

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

**Tuesday, 7 January 2020, 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
Steve Dougherty, Council Member
Jeff Drury, Council Member
Lisa Orme, Council Member
Kevin Payne, Council Member
JC Simonsen, Council Member

Staff Present:

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

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.

2. Swearing in of the Newly Elected City Council Members

The City Recorder swore in Steve Dougherty, Lisa Orme and Kevin Payne as members of the Midway City Council. Each of the three members gave brief remarks.

3. Mayor Pro Tempore – Discuss and Possibly Elect a Member of the Midway City Council to be Mayor Pro Tempore

The City Recorder reviewed the responsibilities of a mayor pro tempore and how they had been elected in the past.

Motion: Council Member Simonsen moved that Council Member Orme be the mayor pro

tempore.

Second: Council Member Payne seconded the motion.

Discussion: None

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

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

4. Consent Calendar

- a. Agenda for the 7 January 2020 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 17 December 2019 City Council Regular Meeting
- d. Minutes of the 17 December 2019 City Council Closed Meeting
- e. Ordinance 2020-01 – Prescribing the Time and Place of the Regular Meetings of the Midway City Council
- f. The Bond for the Mayor of Midway City

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

Council Member Orme asked for more information on the warrant for the 2020 water line project. Wes Johnson explained the project and reviewed the water lines that would be replaced or upgraded.

Council Member Simonsen asked about the bond amount for the Mayor. Brad Wilson reviewed the liability insurance policy which acted as the bond.

Motion: Council Member Orme 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 Dougherty	Aye (Abstained from approving the minutes)
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye (Abstained from approving the minutes)
Council Member Simonsen	Aye

5. 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.

6. Department Reports

Roundabouts / River Road

Wes Johnson reported that the two new roundabouts would be installed on River Road in April or May of that year.

Centennial Committee Monument / Benches

Mayor Johnson showed the type of granite that would be used for the benches at the Wasatch County Centennial Committee's monument.

7. Financial Statements / Audit Report (Approximately 15 minutes) – Receive a presentation on the fiscal year 2019 financial statements (Ryan Child) and audit (Ben Probst).

The item was postponed because Mr. Child was unable to attend.

8. Ordinance 2020-02 / Festival Market Business Licenses and Parking (City Planner – Approximately 45 minutes) – Discuss and possibly adopt Ordinance 2020-02 amending Section 7.05.010 (Festival Market Business Licenses) of the Midway City Municipal Code regarding parking.

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

- Festival market parking
- The proposed ordinance
- Festival market overlay zone
- History of the festival market code
- Requirements and restrictions
- Items to consider
- The proposal applied to property owned by Jennifer Mangum

Mr. Henke also made the following comments:

- The proposed ordinance would allow parking in the overlay zone.
- Wes Johnson estimated that Ms. Mangum's property could have up to 30 parking spaces.
- The property owners and vendors, allowed under this proposal, would not pay festival market business license fees because they provided and maintained public parking throughout the year.
- The proposal was a balance between the interests of the Midway Boosters and local

business owners.

- The number of vendors off the Town Square during Swiss Days declined in 2019.
- The proposal required public parking, which was maintained throughout the year, but it did not require a business license.
- The already required parking for a business did not qualify.
- Limiting the proposal to the overlay zone helped law enforcement during Swiss Days.
- This did not replace the required parking for a business.
- The vendors would have to sell products like those sold at Swiss Days.

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

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

- The proposal had not been specifically discussed with the Midway Boosters.
- One of the Booster's goals was to encourage business.
- A lot of time and resources were donated for Swiss Days. The vendors on the Square helped pay for the shuttle buses and other costs of the event. Was it fair that some vendors not help pay for those costs?
- Vendors off the Square paid more for their space than those on the Square.
- The proposal facilitated public parking.
- Sometimes a code text amendment was not the solution.
- How many potential parking spaces would the proposal provide?
- Could other trades be made?
- The City was looking at other solutions for public parking.
- The parking problems ended at 200 East.
- Did the proposal violate equal protection laws or was it an unfair exaction?
- The additional vendors for a few days was worth it for the increased public parking.
- "Grandfathered" businesses could benefit if they had additional space that could be used for parking.
- Should "grandfathered" properties be excluded? There were few businesses that would fall into this category. A "grandfathered" use could only be taken away if the use was changed.
- The proposal allowed vendors from year to year. The City could choose to not grant vendors beyond a year.
- It was easier to put in parking than to have a business and get a festival market business license.
- Would neighbors be negatively impacted by having a parking lot next to them? Should each lot be considered on a case by case basis?
- A parking lot was preferred to drivers parking in front of residences.
- The additional parking would help with events such as the farmers' market, etc.
- Would the proposal create a significant amount of new parking?
- A parking ombudsman would be more effective than a code text amendment.
- It could become difficult to regulate and enforce the types of products sold.
- The City should support Swiss Days.
- The proposal should specifically state that any fees were being waived.
- The current code limited the number of vendors off the Square based on the size of the hosting business.

Motion: Council Member Orme moved to adopt Ordinance 2020-02 with the following changes:

- It should state that the fees were specifically being waived.
- The products sold would be substantially related to those historically sold on the Town Square during Swiss Days.
- It should state that the vendors were allowed because of the public benefit of additional year around parking.

Discussion: Council Member Drury and Dougherty were not ready to act that night.

Council Member Drury wanted input from the Boosters which held Swiss Days. He said it was difficult to understand the proposal with only one case study. He also wanted more time to finalize the conditions.

Council Member Orme thought that Brian Larney, who owned the parking lot next to the post office, might use the proposal which would provide additional public parking. Council Member Drury stated that it was not the City's responsibility to ensure owners made money off their property.

Second: The motion died for lack of a second.

Motion: Council Member Simonsen moved to table consideration of Ordinance 2020-02, until the next council meeting, so that more information could be gathered to address the concerns raised that evening and with the following conditions:

- It should state that the fees were specifically being waived.
- The products sold should be substantially related to those historically sold on the Town Square during Swiss Days.
- It should state that the vendors were allowed because of the public benefit of additional year around parking.
- The proposed boundary be adjusted as appropriate.
- The legal questions regarding exactions be addressed.

Second: Council Member Dougherty seconded the motion.

Discussion: Council Member Drury suggested that the boundary be expanded east. He did not see a benefit for it to be north of the Town Square. Mr. Henke suggested 150 feet on the north and 150 feet on the south of Main Street.

Mayor Johnson indicated that the proposal could be discussed at the strategic planning meeting.

Corbin Gordon recommended against the proposal being a conditional use because of equal protection laws. Mr. Gordon indicated that the Boosters leased the Town Square for Swiss Days and could screen their vendors. He said the City could not do the same for the vendors off the square. Council Member Dougherty approved if different permits were required for on and off square vendors.

Mr. Gordon indicated that the proposal was not forcing someone to do something, so it was not

an exaction.

Council Member Dougherty raised the following questions:

- Would the proposal grant a new type of permit?
- Was the City using free parking as currency? Did it want to limit this exchange just to having vendors during Swiss Days?

Council Member Payne asked if a private party requested the proposal? Council Member Drury responded that the City proposed the ordinance.

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

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

- 9. Connect to Culinary Water System** (Jim May – Approximately 20 minutes) – Discuss and possibly allow a property at 1242 North Homestead Drive, which is outside of the city limits, to be connected to Midway City’s culinary water system.

Michael Henke noted that Mr. May was not present. Mayor Johnson thought that the applicant should be in attendance.

Motion: Council Member Dougherty moved to continue the item until the applicant requested that it be put back on an agenda.

Second: Council Member Simonsen seconded the motion.

Discussion: None

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

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

- 10. CDRA Annual Meeting** – The Annual Meeting of the Community Development and Renewal Agency for Midway City (Please See Separate Agenda).

Motion: Council Member Simonsen moved to convene as the governing board of the Community Development and Renewal Agency of Midway City.

Second: Council Member Drury seconded the motion.

Discussion: None

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

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

Note: Minutes of the Agency are maintained separately.

Motion: Board Member Drury moved to adjourn the board meeting of the Community Development and Renewal Agency and to continue the City council meeting.

Second: Board Member Dougherty seconded the motion.

Discussion: None

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

Board Member Dougherty	Aye
Board Member Drury	Aye
Board Member Orme	Aye
Board Member Payne	Aye
Board Member Simonsen	Aye

11. Watts Remund Farms PUD, Phases 2, 3A, 3B, and 3C / Preliminary Approval (Berg Engineering – Approximately 30 minutes) – Discuss and possibly grant preliminary approval for Phases 2, 3A, 3B, and 3C of the Watts Remund Farms PUD located at 200 West 600 North (Zoning is R-1-15). Recommended without 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 proposed phases
- Master park plan
- Linear park from downtown to the Valais Park
- Amended master plan
- Trails
- Sensitive lands
- Phasing plan
- Open space plan
- Amenities plan
- Landscape plan

- Site studies
- Water Board recommendation for each phase
- Possible findings

Mr. Henke also made the following comments:

- These were the remaining four phases in the project.
- Normally phases were presented separately.
- A lot of building permits had already been issued for Phase 1.
- Staff recommended that the phases be numbered 2, 3 and 4.
- The phases met the requirement for 50% open space for the development and each phase.
- No water rights were required for the wetlands. This policy would be reviewed in the future because wetlands were shrinking.
- The plat maps for the phases might not be recorded together.

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:

- Phases 2 and 3a might be recorded together but was not sure about the other phases.
- Would renumber the phases.

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

- Signage for the trails and egress in the project was not addressed in the development agreement. The HOA would determine how the private trails would be signed.
- The wetlands should not be disturbed or sprayed.
- More water rights would have to be provided if the wetlands dried up and the HOA wanted to irrigate that area.
- The City Council allowed some of the units in the project to be within the 25-foot buffer around the wetlands. The Council did not allow units in the wetlands.
- There was not a requirement for the sequencing of the phases. Each phase did have to meet access requirements.

Public Hearing

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

Cathy Philpot

Ms. Philpot made the following comments:

- Lived south of the development.

- Owned property next to the development.
- Asked that preliminary approval not yet be granted to Phase 3c until some water issues were understood.
- Water issues with her house and property had increase since trenching in the development. She now had to dehumidify her crawlspace.
- Water was coming out of the tops of the test wells in Phase 3c.
- The water level had risen in other test wells.
- The water lever had decreased in test wells away from the trenching.
- Thought that the trenching, even though clay dams were installed, allowed the water to flow to the south rather than the east.
- Did not think that a wetter winter was the cause of the increased water to the south.
- A spring on her property was producing more water.
- Rick Tatton had a spring in the area that was also producing more water.
- Her neighbors were also having problems with increased groundwater.
- The amount of groundwater in Swiss Paradise, which was east of the development, had significantly decreased.
- Spoke with the developer and Wes Johnson. They attributed the water problems to a more wet winter.
- Water was flowing from the muskrat holes in the ditch along 250 North.

Wes Johnson made the following comments:

- Recently contacted the City's hydrogeologist and would meet with him regarding the water issues. Ms. Philpot was welcome to attend that meeting.
- The drain line in Swiss Paradise had been repaired which could be the reason for the decreased groundwater in that area.
- A drain line could be installed along the south of the development.
- Would provide the most recent data for the test wells to Ms. Philpot.

Athina Koumarela

Ms. Koumarela made the following comments:

- Test wells #16 and #17 had been very high for a long time.
- Approval of Phase 3c might need to be postponed until five years of test well data had been collected.
- Had presented data to the City, when master plan approval was granted, regarding how much groundwater the neighbors were pumping. Wanted to see how much they were now pumping.

Mr. Berg responded that he had not heard about the water issues. He said that he would investigate them. He did not object to preliminary approval being postponed for Phase 3c.

Mr. Berg indicated that wetlands sometimes needed to be mowed or burned to remain healthy. Council Member Dougherty responded that they should not be manicured. Wes Johnson added that the United States Army Corps of Engineers allowed mowing and spraying in wetlands but not filling in or dredging. He indicated that the City's code prohibited disturbing wetlands.

Mr. Berg noted that the wetlands were shown on the plat map. Wes Johnson explained that the

Corps of Engineers would have to approve any re-delineation of the wetlands and the plat map would have to be amended to show the change.

Mr. Berg did not want wetland maintenance to be prohibited. He noted that the City mowed its wetlands in the Valais Park.

Mr. Berg explained the stormwater system for Phase 3c.

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

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

- Vesting was granted with preliminary approval, but it did not change what could happen on the ground.
- Preliminary approval could be postponed or granted with conditions.
- The approved master plan dictated the location of the units, but they could be adjusted depending upon the results of the water study.
- A solution to the water issues could be found before final approval was granted.
- More clay dams or a drainpipe might be needed.
- None of the units had basements.
- What recourse did the City have if final approval was granted but the issues persisted? Final approval should not be granted until the issues were resolved.
- Final approval could be granted with conditions. The construction bond could also cover resolving the issues.
- The civil engineer not the City would be liable if water was an issue in five years.
- Another year of monitoring the groundwater was not an unreasonable request.
- A decision could not be withheld indefinitely.
- Could the cause of the water issues also be in areas outside of Phase 3c?

Motion: Council Member Drury moved to grant preliminary approval for Phases 2, 3a and 3b of the Watts Remund Farms PUD, located at 200 West 600 North, with the following findings and conditions:

- The proposed plan met the requirements of the code for PUDs.
- The public trail system in the development would benefit the entire community by creating a trail away from collector roads.
- The proposal complied with the approved master plan.
- Included the recommendation of the Water Board, as presented that evening, for the water rights that needed to be turned over to the City.
- The numbering for the phases run numerically from 2 to 5.
- The trail that connected the Remund Farms, 300 North and the planned River Road roundabout be constructed with Phase 2.
- Preliminary approval was not granted to Phase 3c.
- The City Engineer, developer and neighbors would work on a solution to the water issues and then come back for preliminary approval for Phase 3c.
- There would be a note on the plat map indicating the amount of water that needed to be turned in and that it did not cover the wetlands.

Second: Council Member Simonsen seconded the motion.

Discussion: None

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

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

Motion: Without objection, Mayor Johnson recessed the meeting at 9:02 p.m. She reconvened the meeting at 9:10 p.m.

12. Dutch Canyon Subdivision, Plat B / Amendment (Berg Engineering – Approximately 15 minutes) – Discuss and possibly amend Plat B of the Dutch Canyon Subdivision, located at 1676 North Dutch Mountain Circle, to combine lots #11 and #12 (Zoning is RA-1-43).

Public Hearing

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

- Land use summary
- Location of the amendment
- Recorded plat map
- Proposed plat map
- Possible findings

Mr. Henke also made the following comments:

- There was a trend to combine lots.
- A building envelope was not required if the setbacks were met.
- The combined lots could be re-subdivided only if they met all code requirements. The Council was not required to approve such a request.

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

Paul Berg, Berg Engineering Resource Group and representing the applicants, indicated that the subdivision CC&Rs did not have a size limitation on houses.

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

- Capping laterals at the main line damaged roads so that was done only when lots were rearranged. It was not required when lots were combined.
- The State Code required that this type of amendment had to be considered by the land use authority.

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 Payne moved to approve the amendment to Plat B of the Dutch Canyon Subdivision, located at 1676 North Dutch Mountain Circle, to combine lots #11 and #12 with no conditions and the following findings:

- Potential trips per day generated from the two lots would be reduced.
- Density in the subdivision would be reduced.
- The area would feel more open because of the reduction of one lot.
- No public street, right-of-way, or easement would be vacated or altered.

Second: Council Member Drury seconded the motion.

Discussion: None

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

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

13. Midway Crest Annexation / Further Consideration (Berg Engineering – Approximately 15 minutes) – Discuss and possibly approve for further consideration the Midway Crest Annexation containing 24.16 acres located at 600 South Fox Den Road.

Paul Berg, Berg Engineering Resource Group and representing the petitioner, made the following comments regarding the proposed annexation:

- The annexation was a condition of providing culinary water to the development on the property.
- The plat map for the development was being signed by Wasatch County.
- The project did not meet all the requirements for a rural preservation subdivision.

Michael Henke gave a presentation and reviewed the following items:

- Land use summary
- Location of the annexation
- Access
- Water Board recommendation
- Site plan
- Trail
- Proposed annexation plan

- Annexation process
- Culinary water will serve letter

Mr. Henke also made the following comments:

- The development would be deed restricted from being further subdivided.
- An existing home on the property would be razed.
- The property historically had not been irrigated.
- The petitioner chose a paved trail along the cul-de-sac instead of an unpaved trail along the south of the property.
- The petitioner wanted to build his home quickly, so he developed in the County with the promise to annex when the subdivision was approved.
- Many of the conditions regarding the project were in the will serve letter.
- The development would connect to the sewer system.

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

Brad Wilson explained the noticing and public hearing requirements for an annexation.

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

- This was an example of a project that was an acre short of being a rural preservation subdivision. If it would have qualified, then the road would have been maintained by the HOA instead of the City.
- The will serve letter addressed the project being near a sewer treatment plant.

Motion: Council Member Simonsen moved to approve the Midway Crest annexation for further consideration based on the property being deed restricted from further subdividing.

Second: Council Member Orme seconded the motion.

Discussion: Council Member Dougherty preferred annexing property before it was subdivided, and the culinary water was provided. Council Member Orme thought that was the preference of the entire Council, but time was an issue for the developer. Council Member Dougherty stated that the City should be the “master of its own fate”.

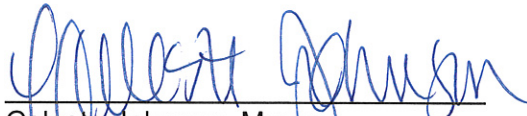
Vote: The motion was approved with the Council voting as follows:

Council Member Dougherty	Aye
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Aye

14. Adjournment

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

The meeting was adjourned at 9:43 p.m.



Celeste Johnson, Mayor



Brad Wilson, Recorder