

Midway City Council
13 June 2018
Regular Meeting

Open Space Committee /
Presentation

**A RESOLUTION FROM THE MIDWAY CITY OPEN SPACE ADVISORY COMMITTEE
RECOMMENDING THE CITY COUNCIL PLACE AN OPEN SPACE BOND ON THE
NOVEMBER ELECTION BALLOT**

WHEREAS, on October 27, 2017, the City formed the Open Space Advisory Committee and tasked it, among other things, to provide information sufficient to consider putting an open space bond on the ballot for 2018; and

WHEREAS, the Committee has met regularly to consider the options available to identify and preserve open space within the annexation limits of Midway City; and

WHEREAS, the Committee has consulted with experts in the bonding process and with organizations devoted to the preservation of open lands in Utah; and

WHEREAS, the Committee has conducted four public meetings for the citizens of Midway to discuss open space issues, to provide feedback to the Committee concerning open space and how to acquire and preserve it; and

WHEREAS, the Committee hosted a public meeting for local landowners to hear from Utah Open Lands about options available for landowners who wish to preserve some or all of their land as open space and yet derive some economic benefit short of selling the land for development; and

WHEREAS, the Committee conducted a survey of Midway residents seeking to gauge their interest in preserving open space and whether they were supportive or some sort of bond initiative as an option to preserving open space; and

WHEREAS, a significant majority of respondents to the survey indicated some degree of support for an open space bond; and

WHEREAS, Wasatch County is one of the fastest growing counties in the United States; and

WHEREAS, Midway City is a popular and desirable place to live; and

WHEREAS, one of the main reasons people relocate to Wasatch County and Midway City is to enjoy the scenic beauty, the outdoor recreation opportunities in the area, and the rural atmosphere of the Heber Valley; and

WHEREAS, Cost of Community Services Studies (COCS) have uniformly found that residential development imposes costs on local government over and above the tax revenue generated by

that development while land dedicated to open space imposes costs on local government in an amount less than the tax revenue generated by the open space land¹; and

WHEREAS, preservation of open space can and should be accomplished through multiple means, such as reasonable land use regulations, sound business decisions by developers, outright donations of land or conservations easements by willing landowners, sale or transfer of development rights between willing landowners and land preservation organizations, partnerships between the City, willing landowners, private donors, and land preservation organizations; and

WHEREAS, the Internal Revenue Service and qualified land preservation organizations consider the commitment of the local community to the goal of preserving open space when determining when a particular proposed donation of development rights or a conservation easement from a willing landowner to a qualified land preservation organization qualifies for favorable tax treatment under the Internal Revenue Code; and

WHEREAS, by placing an open space bond on the ballot Midway demonstrates its commitment to actively participate with willing landowners, private donors, qualified land preservation organizations, and other interested entities and foundations in the mutually beneficial goal of identifying and preserving open space for future generations; and

¹ See, e.g., KOTCHEN & SCHULTE, *A Meta-Analysis of Cost of Community Service Studies*, July 25, 2008, https://www.farmlandinfo.org/sites/default/files/Meta-analysis_COCS_1.pdf at pg. 15 (“We find clear support for the common perception that residential land uses tend to have ratios greater than one, while commercial/industrial and agricultural/open-space land uses tend to have ratios less than one.”) (last visited June 6, 2018). A summary of COCS published by the American Farmland Trust in 2016 reported the results of a 1994 study in three Utah counties (Cache, Sevier, Utah) that found residential development cost local government anywhere from \$1.11 to \$1.27 for every dollar of tax revenue generated by residential development while working and open land costs local government anywhere from \$.01 to \$.43 for every dollar of tax revenue generated by the working or open land. FARMLAND INFORMATION CENTER, *Cost of Community Services Studies*, at pg. 5, Sept. 2016, https://conservationtools-production.s3.amazonaws.com/library_item_files/352/1464/Cost_of_Community_Services_Studies_AFT_FIC_201609.pdf?AWSAccessKeyId=AKIAIQFJLILYGVDR4AMQ&Expires=1528376550&Signature=frs%2BXYQEXkD5LKmqpyu9yOKO2Ro%3D (last visited June 6, 2018). A recent and yet unpublished study by Utah Open Lands centered on our region and reported to the OSAC by Wendy Fisher, President and Founder of Utah Open Lands, at the March 7, 2018, OSAC meeting and at the May 29, 2018, Public Forum Landowner’s Meeting indicates that residential development in Wasatch/Heber Valley costs local government anywhere from \$1.35 to \$1.65 per dollar of tax revenue while agricultural open space generally costs the local government in excess of \$0.60 to \$0.70 per dollar of tax revenue.

WHEREAS, not placing an open space bond on the ballot could be perceived by the IRS, qualified land preservation organizations, private donors, and willing landowners that Midway is not interested in partnering with others in preserving open space; and

WHEREAS, the perception of a lack of interest or concern by Midway in preserving open space could adversely impact the ability of a willing landowner to secure favorable tax treatment for private efforts to conserve open space; and

WHEREAS, the availability of bond funds will enable the City of Midway to partner with willing landowners, private donors, qualified land preservation organizations, and foundations offering grants for the preservation of open space and leverage available funds through matching grants and favorable tax treatment to secure and preserve open space; without the availability of bond funds the City of Midway will not be able to partner with willing landowners, private donors, qualified land preservation organizations, and foundations offering grants for the preservation of open space and leverage available funds through matching grants and favorable tax treatment to secure and preserve open space.

BE IT, THEREFORE, RESOLVED, that the Open Space Advisory Committee, in its regular monthly meeting of June 6, 2018, recommends that the City Council approve placing an Open Space Bond question on the November ballot, authorize retaining the services of a qualified bond attorney to draft appropriate ballot language for a \$5 million open space bond, and let the voters be heard on this important topic.



RESOLUTION 2018-13

A RESOLUTION REQUESTING INFORMATION NECESSARY TO CONSIDER PLACING THE QUESTION OF BONDING FOR OPEN SPACE ON THE BALLOT FOR THE 2018 GENERAL ELECTION.

WHEREAS, in 2017 the City considered putting a bond for open space on the ballot; and

WHEREAS, the bond measure did not pass, with one of the concerns being that the process started too late and adequate information was not available to make an educated decision; and

WHEREAS, on October 11, 2017 the City formed the open space committee with direction to obtain and provide information sufficient to consider putting an open space bond on the ballot for 2018; and

WHEREAS, the Open Space Committee has been working diligently to obtain the information and the City Council supports its on-going efforts; and

WHEREAS, given the legal timing requirements of putting a bond on the ballot, the City Council requests that the Open Space Committee provide the information set forth below no later than June 13, 2018 so that the City Council has adequate time to fully consider the information before proceeding, and so it can meet the legal deadlines should putting a bond on the ballot be approved; and

BE IT RESOLVED, that the Open Space Committee provide the following information to the City Council no later than June 13, 2018, and to make a presentation to the City Council at its June 13, 2018 City Council meeting regarding the information listed below:

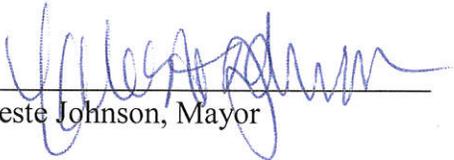
- Recommendation for an Open Space Plan
- Recommendation and supporting data for possible bond amounts
- Analysis and supporting data on how a proposed bond would affect taxes on the Midway City citizens
- A definition of open space and suggestion and analysis on how the bond could be used
- Analysis and recommendation on the County's proposal to also pass an open space bond, including how it would affect Midway City's chances of passing its own

bond, and the Committee's opinion on whether or not it makes sense to support the County bond

- Analysis and supporting data for on-going maintenance costs associated with potential properties that could be purchased with the open space bond

PASSED AND ADOPTED by the Midway City Council on the 25th day of April 2018.

MIDWAY CITY



Celeste Johnson, Mayor

ATTEST:



Brad Wilson, Recorder



[DRAFT] WASATCH OPEN LANDS INTER-LOCAL AGREEMENT

This Inter-local Agreement regarding the formation and operation of the Wasatch Open Lands Board (WOLB) is made and entered into this ___th day of _____, 2017, by and between Wasatch County, a political subdivision of the State of Utah, Heber City, a municipality organized and existing pursuant to the laws of the State of Utah, Midway City, a municipality organized and existing pursuant to the laws of the State of Utah, , and the Heber Valley Chamber of Commerce, a _____ organized and existing pursuant to the laws of the State of Utah, (individually “Party” and collectively “Parties”).

RECITALS

WHEREAS, Wasatch County, Heber City, Midway City, and the Chamber of Commerce have determined that it is in the best interest of the residents of their respective jurisdictions and unincorporated county residents to enter into a cooperative effort to promote open space, both public and private, according to Utah Code Annotated 11-13-206, UCA 17-27a-103 and UCA 10-9a-102.

WHEREAS, the Parties desire to participate and work together in the establishment of a local land conservation advisory board to assist in the administration of the desires and direction outlined in the inter-local agreement. This board will be known as the Wasatch Open Lands Board (WOLB).

WHEREAS, the Parties desire to participate and work in the establishment of funding mechanisms which would provide the funds for the preservation and development of open land, both public and private, for the community benefit.

WHEREAS, the Parties desire to jointly develop strategies, in cooperation and coordination with the public, to establish funding mechanisms based on ordinance, and/or bonding and/or private contribution as described within: funding through ordinances based on UCA 10-9a-508 and UCA 17-27a-507 ‘exactions’ which establish Conservation Fees that are assessed to mitigate increased densities as requested by new development; funding through bonding achieved via revenue bonds approved by the voters of Wasatch County; and/or private contributions to be solicited from private donors for the purpose of acquiring and protecting open lands.

WHEREAS, the Parties desire to preserve open lands and trail corridors pursuant to a common vision and strategy developed and maintained by WOLB to serve the public throughout Wasatch County.

WHEREAS, it is in the best interest of the Parties to clearly define the rights, duties and obligations of the Parties with respect to this board. It will be the responsibility of the WOLB to make recommendations to the Wasatch County Council, Heber City Council and Midway City Council that establish the operational plan which will guide open space preservation in the future.

NOW THEREFORE, the Parties hereby expresses their support and endorsement for the establishment of an inter-local agreement for the creation of the WOLB.

TERMS OF AGREEMENT

I. CREATION OF THE WASATCH OPEN LANDS BOARD (WOLB)

A. Purpose of the Wasatch Open Lands Board:

To preserve agricultural and open lands in Wasatch County for the enjoyment of present and future generations. Open land preservation will ensure the protection of rich farm and ranchlands, unique wildlife habitats, critical watersheds, lakes & streams, historic areas, trail corridors, view sheds and our serene mountain settings (collectively, "Open Lands Purpose"). This is accomplished through voluntary programs, which will ensure the protection of open lands in perpetuity through open space local funding programs and development of land use ordinances and policies that facilitate the Open Lands Purpose.

Gaining the support and vision of the citizens of Wasatch County on open space preservation is an essential responsibility of the WOLB. The WOLB should hold open houses and public meetings to help create support and interest in open space preservation as well as guidance from the public on priority areas for open space preservation and funding options.

II. FORMATION OF THE WASATCH OPEN LANDS BOARD.

A. Delegation of authority to the Wasatch Open Lands Board.

The Parties hereby create the Wasatch Open Lands Board, and delegate to that Board all power, authority and responsibility necessary to direct and conduct the business of the Wasatch Open Lands Board as allowed by law. The Board is created for the express purpose of ensuring that the obligations and purposes of this inter-local agreement are carried out in a productive and efficient manner. The Board shall, among other things, perform the following tasks:

1. The Board shall hold meetings with county citizens to determine priorities, preservation options, funding mechanisms etc.
2. The Board shall direct the preparation and review of a comprehensive work plan, approved by the County Council, that shall serve as a guide for open space preservation and development and prioritization of open space areas for purchase and preservation.
3. The Board shall not have any power to receive funds, approve budgets and administer its operations. Instead, it shall encourage and advise the County Council and other incorporated areas and Parties on how to each establish funding through the TRD & Conservation Fee Ordinances, bonding revenues, grants and/or private donations for open space preservation.

4. Each Party agrees to support the efforts of the Board through providing meeting space, personnel, and other resources reasonably necessary to enable the Board to achieve its purposes.
5. The Board will set up procedures, templates, and guidelines that planning commissions, property owners, developers and land trust conservation organizations would use in encouraging, negotiating, and finalizing purchases of development rights (PDRs), transfer of development rights (TDRs) and placement of conservation easements.
6. Prepare policies, procedures, by-laws and resolutions necessary to carry out the work of the Board in a proper and businesslike manner.
7. The Board will serve on a volunteer basis.
8. The Board will hold meetings as necessary.

III. ORGANIZATIONAL STRUCTURE

The Wasatch Open Lands Board will be comprised of: seven (7) voting members also known as the Governing Board Members.

A. VOTING MEMBERS OF THE BOARD – The Governing Members.

1.1 Membership: The number of voting members shall initially be seven (7) members appointed as follows:

1. Two (2) Board Members appointed by the Wasatch County Council.
2. One (1) Board Member appointed by the Heber City Council.
3. One (1) Board Member appointed by the Midway City Council.
4. One (1) Board Member who is a representative from, and appointed by the Chamber of commerce representing tourism and economic development interests.
5. Two (2) Board members that are citizens at large preferably with experience in open space preservation, real estate or grant writing.
6. In the event that any of the Cities or Towns who have a right to appoint a Board Member do not appoint a Board member within 30 days of a vacancy in their respective seat, the Wasatch County Council may appoint a Board member to fill that seat. That representative appointed by the County shall have a special obligation to hear and make known to the Board any concerns of the legislative body of the municipality that the seat was reserved for, but they shall not be bound to vote in conformity with the wishes of the municipality. They shall maintain their seat for the remainder of their term after the County appoints them, unless they resign or become incapacitated.

Voting Members of the Board shall constitute the official Governing Board of the Wasatch Open Lands Board and shall have all the rights, powers, duties and

responsibilities delegated to the Board as set forth herein. Action may be taken by a simple majority of all the Board Members. The Board is the administrator of the WOLB. At least 2/3 of the Board members must be present to take any official action. Board Member's votes are not weighted in any manner.

1.2 Terms: Each Board Member shall serve at the will of their governing council, except for those appointed by the County in place of a municipality, and shall serve no more than two consecutive four year terms. Initially three of the Governing Board members would serve two year terms, and four Governing members would serve four year terms. Initial terms would be determined by lot at the first meeting of the Board with the two-year terms ending January 1, 2020 and the four- year terms ending January 1, 2022. Thereafter, the terms would run for four years on a staggered basis. The appointed Board Members serve at the will of the appointing entity, and the appointment may be terminated according to the policies and procedures of that appointing entity, except for those who are appointed by the County in place of a municipality. If a vacancy happens among the Governing Members, the Board shall notify the member's appointing Council which shall fill the vacancy within 30 days by another appointment.

IV. BOND SHARING BASED ON TAXABLE VALUE

The intent of the WOLB is to identify open space priorities that will be a benefit for the residents of the County. Participating municipalities may have different priorities than the WOLB, county or other municipalities. This agreement hereby authorizes a percentage of the bond revenue based on taxable value to be used by the individual municipality with the following requirements:

1. The municipality must have a functioning open space board appointed by the legislative body that will make recommendations to the WOLB.
2. Provide a member of the appointed open space board to the WOLB.
3. The municipality must have an adopted open space map identifying priorities for open space purchases. The map shall prioritize open space areas that will provide some or all of the following: the greatest amount of benefit to County residents not just a limited number, Provide significant public use, connect to a network of open space through public trails, preserve historic or cultural buildings or ground deemed important to the municipality.
4. Taxable value will be determined by the County council based on tax assessment numbers and updated as needed.

V. MISCELLANEOUS – Utah Code 11-13-206

- A. This Agreement shall continue for a term of not more than forty (40) years, though it may be terminated at any time by four or more of the six Parties to this Agreement passing resolutions terminating or withdrawing from the WOLB. A Party may withdraw at any time from this Agreement by the

governing council of the Party passing a resolution withdrawing from the WOLB, and delivering the resolution to the WOLB. Any seat of the withdrawing Party shall be forfeit if the withdrawing member appointed a Board Member. If they did not, the Board Seat shall be removed when the term of the Board Member expires.

- B. This Agreement does not:
- a. Require any Party to adjust its budget for a current or future fiscal year;
 - b. include an out-of-state public agency as a Party;
 - c. provides for a Party to acquire or construct:
 - i. a facility; or
 - ii. an improvement to real property;
 - d. provide for a Party to acquire or transfer title to real property;
 - e. provide for the public agency to issue bonds;
 - f. create an inter-local entity; or
 - g. provide for a Party to share taxes or other revenues; or
 - h. Include as a Party the state or any department, division, or agency of the state.
- C. The WOLB does not have the authority to own property, to dispose of property, to have employees, or to contract for services. With the voluntary cooperation of a Party, the WOLB may work with Parties or other persons to facilitate the purchase of property, the disposal of property, the direct the efforts of their employees, or contract for services. Any intellectual property created by WOLB shall be considered the joint property of each of the Parties.
- D. All Parties are governmental entities under the Governmental Immunity Act of Utah (Utah Code Ann. § 63G-7-101, et seq. as amended) (“Governmental Immunity Act”). Consistent with the terms of the Governmental Immunity Act, the Parties agree that each Party is responsible for any wrongful or negligent acts which it commits or which are committed by its authorized agents, officials, or employees, and neither Party shall have any liability whatsoever for any wrongful or negligent act of the other, its agents, officials, or employees. No Party waives any defenses or limits of liability otherwise available under the Governmental Immunity Act and all other applicable law, and all Parties maintain all privileges, immunities, and other rights granted by the Governmental Immunity Act and all other applicable law. The Parties agree to assume any and all legal costs for their own defense. Each Party agrees to indemnify, hold harmless, and defend and release all other Parties, their agents, officials, and employees from and against any and all suits, claims, and proceedings for loss, damages, injury or liability, by the Party, or its representatives arising from this Agreement, unless caused by the negligence or willful misconduct of the other Party.
- E. No agent, employee or servant of a Party is or shall be deemed to be an employee, agent or servant of another Party as a result of this Agreement or the acts authorized hereby. None of the benefits provided by each Party to its employees, including but not limited to workers' compensation

- insurance, health insurance and unemployment insurance, are available to the employees, agents, or servants of the other party. Each Party shall each be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the performance of this Agreement.
- F. In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- G. The Parties agree as follows:
- a. This Agreement shall be approved by each Party by passing a resolution adopting this Agreement by October 1, 2017. This Agreement shall be reviewed as to the proper form and compliance with applicable law each Party;
 - b. An executed original counterpart shall be filed with the keeper of records for each party pursuant to §11-13-209;
 - c. No real or personal property shall be acquired jointly by the Parties as a result of this Agreement. To the extent that a Party acquires, holds, or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such Party shall do so in the same manner that it deals with other property of such Party; and
 - d. Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action taken pursuant to this Agreement, and for any financing of such costs.
- H. The Parties acknowledge and agree that this Agreement constitutes the entire integrated understanding between Parties, and that there are no other terms, conditions, representations or understanding, whether written or oral, concerning the rights and obligations of the Parties to this Agreement except as set forth in this Agreement. This Agreement may not be enlarged, modified or altered, except in writing, signed by all the Parties to the Agreement.
- I. This Agreement may only be amended by the mutual written agreement of all the Parties, which amendment will be attached to this Agreement. Any changes in the scope of the services to be performed under this Agreement, mutually agreed to and signed by both Parties, specifying any such changes.
- J. It is understood and agreed by the Parties hereto that this Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance. All actions, including but not limited to court proceedings, administrative proceedings, arbitration and mediation proceedings, shall be commenced, maintained, adjudicated and resolved within the jurisdiction of the State of Utah.

IN WITNESS WHEREOF, the Parties execute this Agreement on the day and month recited above,

WASATCH COUNTY:

HEBER CITY

By: _____ By: _____

MIDWAY CITY:

HEBER VALLEY CHAMBER OF COMMERCE

By: _____ By: _____

DRAFT