

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

**Tuesday, 17 May 2022, 6:00 p.m.
Midway Community Center, Council Chambers
160 West Main Street, Midway, Utah**

Note: Notices/agendas were posted at 7-Eleven, Ridley's Express, the United States Post Office, the Midway City Office Building, and the Midway Community Center. Notices/agendas were provided to the City Council, City Engineer, City Attorney, Planning Director, and The Wasatch Wave. The public notice/agenda was published on the Utah State Public Notice Website and the City's website. A copy of the public notice/agenda is contained in the supplemental file.

1. Call to Order; Pledge of Allegiance; Prayer and/or Inspirational Message

Mayor Johnson called the meeting to order at 6:10 p.m.

Members Present:

Celeste Johnson, Mayor
Steve Dougherty, Council Member
Jeff Drury, Council Member
Lisa Orme, Council Member
Kevin Payne, Council Member
JC Simonsen, Council Member

Staff Present:

Corbin Gordon, Attorney
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 Payne gave the prayer and/or inspirational message.

2. Consent Calendar

- a. Agenda for the 17 May 2022 City Council Regular Meeting
- b. Warrants
- c. Release the warranty bond for Phase 1 of the Scotch Fields PUD located at approximately 1200 North Canyon View Drive
- d. Release the construction bond, minus 10% and any amount for landscaping, and begin the one-year warranty period for Phase II of the Scotch Fields PUD located at approximately 1400 North Canyon View Drive
- e. Ordinance 2022-16 affirming that the building inspector is also the designated fire marshal for Midway City

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

Council Member Simonsen asked about the power bill for the ice rink. Council Member Drury responded that it was the last bill for the season.

Council Member Simonsen asked about the warrant for jewelry. Mayor Johnson responded that it was for the souvenir shop.

Council Member Orme asked about the proposed ordinance regarding the fire marshal. Mayor Johnson responded that the City always had its building official be the fire marshal, with the exception of one who did not have the proper certification. She added that the ordinance would formalize that procedure.

Council Member Dougherty asked if the construction bonds for both Scotch Fields, Phases 2 and 3 needed to be released. Brad Wilson responded that it was proposed that both bonds be released. Council Member Dougherty asked if all the landscaping issues had been resolved. Michael Henke responded that he thought all the issues had been resolved with all the owners in the later phases.

Motion: Council Member Drury moved to approve the consent calendar with all the items as noted with the exception that Scotch Fields, Phase 3 being added with the same language as for Phase 2.

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

3. Public Comment – Comments were taken for items not on the agenda.

Mayor Johnson asked if there were any comments from the public for items not on the agenda.

The Kantons at Village Green PUD / Landscaping

Fred Pease gave a presentation regarding the landscaping and made the following comments:

- The PUD was now being built by Regal Homes.
- They had not responded to issues and concerns or blamed problems on the subcontractors.
- Understood that the PUD was a worksite, but there were problems that needed to be addressed.
- The pressurized irrigation, storm drain, and trail landscaping all had problems.

- Did not want Regal Homes to walk away when all the units were built and not fix the problems.

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

Wes Johnson made the following comments:

- \$63,000 was being held for landscaping.
- Some money was released as each unit was built, but no more would be released until the issues in the common area were addressed.
- Only had two or three developments with landscaping issues during his time with the City.
- The Municipal Code did not address landscaping.
- Did not look at the landscaping in detail such as the quality of the sprinkler heads, coverage, depth of the topsoil, etc.

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

- Bond money for the landscaping should not be released when each unit or house was completed.
- The release process, including when bond funds were released, should be reviewed, and made stricter in the Municipal Code.
- Street signs, etc. were not landscaping.
- The project should be shut down to get the developer's attention.
- The City Attorney should review the development agreement to determine the City's options.
- Some bond money should be held for one year after the landscaping was completed to insure proper installation.
- Should there be a separate bond for landscaping?

No further comments were offered.

4. Department Reports

Boosters / Cannery / Founders' Day

Council Member Drury reported that the Midway Boosters completed the remodel of its cannery building. He indicated that the Boosters would help with Founders' Day. He asked that the flower beds be tilled for the event.

Culinary Water

Council Member Dougherty had not received any complaints about the culinary water system.

PI System / Restrictions / Cleaning Filters

Council Member Dougherty reminded everyone to follow the restrictions on the use of the pressurized irrigation system. He also reminded everyone to clean their sprinkler system filters to help maintain water pressure.

HL&P / Rate Study / Capital Projects / Power Prices

Council Member Dougherty reported that Heber Light & Power Company was doing a rate study. He indicated that rates would change in October and could be based on the time of the day that the power was used. He added that HL&P had a lot of capital projects that needed to be done and the cost of wholesale power was increasing dramatically.

Welcome Packets

Mayor Johnson reviewed the idea of giving welcome packets to new residents.

- 5. Tentative FY 2023 Budget / Public Hearing** (Budget Officer – Approximately 10 minutes) – Receive public comment on and possibly discuss the adopted tentative FY 2023 Budget for Midway City. **Public Hearing**

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.

Mayor Johnson indicated that the final budget would be considered on June 21st.

- 6. Resolution 2022-15 / Appenzell PUD Master Plan Amendment** (City Planner – Approximately 15 minutes) – Discuss and deny, continue, or approve Resolution 2022-15 amending the master plan for the Appenzell PUD located at 700 South Center Street.

Council Member Dougherty explained that he represented David Tew in a legal issue. He noted that Mr. Tew had resigned as president of the Appenzell HOA, but he would still recuse himself from consideration of the request.

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

- Background
- Development agreement
- Land use summary
- Location of the PUD
- Property proposed for sale
- Landscaping plans
- Area not counted as open space
- Landscaping plan provided by applicants
- High Valley Ranch Subdivision

- High Valley Ranch PUD
- Open space plan
- Items of consideration
- Incentives
- Possible findings

Mr. Henke also made the following comments:

- His staff report addressed what was presented at the last meeting. Had since received a different proposal.
- A barn on the property had been sold and moved.
- The real issue with the request was adjusting the outside boundary of the project. Adjusting interior lot lines was not as significant.

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

Skeeter Gehring, representing the applicants, gave a presentation and reviewed the following items:

- Update
- What was being requested
- Alternate scenarios
- Density
- Open space
- Funding
- Damaged irrigation system

He also made the following comments:

- Was the second owner to move into a unit in the PUD.
- The development had been nothing but problems.
- The landscaping issues had been presented to the Council this year and several years earlier.
- The developer was Regal Homes and the landscaping looked like what was in The Kantons at Village Green.
- David Tew was no longer going to buy a unit in the development.
- David Burton was the new HOA president.
- Was trying to get help remediating the problems.
- The fixes would be costly.
- Wanted to use the area, where the barn used to be, as credit to replace the lot that they wanted to sell.
- The Ford family wanted to buy the lot so that their son could build on it.
- The landscaping was an eyesore that needed to be fixed.
- The berm was too steep to mow.
- The irrigation system had been destroyed by construction.
- There were a lot of weeds and thistles.
- Almost all the neighbors supported fixing the problems.

- Requested a final decision that night.
- Several proposals would increase the amount of open space.
- The request did set precedence and complied with the 2016 Municipal Code.
- The landscaping would affect everyone.
- Buyers assume that the City Engineer approved the drainage, slope, etc.
- Ditches for drainage ran across sidewalks and into driveways.
- Was not comfortable with D minus work.
- Each request to sell open space would be considered on its own merits.
- Could not sue the developer.
- The developer received concessions but did poor work.
- The City should insure that the landscaping was installed well and after all of the units had been built.
- The City needed to have landscaping standards.
- The property owners would lose a lawsuit because the developer had documentation from the City that the landscaping was adequate.
- No bond money had been retained for the landscaping in the common area which was in terrible condition.

David Burton made the following comments:

- Indicated that the HOA met with an attorney.
- The attorney did not think that the HOA could win a lawsuit.
- Regal Homes dragged out court cases.

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

- The request still had the required amount of open space to comply with the Municipal Code in 2016. It was not an exception to the Code.
- More open space would be provided.
- The landscaping was a weed patch and did not look good.
- It would not be bad to allow the request.
- The barn should not have been moved.
- The Council should have a basis for whatever was approved.
- The request would not change the 2016 Code.
- The City had to consider other HOAs wanting to sell off open space. Several had already inquired about the possibility.
- A lot of work and negotiation went into a development agreement. It became the code when it was signed.
- A certificate of occupancy was not a guarantee of quality construction.
- The landscaping was an issue between the property owners and the developer.
- There should be a significant bond amount that was held for one year after an entire PUD was completed.
- The City could not become involved in every dispute between property owners and a developer.
- Amending a development agreement and reevaluating concessions would set precedent.
- Both parties had to agree to amending a development agreement.
- An increase in open space could have mitigated other issues that a future council might not know about.
- The City did not require the developer to keep the barn which was a requirement of the

development agreement.

- Many property owners would not have the money for a special assessment to install the landscaping.
- The project was along the entrance to Midway.
- The City had allowed boundaries in other developments to be changed.
- The situation was difficult.
- The issue of the landscaping was not a hardship for the property owners.
- More houses required more infrastructure.
- Selling the property would reduce open space.
- The Village was proposed with more than 50% open space. Could this be reduced in the future?
- The overall approval for a development needed to be considered.
- There were areas that did not qualify as open space but functioned as such.
- What prevented other PUDs from having financial problems and requesting to sell off open space?
- It was not realistic to think that the property would be sold and remain as open space.
- The building codes had requirements for construction but not for landscaping.
- It was difficult for the City to inspect landscaping because it did not have applicable requirements.
- For governments to function they had to have immunity from liability.
- It was the developer's responsibility to install the landscaping.
- The City Engineer should not have to count the number of bushes in a development.
- The City was not use to developers who did not care about landscaping.
- What was enforceable was the contracts between the owners and the developer.
- Understood why the owners did not want to sue the developer.
- The City was holding \$21,000 for landscaping.
- The landscaping plan for the development was not specific.
- The City inspected to see where the blue grass and the natural vegetation was in a project. It determined if the sprinkler system turned on.
- The request was precedence setting.
- The landscaping was not the City's fault.
- HOAs had to eventually fix roads which was expensive. Would they remove their clubhouse and sell the land for open space to pay for the fixes?
- The applicants were not blaming the City.
- The City was limited to the bond amount that it set aside for landscaping.
- Regal Homes had requested that the bonds for Appenzell and Kantons be released.

Motion: Council Member Drury moved to deny Resolution 2022-15 with the finding that its adoption would set an unacceptable precedent for future development agreements.

Second: Council Member Payne seconded the motion.

Discussion: None

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

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

Council Member Payne
Council Member Simonsen

Aye
Aye

Council Member Simonsen indicated that he could see both sides of the issue.

7. The Village / M&I Water (City Engineer – Approximately 15 minutes) – Discuss and deny, continue, or approve the use of municipal and industrial (M&I) water to meet the needs of The Village located at 541 East Main Street (Zoning is C-2).

Wes Johnson gave a presentation regarding the request and reviewed the following items:

- Alpenhof-Weber well capacity and usage
- Alpenhof-Weber well capacity including all proposed M&I water

Mr. Johnson also made the following comments:

- Several years earlier the City, Midway Irrigation Company, and Loughlin Water Associates did a water rights assessment.
- The City owned all the rights in the Alpenhof-Weber well. Water from the well could be used for outside use without any special arrangements.
- The well had been test pumped for 24 hours up to 550 gallons per minute (gpm) which was the City's capacity to dispose of test water at that time. The State Engineer approved 500 gpm. Was convinced that the well could pump more water.
- Test pumping the well again would take it offline for two weeks and it would not be able to fill the Alpenhof tank.
- None of the M&I water owned by the City had been transferred into the well.
- The City's water sources were metered.

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

Dan Luster, applicant, made the following comments:

- Had 28.82 AF of irrigation company shares for The Village.
- Overestimated the amount of water needed for the three restaurants in the project.
- Could not get any of his water back was the applicable plat map was recorded.

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

- The water assessment did not have the information needed to make a decision about the City's water sources.
- Only the City could authorize someone else to own rights in the Alpenhof-Weber well.
- The City should know what water rights were assigned to the well. It should ensure that amount of water could be provided. The remaining balance should be tracked.
- The City needed to know how the water from all of its sources was allocated.
- The City owned irrigation shares, but the Midway Irrigation Company still owned the water right.
- Many developments in the future would provide foreign water rights.

- The water sources could be compromised by the drought.
- Assumptions were not being made about the well to facilitate new development.
- Which sources did the City's irrigation shares come from?
- The needed water rights for The Village were increased by the Midway Water Advisory Board from 166 AF to 181 AF.
- None of the City's M&I water rights needed to be transferred to the well because they were for outside use.
- The City needed to know how much of its water was allocated to indoor and outdoor uses.
- Unused water rights were not allowed to be transferred into the well.
- Any excess water could be used on the next phase until the last phase was approved.
- If the uses changed and required more water, then that water would have to be provided to the City.

Motion: Council Member Drury moved to approve 28.82 AF of M&I water to be allowed to be imported into the Alpenhof-Weber well with the following conditions:

- Any point of diversion or transfer paperwork be borne by the applicant and the state engineer.
- This water, if it was not already in the development agreement, could only be used for The Village development.

Discussion: Council Member Simonsen asked the history of the water rights proposed for the development. Corbin Gordon explained that it was a lease from a special service district that got the water from the Jordanelle Reservoir and the Central Utah Project.

Council Member Drury noted that the residents in the project would have to pay the lease costs in perpetuity. Mayor Johnson did not like that a developer would use the water to make the project happen, but the residents would have to pay the long-term cost.

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. Kay's Landing Annexation / Further Consideration (Berg Engineering – Approximately 45 minutes) – Discuss and deny, continue, or approve for further consideration the Kay's Landing Annexation located at 1591 South Stringtown Road (Zoning is RA-1-43).

Council Member Payne disclosed that he did not have any financial ties to the Kay's Landing Annexation but would submit another annexation that abutted it. Corbin Gordon indicated that Council Member Payne did not have to recuse himself from consideration of the item. Paul

Berg, representing the petitioner, stated that the two annexations were not contingent on each other.

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

- Summary
- Location of the annexation
- City boundary
- Concept plan
- Unincorporated peninsulas
- Park annexation fee
- Discussion items
- Possible findings
- Annexation process

Mr. Henke also made the following comments:

- The Council was deciding that evening if they wanted to consider the annexation.
- Wasatch County wanted a city to be responsible for the entire road if it was touched by an annexation.
- Only county peninsulas going into a city were prohibited.
- The associated development would have a public road.
- The property was proposed for annexation to receive culinary water from the City.

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

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

- The proposed zoning in the City would be the same as in the County.
- Previously the area had its own culinary water company which had since been acquired by the City. Previous area developments were able to connect to culinary water without having to annex.
- The amount of the park annexation fee was arbitrary.
- The petitioner had the necessary water shares from the Midway Irrigation Company.

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

- Sewer was available for the property.
- It made more sense for the petitioners to request a will serve letter and agree to participate in a future annexation.
- The Municipal Code required annexation if it was possible.
- The City could annex the property but require the property owners to plow the roads.

Motion: Council Member Drury moved to pursue the annexation and move forward.

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 2022-03 / PUDs and Subdivisions (City Planner – Approximately 60 minutes) – Discuss and deny, continue, or adopt Ordinance 2022-03 amending Chapter 16.16 (Planned Unit Developments and Subdivisions) of the Midway City Municipal Code regarding planned unit developments and subdivisions. Recommended by the Midway City Planning Commission.

Michael Henke gave a presentation regarding the proposed ordinance and reviewed the revisions since it was last considered by the Council.

Mr. Henke also made the following comments:

- The Planning Commission recommended a specific code for affordable housing.
- Required parking and open space with PUDs and subdivisions increased the cost of the units.
- An infill code could be adopted.
- Up to four units were allowed per building.
- The PUD code allowed for condominiums.
- The Municipal Code and the ordinance did not limit the maximum size of houses.
- Some issues had been raised with the subdivision portion of the ordinance. Recommended that any approval include the opportunity to make those changes.

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

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

- The ordinance was not affected by recently adopted Utah State House Bill 303.
- A 3,000 sq. ft. pad was not too large if it included a garage. A 1,000 sq. ft. pad was good without a garage.
- The ordinance could be modified to include internal accessory dwelling units.
- The ordinance should be adopted, and work begun on an affordable housing code.
- Infill parcels would be lost if the City waited to work on affordable housing.
- A notice of pending ordinance could be adopted for affordable housing.
- What was the tipping point when affordable housing could be profitable? That question could be determined by establishing building costs.
- There could be a lower water requirement for small affordable units.

- Roads and open space eliminated affordability.
- Affordable housing was more than tweaking the proposed ordinance.
- The revision of the General Plan needed to be done before an affordable housing code could be prepared.
- An affordable housing code would require real creativity and could take six months or more to complete.
- Was an affordable housing expert needed?
- The ordinance should not be approved if it was not ready.
- Issues like open space, water, negotiated approvals, etc. still needed to be addressed.
- Significant incentives were needed to make affordable housing work. It could only be done with subsidies.
- Did the City want PUDs in the RA-1-43 zone?
- Open space provided as part of a lot did not benefit a community.

Motion: Council Member Dougherty moved to continue the matter indefinitely.

Discussion: Michael Henke asked for direction on pad size. Council Member Dougherty did not want to negotiate that issue that late in the evening.

Council Member Simonsen thought that the ordinance was close but needed a few tweaks. He indicated that it did not have to be considered at the next meeting.

Mayor Johnson suggested that the ordinance be adopted by August of that year.

Second: Council Member Drury seconded the motion.

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 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

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

Motion: Council Member Drury moved to go into a closed meeting.

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

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

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

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

11. Adjournment

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

The meeting was adjourned at 10:37 p.m.


Celeste Johnson, Mayor


Brad Wilson, Recorder