

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

**Tuesday, 20 July 2021, 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 6:02 p.m.

**Members Present:**

Celeste Johnson, Mayor  
Steve Dougherty, 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/Financial Officer

**Members Excused:**

Jeff Drury, Council Member

**Note:** A copy of the meeting roll is contained in the supplemental file.

Mayor Johnson led the Council and meeting attendees in the pledge of allegiance. Council Member Orme gave the prayer and/or inspirational message.

**2. Consent Calendar**

- a. Agenda for the 20 July 2021 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 1 July 2021 City Council Meeting
- d. Minutes of the 6 July 2021 City Council Work Meeting
- e. Minutes of the 6 July 2021 City Council Regular Meeting
- f. Glen Lent as an alternate member of the Midway City Open Space Advisory Committee
- g. Rene Holm as a full member of the Midway City Open Space Advisory Committee to replace Ameer Armour

- h. A second one-year extension of final approval for the Raynor Subdivision located at 565 North River Road (Zoning is R-1-15)

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

**Motion:** Council Member Dougherty moved to approve the consent calendar.

**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	Excused from the Meeting
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.

Scotch Fields, Phases 1 and 2 / Landscaping

Gary Blake made the following comments:

- Bill Probst, who was one of the developers for the project, did not follow the landscaping plan approved by the City. There was a large area where the developer did not put in the specified bluegrass. The developer was not being held accountable.
- The City was still holding a portion of the bond for the project.
- Who was responsible for inspecting the landscaping?
- The developer, not the HOA, should pay to correct the landscaping.
- No more money from the bond should be released until the issue was fixed.

Mayor Johnson made the following comments:

- Tex Couch, Midway City Building Official, did not offer an opinion on the grading in the development.
- Time had not been budgeted to discuss the two phases.
- The City would speak with Mr. Probst or put the item on a future agenda.
- The homeowners in the project needed to be involved.

Wes Johnson indicated that inspecting the landscaping was a grey area, but his office was willing to assume that responsibility.

Erin Malan agreed that the landscaping plan included bark or mulch around the units. The

homeowners who wanted that should have it.

Bob Garretson indicated that Dennis Higley was also a developer for the project and should be held accountable.

No further comments were offered.

#### **4. Department Reports**

##### Housing Authority / Restructuring

Council Member Payne reported that the Wasatch County Housing Authority would hire a consultant to help restructure the organization. He added that the Mountainland Association of Governments would also be involved in the restructuring.

##### Water / Community Meeting

Council Member Dougherty suggested August 5<sup>th</sup> or 12<sup>th</sup> for a community meeting regarding water and water conservation. He thought that it would help residents become educated on these issues. He recommended that the Council attend.

##### Midway Business Alliance / Shortage of Workers

Council Member Dougherty indicated that he wanted to survey members of the Midway Business Alliance. He wanted to know why restaurants did not have sufficient employees and had to leave tables empty.

##### HL&P / Drought / Rates

Council Member Dougherty indicated that the Heber Light & Power Company (HL&P) was generating less power at the Jordanelle Dam because of the drought. He also indicated that HL&P was studying its rates.

##### Animal Control / Wasatch County

Council Member Simonsen reported that Wasatch County might become responsible for animal control, rather than Heber City, because of the growth in the area.

##### River Road Project / Update

Wes Johnson reported that Main Street might be closed for another two weeks because of the River Road Project. Mayor Johnson reported that the Sheriff's Department was doing speed control on Michie Lane which was the detour for the project. Council Member Dougherty indicated that the speed trailers would be more effective in the middle rather than the ends of the blocks.

## Fire District / Transfer Van

Brad Wilson reviewed a presentation from the Wasatch County Fire District. It thanked Midway for funding a new patient transfer van.

**Note:** A copy of the presentation is contained in the supplemental file.

**5. Ordinance 2021-13 / Non-Conforming Buildings and Uses** (City Planner – Approximately 5 minutes) – Discuss and possibly adopt Ordinance 2021-13 amending Section 16.26.8 (Non-Conforming Buildings and Uses) of the Midway City Municipal Code regarding non-conforming buildings and uses. Recommended without conditions by the Midway City Planning Commission. **Public Comment**

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

- Pictures
- Houses
- Garages
- Diagrams
- Possible findings

Mr. Henke also made the following comments:

- The ordinance applied just to setbacks.
- It would allow flexibility and help preserve existing structures.
- It was based on Summit County's code.
- An addition to a non-conforming building was allowed if the addition met the current setbacks.
- Side setbacks were minimal and would not be impacted.

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

Mayor Johnson pointed out that non-conforming structures were not necessarily illegal.

## **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 Ordinance 2021-13 regarding non-conforming buildings and uses with the following findings:

- The proposed code would address when and how certain nonconforming buildings and structures could be enlarged.
- The proposed code would allow for legally conforming additions to structures that were legally built but were now nonconforming due to current land use code requirements.
- The proposed code would only allow the enlargement of residential buildings and structures that were nonconforming due to height and/or setback requirements and agricultural or accessory structures that were non-conforming due to side and rear setbacks (must comply with current front setbacks). Structures that were deemed nonconforming due to other current land use code requirements would not qualify.
- The proposed amendment would allow for the enlargement of some nonconforming historic buildings and structures that otherwise would not be possible.

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

**6. Ordinance 2021-14 / Off-Street Parking and Loading Uses** (City Planner – Approximately 5 minutes) – Discuss and possibly adopt Ordinance 2021-14 amending Section 16.13.39 (Off-Street Parking and Loading Uses) of the Midway City Municipal Code allowing narrower commercial driveways for existing structures. Recommended without conditions by the Midway City Planning Commission. **Public Comment**

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

- Background
- Proposed code
- Diagrams
- Possible findings

Mr. Henke also made the following comments:

- The ordinance addressed access areas for commercial parking.
- It did not affect the actual parking.
- It created flexibility and preserved existing structures.

**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.

**Motion:** Council Member Orme moved to approve Ordinance 2021-14 regarding off-street parking and loading uses with the following findings:

- The proposed amendment would create additional flexibility for driveway access widths for properties with historic homes in the C-2 and C-3 zones.
- The proposed language helped promote the preservation of historic structures while allowing for increased economic development in Midway's commercial zones, which was a goal described in the General Plan.

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

**7. Resolution 2021-13 / Street Cross-Sections** (City Engineer – Approximately 5 minutes) – Discuss and possibly approve Resolution 2021-13 amending the Midway City Standard Specifications and Drawings regarding reducing the width of street cross-sections.

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

- Road classifications
- Proposed cross-sections.

Mr. Johnson also made the following comments:

- A driver's speed was relative to their comfort level.
- Four cross-sections were proposed.
- A developer would need to request, and the Council would have to approve, the use of cross-section number three in a development.
- Usually, only service vehicles parked on the street when there were larger lots.
- Cross-sections three and four differed in the width of the asphalt.
- Concrete curbs helped asphalt from failing.

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

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

- Developers would choose the least costly cross-section. Should cross-section number

- four be required instead of a choice with number three?
- Front setbacks should be increased for larger lots. This would increase the driveways which would provide additional parking.
- The Cascades at Soldier Hollow had a rural cross-section and there was not a parking problem on its streets.
- The width of the asphalt should be decreased to reduce heating and runoff.
- Larger lots and houses had more cars and service vehicles. There should be a requirement for off-street visitor parking for both public and private streets.
- River Road was too narrow and did not have a concrete curb to protect the asphalt. A lot of trucks used the road. The road was being widened.
- Increased front setbacks would only be effective if the lots were deep.

**Note:** Council Member Orme left at 7:24 p.m.

- Cross-section number four should come back to the Council for revisions.

**Motion:** Council Member Simonsen moved to approve Resolution 2021-13 as is, regarding street cross-sections, and instruct the staff to get feedback from the Council for additional changes.

**Second:** Council Member Dougherty seconded the motion.

**Discussion:** Council Member Payne asked if cross-section number four was still discretionary under the motion. Council Member Simonsen responded that it remained discretionary.

**Note:** Council Member Orme returned at 7:27 p.m.

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

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

**8. Ordinance 2021-21 / Parking Violations** (City Attorney – Approximately 30 minutes) – Discuss and possibly adopt Ordinance 2021-21 amending the Midway City Municipal Code regarding parking violations.

Mr. Gordon made the following comments:

- The ordinance was modeled after Provo's code.
- It would decriminalize parking violations and make them civil infractions.
- Violators would not have to go to court, but the City had to establish an appeals process. The City's administrative law judge could be the appeal authority.

- It allowed law enforcement officers to issue a violation and City to enforce it.
- Received comment from the Council and some things needed to be reviewed.
- If a violator did not pay or dispute the fine, then it would become a criminal offense.
- Both the Sheriff's Department and the City could write fines.
- Did not know if the City could have a vehicle towed without involving the Sheriff's Department.

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

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

- More review and feedback were needed before the ordinance should be adopted.
- The Wasatch County Sheriff made several suggestions for the ordinance.
- Currently the City did not have a mechanism to enforce its parking laws.
- Some violators might not live in Utah or may disregard the fine.
- A mechanism would be needed to track the violations.

**Motion:** Council Member Simonsen moved to table Ordinance 2021-21 to the next meeting, or next best meeting for the Council, so that some of the issues could be resolved and the Council could be ready to discuss it. He further moved that staff make recommendations on how to administer the ordinance.

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

**9. Resolution 2021-24 / Cemetery Moratorium** (City Attorney – Approximately 5 minutes) – Discuss and possibly adopt Resolution 2021-24 enacting a moratorium on the sale of spaces in the Midway City Cemetery to allow for a review of rates and services.

Corbin Gordon gave a presentation regarding the request and made the following comments:

- The resolution enacted a moratorium on the sale of cemetery spaces until some pressing issues were resolved.
- The transfer of ownership and family disputes needed to be resolved.
- Two spaces could still be sold for someone who had recently passed away and their spouse.

Council Member Orme recommended that the extra space be for anyone not just the spouse.



**Motion:** Council Member Orme moved to approve the moratorium with the addition of the right to buy two spaces because of a recently deceased person.

**Second:** Council Member Payne seconded the motion.

**Discussion:** Council Member Orme noted that the Council needed to discuss the cemetery issues at a work meeting.

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

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

**10. Main Street and River Road / Traffic Light** (Council Member Simonsen – Approximately 15 minutes) – Discuss and possibly approve a letter authorizing a traffic light at the intersection of Main Street and River Road.

Council Member Simonsen made the following comments:

- Met with UDOT several times
- The intersection of Main Street and River Road was a safety issue and had been a problem for some time. It needed to be fixed.
- A roundabout was too large for the intersection and would require condemning property.
- UDOT wanted a unified message from the Council.
- If the Council supported a signal light at the intersection, then UDOT would prioritize it.
- A signal light had been warranted for some time.
- UDOT would not object to the City also requesting that area of Main Street be widened because the developer, for The Village, would do a lot of the work.

**Note:** A copy of slides regarding the intersection is contained in the supplemental file.

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

- The signal light and intersection would be like the intersection of Main Street and Center Street including turn lanes.
- The Mayor, Council and City Engineer should all sign the letter.
- The issue had been brought before the Council so that residents could be informed. It was noted that some residents did not want additional signal lights.

**Motion:** Council Member Dougherty moved to formalize the draft letter and get signatures from the Mayor, all council members, and the City Engineer. He further noted that the City had truly considered the issue.

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

**11. Rising Ranch Subdivision / Final Approval** (Summit Engineering – Approximately 15 minutes) – Discuss and possibly grant final approval for the Rising Ranch Subdivision located at 425 North Homestead Drive (Zoning is R-1-22). Recommended with conditions by the Midway City Planning Commission.

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

- Land use summary
- Location of the project
- Pictures of the project
- Trails
- Existing home
- Proposed plat map
- Open space
- Easements
- Trail cross-section
- Water board recommendation
- Planning commission motion
- Possible findings
- Proposed conditions

Mr. Henke also made the following comments:

- The project would complete the trail on Swiss Alpine Road that went to Homestead Drive and a school bus stop.
- Lot eight would only be built when Kohler Lane became an improved city street.
- The corner lot would only have access on Swiss Alpine Road.
- The other lots on Homestead Drive would share driveways.
- There would be a 100-foot setback from Homestead Drive.
- The open space would remain as agriculture in the short-term but could have amenities in the future.
- There was access to the open space for all owners in the project.
- The developer would provide funds for a future bike lane.
- Approving lot eight for development, once Kohler Lane was a city street, could be done by staff instead of the Council. The deed restriction would be released at that time.
- If lot eight was never buildable it would remain as agriculture. Water rights would be

turned in for the lot.

- The property had two existing culinary water connections.
- Lot eight would have to be maintained to the standard required by the Municipal Code.

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

Sam Castor applicant, made the following comments:

- Infrastructure for lot eight would be extended when the project was built or later.
- Every lot owner had a vote on what could be done with the open space.

Council Member Dougherty recommended that the open space be called community space or something else to avoid confusion.

Tom Horrocks, who owned property on Kohler Lane, made the following comments:

- His father-in-law owned Kohler Lane and gave it to Wasatch County as a road.
- He had maintained the road.
- The City should consider having its own police department.

**Motion:** Council Member Dougherty moved to grant final approval to the Rising Ranch Subdivision as presented with the following findings and conditions:

- The proposal met the intent of the General Plan for the R-1-22 zone.
- The proposal complied with the land use requirements of the R-1-22 zone.
- A public trail would be built as part of the subdivision that would benefit members of the community.
- 0.956 acres of open space would be created as part of the development.
- The Homestead Drive half width adjacent to the development would be widened to 26 feet.
- The duration of final approval would be for one year from the date of final approval of the development by the City Council. Should a final plat not be recorded by 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, unless, on a showing of extenuating circumstances, the City Council extended the time limit for plat recording, with or without conditions.
- A plat note would be included that precluded access to lot three from Homestead Drive.
- Funds to build the five-foot bike lane along Homestead Drive adjacent to this project would be added to the general trails fund and would be used when the bike lane was completed in the future as part of a larger improvement project.
- The plat and development agreement would clearly state that parcel eight was not currently considered a building lot and what needed to occur for the parcel to become buildable. This would include at a minimum the need for additional planning approval, possibly amending the development agreement, obtaining a minimum of 115 feet of frontage along a road built to city standards, lot improvements that included a sewer connection, culinary water connection, irrigation connection, adequate access to a fire hydrant, etc.
- The trail easement along Swiss Alpine Road would be a minimum of 15 feet wide.

- A different name would be used on the plat map for the area shown as open space.

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

**12. Rising Ranch Subdivision / Transient Rentals Conditional Use Permit** (Summit Engineering – Approximately 15 minutes) – Discuss and possibly grant a conditional use permit for transient rentals in the Rising Ranch Subdivision located at 425 North Homestead Drive (Zoning is R-1-22). Recommended without conditions by the Midway City Planning Commission. **Public Hearing**

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

- Overview
- Transient rental requirements
- Tax benefits
- Planning commission motion
- Possible findings

Mr. Henke also made the following comments:

- The request was for the conditional use permit (CUP) to apply to all lots in the development.
- The existing home had been a transient rental.
- The property was included in the Transient Rental Overlay District (TROD).
- Each lot owner would have to apply for a transient rental business license.
- A CUP was permitted with conditions to mitigate impacts on the neighbors.
- An entire house had to be rented as a transient rental. They could not be bed and breakfasts.
- There could be separate property managers for each house.
- Staff would review the license requests.
- The City Attorney would review the CC&Rs for the project.

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

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

- Both the CUP and transient rental regulations governed the request.

- Should the CUP be conditioned on revisiting future impacts?
- Would there be the appropriate amount of parking for transient rentals?
- The transient rentals should not bother the neighbors. There should be limitations on alcohol, ATVs, etc.

### **Public Hearing**

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

### **Rene Horrocks**

Ms. Horrocks was concerned about the transient rentals being noisy and becoming hotels. Council Member Dougherty responded that events were not allowed at transient rentals.

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

Sam Castor, applicant, made the following comments:

- The CC&Rs would state that any additional parking had to be in a garage.

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

- A property owner could hold a wedding if they did not charge for it.
- The Council should mitigate concerns when the CUP was granted.
- A transient rental license could be revoked in certain circumstances.
- Could the CUP be granted with a one-year review?
- The license was the best way to address future problems.

**Motion:** Council Member Orme moved to approve the transient rental condition use permit for the Rising Ranch Subdivision with the following findings and conditions:

- The proposed use was a conditional use in the R-1-22 zone and was in the Transient Rental Overlay Zone.
- The proposal met the vision for residential development the R-1-22 zone within the TROD in the General Plan.
- Every licensed rental unit helped the City to comply with State requirements that allowed the City to collect the resort tax.
- Each property would be required to obtain their own individual transient rental business license previous to renting their property on a nightly basis.

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

**13. Resolution 2021-19 / Rising Ranch Subdivision Development Agreement** (City Attorney – Approximately 5 minutes) – Discuss and possibly approve Resolution 2021-19 adopting a development agreement for the Rising Ranch Subdivision located at 425 North Homestead Drive (Zoning is R-1-22).

Corbin Gordon made the following comments regarding the development agreement:

- It included what had been approved for the project.
- Would increase the required width of the trail.
- Would add provisions regarding weed control and the open space.

**Motion:** Council Member Payne moved to approve Resolution 2021-19 adopting a development agreement for the Rising Ranch Subdivision with the changes summarized by the City Attorney.

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

**Motion:** Without objection, Mayor Johnson recessed the meeting at 8:45 p.m. She reconvened the meeting at 8:53 p.m.

**14. Resolution 2021-25 / Scotch Fields PUD, Phases 3, 4, and 5 Development Agreement Amendment** (City Attorney – Approximately 30 minutes) – Discuss and possibly approve Resolution 2021-25 adopting an amended development agreement for Phases 3, 4, and 5 of the Scotch Fields PUD located at approximately 1400 North Canyon View Road (Zoning is R-1-22).

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

- Master plan summary
- Items to consider
- Location of the project
- Phasing

- Approved landscaping plan
- Proposed landscaping plan

Mr. Henke also made the following comments:

- The resolution would change the approved plan but not the language in the development agreement.
- It would not affect phases one and two.
- All plat maps for the project had been recorded.
- Some units in phase three had been sold.
- Notices had been mailed to all the owners in phase three, four, and five. None of these owners had contacted the City.
- The amended plan would not include bark or mulch.
- There were sufficient water rights for the project.
- A petition had been sent to the City Council.
- Some owners wanted mulch others did not.
- The request was a discretionary decision.
- The bond for phases one and two had not been released because of the landscaping.

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

Mayor Johnson indicated that any issues with phased two and three would be addressed separately.

### **Public Hearing**

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

### **Jennifer Barnes**

Ms. Barnes made the following comments:

- The notice to the property owners had only gone out that week.
- Bought her unit when there was snow on the ground and was unable to see the landscaping in the other phases.
- The landscapers disagreed with how they were told to install the landscaping.
- Phases one and two did not have basements like the other phases.
- The development was not as charming with flat landscaping and less grass.
- Wanted a barrier between her basement and the grass.
- Bill Probst, one of the developers, said that putting in the bark would raise the HOA dues by \$80 a month. She could maintain the bark around her house and replace it once a year.
- Having the bark should at least be an option.
- Did not know what those circulating the petition said to the signers.
- The developer still ran the HOA.
- Did not speak to Thom Wright when she bought her house.

Jenny Strangis

Ms. Strangis made the following comments:

- She did not receive a notice because she had not yet moved into her house.
- Wanted to be aware of what was happening.
- There was some bark in front of the houses in phases one and two.
- Did the homeowners have an option?
- Would the bark be removed completely or partially?
- The homes in the development were expensive.

Jane Cornelius

Ms. Cornelius made the following comments:

- The landscaping plan should stay the same as when she purchased her house.
- The owners in the previous phases were upset that they would have to pay for the mulch in the later phases.
- Less grass was beneficial because of the drought.
- The development looked dystopian because of no landscaping.

Bob Garretson

Mr. Garretson made the following comments:

- Lived in phase one.
- Did not want to pay for the mulch in other phases.
- Did not have bark around his house and did not want it.
- Added that the bark would raise the HOA dues.
- Some homeowners were on a fixed income.
- The *New York Times* recommended against putting bark next to your house.

Russ Rauhauser

Mr. Rauhauser made the following comments:

- Lived in phase two.
- Over 50% of the residents in the first two phases did not want mulch.
- The developer would install it, but the HOA would have to maintain it.
- Dues would increase.
- Was happy without mulch.

Paul Berg, Berg Engineering Resource Group



Mr. Berg read the landscaping section and requirements of the Municipal Code. He made the following comments:

- Represented the applicant.
- One person from phases three, four, and five had signed the petition.
- The landscaping plan had been submitted as a concept as part of the master plan approval.
- Changing the landscaping was like moving a fire hydrant and should be approved administratively.
- The request complied with the Municipal Code.
- The majority of the homeowners wanted the grass instead of the bark.
- The request should be approved.
- The petition was done by homeowners and not his firm.
- The complaints were better dealt with by the HOA.
- A developer should be able to change their mind.

#### Thom Wright

Mr. Wright made the following comments:

- Sold units in the project.
- Met with 49 owners and they never asked for the landscaping plan.
- Told them there landscaping would be the same as in the first two phases which was grass up to the foundations.
- Phases three, four, and five had greater slopes which was problematic for mulch.

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

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

- Planters and a drip system were better around a house.
- The wind blew the mulch away and into windows.
- The HOA, not the individual property owners, owned the property around the units in a PUD.
- The developer still ran the HOA.
- The property owners should get what they purchased.
- Basements had flooded because of sprinklers next to houses.
- It was not good to plant Kentucky blue grass when there was a drought.
- Other developers had honored requests from buyers.
- The HOA should resolve the issue, but the developer was still in charge of the HOA.
- Some people purchased houses in the project know that bark would be put around them.
- The bark was proposed by the developer and not required by the City.
- The developer had a fiduciary responsibility to build what he showed buyers.
- There was not a compelling reason to change the landscaping plan.
- The developer was asking the homeowners to change something they had agreed upon.
- The HOA, once it was run by the homeowners, could come back and request a change in the landscaping plan.
- It felt like the City was getting between the developer and homeowners.

- It was an issue for the City because it had signed the development agreement.

Bill Probst, applicant, made the following comments:

- None of the buyers had asked to see a landscaping plan.
- Did not show a plan to any buyers.
- The owners in the last three phases had to drive by the first two phases. They could see the landscaping in those phases.
- He was not doing a “bait and switch”.
- The additional grass would only be three feet deep and would not require more water.
- The Canyon View PUD was removing its mulch.
- A drip line would use more water than a sprinkler.
- His and other houses had grass up to the foundations and did not have a problem with flooding.
- Did the project have area drains?
- The developer and homeowners should try to reach an agreement.

**Motion:** Council Member Simonsen moved to continue Resolution 2021-25, for the developer and homeowners to come back with more information to help the Council resolve the issue.

**Second:** Council Member Dougherty seconded the motion.

**Discussion:** Council Member Payne encourage the developer and the homeowners to workout the issue without coming back to the Council. Council Member Dougherty responded that would be good but he was not looking for them to reach an agreement.

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

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

**15. Saddle Creek Subdivision, Phases 2 and 3 / Final Approval** (Berg Engineering – Approximately 15 minutes) – Discuss and possibly grant final approval to Phases 2 and 3 of the Saddle Creek Subdivision located at 970 South 250 West (Zoning is R-1-22). Recommended with conditions by the Midway City Planning Commission.

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

- Land use summary
- Location of the project
- Proposed plat maps
- Trails
- Master plan
- Phasing plan
- Street cross-sections

- Improvement of 250 West
- Letter from City Engineer
- Water board recommendation
- Planning commission motion
- Possible findings
- Proposed condition
- Water line extension agreements

Mr. Henke also made the following comments:

- Phases two and three would be built together.
- The landscaping plan was part of the master plan approval.

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

Paul Berg, Berg Engineering Resource Group and representing the applicants, indicated that the applicant wanted the same cross-section for the entire project.

**Motion:** Council Member Payne moved to grant final approval for Saddle Creek Subdivision, Phases 2 and 3, located at 970 South 250 West, with the following findings and condition:

- The proposed plans for phases two and three complied with the requirements of the land use code.
- The proposal met the vision as described in the General Plan for the R-1-22 zone.
- Road improvements along 250 West would benefit the community in general.
- The public trail built along 250 West would help complete the master trail plan that would benefit members of the community.
- No plat map could be recorded until the existing plat was vacated by the County Recorder.
- The duration of final approval would be for one year from the date of final approval of the development by the City Council. Should a final plat map not be recorded by 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, unless, on a showing of extenuating circumstances, the City Council extended the time limit for plat recording, with or without conditions. Such conditions could include, but were not limited to, provisions requiring that: (a) construction must be conducted according to any new City standards in effect at the time the plat was ultimately recorded; (b) the property would be maintained in a clean, dust-free, and weed-free condition at all times; (c) each extension would be for a one-year period only, after which time an annual review would be presented to the City Council; and/or (d) 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.
- Any required water extension line agreement fees would be paid for before the recording of the plat map.

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

**Motion:** Council Member Dougherty moved 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	Excused from the Meeting
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

**16. Resolution 2021-21 / Saddle Creek Subdivision, Phase 2 Development Agreement**  
(City Attorney – Approximately 5 minutes) – Discuss and possibly approve Resolution 2021-21 adopting a development agreement for Phase 2 of the Saddle Creek Subdivision located at 970 South 250 West (Zoning is R-1-22).

Paul Berg, representing the applicant, asked that the items be tabled if the applicant's comments had not been addressed.

**Motion:** Council Member Simonsen moved to table Resolution 2021-22.

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

**Motion:** Council Member Simonsen moved to consider the next item on the agenda.

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

**17. Resolution 2021-22 / Saddle Creek Subdivision, Phase 3 Development Agreement**  
(City Attorney – Approximately 5 minutes) – Discuss and possibly approve Resolution 2021-22 adopting a development agreement for Phase 3 of the Saddle Creek Subdivision located at 970 South 250 West (Zoning is R-1-22).

**Motion:** Council Member Simonsen moved to table Resolution 2021-22.

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

**Motion:** Council Member Orme moved to consider Item 18.

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

**18. The Reserve at Midway, Phase 2 / Final Approval** (Berg Engineering – Approximately 15 minutes) – Discuss and possibly grant final approval for Phase 2 of The Reserve at Midway located at 285 West Luzern Road (Zoning is RA-1-43). Recommended with conditions by

the Midway City Planning Commission.

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

- Land use summary
- Location of the project
- Sensitive lands map
- Master plan
- Master plan with phases
- Trails
- Open space
- Water rights
- Unirrigated areas
- Water board recommendation
- Planning commission motion
- Possible findings
- Proposed conditions

Mr. Henke also made the following comments:

- The dumpsters for Interlaken Town would be next to the town's well house.
- The unirrigated areas were on a steep slope and could not be mowed or cut.
- There was a list of the trees that would be planted in the development.
- The ownership and maintenance of the trails was indicated in the development agreement and staff reports.

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

Paul Berg, Berg Engineering Resource Group and representing the applicants, indicated that the roads in the project could be used to collect Interlaken's garbage. He noted that they had public access easements.

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

- The City Attorney should review the easements in the development to ensure that the roads could be used to collect Interlaken's garbage.
- Goats could be used to maintain the unirrigated areas.
- The City Engineer's office would inspect the trails and let the HOA know when there was a problem.
- The issue regarding the water tank had been resolved.

**Motion:** Council Member Payne moved to grant final approval for The Reserve at Midway, Phase 2, located at 285 West Luzern Road (Zoning was RA-1-43) with the following findings and conditions:

- The proposal complied with the requirements of the code for standard subdivisions.
- The proposal met the vision of the area as described in the General Plan for the RA-1-43

zone.

- The public trails would be an amenity to the entire community.
- The duration of final approval would be for one year from the date of final approval of the development by the City Council. Should a final plat not be recorded by 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, unless, on a showing of extenuating circumstances, the City Council extended the time limit for plat recording, with or without conditions
- All approved non-irrigated areas would be noted on the plat
- Private roads in the development would have a public access easement which would be noted on the plat map and in the development agreement.
- All asphalt trails would be built and maintained by the developer and would have public access easements.
- Included a plat note that addressed the retention pond along the common property line of lots nine and ten. It would address access, allowable uses, limits on disturbances and limits on fencing along the common fence line.
- Extend the asphalt trail along the frontage of lots 19 and 20 and connect to the trail in Common Area F.

**Second:** Council Member Orme seconded the motion.

**Discussion:** Council Member Simonsen asked if a trail would continue to use Luzern Road. Mr. Henke responded that it would use the road and be along the hillside.

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

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

**Motion:** Council Member Dougherty moved to consider Item 19.

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

**19. Resolution 2021-23 / The Reserve at Midway, Phase 2 Development Agreement (City Attorney – Approximately 5 minutes) – Discuss and possibly approve Resolution 2021-23 adopting a development agreement for Phase 2 of The Reserve at Midway located at 285**

West Luzern Road (Zoning is RA-1-43).

Paul Berg, Berg Engineering Resource Group and representing the applicant, indicated that the applicant had several changes to the agreement. He asked to receive the agreements sooner so that they could be reviewed by the applicants.

**Motion:** Council Member Payne moved to continue Resolution 2021-23.

**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	Excused from the Meeting
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 Orme seconded the motion. The motion passed unanimously.

The meeting was adjourned at 10:28 p.m.

  
\_\_\_\_\_  
Celeste Johnson, Mayor

  
\_\_\_\_\_  
Brad Wilson, Recorder