

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

**Tuesday, 19 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 6:00 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:**

Josh Jewkes, City Attorney's Office  
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. Brent Haight gave the prayer and/or inspirational message.

**2. Consent Calendar**

- a. Agenda for the 19 March 2019 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 5 March 2019 City Council Work Meeting
- d. Minutes of the 5 March 2019 City Council Closed Meeting
- e. Minutes of the 5 March 2019 City Council Regular Meeting
- f. One-year extension of preliminary approval for the Lucerne Estates Subdivision located at approximately 100 South and 100 East (Zoning is R-1-9)
- g. Open space evaluation form for landowners

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

Mayor Johnson read the consent calendar and indicated that she emailed a proposed change to the Council and staff regarding the closed meeting minutes.

**Motion:** Council Member Orme moved to accept the consent calendar with the proposed change to the closed meeting minutes.

**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

### 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.

#### Soldier Hollow Pro XCT

Brent Haight reviewed the Soldier Hollow Pro XCT mountain biking event that would be held in May and made the following comments:

- Had two children who would participate.
- It was an annual event organized by the Summit Bike Club.
- It was an Olympic qualifying event.
- There would be 300 racers with family and teams.
- The cost to hold the event was increasing.
- Had sought various local grants and needed corporate sponsors.
- Asked the City to help promote the event.

No further comments were offered.

### 4. **Department Reports**

#### 2019 State Legislative Session

Council Member Orme reviewed legislation adopted by the State Legislature including a change to the resort communities tax.

### Boosters / Parking / City Beautification

Council Member Drury reported that the Midway Boosters would work with the City on parking lots. He also indicated that they would hold their annual city beautification.

### Ice Rink

Council Member Drury reported that the City's ice rink closed that Sunday for the season. He reviewed various statistic for that season.

### Open Space Committee

Council Member Drury reported that the Midway City Open Space Advisory Committee would hold a landowners' meeting that Thursday.

### HL&P / Budget Amendment

Mayor Johnson reported that Heber Light & Power Company would give the City a credit for the variable frequency drive installed at its ice rink.

### HVRR / New Cars

Mayor Johnson reported that the Heber Valley Railroad had purchase several railroad cars from Canada.

### HVSSD / Additional Flows

Mayor Johnson reported that the Heber Valley Special Service District purchased equipment to handle additional flows.

### MSD / Sewer Flows

Mayor Johnson said that she would report in the future on the sewer flows for the Midway Sanitation District.

- 5. Michie Lane Park / Award Contract** (City Planner – Approximately 5 minutes) – Discuss and possibly award a contract to construct the Michie Lane Park located at 300 East Michie Lane.

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

- History of the Michie Lane Park
- Park plan from the developer

- New park plan
- Bid results
- Lowest bid
- Alternate bid items
- Play equipment

Mr. Henke also made the following comments:

- The bid included off-site trees.
- The park would be ADA accessible.
- The deadline for the project was the end of June.
- The park had been included in the mowing contract for that year.
- The landscape architect who designed the park would also oversee its construction.

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

**Note:** Council Member Orme recused herself from consideration of the item and left at 6:34 p.m.

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

- Enough park impact fee money was available for the project.
- The Council decided to use sod rather than hydroseeding on as much of the park as possible.
- There should be an ADA ramp from the road.
- Shaded sails for the equipment were too expensive.
- Any reasonable change orders were shown as alternates in the bid.
- The extended operation and maintenance costs should be determined for the park. A maintenance schedule should be prepared for the park. These things could be done by the City’s trails and parks advisory committee.

**Motion:** Council Member Van Wagoner moved to award a contract for \$293,963 to River Hollow Enterprises with the addition of the ADA access ramp for \$800.

**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	Excused
Council Member Probst	Aye
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

**Note:** Council Member Orme returned at 6:48 p.m.

- 6. HVAC for City Buildings / Award Contract** (City Engineer – Approximately 5 minutes) – Discuss and possibly award a contract for the maintenance of the heating, ventilation and air conditioning (HVAC) systems for Midway City’s buildings.

Brad Wilson presented the bids for the HVAC contract.

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

Wes Johnson indicated the frequency and hourly rates for the bids. He noted that the bid included inspections. He said that an additional hourly rate and the cost for parts would apply to any repairs.

**Motion:** Council Member Simonsen moved to grant a contract to the low bidder for inspections once a year (\$1,530) and the specified unit prices and hourly rate.

**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

- 7. Sweeping / Award Contract** (City Engineer – Approximately 5 minutes) – Discuss and possibly award a contract for the sweeping of Midway City’s streets, parking lots and other areas.

Brad Wilson indicated that the Public Works Department would do the sweeping instead of a contractor.

- 8. Sunburst Ranch HOA / Sunburst Ranch Master Plan Amendment** (Sunburst Ranch HOA – Approximately 20 minutes) – Receive a presentation from the Sunburst Ranch Homeowners’ Association regarding the proposed master plan amendment for the Sunburst Ranch PUD located at Ranch Way and Swiss Alpine Road (Zoning is R-1-22 and RA-1-43).

Mike Anderson, Sunburst Ranch HOA President, made the following comments:

- He and the HOA had been sued by the applicants for the master plan amendment. The lawsuit was pending.

- Was unaware that the amendment would be considered at the last council meeting.
- Requested that the amendment be denied and that the plan approved in 2010 be followed.
- The amendment that was presented to the Planning Commission was not the one being considered by the Council.
- The HOA did nothing to slow the construction of the development's second phase but had approved changes to accommodate the developer.
- The HOA hired the company that plowed the roads and driveways.
- The HOA did not restrict access to the development. Would access to the proposed third phase be restricted by the applicants?
- The HOA had loaned the applicants \$55,000 for work that needed to be done in the first phase. The money had to be repaid within ten years.
- The applicants requested that the water rights, remaining after the number of units was reduced by three, be returned to them.
- The applicants closed a retention pond which then forced water down to the other phases of Sunburst Ranch.
- No trespassing signs had been posted around the area proposed for the third phase.
- A lot of the open space for the project was in the third phase which would be the crown jewel of the development.
- The approved amenities in the third phase had been removed in the plan presented to the Planning Commission.
- The proposed amendment put homes on the best land.
- A complete separation of the third phase from the other phases would not work.
- Cul-de-sacs were problematic for plowing snow.
- The amenities were too close to the units and did not have dedicated parking.
- The approved pavilion and large open area had been removed.
- It was always intended that there would be one HOA for the entire project. One HOA which would be stronger and more functional. The articles of incorporation for the HOA stated there would be one association.
- CC&R's could not supersede City regulations.

**Note:** Mr. Anderson distributed a letter from the HOA's previous legal counsel, article of incorporation for the HOA and responses to comments made at the previous council meeting. Copies of these documents are contained in the supplemental file.

Greg Lupis, Sunburst Ranch homeowner, made the following comments:

- Was not notified that unit #15 would be built in the first phase. Because of that change he lost the view from his unit, which the applicants said would not happen. The City should not have allowed it to be built so close to his unit.
- He would not be able to sell his unit.
- People should try to reduce the animosity regarding the development.

Murry Mahoney, Sunburst Ranch homeowner, made the following comments:

- Was on the HOA board for seven years.
- The proposed amendment was inferior to the plan approved in 2010.
- The amendment would reduce property values of the existing units.

Karen Perkins, Sunburst Ranch homeowner, said that the units in the first two phases were not inferior as stated in the previous council meeting.

Mary Lou Condie, Sunburst Ranch homeowner, said that the homes not built by the applicants were done hastily and were of inferior quality.

Judy Olin, Sunburst Ranch homeowner, said that the builder of her home was good. She bought in the project because of what would be in the third phase.

Brenda Graff, Sunburst Ranch homeowner, made the following comments:

- Bought in the development because of the third phase.
- Her real estate agent did not say anything about changes to the third phase.
- Who informed the real estate agents of any changes?
- Remodeled her entire unit.
- Parked a trailer in the development. It was impounded and she had to pay an impound fee.

**9. 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.

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

- The applicants would abide by the decision of the court.
- Needed more time to review the proposed amendment to the development agreement.
- The applicant had stepped in and helped resolve the issues with the first phase.
- The applicant was not responsible for the location of lot 15.
- The current amendment had a lot of benefits for the City and the HOA.
- Reopening the retention pond was not required but would be done if the amendment was approved.
- There was no requirement that the residents in the other phases should be able to use the amenities in the third phase.
- The amendment eliminated large slope cuts.

Steve Condie, applicant, made the following comments:

- Mr. Mansfield had been involved with the project from its beginning and wrote the original documents.
- The proposed amendment avoided deep cuts and significant slopes.

Kent Wilkerson, Cascade Civil Engineering and engineer for the applicants, made the following comments:

- The approved plan from 2010 had less open space and it was not contiguous.
- The 2010 plan could be built but it would require eight feet of fill and a 28-foot-high retaining wall.

- Used the same scale as the 2010 plan for the new proposal except for the pickle ball court.

The Council, staff and meeting attendees discussed the following items related to the proposed development:

- Should the proposed amendment go back to the Planning Commission? The Council was the land use authority for Midway and was not required to sent it back to the Commission.
- Should the Council wait to make any decision until after the lawsuit was resolved?
- The City should not become involved in the lawsuit.
- The Council was not obligated to approve the amendment.
- The City did not enforce the CC&R's for a development.
- The issue of multiple HOA's could be separated from the proposed amendment.
- The slope of the land, proposed for the third phase, was a significant issue.
- Allowing residents from the first two phases to use the amenities in the third phase might resolve some of the existing concerns.
- The retention pond which had been closed was an issue that needed to be resolved.
- Any agreement should avoid the issue of multiple homeowners' associations.
- The amendment was just the first of several approvals that the applicants would need.
- The retention basin was built and functioning before the 2010 plan was approved. It was closed after the plan was approved.
- Trails, landscaping, design, and the retention pond needed to be resolved and included in the amended development agreement.
- The City should not be liable for a 28-foot-high retaining wall.
- There was a 24-foot-high retaining wall in Valais.
- There were already two retaining walls in Sunburst Ranch.
- The Planning Commission should consider items such as amenities.
- The pending lawsuit did not address issues like the retention pond.
- People purchased units based on the plan for the entire project. There could be small but not large changes to the plan.
- Drainage needed to be addressed.
- The City was not slowing down the development because the applicants could always build the 2010 plan.
- Sending the proposal back to the Planning Commission would also give the HOA a chance to consider it. It would also encourage a full and thorough review.
- None of the existing agreements had a sunset clause. Such clauses were difficult to have in a phased development.
- The City could not prohibit requests for future amendments.
- The engineer, who designed the 2010 plan, said there were ways to mitigate the concerns with slope.
- Going back to the Planning Commission would add at least eight weeks to the approval process.
- Driveway slopes should be no greater than 10%.
- Units could be designed to address all the issues with the 2010 plan.
- The new proposal better matched the City's current requirements for open space.

**Motion:** Council Member Drury moved to table consideration of the item with the following conditions:



- Request that the proposed plan include a landscaping design, the retention pond, and amenities drawn to scale showing where and what they would be.
- The sections in the proposed amended development agreement, regarding the homeowners' association and the retention pond, not be changed.

**Second:** Council Member Van Wagoner seconded the motion.

**Discussion:** Council Member Simonsen noted that several documents related to the project had never been recorded. He asked if documents could be subject to voiding if they were not recorded.

Council Member Drury noted that if the current proposal was denied then the applicant would have to build a plan that didn't have a full paper trail.

Josh Jewkes stated that the proposed amendment to the development agreement would supersede all other agreements.

Mr. Mansfield agreed with the concept for the amended development agreement but said that it needed more definition.

**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 Drury explained that the plan should show more than just grass and trees but should include the amenities and cross sections.

**10. 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).

Mayor Johnson indicated that the item would not be considered that night.

**11. Resolution 2019-03 / Budget Amendment** (Financial Officer – Approximately 30 minutes) – Discuss and possibly approve Resolution 2019-03 amending the Fiscal Year 2019 Budget for Midway City. **(Public Hearing)**

Brad Wilson gave a presentation on the proposed budget amendment.

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

Council Member Van Wagoner made the following comments:

- Opposed reinstalling parking between the Town Hall and the Community Center. That parking lot had facilitated the selling of drugs. Benches and a monument, to highlight the City, were to be put in the space.
- There was additional parking on the north side of the Town Square.
- Suggested a parking lot next to the ice rink and west of the Community Center.
- Lamented that the baseball diamond had been removed from the Town Square.

Council Member Drury responded that he had three meetings at the Town Square that week and each time all the parking stalls were full.

Mayor Johnson asked the City Engineer to draft a parking lot plan for the area next to the ice rink. She noted that public parking at the post office was no longer an option.

Council Member Probst indicated that parking next to the tennis court could be expanded.

Council Member Simonsen thought that most people would not walk a long distance for parking.

Mr. Henke said that the corner, next to the Community Center and the ice rink, was one of the most visible in the City.

### **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 Van Wagoner moved to approve Resolution 2019-03 amending the FY 2019 Budget for Midway City.

**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

Council Member Simonsen noted that the City should spend at least \$40,000 a year to maintain its existing trails. Michael Henke added that a maintenance plan was needed for trails.

Council Member Van Wagoner indicated that the trail along Dutch Fields and River Road was in such poor condition that it was a significant liability. Wes Johnson noted that the trail was the

responsibility of the Dutch Fields HOA. Josh Jewkes indicated that if the City let the public use the trail then it needed to fix the problems.

Council Member Van Wagoner recommended that sidewalks from the Midway Elementary School be extended to developments like Indian Summer. Mayor Johnson added that there was no sidewalk along north Center Street.

**12. Adjournment**

The meeting was adjourned at 9:09 p.m.

  
Celeste Johnson, Mayor

  
Brad Wilson, Recorder