit members of the community.
- Amending the master plan was discretionary and the City was under no obligation to approve the proposal even if it complied with the land use code.
- The applicant would survey the boundaries of the wetlands and then install temporary construction fencing when the site improvements began for Phase Five as well as when homes were constructed in Phase Five.
- Staff and the applicant would update the Council at preliminary and final approval regarding remediation of the water issues and the agreement.

Second: Council Member Orme seconded the motion.

Discussion: Ms. Philpot asked what would motivate the HOA to continue cleaning the equalization pipe. Council Member Dougherty responded that issue should be addressed in the proposal she received from the applicant.

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: Council Member Drury moved to continue the meeting to consider the next item on the agenda.

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

18. Ordinance 2022-26 / Resort Zone Landscaping Bond (City Planner – Approximately 15 minutes) – Discuss and possibly deny, continue, or adopt Ordinance 2022-26 amending Section 16.15 (Resort Zone Landscaping Bond) of the Midway City Municipal Code clarifying that a landscaping bond is required separate from the construction bond. Recommended for adoption without conditions by the Midway City Planning Commission.
Public Hearing

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

- Proposed code
- Proposed language

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

Public Hearing

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

Paul Berg

Mr. Berg made the following comments:

- The City did not have a landscaping problem but a complaint problem.
- Bonding and design were not the way to deal with the issue.

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

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

- There were developments where the sprinkling system did not work properly after installation.
- Contractors, working for the developer, sometimes drove over landscaping and sprinklers during construction.
- There was a problem with developers installing and maintaining landscaping.
- It was not an issue of more or less trees.

Motion: Council Member Payne moved to adopt Ordinance 2022-26 with the following findings:

- The proposed code amendment would allow for better landscaping results in resort development common areas and open spaces.
- The proposed adjustment would allow administrating the code to be much simpler.
- Landscape and construction bonds would be posted separately before a plat was recorded.

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

Motion: Council Member Payne moved to continue the meeting to consider the next item on the agenda.

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

19. The Village / Underground Garages (Midway Heritage Development – Approximately 30 minutes) - Discuss and possibly deny, continue, or approve underground garages for The Village located at 541 East Main Street (Zoning is C-2).

Dan Luster, applicant, made the following comments:

- The water in the first groundwater study was surface water.
- The groundwater was at 50 feet and came up to 25 feet when the ground was drilled.
- Would install an eight-inch instead of the recommended four-inch drainpipe.
- Two addendums had been added to CMT's groundwater report to clarify what was surface and what was groundwater.
- The outside courtyards would be at grade.
- The request would not change the plat maps.
- The groundwater system would fulling function with each phase.
- The HOA would hire a property management company to maintain the groundwater mitigation system.
- There would be no living spaces below ground.
- Snow removal would be more difficult because of the underground garages. Snow would have to be pushed to the end of the ramps or put in dump trucks.
- Wanted permission to spend a lot of money making the development look better.
- A fence was needed for retaining walls over a certain height.
- Preferred a cement slab over the driveways instead of retaining walls.
- Only visible retaining walls should be required to look a certain way.

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

- The development included two underground systems. One handled groundwater and the other handled surface water.
- Increasing the capacity of the irrigation ditch would have to be discussed with the Midway Irrigation Company.
- The biggest groundwater concern would be the ponds leaking.
- Not all units would have underground garages.

JB Brown, Loughlin Water Associates, made the following comments:

- There was groundwater on the property, but it was not shallow.
- There was an artesian well 600 feet from the property.
- The soils were impermeable.
- Eight borings and test pits had been done.
- The needed capacity of the pump system could not be determined if there was no groundwater at that depth.
- The CMT report ignored that there was not saturation.
- It was remote that construction would go down to the groundwater.
- Water levels would be observed during construction.

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

- How much water could be handled by the mitigation measures?
- Could the irrigation ditch handle the pumped groundwater?
- The condition of the surface ditch was unknown.
- Were the planned retention ponds large enough? Mr. Berg responded that any groundwater would be put in the irrigation ditch and not the retention ponds.
- Was there competing groundwater reports?
- The groundwater report from CMT was confusing enough to require a plan and design for groundwater.
- Installing the sewer line would determine if there was groundwater.
- Would the Council see again the already approved phases because of the underground garages? Requesting underground garages was allowed by the master plan. The request was an engineering issue and would not require the previous approval to be revisited.
- The groundwater system needed to be exercised once a month.
- Should the Council approve underground garages just for phases one and two to see how they worked?
- The development agreements for the already approved phases should be amended to address the underground garages. Approval could be granted, conditioned on development agreement amendments, to allow the applicant to start planning.
- The rock for the retaining walls should not be concrete, imitation rock, etc.
- The development agreements should be amended to address the operation and maintenance of the groundwater system.
- The City Engineer should review the capacity of the irrigation ditch.

Motion: Council Member Drury moved to conditionally grant approval for The Village and

underground garages with the following conditions and findings:

- Changes to the development agreements, on a per phase basis, including Phases One and Two which already received preliminary approval.
- The development agreements would add conditions to the underground parking as mentioned in the information provided and other conditions as needed.
- CMT Engineering concluded that the development did not appear to have shallow groundwater.
- Loughlin Water Associates, LLC concluded that the development did not appear to have shallow groundwater.
- If subgrade parking was allowed, the buildings would be better designed which would greatly impact the streetscape and the overall character of the neighborhood.
- If subgrade parking was allowed, there would be more garage area for parking and storage which would help make it possible that surface street parking would be minimal.

Discussion: Council Member Dougherty asked if the finding regarding CMT needed to be eliminated because it was questioned by the City Engineer. Mr. Henke indicated that CMT had conflicting reports but did state there was no shallow groundwater. Wes Johnson was comfortable keeping the finding because CMT claimed there was no shallow groundwater.

Mayor Johnson indicated that the amendments to the development agreements would be considered at the next council meeting.

Council Member Dougherty asked if there should be a condition that the City Engineer approve some type of report on the irrigation ditch. Mr. Johnson responded that he would study the ditch when he reviewed the construction plans.

Second: Council Member Dougherty seconded the motion.

Discussion: Council Member Simonsen asked if the condition regarding retaining areas, recommended by staff, needed to be changed to visible retaining areas. He noted this change was requested by the applicant. Council Member Drury responded his intention was to address this issue in the amended development agreements.

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

20. Adjournment

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

The meeting was adjourned at 12:33 a.m.

Celeste Johnson, Mayor

Brad Wilson, Recorder

DRAFT