



Memo

Date: 23 November 2022

To:

Cc:

From: Brad Wilson, City Recorder

RE: Minutes of the 15 November 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, 15 November 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 6:03 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 15 November 2022 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 1 November 2022 City Council Work Meeting
- d. Minutes of the 1 November 2022 City Council Regular Meeting
- e. Minutes of the 1 November 2022 City Council Closed Meeting

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

Motion: Council Member Payne moved to approve the consent calendar.

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

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. No comments were offered.

4. Department Reports

Public Transit

Council Member Orme reviewed new transit options offered by High Valley Transit. Mayor Johnson noted that the service would be free. She explained that transit fares comprised 10% of the system's revenue but 70% of its administrative costs.

Tree Lighting

Council Member Orme reminded everyone about the upcoming tree lighting event.

Alpenhof Park / RFP

Council Member Simonsen indicated that the plan to improve Alpenhof Park had been let out for proposals.

Caring Coalition Committing / Alcohol and Tobacco Use by Youth

Mayor Johnson reported that the Caring Coalition Committee was working on reducing alcohol and tobacco use by the youth.

MSD / HVSSD / Budgets

Mayor Johnson reported that the Midway Sanitation District (MSD) and the Heber Valley Special Service District (HVSSD) were finalizing their budgets.

5. Ordinance 2022-29 / General Plan Amendment (Peter and Emily Malinka – Approximately 60 minutes) – Discuss and possibly deny, continue, or adopt Ordinance 2022-29 amending the Road System Master Plan, in the Midway City General Plan, to remove or reroute a planned portion of 200 North. **Public Hearing**

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

- Introduction
- Road System Master Plan
- 1977 Street Plan
- History
- Current street plan
- Applicants' proposal
- Criteria for the City to build roads.
- Arguments for and against a 250 North connection
- A General Plan Transportation Committee proposal to eliminate 200 North and only connect 200 East to 180 North.
- Location of the Malinka property
- General Plan
- Items of consideration
- Planning commission recommendation
- Possible findings
- Proposed recommended condition

Mr. Henke also made the following comments:

- Building the remainder of 200 North would continue the 21 original city blocks.
- 200 North or any other road was not planned to connect to 250 North.
- Developers would build 200 North as needed.
- It would be hard to connect to 250 North using the criteria for the City to build the connection.
- Fewer connecting roads were needed because the area had fewer houses.
- The Planning Commission recommended the Committee's proposal.
- The Malinkas would be required to build 200 North or provide a right-of-way for it if the road remained on the Road Plan. They wanted to do a density reduction subdivision which would not require 200 North. The property was zoned R-1-11 and R-1-15.
- Did not know what the Miller family would do with their property, which would include the planned 200 North or the proposed connection to 250 North. They would have to use cul-de-sacs if 200 North was removed from the Road Plan.

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

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

- Council Member Dougherty noted that the General Plan Transportation Committee's proposal was not before the Council. He asked if it could be approved.
- Council Member Dougherty asked what the applicant was proposing.

- Council Member Payne asked if removing 200 North from the Street Plan could be conditioned upon the Malinkas doing a density reduction subdivision. Mr. Henke responded that such a condition was appropriate.

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

- 200 North as planned would not line up with the entrances to the church house on Center Street. It would affect seven property owners.
- Connecting 200 North to 250 North would only affect two property owners.
- Only heard of the General Plan Transportation Committee's proposal after he submitted the application to connect to 250 North. Now supported the Committee's plan.
- Thought that the Malinkas would still do a density reduction subdivision even if the Committee's proposal was approved.
- The applicants, public, and City supported the Committee's proposal.

Public Hearing

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

Doug Engfer

Mr. Engfer made the following comments:

- Lived at the end of 250 North.
- Opposed any connection to 250 North.
- Supported removing 200 North from the Road Plan.
- Supported the proposal by the General Plan Transportation Committee.
- The area by his house was productive grazing land.

Cathy Philpot

Ms. Philpot made the following comments:

- Wanted to keep the area historic and rural.
- Lived on 250 North.
- Did not support a connection to 250 North.
- Supported removing 200 North from the Road Plan.
- There was a group trying to preserve the area as open space.

Jeff Findarle

Mr. Findarle made the following comments:

- Lived west of the Malinka's property.
- He, and his neighbor to the north, supported removing 200 North from the Road Plan.

- They supported connecting 150 North to 300 West.

Tyson Miller

Mr. Miller made the following comments:

- Owned the largest piece of property effected by the proposal.
- Supported the proposal from the General Plan Transportation Committee.
- Objected to connecting to 250 North.
- Would oppose the use of eminent domain.
- Did not have any plan at that time to develop his property.
- Wanted as much flexibility as possible for his property.

Peter Malinka, Applicant

Mr. Malinka made the following comments:

- Connecting to 250 North was a miscommunication. It was done simply to show an alternative for connectivity.
- Just wanted to remove the planned section of 200 North from the Street Plan.

Jonathan Hunt

Mr. Hunt made the following comments:

- Lived on 180 North.
- Opposed connecting 180 North to 250 North.
- The need for the connection could not be proven.
- The connection would be detrimental to his neighborhood.

Denise Bagley

Ms. Bagley opposed connecting to 250 North. She was unclear on what the Council was voting on. Mayor Johnson responded that 200 North should be removed as recommended by the General Plan Transportation Committee. Council Member Dougherty indicated that the Council could only decide on what was on the agenda. Mayor Johnson responded that the motion could be made to remove 200 North, from the Street Plan, and accept the route proposed by the General Plan Transportation Committee.

Emily Belanger

Ms. Belanger made the following comments:

- Lived in the Indian Summer Subdivision.
- Opposed the connector to 250 North.
- The area was residential and did not need through roads.

- There were already redundancies in connectivity in the area.
- Supported removing 200 North and adopting the proposal of the General Plan Transportation Committee.

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

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

- The Street Plan did not show 200 North connecting to 180 South.
- The Plan showed general locations and contemplated flexibility in the routes of the planned streets.
- The City would have to meet the three criteria to force a road through someone's property.
- Imminent domain would have to be used to connect 200 North from the Malinka property to Center Street.
- The General Plan Transportation Committee's proposal would not be built if the Miller property was never developed.

Motion: Council Member Dougherty moved to reject any amendment to the Master Road Plan that connected 250 North to anything with the following findings:

- The connection to 250 North had not been on any street plan.
- Property owners bought based on the existing street plans.
- It would require condemnation.
- It was too problematic.
- The applicant no longer supported the connection.

Second: Council Member Simonsen seconded the motion.

Discussion: Paul Berg indicated that the applicant's request was an amendment to the Street Plan. He suggested that the General Plan Transportation Committee's proposal was also an amendment, and everything could be done in one motion.

Amended Motion: Council Member Dougherty moved to amend the General Plan to adopt the recommendation from the General Plan Transportation Committee, as depicted to remove those portions of 200 North from the 1977 General Road Plan as indicated, with the following conditions:

- Withdrawal of the Malinka application.
- Adopt Ordinance 2022-29 with the following amendments:
 - The title would be "To remove a portion of 200 North from the Road System Master Plan."
 - Remove the second, third, fourth, and fifth recitals to eliminate any reference to the Malinka property.
- The wording changed to "The following planned road shall be removed from the Midway City Road System Master Plan on the condition that the Malinkas' proposed low-density subdivision is approved and recorded before the map was officially amended. If the conditions were met, the following amendment to the Road System Master Plan would be made:

- A portion of 200 North, running from Center Street to 200 East, would be removed. and rerouted from 180 North (Indian Summer Subdivision) to 200 East.
- The owner of the property, that was currently owned by Peter and Emily Malinka and identified as Parcel #06-4928, recorded the plat map as a density reduction subdivision of no more than five lots.

Second: Council Member Simonsen seconded the amended motion.

Discussion: Council Member Drury reviewed 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

Council Member Dougherty indicated that the Malinkas should withdraw their application.

Note: Michael Henke left.

6. Resolution 2022-39 / Bonner Meadows Development Agreement (City Attorney – Approximately 15 minutes) – Discuss and possibly deny, continue, or approve Resolution 2022-39 adopting a development agreement for the Bonner Meadows Subdivision located at 100 South and 100 East (Zoning is R-1-9).

Mr. Gordon reviewed changes to the Development Agreement and made the following comments:

- Made the edits from the previous meeting.
- The developer requested some minor changes.
- The Council needed to discuss the changes.

Note: Michael Henke returned.

The Council and meeting attendees discussed the edits and changes.

Mr. Gordon recommended that the Agreement be approved with the following changes:

- The developer had one year to record the plat map.
- Once the plat map was recorded then the Agreement would not expire.
- The developer would not hinder the City's obligation to dedicate 185 South to the Wasatch County School District.
- Subparagraph B(ii) to say only land use resolutions and ordinances and not all resolutions and ordinances of the City.

- 6(A) deleted.
- In Section 3(A)(iii)(f) the City rejected the change from the developer.
- In Section 3(A)(iii)(g) the City accepted the changes.
- Would include language regarding fencing and the temporary construction plan.
- At no time would 200 East be closed without the approval of the City Engineer.
- The changes in Section 3(A)(iii)(j) and (k) were accepted.
- In Section 3(A)(iii)(l) would be amended to state that the applicant could request an extension if needed because of the irrigation easement.
- Section 3(A)(iii)(u) the gate would be installed in the place as designated on the plat map.

Motion: Council Member Orme moved to accept Resolution 2022-29 with the changes outlined by the City Attorney.

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

Motion: Without objection, Mayor Johnson recessed the meeting at 7:52 p.m. She reconvened the meeting at 8:00 p.m.

- 7. Ordinance 2022-28 / Animals in Vehicles** (City Attorney – Approximately 15 minutes) – Discuss and possibly adopt Ordinance 2022-28 amending Title 6 (Animal Control) of the Midway City Municipal Code regarding animals in vehicles.

Corbin Gordon reported that he needed more time to make changes to the proposed ordinance.

Motion: Council Member Drury moved to continue Ordinance 2022-28.

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

8. Van Wagoner Subdivision / Preliminary and Final Approval (Berg Engineering – Approximately 30 minutes) – Discuss and possibly deny, continue, or grant preliminary and final approval for the Van Wagoner Subdivision located at 160 North 200 East (Zoning is R-1-9 and R-1-15). **Public Hearing**

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

- Land use summary
- Location of the proposed development
- Surrounding area
- Utilities
- Existing site plan
- Proposed plat map
- Photographs
- Water board recommendation
- Possible findings

Mr. Henke also made the following comments:

- There could have been more lots on the property.
- Three buildings would be removed.
- The property to the north might have a rural preservation subdivision and not need a main culinary water line.
- Several buildings and fences were in the right-of-way. An encroachment agreement could be reached between the owner and the City as part of the development agreement.
- Two parcels would be combined.
- The neighbors would like to save the barn if it was going to be demolished.
- There was a sliver of land on the west side of the road that was not buildable.

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

Wes Johnson made the following comments:

- Recommended that a main culinary water line go to the end of the proposed subdivision to eventually be looped with 180 North. The City would pay to upsize the line for fire flow.
- The sewer line in the road needed to be replaced.

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

- The encroachment into the right-of-way predated any of the council members.
- The buildings would have to be moved if there was a compelling need.
- The road had to be built to the City's standards if it eventually connected to another road.

- It would be nice to preserve the butcher's shop, which was a historic structure. This issue should be addressed.
- Could a city standard road fit in the existing area between the structures on each side of the road? The standard was 56 feet with 66 feet available.
- If a safe road could be built, then the excess property should be deeded to the owners to eliminate the encroachment issue. There was a mandated process to vacate a portion of a road.
- The butcher's shop was limited to its historical use. The use would end if the building was torn down.
- The City should not agree to a non-conforming structure. Vacating the unneeded section of road would eliminate the issue, except for setbacks, and maintain the rural character of the property.
- The City should not lose the right to oppose future non-conforming issues.
- The City could say that it chose not to legally challenge this non-conforming issue.
- Should the agreement be written in such a way to address slight changes in conditions?
- Should all the needed right-of-way be taken from one side of the road? The right-of-way should line up with the existing fence on the east.

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.

Note: Council Member Orme left at 8:33 p.m. and continued participating electronically

Motion: Council Member Simonsen moved to approve the Van Wagoner Subdivision for preliminary and final approval with the adjustments by the City Attorney and the following findings:

- The proposed lot met the minimum requirements for the R-1-9/R-1-15 zoning districts.
- The proposal met the intent of the General Plan for the R-1-11/R-1-15 zoning districts.
- The applicant would be required to install or bond for all unfinished improvements prior 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 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

Mr. Henke asked who would be responsible for vacating the section of the road. The Council indicated that the City would be responsible.

9. Resolution 2022-40 / Van Wagoner Subdivision Development Agreement (City Attorney – Approximately 5 minutes) – Discuss and possibly deny, continue, or approve Resolution 2022-40 adopting a development agreement for the Van Wagoner Subdivision located at 160 North 200 East (Zoning is R-1-9 and R-1-15).

Corbin Gordon indicated that he would update the Agreement to include the items from the approval.

Motion: Council Member Dougherty moved to continue the item until the next meeting so that the Council could review the final document.

Discussion: Paul Berg asked that the agreement not be in his name. He noted that the listed acreage was off slightly.

Wes Johnson asked when construction would begin. Ken Van Wagoner responded in approximately six months.

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	Absent
Council Member Payne	Aye
Council Member Simonsen	Aye

10. Adjournment

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

The meeting was adjourned at 8:55 p.m.

Celeste Johnson, Mayor

Brad Wilson, Recorder

DRAFT