

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

**Tuesday, 16 July 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. She excused Council Member Probst.

Members Present:

Celeste Johnson, Mayor
Jeff Drury, Council Member
Lisa Orme, Council Member
JC Simonsen, Council Member
Ken Van Wagoner, Council Member
(Participated Electronically)

Staff Present:

Corbin Gordon, Attorney
Michael Henke, Planning Director
Wes Johnson, Engineer
Brad Wilson, Recorder/Financial Officer

Members Excused:

Bob Probst, 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. Maddalena Willis, Miss Wasatch County 2019, gave the prayer and/or inspirational message.

2. Consent Calendar

- a. Agenda for the 16 July 2019 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 18 June 2019 City Council Work Meeting
- d. Minutes of the 18 June 2019 City Council Closed Meeting #1
- e. Minutes of the 18 June 2019 City Council Regular Meeting
- f. Minutes of the 18 June 2019 City Council Closed Meeting #2

- g. Kameron Kieffer as a Full Member of the Midway City Trails and Parks Advisory Committee
- h. Laron Turley as an Alternate Member of the Midway City Trails and Parks Advisory Committee

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

Wes Johnson asked that the following bills be added to the warrant list:

- JB Gordon, Cemetery Road and Tate Lane Water Line, \$111,691.03
- BD Bush Excavation, 600 North Road and Utilities, \$228,000.51
- Berg Engineering Resource Group, 600 North Road and Utilities, \$12,986.89

Motion: Council Member Drury moved to approve the consent calendar with the requested additions.

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	Excused from the Meeting
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

Mayor Johnson indicated that the request for a temporary beer event permit had been withdrawn and the item had been removed from the agenda. She added that the zoning map amendment would also not be considered that night at the request of the applicant.

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.

Transmission Line

Adam Buhl asked the status of approving the transmission line through the southwest section of the City. Mayor Johnson responded that the request would again be considered at the next planning commission meeting and nothing had been approved.

No further comments were offered.

4. Department Reports

Wayfinding Signs

Council Member Orme reported that the City was working on wayfinding signs.

Independence Day Celebration

Council Member Drury reported that a good Independence Day celebration was held by the Midway Boosters.

HL&P Substation

Mayor Johnson reported that Heber Light & Power Company was working to get a permit for a new substation. She said that the station would be near the Heber Valley Railroad (HVRR) station and would be paid for from impact fees.

HVRR / New Cars

Mayor Johnson reported that new railroad cars were arriving from Canada for the HVRR.

MSD / Updating Systems

Mayor Johnson reported that the Midway Sanitation District (MSD) was updating its systems.

5. Open Space Committee / Report (Courtland Nelson – Approximately 10 minutes) – Receive a report from the Midway City Open Space Advisory Committee.

Mr. Nelson, Committee Chair, gave a presentation and reviewed the following items:

- Organizing
- Focus on the open space chapter of the General Plan
- Outreach steps
- Overview of the notices of interest
- Interview opportunities
- Certified land trusts
- Photographing properties
- Forms
- Meeting between the City Council, Committee and landowners in the early fall

6. Farmers Market / Presentation (Chris Pyper – Approximately 10 minutes) – Receive a presentation on the farmers market held at the Town Square.

Athina Koumarela and Chris Pyper gave a presentation and made the following comments:

- The market facilitated farming

- Would like a permanent space on the Town Square
- Asked that the fees for the use of the Square be waived
- Focused on local items
- Provided a community booth
- Wanted sponsorships
- Had a good response from the community

The Council agreed that the fees should be waived.

7. ULGT / TAP (Jason Watterson) – Receive a presentation on the Trust Accountability Program (TAP) of the Utah Local Governments Trust.

Mr. Watterson reviewed TAP and gave the City a gift for meeting the goals of the program. He added that the City also received a cash award.

8. Urban Deer / Population Control Program (Chris Crittenden – Approximately 20 minutes) – Receive a presentation on and discuss a population control program for the deer population within Midway City.

Chris Crittenden explained that the program would not eliminate deer but would restore balance to the ecosystem.

Wes Alexander, Utah Department of Wildlife Resources, gave a presentation regarding the program and made the following comments:

- It would not eliminate all the deer.
- Feeding deer should be prohibited so that it would not attract them from the mountains.
- Non-lethal deer removal had been discontinued because it spread disease.
- The City had to set up and run the program.
- The City could contract with someone to kill deer from a stand with a bow.
- Another option was to trap and cull the deer which was less liability.
- The meat had to be used.
- Counting the number of deer, which was needed to apply for the program, could be challenging.

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

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

- A lot of education was needed at the beginning of the program.
- Did the City have the resources to run the program?
- The City should first gather more information.
- Was deer in the City a significant problem?

9. Elmer Mixed-Use Development / Conditional Use Permit (Debbie Elmer – Approximately

20 minutes) – Discuss and possibly grant a conditional use permit for the Elmer Mixed-Use Development located at 65 South Center Street (Zoning is C-2). Recommended with conditions by the Midway City Planning Commission. **Public Hearing**

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

- Land use summary
- Preschool proposal
- Location of the proposed development
- Overview of the site
- Street view of the site
- Picking up and dropping off children
- Discussion items
- Possible findings
- Proposed conditions.

Mr. Henke also made the following comments:

- All other necessary organizations had approved the proposal.
- The only identifiable safety issue might be picking up and dropping off children.
- The backyard was fully fenced.
- Vehicles could wait on the shoulder of the road because it was wide enough.
- No issues had been raised with people also living in the home. All occupants had to have background checks.

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

Debbie Elmer, applicant, made the following comments:

- Had owned and operated a daycare for many years.
- Now wanted a preschool so the that children would leave at 3 p.m.
- Owned a 14-foot area on the north of the house that could be used for parking.
- Had been on the state board related to daycares.

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 a conditional use permit for the Elmer mixed-use development, for the use described, with the following findings and conditions:

- The proposed mixed-use development was a conditional use in the C-2 zone.
- Preschools and daycares were permitted uses in the C-2 zone.
- The proposal would increase traffic on Center Street.
- The applicant would need to receive approval for a business license which required

- health, fire district, and building department approvals.
- The Utah Department of Health, Child Care Licensing Program would need to approve the business before operations could commence.
- The facility had a through driveway for pick up and drop off.
- The through driveway had to be kept clear year-round including snow in the Winter.
- Any increase in the number of students or classes above what had been proposed would require the conditional use permit be reevaluated and approved by the City Council.
- All inspections must be completed, and a business license issued before the preschool could hold any classes.
- If any safety issues were identified after approval was granted, then the applicant had to work with the City to alleviate any issues and if the issues could not be alleviated then the conditional use permit and business license might be revoked.
- The backyard children's play area would be fenced.

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	Excused from the Meeting
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

10. Pot Rock Place / Plat Amendment (Summit Engineering – Approximately 10 minutes) – Discuss and possibly amend the plat map for the Pot Rock Place Subdivision located at approximately 255 East 600 North (Zoning is R-1-22). **Public Hearing**

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

- Land use summary
- Location of the subdivision
- Recorded plat map
- Proposed plat map
- Codes regarding these types of changes
- Possible findings

Mr. Henke also made the following comments:

- The proposed amendment would resolve the issue of a portion of the driveway, for Lot #1, being on Lot #2.
- If the amendment was approved, then all the driveway would be on Lot #1.
- Recommended amending the plat map rather than changing the lot lines with a metes and bounds description.
- The amended lots would still comply with the Municipal Code.
- The public utility easements would remain in the same locations

- The sports court would remain on Lot #2.

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 the plat map amendment, for the Pot Rock Place Subdivision, according to the staff recommendations.

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	Excused from the Meeting
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

11. Cowboy Poetry Gathering / Presentation (Diane Pope – Approximately 15 minutes) – Receive a report on the Heber Valley Western Music & Cowboy Poetry Gathering and possibly approve a donation for the event.

Mary Kelly, producer for the Gathering, gave a presentation and made the following comments:

- Thanked the City for its support.
- That year would be the 25th anniversary of the Gathering.
- Additional money was being spent on more famous performers.
- Diane Pope would be the next producer.

Tom Fowler, financial officer for the Gathering, gave a presentation. He requested a continued grant of \$10,000 from the City.

Note: A copy of Ms. Kelly’s and Mr. Fowler’s presentation is contained in the supplemental file.

Motion: Council Member Drury moved to continue support with a \$10,000 donation.

Second: Council Member Orme 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	Excused from the Meeting
Council Member Simonsen	Aye
Council Member Van Wagoner	Unavailable

12. Cozens Subdivision / Preliminary & Final Approval (Albert Cozens – Approximately 15 minutes) – Discuss and possibly grant preliminary and final approval for the Cozens Subdivision located at 840 South Stringtown Road (Zoning is RA-1-43). Recommended for approval without conditions by the Midway City Planning Commission. **Public Hearing**

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

- Land use summary
- Location of the subdivision
- Proposed plat map
- FEMA flood plain
- Existing accessory dwelling unit
- Discussion items
- Water Board recommendation
- Possible findings
- Proposed conditions

Mr. Henke also made the following comments:

- The applicant needed to prove that the accessory dwelling unit was approved by Wasatch County. If it was not approved, then it needed to be removed because it was not allowed by the Municipal Code.
- A 50-foot setback from the road was required.
- The property could be re-subdivided for up to three lots.
- The applicant was only requesting that the property be a single lot. The existing home would have to be raised if another one was built.
- The approval was needed to make the property a legal lot and have a clear title.
- The house had a leach field instead of a septic tank.
- Nothing could be built in the flood plain.

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.

Adam Buhl

Mr. Buhl confirmed that there would be just one lot in the subdivision. He also expressed concern with the construction traffic in the area and a child almost being hit.

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

Motion: Council Member Drury moved to grant preliminary and final approval for the Cozens Subdivision adopting the staff report and including the following findings and conditions:

- A 50-foot setback would be included on the plat map.
- The living space in the barn would be removed or the applicant would show that it was approved by Wasatch County. The City Planner had authority to determine which had occurred.
- The existing house was a legal non-conforming use.
- Any new dwelling had to meet the 50-foot setback if the existing house was raised.

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	Excused from the Meeting
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

13. Resolution 2019-22 / Cozens Subdivision Development Agreement (City Attorney – Approximately 5 minutes) – Discuss and possibly approve Resolution 2019-22 adopting a development agreement for the Cozens Subdivision located at 840 South Stringtown Road (Zoning is RA-1-43).

Corbin Gordon reviewed the development agreement for the subdivision.

Council Member Simonsen asked that development agreements have shorter terms. Mr. Gordon responded that he would make that change.

Motion: Council Member Simonsen moved to approve Resolution 2019-22 with a shorter term.

Second: Council Member Orme 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	Excused from the Meeting
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

Motion: Without objection, Mayor Johnson recessed the meeting at 8:09 p.m. She reconvened the meeting at 8:17 p.m.

14. Midway Farms / Plat Amendment (Tom Hansen – Approximately 30 minutes) – Discuss and possibly amend the plat map for the Midway Farms Subdivision, located at 180 West Farm Road, to remove 0.89 acres from Lot #11 (Zoning is R-1-22). **Public Hearing**

15. Swiss Farm / Plat Amendment (Tom Hansen – Approximately 5 minutes) – Discuss and possibly amend the plat map for the Swiss Farm Subdivision, located at 846 North Swiss Farm Court, to add 0.89 acres to Lot #13 (Zoning is R-1-22). **Public Hearing**

Mayor Johnson indicated that the applicants' engineer had not yet arrived. She added that any questions for the engineer could be addressed later in the meeting.

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

- Summary
- Location of the subdivision
- Drawing of the proposed change
- Recorded plat map for Midway Farms
- Recorded plat map for Swiss Farm
- Proposed plat map for Midway Farms
- Proposed plat map for Swiss Farm
- Items of discussion
- Public comment
- Possible findings

Mr. Henke also made the following comments:

- The adjusted lots would conform to the Municipal Code. They would also comply with the Utah Code regarding the exchange of title.
- The process was the same as the amendment to the Pot Rock Place Subdivision.
- The amendments would include a vacation process.
- The Utah Code allowed the land use authority to approve the requests.
- Plat amendments were discretionary, but it appeared the Utah Code required the City to approve this request.
- The Midway Farms Covenants, Conditions & Restrictions (CC&Rs) applicability to the adjusted lots depended upon how the CC&Rs were written.
- The City Council previously approved a lot line adjustment between two lots in Midway Farms. It had also approved adding property from the Farm Springs Subdivision to a lot in Midway Farms.
- Frontage would have to be created for the adjusted lot in Swiss Farm to be subdivided.

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

Corbin Gordon made the following comments:

- The City was not involved with the CC&Rs. They were a private document between private property owners.
- The question was if the City Council had discretion in the matter.
- Was this a boundary line change, which was not discretionary, or was this a plat amendment which was discretionary?
- The Utah Code wanted to avoid a cumbersome process for minor changes.
- Wanted to hear both sides' arguments then issue a legal opinion.
- The City needed to focus on the law.
- If the Council had discretion, then other issues needed to be considered and conditions could be added to an approval.
- A public hearing could be held that night, but any comments needed to be directed to the Council.

Tom Hansen, applicant, made the following comments:

- The Utah Code referenced that exact issue.
- He owned both lots and could amend common lot lines even if they were in two different developments.
- A public hearing was not required for the issue.
- Grew up on ten acres raising livestock.
- Had been using his father's property to raise livestock.
- Now wanted his own property so that his children could have chores.
- Others would try to confuse the issue.
- The Council should rely on the staff's presentations.

Sara Hansen, applicant, made the following comments:

- Their intentions were clear.
- Had known the owners of the lot in Midway Farms for some time. The wife wanted to sell it to them now that her husband had passed away.
- The adjustment would increase their backyard and not negatively affect anyone.
- A neighbor's chain-link fence, for their tennis court, was right next to their property.
- Would not subdivide the property in the future.
- Was not setting precedence.
- If they built a barn it would be next to the neighbor's tennis court.
- Was not doing anything wrong or illegal.

Steve Hansen, representing the applicants, made the following comments:

- Was Tom Hansen's father.

- Needed to defend the applicants from intimidation, scare tactics and bullying.
- The issues should have been delayed until the engineer, a paid expert, was present.
- The law addressed the issue being considered.
- People were trying to create confusion about the issue.
- A new lot would not be created.
- The Council could deny a request to create an additional lot.
- There was no specific statute that said the issue was illegal.
- The idea that the Midway Farms CC&Rs would apply, to the land being attached to the applicants' lot in Swiss Farm, was not based on any law. The CC&Rs would not apply to that land.
- The City could not be arbitrary or caprices.
- The Council did not have unbridled discretion.
- The District Court could only consider the issue if the Council denied it and all administrative remedies were exhausted. The Court would consider if the Council's decision was based on substantive evidence.
- The applicants chose to be transparent and not just record deeds adjusting the boundary lines.
- Nothing in Utah law said that property could not be removed from an HOA.

Public Hearing

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

Melyssa Davidson

Ms. Davison, Wrona Dubois Law Firm and representing the Midway Farms HOA, made the following comments:

- Requested that the amendments be denied or continued to receive a formal legal opinion from the City Attorney.
- The amendments were a legislative item and the Council had discretion to approve them or not.
- The HOA believed that the item was a re-subdivision and prohibited by its CC&Rs.
- Was not asking that the City enforce the CC&Rs.
- The CC&Rs did run with the property being discussed that evening.
- In the Utah Code a super majority of the HOA was needed to release the CC&Rs from a property.
- The applicants were attempting an "end-run" around the CC&Rs.
- The issue was hotly contested.
- The HOA had to enforce its CC&Rs. Litigation to enforce them and an injunction on the Council's decision was anticipated.
- Wanted to know the City Attorney's opinion on approving something that was contrary to the CC&Rs.
- The previous lot line adjustments, approved by the Council, did not vacate any property or transfer any property out of Midway Farms. Lot lines were squared up. The adjustments had the consent of a majority of the HOA.
- A de minimis amount of land from the Farm Springs Development was attached to a lot

- in Midway Farms.
- Wanted the Council to take note of the CC&Rs.
- The staff report said that the issue was a plat amendment.

David Carson

Mr. Carson, Midway Farms HOA President, made the following comments:

- The applicants came to a meeting of the HOA and had been forthright and transparent.
- Mr. Hansen indicated to the HOA that the change was to facilitate agriculture on his lot. He also indicated that he wanted each lot to be a certain size but under three acres because it maximized their value. This was like land speculation.
- The request was to amend existing plat maps.
- Land speculation was not a good reason to amend a plat map.
- The Council should consider the precedence that would be set by approving the amendments, which would undermine the HOA's ability to govern.
- The same request could be made of two more properties.
- As the City grew there would be pressure to develop.

Rich Broadbent

Mr. Broadbent made the following comments:

- Lived in Midway Farms.
- More property owners could make the same request.
- Knew about the HOA when he bought his lot in Midway Farms.
- The HOA worked hard to protect the size of the lots.
- The HOA voted 19 to three to oppose the request.
- Not aware of any insinuations about the applicants and had no animosity towards them.

Randon Wilson

Randon Wilson made the following comments:

- Owned lots five and six in Midway Farms.
- Was one of the original owners in the subdivision.
- The subdivision HOA had met every year since it was organized.
- The HOA took seriously its CC&Rs.
- Any structure or fence had to be approved by the HOA's architectural committee.
- Had been the secretary/treasurer for the HOA for over 40 years.
- There was a good discussion at an HOA meeting about the request.
- The HOA voted to sustain its CC&Rs. A terrible precedence would be set if it did not sustain them.
- The current home could be demolished, and another home put on the lot.
- Requested that the Council deny the request.
- If the Council wanted to approve the request, then it should at least wait until the issues had been resolved between the HOA and applicant.

Roger Dibb

Mr. Dibb preferred open space and green space. He thought that the request could lead to further subdividing.

Tate McCotter

Mr. McCotter made the following comments:

- Lived in Midway Farms.
- Was a member of the Midway Farms HOA Board.
- Moved to Midway in 1991 and always wanted to live on Farm Road.
- Liked that the HOA protected the development
- The issue was not personal.

Tommy Deaver

Mr. Deaver made the following comments:

- Lived in Midway Farms.
- Knew what the CC&Rs said when he purchased his property.
- Was willing to abide by the CC&Rs and so should all the other property owners who lived in the subdivision.
- Wanted to maintain the status quo which the applicants wanted to change.
- Did not want to prevent them from having chickens, etc. but they should do it with the lots as currently established.
- There were four of five situations where another home could be built on the expanded Swiss Farm lot.
- The applicants' property rights violated the CC&Rs which they signed when they bought in the subdivision.
- The feelings of the property owners should be considered.
- Any letters supporting the request were from people who did not live near Midway Farms.

Sheila Probst Siggard

Ms. Siggard made the following comments:

- Was a native of Midway.
- Had seen a lot of change to the area in 40 years.
- A variance should be granted so that livestock could be on the property.
- A survey had been done which showed that residents wanted to keep the area rural.
- Three acres was not too much for livestock.
- The deer lived in the area for hundreds of years.
- Wanted to keep the area rural.

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

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

- Plat amendments were not unusual.
- The use of the land would not change.
- Only a property line was being moved.
- Was requesting a plat map amendment because the change coincided with the lot lines. The applicant could do the same thing in another way.
- The request met the requirements of the Municipal Code and the zone.
- No roads would be affected.
- No new lots would be created.
- The request was not a subdivision or re-subdivision.
- There would be no increase in density.
- Additional homes could not be built on either lot because there was not the frontage on a street.
- The request did not violate the Utah Code.

Steve Hansen made the following comments:

- There was nothing illegal or improper with moving a fence line and selling one of the lots.
- In the past the applicants spoke to the owner of the lot in Midway Farms about buying a portion of the property.
- The request would leave the Midway Farms lot with enough acreage.
- It was appropriate to make a profit on a real estate deal.
- It was improper for the Midway Farms HOA to have such oversight and dictatorial control.
- The applicants were being disrespected.
- The request was allowed by Utah law.
- The HOA said that it would sue.
- The HOA could not appeal the Council's decision until all administrative remedies were exhausted.

Tom Hansen read the definition of subdividing in the Utah Code and made the following comments:

- The request would not subdivide any of the properties into additional lots.
- The vote by the HOA was if he was violating the CC&Rs by re-subdividing.
- Would have voted against himself if he was subdividing property.
- Anyone could come to his house and discuss the issue with him.

Sara Hansen made the following comments:

- The land would look the same after the amendments.

- They could not keep both lots because of the financial burden.
- The Midway Farms CC&Rs required one acre lots. The Midway Farms lot would be two acres after the amendments.

Motion: Council Member Van Wagoner moved to approve both amendments with the following findings:

- The amendments were lot line adjustments.
- The request was not subdividing property according to the Utah Code.
- No additional lots were being created.
- The General Plan encouraged agriculture.
- The property could not be legally subdivided at that time because there was not frontage on a road.

Second: Council Member Drury seconded the motion.

Discussion: Council Member Drury said that the Council had the right to decide on the request. He also said that nothing in the request was prohibited.

Council Member Simonsen made the following comments:

- The greatest concern of the Midway Farms HOA was enforcing its CC&Rs.
- It was the HOA's responsibly to enforce the CC&Rs.
- Wanted more legal advice but the request did not look like a subdivision of property.
- The City had authority to approve the request.

Council Member Orme made the following comments:

- The request did not subdivide property.
- It complied with the zone and what was the jurisdiction of the Council.

Corbin Gordon made the following comments:

- Utah Code stated that the request only had to meet certain criteria for approval.
- No argument had been presented that the request would subdivide property.

Mayor Johnson asked if the lots should be deed restricted. Council Member Simonsen did not think the Council had that discretion. He noted that could be done voluntarily by the applicant.

Council Member Van Wagoner noted that if anyone wanted to subdivide the lots in the future that would require Council approval.

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

Council Member Drury	Aye
Council Member Orme	Aye

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

16. Saddle Creek Ranch, Phase 1 / Preliminary Approval (Berg Engineering – Approximately 20 minutes) – Discuss and possibly grant preliminary approval for Phase 1 of the Saddle Creek Ranch Subdivision located at 970 South 250 West (Zoning is R-1-22). Recommended with conditions by the Midway City Planning Commission. **Public Hearing**

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

- Land use summary
- Location of the phase
- Master plan approval
- Phasing plan
- Trails and sidewalks
- Phase 1 site plan
- Landscaping plan
- Items of discussion
- Transmission line
- Water line extension agreements
- Possible findings
- Proposed conditions
- Clustered mailboxes

Mr. Henke also made the following comments:

- A temporary cul-de-sac would be required for the phase.
- Lump sums were required to be paid for two water line extension agreements. These amounts had been recalculated based on the new density.
- Better coordination regarding the location of clustered mailboxes was needed with the United States Postal Service (USPS).
- Nothing had changed since the master plan was approved.

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

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

- The CC&Rs would be submitted with final approval.
- Would work with the USPS on the location of the mailboxes.
- Asked that the water line extension agreements be paid by phase.

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

- Needed to determine if the extension agreements allowed payment by phases. Usually

- all phases were paid at once. Some were paid with each building permit.
- The City should work with the applicants, but it should also be consistent.

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 grant preliminary approval for Phase 1 of the Saddle Creek Ranch Subdivision with the following conditions:

- The required water extension line agreement fees would be paid for all 36 lots before the recording of the plat map for Phase 1.
- The developer would work with the post office to find a location, out of the sight visibility triangle, for the Cluster Box Unit that would service the subdivision and submit that plan with the application for final approval.
- Draft codes, covenants and restrictions would be submitted with the application for final approval that would form the HOA and have a maintenance plan for the common area and amenities.

Second: Council Member Orme 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	Excused from the Meeting
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

17. Scotch Fields, Phases 3 & 4 / Final Approval (Berg Engineering – Approximately 15 minutes) – Discuss and possibly grant final approval for Phases 3 and 4 of the Scotch Fields PUD located west of Valais (Zoning is RA-1-43). Recommended without conditions by the Midway City Planning Commission.

Note: Corbin Gordon recused himself from consideration of the approval and left at 10:15 p.m.

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

- Land use summary
- Location of the phases
- Site plan
- Phasing plan
- Site plan for the two phases with a new road alignment

- Trails
- Open space
- Possible findings
- Water Board recommendation

Mr. Henke also made the following comments:

- The amenities for the PUD would be in Phase 4.
- The Planning Commission recommended that the units be staggered. It also recommended an island of native grass.
- Was fine with the landscaping with a bond in place.
- Did not have any recommended conditions.

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

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

- The phases were consistent with the General Plan and preliminary approval granted by the Council.
- Some native grass would be used to breakup the landscaping and reduce maintenance.

Motion: Council Member Orme moved to grant final approval for Phases 3 and 4 of the Scotch Fields PUD.

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	Excused from the Meeting
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

18. Resolution 2019-23 / Scotch Fields, Phases 3 & 4 Development Agreement (City Attorney – Approximately 5 minutes) – Discuss and possibly approve Resolution 2019-23 adopting a development agreement for Phases 3 and 4 of the Scotch Fields PUD located west of Valais (Zoning is RA-1-43).

The Council and staff discussed the duration of development agreements. It was suggested that the issue be discussed at a work meeting.

Motion: Council Member Simonsen moved to approve Resolution 2019-23.

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	Excused from the Meeting
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

Note: Corbin Gordon returned.

19. Lime Canyon Meadows / Preliminary Approval (Brett Walker – Approximately 20 minutes) – Discuss and possibly grant preliminary approval for the Lime Canyon Meadows Subdivision located at 960 West Lime Canyon Road (Zoning is R-1-22). Recommended with conditions by the Midway City Planning Commission. **Public Hearing**

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

- Land use summary
- Location of the proposed subdivision
- Transmission line
- Site plan
- Proposed plat map
- Easements
- Drainage and hydrology
- Discussion items
- Possible findings

Mr. Henke also made the following comments:

- The property proposed for development was a remnant parcel in an existing rural preservation subdivision.
- The Planning Commission recommended not granting preliminary approval until the hydrology study was approved by the Cities' staff.

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

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

- The consultants had provided the results of their hydrology study but had not provided the final study. Thought that this would be enough for preliminary approval.
- Some additional surveying was being done.

- Changes needed to be made to address the City Engineer's concerns.
- The applicant should not have to fix all the problems further up the canyon.

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

- The City Engineer needed to approve granting preliminary approval and indicate that any issues could be resolved.
- A house in Lime Canyon had flooded so the hydrology of the area was important.
- The study should be completed and done right to protect everyone involved.
- If someone's home flooded, then they would look to the City to see if everything was done correctly.
- The approval should be tabled until the study was completed and approved.

Public Hearing

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

Brett Walker, Applicant

Mr. Walker made the following comments:

- Did his due diligence when he purchased the property.
- Checked with the State, Wasatch County and FEMA and there were no flood plains on the property.
- Allowed for large areas for water to dissipate.
- The City should be fair to everyone.
- Everyone near a drainage should be treated the same way he was being treated.
- It was arbitrary for the City to require him to do a hydrology study.
- Had never hired an attorney for a development.
- There was not a creek running down Lime Canyon.
- Would have to build 20-foot-high berms to meet the requirements regarding a 100-year storm.
- His property had nothing to do with a home further up Lime Canyon that had been flooded.
- It was not his responsibility to fix the City's problem.
- What could the City do to remediate the water on his property?

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

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

- All developments in the City had to have a storm drain system.
- The lots in the rural preservation subdivision had been moved west to avoid having to do a hydrology study.
- A hydrology expert was needed to help the Council make an informed decision.
- The study request was not personal.

- Problems with other developments in the area should have been addressed when they were approved.
- The water issues had been discussed for many years with potential buyers of the property. Everyone knew the area flooded.
- The City Engineer needed to approve the response to the water issue.
- The proposed development was at the bottom of a drainage.
- The City should not continue to make mistakes with drainage and flooding in the area.
- Enough information should be provided to make a good decision.

Motion: Council Member Simonsen moved to table consideration of preliminary approval to get the hydrology study, have the City Engineer review it to ensure that the project met the standards for building in that area and appropriate language be included on the plat map for the Rocky Mountain Power easement.

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	Excused from the Meeting
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

20. Closed Meeting to Discuss Pending or Reasonably Imminent Litigation

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

Second: Council Member Orme 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	Excused from the Meeting
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 Drury moved to go out of the closed meeting.

Second: Council Member Orme 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	Excused from the Meeting
Council Member Simonsen	Aye
Council Member Van Wagoner	Aye

21. Settlement Agreement / John Probst Lawsuit (City Attorney – Approximately 15 minutes)
– Consider and possibly approve a settlement agreement in the John Probst lawsuit.

Motion: Council Member Van Wagoner moved to approve the settlement agreement with John Probst as agreed to by all parties.

Second: Council Member Drury seconded the motion.

Discussion: None

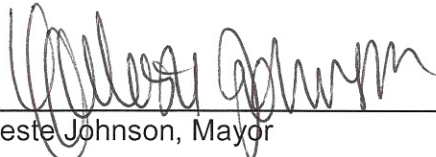
Vote: The motion was approved with the Council voting as follows:

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

22. 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 11:37 p.m.



Celeste Johnson, Mayor



Brad Wilson, Recorder