

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

**Tuesday, 5 March 2019, 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 6:01 p.m.

Members Present:

Celeste Johnson, Mayor
Jeff Drury, Council Member
Lisa Orme, Council Member
Bob Probst, Council Member
JC Simonsen, Council Member
Ken Van Wagoner, Council Member

Staff Present:

Corbin Gordon, Attorney
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. Council Member Orme gave the prayer and/or inspirational message.

2. Consent Calendar

- a. Agenda for the 5 March 2019 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 19 February 2019 City Council Work Meeting
- d. Minutes of the 19 February 2019 City Council Closed Meeting
- e. Minutes of the 19 February 2019 City Council Regular Meeting
- f. One-year extension of final approval for the Pine Canyon Paradise Subdivision located at 521 North Pine Canyon Road
- g. Conclude the warranty period and release the remainder of the bond for the Eldon's Place Subdivision, located 50 West 970 South, subject to the payment of all fees due to Midway City.

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

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

Second: Council Member Drury seconded the motion.

Discussion: None

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

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

Cemetery / Bathroom

Council Member Probst reported that repairs were needed at the cemetery bathroom.

Town Hall / Audio Box / Janitor's Closet / Theater Lights

Council Member Probst reported that an old audio box had been removed at the Town Hall. He reported that the janitor's closet in the building had been organized. He also reported that several bulbs had been replaced in the theater lights.

Town Hall / Refinish Floor

Council Member Probst reported that the floor in the main room in the Town Hall needed to be refinished.

Snow Plowing

Council Member Van Wagoner thanked the Public Works Department for removing snow off the roads and sidewalks. He indicated that a lot of salt had been used and the work was hard on the equipment.

Midway Irrigation Company / Contract for City Employee

Council Member Van Wagoner reported that the Irrigation Company would start using a city employee the next month.

PI System / Meters for Parks and Cemetery

Council Member Van Wagoner reported that the City would install meters at its parks and cemetery for the pressurized irrigation (PI) system.

PI System / Exchange Program

Council Member Van Wagoner indicated that the City and Midway Irrigation Company were reviewing the exchange program for the pressurized irrigation system.

Weed Spraying / Certification

Mayor Johnson reported that two public works employees would be certified to use chemicals to kill weeds.

Safe School Routes

Council Member Simonsen reported that the City and Midway Elementary School were still working on safe school routes, which sidewalks to plow and a crossing guard at Michie Lane and Center Street.

Sidewalks / Priority Map

Council Member Simonsen reported that the City needed to prepare a map showing the priority for clearing snow off sidewalks. He added that the map should correspond with the safe school routes.

Trails / Grants / Survey

Michael Henke reported that the City applied for another trail grant. He added that the City would do a trails survey.

Michie Lane Park / Construction Bids

Mr. Henke reported that eight bids had been received to build the Michie Lane Park.

State Legislature / Bills

Council Member Orme reported on the bills being considered at the Utah State Legislature.

5. Ordinance 2019-05 / Cul-de-Sacs and Road Lengths (City Planner – Approximately 15 minutes) – Discuss and possibly adopt Ordinance 2019-05 amending Title 16 (Land Use) of the Midway City Municipal Code regarding cul-de-sacs and the length of roads. Recommended for approval without conditions by the Midway City Planning Commission.

Public Hearing

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

- Existing regulations
- Examples of cul-de-sac lengths
- Length considerations
- Sprawl
- Proposed code

Mr. Henke also made the following comments:

- The City's standard specifications and drawings limited cul-de-sac lengths to 500 feet.
- The proposed code would not give the City Council any discretion on cul-de-sacs.
- Was concerned about single points of access.
- The ordinance would avoid a taking because it allowed some development on existing cul-de-sacs and single access roads longer than 500 feet.
- Recommended that cul-de-sacs be no longer than 1,300 feet as recommended by the Wasatch County Fire Marshal.

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

Corbin Gordon reviewed changes that he made to the ordinance since the work meeting that morning.

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

- Looping roads needed to be clarified.
- A second access was less useful if it was close to the first access.
- Long cul-de-sacs were problematic for emergency services.

Public Hearing

Mayor Johnson asked if there was any public comment on the issue. There were no comments.

Motion: Council Member Drury moved to adopt Ordinance 2019-05 regarding cul-de-sacs and road lengths with the following findings and conditions:

- The number of lots allowed on a cul-de-sac over 500' in length would be 11.
- The number of units allowed on cul-de-sacs 500' or less would be the amount allowed by the zoning code.
- The proposal helped promote larger lots and open space which was a goal described in the General Plan.
- Allowing properties to develop along existing nonconforming public streets greater than 500' in length would help avoid taking claims and allow property owners more flexibility.
- The maximum length of any cul-de-sac including any branches would be 1,300 feet as recommended by the Wasatch County Fire Marshal and Wasatch County regulations.

Second: Council Member Van Wagoner seconded the motion.

Discussion: None

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

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

- 6. Hidden Haven Subdivision / Preliminary Approval** (City Planner – Approximately 30 minutes) – Discuss and possibly grant preliminary approval for the Hidden Haven Subdivision located at 800 East Main Street (Zoning is R-1-15). Recommended for approval with conditions by the Midway City Planning Commission. **Public Hearing**

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

- Land use summary
- Location of the subdivision
- Proposed plat map
- Landscape drawing
- Infrastructure
- Points of discussion
- Proposed plat map without stub road
- Water Board recommendations
- Possible findings
- Recommended conditions

Mr. Henke also made the following comments:

- The existing home was on a well and septic tank. It would be demolished.
- All lots would be connected to standard utilities.
- An irrigation ditch would be relocated and piped.
- The proposed cul-de-sac was 800 feet long.
- There was a proposed stub road to the property to the west.
- Recommended that stub roads connect to another road.

- The Planning Commission recommended an agreement with the adjoining land owner for the road.
- Told the applicant that there was a 500-foot length limit on cul-de-sacs.
- Recommended that snow not be plowed off the stub road until it connected. Also recommended that none of the lots be accessed from the road.
- Cluster mail boxes should not be in a sight triangle.
- The applicant proposed that the park and the associated portion of the pond be dedicated to the City. There were some issues such as water rights that would need to be considered.
- The stub road could connect to a road that was planned for the area.
- The common area would increase if there was not a stub road.
- The pond was part of the required open space.

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

Mayor Johnson reported that the item was considered at the work meeting that morning.

Public Hearing

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

Jon Deverian, Devco Homes / Applicant

Mr. Deverian made the following comments:

- Did not favor the stub road.
- Suggested that the park and pond remain private.
- Was unable to contact Hylton Haueter, who owned the property to the west, because he wintered in Arizona.
- The HOA for the subdivision could form a committee to police access to the park and pond.

Ken Owens

Ken Owens distributed a packet of information to the Council and made the following comments:

- Met with the engineer for the project about boundary issues and use, maintenance and liability related to the pond.
- The stub road would encourage public access to the park and pond.
- There was an order from the State regarding the use and maintenance of the pond.
- Was concerned that the park would eventually become public.

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

Jerry Owens, Neighbor

Jerry Owens indicated that he had to rescue people in the pond. He thought that there would eventually be lawsuits if the pond was public.

Corbin Gordon reviewed the water rights for the pond. He indicated that the HOA and lot owners in the project needed to know the liability associated with the pond. He added that the water right was not permanent and could go away. He recommended that water rights also be turned in for that area of the subdivision.

Brian Balls, Summit Engineering

Mr. Balls, representing the applicant, made the following comments:

- Had a productive meeting with Jerry Owens.
- Tried to contact Mr. Haueter.
- The location of a planned city road could be moved to facilitate the subdivision.
- There were valid concerns about the stub road.
- Understood the 500-foot limitation on cul-de-sacs, but the property was “sandwiched” and there were no other good options.
- This was a fringe area of the City with a low traffic count that did not require the same amount of connectivity.
- The City had allowed development on other cul-de-sacs which were longer.
- Asked for the consideration of the Council.
- Would provide the CC&R’s and a maintenance plan for final approval.
- The application for the subdivision was submitted prior to approval of the new cul-de-sac ordinance.
- Another developer had recently been approved for a cul-de-sac on another cul-de-sac that was greater than 500 feet. He had been approved because the development had a stub road.
- The proposed stub road bisected two zones.

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

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

- Acqua Recovery stocked the pond with fish.
- There were a lot of issue with the pond that needed to be resolved.
- There was no compelling reason for the cul-de-sac to be longer than 500 feet.
- The recently approved cul-de-sac with the stub road also included an agreement with the adjoining property owner for a through road.
- A lot split on a cul-de-sac, longer than 500 feet, had been approved because the road predated the length limit and had a stub road that was on the City’s transportation plan.
- Mr. Hylton would be limited in what he could do with his property because of the stub road.
- Mr. Hylton needed to agree to the stub road and its location.

- The public should not access the pond.

Motion: Council Member Drury moved to deny preliminary approval because the cul-de-sac was greater than the 500-foot length without secondary egress, the stub road had not been agreed upon by the neighboring landowners as proposed by the Planning Commission, it went against the City’s construction standards, and presented a public safety issue because of the extended length of the cul-de-sac.

Second: Council Member Probst seconded the motion.

Discussion: Mr. Balls asked that the item instead be tabled so that he had time to work with Mr. Haueter. Council Member Orme responded that an agreement with Mr. Haueter would not resolve all the Council’s concerns. Council Member Van Wagoner noted that a stub road just to the property line did not address the concerns with a longer cul-de-sac.

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

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

Mayor Johnson noted that the applicant could reapply, but the proposal would fall under the new cul-de-sac ordinance. Mr. Henke noted that the second access would have to be fully built to avoid the cul-de-sac issues.

- 7. Silver Rim Water Holdings / Change Application** (Rich Bloomfield – Approximately 30 minutes) – Discuss and possibly approve a change application to divert 100 acre feet of water into the Alpenhof/Weber well.

The applicant asked that the item not be considered at the meeting.

- 8. Sunburst Ranch PUD / Master Plan Amendment** (Steve Condie – Approximately 20 minutes) – Discuss and Possibly Amend the Master Plan for the Sunburst Ranch PUD Located at Ranch Way and Swiss Alpine Road (Zoning is R-1-22 and RA-1-43). Recommended for approval without conditions by the Midway City Planning Commission.

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

- Land use summary
- Annexation agreement
- Amendment to the annexation agreement
- Location of the planned PUD
- Approved plan from 2010
- Proposed plan with or without a connector road

- Points of discussion
- Open space

Mr. Henke also made the following comments:

- Several council members had been elected since the item was continued.
- The Sunburst Ranch HOA wanted the proposed phase to connect to the existing phases.
- The new phase had less units than originally proposed which would reduce the amount of HOA dues collected.
- The new proposals were closer to the City's PUD code than the 2010 plan.
- The plan without a connector road had less units and did not block a view corridor, but the cul-de-sac was too long.
- The elimination of amenities was a concern when the item was continued.
- Gates between phases were not allowed.

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

Corbin Gordon reviewed the history of the project, its controlling documents and made the following comments:

- The original annexation agreement referenced a conceptual plan, but it was not attached. Open space was pushed up to the top of Phase 3. The other phases could not have been approved without the open space in Phase 3.
- The annexation agreement stated that major changes had to be approved by both the developer and the City.
- An amended master plan agreement was approved in 2010 but it was not clear what it amended.
- No master plan was adopted for the project.
- In 2017 the Council asked the applicant to work with the HOA concerning the elimination of the amenities.
- The latest plan included amenities which could be used by residents in the other phases.
- The City never intended to give the HOA the authority to determine the layout and locations of roads.
- The Council had no legal obligation to approve the proposed amendment.
- The applicant wanted a separate HOA for Phase 3.
- Separate HOA's in the same project could be problematic.
- The previous engineer for the project indicated that the trails would connect all phases of the project.
- The approved plan would require a significant cut in the hill and steep driveway slopes in Phase 3.
- Did not review the CC&R's because they did not involve the City.
- None of the approved agreement stated that there had to be one HOA.
- Phase 3 did have to be built in accordance with the controlling documents.
- One HOA and connecting roads between phases was always anticipated.
- The HOA for Phase 3 would pay for the operation and maintenance of the amenities.
- Any approval should require that the trails and sidewalks connect all the phases. It should also require the retention pond in Phase 3 and similar architecture in all phases.

Robert Mansfield, Mitchell Barlow & Mansfield and counsel for the applicants, made the following comments:

- Phase 2 in the project had been sold to someone else and had a lot of problems. Only one unit had been built in the phase after two years.
- The existing HOA was too interested in every detail of construction.
- The applicant did not want to be subject to the existing HOA during construction and wanted to finish the phase in a timely manner. The HOA's could merge after construction was completed.
- The CC&R's allowed for separate HOA's.
- Drafted the CC&R's.
- A lawsuit between the developer and the existing HOA had not yet been resolved.
- The applicant would abide by the court's ruling.
- Usually multiple HOA's in the same development hired the same companies to plow snow, etc.
- The amendment should be approved that night and then the agreement written and adopted at a later date.
- Swiss Mountain Estates' drainage issues were not the applicant's problem. Swiss Mountain Estate's had their own property that could be used for the retention pond.

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

- The original plan showed a retention pond in Phase 3 to help with runoff from Swiss Mountain Estates. The pond was not shown on the most recent plans. The current location had worked well for years.
- Owners who bought their units after 2010 expected the amenities.
- Should the Council wait to make a decision until the outstanding issues were resolved?
- The number of HOA's should be determined by the court.
- Usually an agreement was adopted the same night as development approval.
- The previous city attorney indicated there was not an agreement that required the retention pond on the applicant's property. The applicant did not sign anything that allowed it on his property. He did not want the liability.
- Who would maintain the pond?
- The pond filled up with gravel and debris.
- The Council could require the pond as part of the approval.
- The units should be pushed further back from the sidewalk to allow for longer vehicles in driveways.
- The project began 20 years ago and waiting another two weeks was not a significant imposition.
- This was the time to deal with the drainage issue and the retention pond.

Motion: Council Member Simonsen moved to table consideration of the master plan amendment for two weeks until the agreement had been worked out and indicated that the amenities, including trails and sidewalks, were accessible by residents in all the phases.

Second: Council Member Van Wagoner seconded the motion.

Discussion: None

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

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

Council Member Van Wagoner asked that the agreement be reviewed at the work meeting.

9. Resolution 2019-07 / Amendment to Sunburst Ranch Development Agreement (City Attorney – Approximately 10 minutes) – Discuss and Possibly Approve Resolution 2019-07 Adopting an Amended Development Agreement for the Sunburst Ranch PUD Located at Ranch Way and Swiss Alpine Road (Zoning is R-1-22 and RA-1-43).

The Council agreed to consider the item at its next meeting.

10. Grass Maintenance / Contract (Public Works Administrative Lead – Approximately 5 minutes) – Discuss and possibly award a contract to maintain the grass at Midway City’s parks, cemetery and other locations.

Mayor Johnson reported that maintenance of the City’s cemetery and parks had been put out for bid. She indicated that Spectrum Landscaping Services was the low bidder. She added that they were a local company that did the landscape maintenance for the Valais PUD.

Council Member Drury broke down the costs for landscape maintenance, including labor and equipment, and asked if it would be less costly and allow for more flexibility for the City to do it itself.

Mayor Johnson noted the number of people that were needed to mow the cemetery. She questioned if the City could do the maintenance.

Council Member Van Wagoner noted that the City used to do its own maintenance and that had advantages and disadvantages.

Council Member Van Wagoner asked that the sides of the roads be mowed.

Motion: Without objection, Mayor Johnson recessed the meeting at 8:56 p.m. She reconvened the meeting at 9:02 p.m.

Mayor Johnson suggested using Spectrum for one year while evaluating if the City could do the work. Council Member Drury proposed a one-year contract with Spectrum with an option for two one-year renewals. Council Member Orme wondered if Spectrum would honor their bid if it would possibly be for just one year. Corbin Gordon recommended a three-year contract with a renewal each year.

Motion: Council Member Drury moved to award a three-year contract, with yearly renewals, to Spectrum Landscaping Services.

Second: Council Member Van Wagoner seconded the motion.

Discussion: None

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

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

11. Ordinance 2019-04 / Snow Removal and Fire Hydrants (City Planner –Approximately 15 minutes) – Discuss and possibly adopt Ordinance 2019-04 amending Section 8.05.080 (Sidewalks to Be Cleared) and Section 8.05.090 (Snow Removal near Mailbox Receptacles and Fire Hydrants) of the Midway City Municipal Code regarding snow removal by property owners.

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

- Issues raised by the Council
- Existing code
- Proposed language for snow removal around mailboxes and fire hydrants

Mr. Henke also made the following comments:

- The ordinance had been considered at three separate meetings.
- Snow removal around fire hydrants along private streets was the responsibility of residents.
- Public streets were not mentioned to avoid liability.

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

Corbin Gordon made the following comments:

- The City needed help with snow removal, but it should not make residents criminally liable for its removal around fire hydrants.
- Fire hydrants were part of the City’s water system and it should maintain them.
- The issue could be addressed in development agreements.

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

- If the City required something, then it should have a punishment for non-compliance.
- The City could encourage but not require help with snow removal.
- The City could send out a postcard in the fall reminding residents of winter related regulations and issues.

Motion: Council Member Van Wagoner moved to adopt Ordinance 2019-04 regarding snow removal and fire hydrants as presented by staff and including the new language for mailboxes.

Second: Council Member Simonsen seconded the motion.

Discussion: None

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

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

12. Adjournment

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

The meeting was adjourned at 9:19 p.m.



 Celeste Johnson, Mayor



 Brad Wilson, Recorder