

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

**Tuesday, 2 October 2018, 6:00 p.m.
Midway Community Center, City 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, Public Works Assistant Crew Chief, 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. She excused Council Member Van Wagoner and indicated that he might participate electronically later in the meeting.

Members Present:

Celeste Johnson, Mayor
Lisa Christen, Council Member
Jeff Drury, Council Member (Participated electronically)
Bob Probst, Council Member
JC Simonsen, Council Member
Ken Van Wagoner, Council Member (Participated beginning at 6:46 p.m. Participated electronically).

Staff Present:

Corbin Gordon, Attorney (Arrived at 8:15 p.m.)
Mark Anderson, Zions Public Finance/Financial Advisor
Michael Henke, Planning Director
Wes Johnson, Engineer
Brad Wilson, Recorder/Financial Officer

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. Dave McMaster gave the prayer and/or inspirational message.

2. Consent Calendar

- a. Agenda for the 2 October 2018 City Council Meeting
- b. Warrants
- c. Minutes of the 18 September 2018 City Council Work Meeting
- d. Minutes of the 18 September 2018 City Council Closed Meeting
- e. Minutes of the 18 September 2018 City Council Regular Meeting

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

Council Member Simonsen asked about the large payment to Kilgore Contracting on the warrant list. Wes Johnson responded that was retainage being released for the 2017 road and utility improvements.

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

Second: Council Member Simonsen seconded the motion.

Discussion: None

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

Council Member Christen	Aye
Council Member Drury	Aye
Council Member Probst	Aye
Council Member Simonsen	Aye
Council Member Van Wagoner	Excused from the Meeting

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

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

Residential Treatment Facility / 430 West 200 North

Gay Motley read a statement regarding the residential treatment facility that was proposed for 430 West 200 North. She was concerned with its location, which was across the street from her house, and the proposed number of patients. She asked that it be limited to 24 patients and staff to preserve the character of the neighborhood.

Shellie Stevenson said that she lived by Inn on the Creek which was now a residential treatment facility. She said there had been no problems with the facility because it was originally built as an inn and was in the resort zone. She asked that the proposed facility be limited to 24 patients and staff because it was in a residential zone with a lot of neighbors.

Laren Gertsch stated that he only found out about the proposed facility the previous day. He added that he owned property next to the facility. He asked the City Council to approve a resolution requiring neighbors to be notified of proposals by their property. Mayor Johnson responded that the City would consider expanding its notification requirements.

Mr. Gertsch noted that houses went through an approval process, met certain requirements and paid certain fees based on them being single family residences. He said that commercial facilities had higher requirements and fees.

Mr. Gertsch asked that the facility be limited to eight patients and staff.

Danya Crawford was concerned about the facility because it would be on a bike path and a

school bus route.

Mayor Johnson explained that because of the Federal Fair Housing Act the City could not deny a residential treatment facility. She indicated that the City was working with the homeowner to resolve the issue. She stated that neighbors had a right to know about proposals near their properties.

Brad Wilson noted that the City had been sued in federal court by the homeowner and that a settlement was being negotiated. He indicated that it was difficult for the City to comment with pending litigation and settlement negotiations ongoing.

Al Yarbrough indicated that he spent 45 years in law enforcement and his home was next to the proposed facility. He said that there were problems with such facilities.

Susan Weaver said that she lived next to the property, proposed for the facility, for 38 years. She liked the owner of the house but worried about its impact on handicapped neighbors and surrounding property values. She suggested that the house be used for an assisted living facility for the elderly.

Teresa Wharton wanted time to review the proposal which was adjacent to her property. She was concerned about the facility because of its impact on safety and property values.

Ms. Wharton asked if the number and scope of residential treatment facilities could be limited. Mayor Johnson responded that the Municipal Code now limited the number of patients to the approximate number of people living in other houses in the neighborhood. Michael Henke explained that the new restrictions had been noticed before an application for the facility was submitted.

Mr. Henke reviewed federal and state law regarding residential treatment facilities. He indicated that the City could not limit the number of facilities, but it could limit the number of patients. He added that the state regulated the facilities.

Mayor Johnson asked residents to email to her any questions for the City Attorney. She would then forward them to him.

Athina Koumarela thought that the company, which would operate the facility, would require a certain number of patients for it to be viable.

Steve Sprackland said that the proposed number of 40 plus patients was too many and would have a negative impact on the neighborhood.

Gayle Gale made the following comments:

- Had been a nurse at residential treatment facilities.
- Such facilities for youth had runaways and needed twice as many staff as patients.
- Many patients wanted to get out of a treatment facility and go to a halfway house.
- Some patients committed suicide.
- Runaways would try to find a way to get out of the neighborhood.
- Police would be called to search for runaways.
- Runaways would break into homes.
- Was not against helping people with addictions.

- Residential areas were not the right places for such facilities.
- Was attacked while working in such a facility.
- There would be increased traffic because of deliveries, etc.
- People operated these facilities to make money.

No further comments were offered.

4. Department Reports

Midway Business Alliance

Council Member Christen reported that the Midway Business Alliance wanted to focus on helping local businesses. The Alliance would receive help from Heber Valley Tourism and Development.

Midway Boosters / Boy Scout Troop

Council Member Drury reported that the Midway Boosters would sponsor a non-denominational boy scout troop. They might want to use a room in one of the City's buildings for the troop.

Ice Rink / Repairs / Upgrades / Contract

Council Member Drury reported that repairs and upgrades would be made to the City's ice rink. He also indicated that he was working on a new contract with the Midway Boosters who would again operate the rink that season.

Swiss Days

Council Member Drury reported that Swiss Days was successful.

HL&P / Planning Meeting

Mayor Johnson reported that Heber Light & Power Company (HL&P) would have a planning and budget meeting the following day.

MSD / Rate Increase

Mayor Johnson reported that the Midway Sanitation District (MSD) was proposing a small rate increase. She noted that MSD had not raised its rates in 12 years and would hold a hearing regarding the increase on October 24th.

Note: Council Member Van Wagoner began participating in the meeting at 6:46 p.m.

5. Issuance of General Obligation Bonds / Public Meeting (Approximately 45 minutes) – Arguments for and against the issuance of not to exceed \$5,000,000 of general obligation bonds to finance all or a portion of the costs to preserve open space and related improvements; and related matters.

Mayor Johnson indicated that equal time would be given to those supporting and opposing the issuance of bonds. She hoped that the meeting would answer questions and resolve concerns.

Brad Wilson read the arguments and rebuttals chosen by the City Council as required by state law.

Note: A copy of the arguments and rebuttals is contained in the supplemental file.

Mayor Johnson asked if there were any comments regarding the issuance of bonds.

Janice Kennedy

Ms. Kennedy asked about cost, time limit and interest rate for the bonds. She noted that multiple bonds could be issued if the ballot proposition was approved. Mayor Johnson added that there would be costs each time bonds were issued. Council Member Simonsen noted that the authorization would be for ten years. Brad Wilson estimated the interest rate at 3.5%.

Mark Anderson noted that the individual tax impact would decrease as the City's population increased. Mayor Johnson indicated that approximately 300 additional houses had been approved in the City. She also indicated that an additional 700 were in different stages of the approval process. She noted that residents would have to share in the cost of these additional houses.

Courtland Nelson, Midway City Open Space Advisory Committee Chair

Committee Chair Nelson explained a fact sheet and made the following comments:

- The Committee would recommend to the City Council a process and system for choosing open space to be preserved.
- The Committee would seek input from entities that had successfully preserved open space.
- The process would not address all the details for preserving and maintaining a piece of open space.
- Hoped to match the bond money by two to three times.
- Recommended against the City owning open space outright unless it was of historic significance.
- The Committee would propose a new chapter to the City's general plan regarding open space.
- Bonding for and preserving open space would be a complex process.

Note: A copy of the fact sheet is contained in the supplemental file.

Mayor Johnson indicated that there would be a public hearing on any open space proposed for preservation. Council Member Simonsen indicated that a property owner had to be a willing participant in the process.

Steve Dougherty

Mr. Dougherty made the following comments:

- Was a resident and real estate attorney.
- Supported the issuance of bonds and wanted the City to have that tool. However, he asked the City Council and staff to commit to first using other tools.
- Could developer fees repay the bonds?
- Asked the City to have the criteria, for which open space would be preserved, before the first bonds were issued.

Jon McKeon

Mr. McKeon made the following comments:

- Tourism rather than agriculture now drove the area economy.
- People moved to Midway because of the open space.
- 300 houses with three occupants each could increase the City's population by 25%.
- Park City had preserved significant sections of open space.

Kathy Symonds

Ms. Symonds supported bonding because time was slipping away, and the City needed that tool for open space preservation.

Athina Koumarela

Ms. Koumarela reviewed the preservation of Snake Creek Canyon and indicated that was a model for future conservation.

Holly Kent

Ms. Kent indicated that a lot of open space had recently been developed. She said that land owners were constantly being approached to develop their property. She thought that children struggled to know what to do with their family's land. She asked the City to be proactive.

Mayor Johnson said that she spoke with a resident who had served on previous councils. She said that person wished those councils had done more to preserve open space. She added that another longtime resident was excited about selling some of their development rights.

Mayor Johnson indicated that she was committed to using all available tools to preserve open space. She added that good selection criteria were important.

Ruth Holmes

Ms. Holmes asked how the City was already preserving 15% open space as some had claimed. Michael Henke responded that a percentage of open space was preserved with each resort, PUD and subdivision. Ms. Holmes noted that this open space was not in addition to what existed before the land was developed.

Ms. Holmes expressed concern for people on fixed incomes. Council Member Simonsen indicated that there were tax abatement programs for such residents. Brad Wilson reviewed the available abatement programs.

Katie Noble

Ms. Noble indicated that she was a resident and a real estate attorney. She favored the issuance of bonds to preserve open space.

Ms. Noble asked if the criteria, for choosing open space for preservation, would be in the voter information pamphlet. Mayor Johnson responded that the three criteria in Committee Chair Nelson's fact sheet would be included in the pamphlet.

Ms. Noble also made the following comments:

- Personal income usually increased along with bond rates.
- The individual cost of the bonds would decrease as the population increased.
- Land prices had increased 20% in the last year. This meant that the cost of open space was also increasing.
- Identifying specific open space parcels for preservation too soon, would discourage a good deal.

Clint Coleman

Mr. Coleman made the following comments:

- Opposed bonding for open space.
- It was good to discuss the issue.
- Residents would be voting based on the exact ballot language adopted by the City Council. This language was fixed, could not be changed or superseded by any other information regarding the bond.
- Most voters would not see the information prepared by the Open Space Committee. Some of it had only been prepared since the last council meeting.
- The information provided by the Committee did not mention preserving agriculture.
- If the bond proposition passed, hoped that the City would keep the promises made in other documents and information.
- The Committee was created to define open space and related issues. Instead, it had

worked on putting the open space bond on the ballot. It was now just starting to work on the other issues.

- Midway was more about the people than it was about fields and view corridors.
- Everyone had the right to live in Midway.

Mayor Johnson responded that the voter information pamphlet would include information from the Committee. She added that the recent information was prepared to clarify issues that had been raised.

Council Member Simonsen explained that the voters were authorizing the City to analyze and preserve open space. He said the Committee would help in that effort.

Colleen Bonner

Ms. Bonner made the following comments:

- Thanked the Open Space Committee.
- Creating an open space chapter for the General Plan was a good idea, but it should have been done months earlier.
- Preparing information sooner would have encouraged trust and transparency.
- Because of the lack of information, the City was in the same place as it was a year ago regarding bonding for open space.
- There should have been a formal process to prepare and distribute information regarding bonding and open space preservation. This should have been done before the issue was put on the ballot.

Note: Corbin Gordon arrived at 8:15 p.m.

Jon McKeon

Mr. McKeon made the following comments:

- The language for open space bonding was semantics.
- A lot of work had been done in preparation for bonding.
- Why should Midway wait any longer to bond?
- There were almost 1,000 houses in the queue to be built.
- Resources were needed to preserve open space.
- Midway needed balanced growth.
- The City should not wait to bond for open space because the cost of property (open space) and interest rates were increasing.

Clint Coleman

Mr. Coleman made the following comments:

- Definitions and criteria should be established before any bonds were issued.
- Residents would be better served supporting Wasatch County's open space bond.

- The residents that he associated with, some of whom were large land owners in Midway, were opposed to the City's open space bond.
- George Hansen had done a lot for the community.

Holly Kent

Ms. Kent said that the City was being proactive by bonding for open space. She questioned how specific it needed to be before the issue should be decided. She hoped that all sides would work in good faith.

No further comments were offered.

Public Comment (Continued)

Residential Treatment Facility / 430 West 200 North

Corbin Gordon made the following comments regarding the residential treatment facility:

- Did not have his file with him so some of his facts might not be exact.
- The City passed an ordinance regarding such facilities that complied with the Federal Fair Housing Act and the Utah Fair Housing Act.
- Federal and State law clearly stated that certain people had a right to live in a community, including those dealing with addictions and living in residential treatment facilities. Midway City welcomed these people and supported the fair housing acts.
- The City was concerned with the scope of residential treatment facilities. 36 patients plus 16 staff were a lot of people for a residential use.
- The City did extensive work in preparing its residential treatment facility regulations, including a poll by Dan Jones and Associates, and providing for reasonable accommodation.
- The regulations allowed 8 people plus reasonable accommodation.
- A facility was not allowed to change the character of a neighborhood.
- The owner of the house at 430 West 200 North filed a lawsuit against the City claiming that its ordinance was discriminatory. He had signed a lease with a treatment facility operator and was suing for the loss of the lease. He was asking for \$1.3 million in damages. The lawsuit was pending.
- The City was trying to comply with the various fair housing acts and protect the character of its neighborhoods. It wanted to avoid commercial uses in residential zones. It also wanted to avoid hospital size facilities in residential areas.
- Outside legal counsel had been retained to defend the City against the lawsuit.
- The City would not oppose a facility with 8 people.
- The lawsuit argued that a facility could have an unlimited number of patients and staff.
- Safety and maintaining the character of a neighborhood had to be considered, which is why the City had a survey done to determine the size and impact of residences in the area.
- The City had to base a decision on codes and science not public clamor.
- The State of Utah regulated treatment facilities.

Issuance of General Obligation Bonds / Public Meeting (Continued)

Council Member Van Wagoner made the following comments:

- Was not opposed to open space.
- Was concerned about the cost of an open space bond. The City would lose its resort tax revenue in 2019 and had to use reserves in 2018.
- The City might have to raise property taxes to continue providing the same level of general services.

Mayor Johnson responded that the City would hold budget meetings to address revenue issues. She thought that a bond was fairer than other revenue sources because it would be considered and voted on by residents.

Mayor Johnson stated that for every dollar in property tax revenue it cost the City \$1.35 to provide services to residential developments. She added that the City had a small commercial base.

Kent Kohler made the following comments:

- The Valais PUD, when it was first proposed, significantly increased the population of Midway.
- Wanted to know how much open space \$5 million would preserve.
- The City should not preserve commercial property because it was more expensive and was needed for a greater commercial tax base.
- Might support an open space bond if it was done correctly.

Motion: Without objection, Mayor Johnson recessed the meeting at 8:48 p.m. She reconvened the meeting at 8:57 p.m.

6. Closed Meeting to Discuss Pending or Reasonably Imminent Litigation

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

Second: Council Member Christen seconded the motion.

Discussion: None

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

Council Member Christen	Aye
Council Member Drury	Aye
Council Member Probst	Aye
Council Member Simonsen	Aye
Council Member Van Wagoner	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 Van Wagoner 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 Christen	Aye
Council Member Drury	Aye
Council Member Probst	Aye
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

7. Adjournment

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

The meeting was adjourned at 9:58 p.m.



Celeste Johnson, Mayor



Brad Wilson, Recorder