

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

**Tuesday, 6 June 2023, 6:00 p.m.
Midway Community Center, 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, 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 Drury and Council Member Simonsen.

Members Present:

Celeste Johnson, Mayor
Steve Dougherty, Council Member
Lisa Orme, Council Member
Kevin Payne, Council Member

Staff Present:

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

Members Excused:

Jeff Drury, Council Member
JC Simonsen, 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. She gave the prayer and/or inspirational message.

2. Consent Calendar

- a. Agenda for the 6 June 2023 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 16 May 2023 City Council Work Meeting
- d. Minutes of the 16 May 2023 City Council Regular Meeting
- e. The bond for the Midway City Mayor

Note: Copies of items 2a through 2e are contained in the supplemental file.

Council Member Dougherty asked about the warrant for Silver Spur Construction. Wes Johnson responded that it was for materials purchased for the Homestead trail and utilities project.

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

Second: Council Member Orme seconded the motion.

Discussion: None

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

Council Member Dougherty	Excused from the Meeting
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Excused from the Meeting

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

Mayor Johnson asked if there were any comments from the public for items not on the agenda.

Sewer Treatment Plant / Concerns

LaDawn Stead made the following comments:

- Thanked the Council for its service.
- The ponds at the Heber Valley Special Service District's (HVSSD) sewer treatment plant smelled.
- There were unexplained sicknesses and health problems when the ponds smelled.
- The plant used an outdated system that was not being maintained.
- The plant should be upgraded.
- A citizen action committee should be formed to help solve the problem.

Mayor Johnson, who also served on the HVSSD Board, made the following comments:

- Met with a group of residents who were concerned about the plant and the smell.
- Asked that the group submit questions in writing for the next board meeting.
- Questions were not submitted.
- A question-and-answer period at the next board meeting was cancelled because no questions were submitted, and the group had discussed litigation.
- People could still come to the board meeting and speak during the public comment period.

Council Member Dougherty explained that the Council was not directly involved with HVSSD but he supported the residents' concerns.

Council Member Orme made the following comments:

- The problem was bad.
- Received a lot of phone calls about the issue.
- The plant treated sewage from the entire valley.
- The problem was an entire community issue.

Dan Stead made the following comments:

- Lived in Midway for twelve years.
- Appreciated the Council's service.
- The Council should use its indirect influence to solve the problems with the plant.
- Suffered from health problems that started with the smell and went away when he left on vacation. The problem returned when he returned from vacation.
- Supported a citizen action committee to address the problem.
- The committee would have the time to find solutions.

No further comments were offered.

4. Department Reports

Wasatch Works / Golf Tournament

Council Member Orme reported that Heber Valley Tourism and Economic Development (HVTED) would hold a golf tournament to raise money for the Wasatch Works program. The program would provide scholarships to students who worked 600 hours at local businesses in two years.

Ameyalli Resort / Groundbreaking

Council Member Orme reported that a groundbreaking would be held for the Ameyalli Resort on June 27th at 4:00 p.m.

Broken Limbs / Clean-Up

Council Member Orme explained that the Public Works Department would not pick up tree limbs placed along the sides of the roads after May 30th. Mayor Johnson added that the Department was working additional hours to pick up the limbs. She noted that residents could take garbage to the transfer station for free several times during June.

Mental Health / Retreat / Facility

Mayor Johnson reported that she would attend a mental health retreat to be held at Bryce Canyon. She added that the acquisition of land, and the fund raising for a mental health facility, next to the Heber Valley Hospital was progressing.

HVRR / Tickets

Mayor Johnson reported that all the tickets for a free ride on the Heber Valley Railroad had been given away.

5. High Valley Arts / Temporary Use Permit (City Planner – Approximately 15 minutes)

Discuss and possibly deny, continue, or grant a temporary use permit, and waive the application fee, for High Valley Arts to exceed the allowed sound levels for a musical production at 200 South and 400 East.

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

- Overview
- Noise limits
- Location and decibel levels

Mr. Henke also made the following comments:

- No formal complaints had been submitted regarding the productions.
- Had previously received a letter of support for the productions from a bordering subdivision.
- The production would end by 10:30 p.m.

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

Motion: Council Member Payne moved to approve a temporary use permit for the High Valley Arts to exceed the allowed sound levels for a musical production at 200 South and 400 East.

Second: Council Member Dougherty seconded the motion.

Discussion: None

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

Council Member Dougherty	Excused from the Meeting
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Excused from the Meeting

Motion: Council Member Dougherty moved to waive the fee for the temporary use permit because he was supportive of the activity.

Second: Council Member Payne seconded the motion.

Discussion: None

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

Council Member Dougherty	Excused from the Meeting
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Excused from the Meeting

6. Ordinance 2023-09 / TROD Amendment (Chad and Karissa Marsing – Approximately 45 minutes) – Discuss and possibly deny, continue, or adopt Ordinance 2023-09 amending the Midway City Land Use Map to add a parcel of land, located at 26 South 200 West, to the Transient Rental Overlay District (TROD). Recommended for denial by the Midway City Planning Commission. **Public Hearing**

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

- Land use summary
- Location of the proposed transient rental
- Zoning map with the TROD
- Discussion points
- Possible findings supporting the amendment
- Possible findings against the amendment

Mr. Henke also made the following comments:

- The application was the third proposed TROD amendment in the last year.
- The City's transient rental code had been adopted by other municipalities.
- The underlying zone would not change.
- The applicant would still have to request a conditional use permit if the amendment was approved.
- An amendment at Burgi Hill had been denied but one on 100 South had been approved.
- Language in the General Plan discouraged such amendments.
- The amendment was a legislative action and discretionary.
- Did not have any proposed conditions.
- Conditions could be added with the conditional use permit.

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

Mayor Johnson noted that the Planning Commission recommended denial of the amendment to not set precedence.

Public Hearing

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

Karissa Marsing, Applicant

Ms. Marsing made the following comments:

- Knew the chances of approval were slim.
- Wanted to share her thoughts about the request.
- Grew up in Charleston.
- She and her husband moved to Price to farm.
- Their home in Midway being a transient rental would allow them to come back to visit.
- Wanted to stay connected to the area.
- The house was across the street from a restaurant which was not ideal for a full-time resident but better for tourists.
- Some tourists preferred a house to a resort.
- Had been open with her neighbors.
- Offered to install a privacy fence.
- The house was small and could accommodate a maximum of six people.
- Could restrict partying and other similar activities.
- Would rent the house for longer periods of time if the request was not approved.
- Understood the concerns with transient rental units. There were no perfect answers to those concerns.
- Requested a compromise solution.

Lannette Nelson

Ms. Nelson made the following comments:

- Did not support the amendment for the reasons that Mr. Henke presented.
- It would increase property values.
- Transient rentals should be taxed at 100% of their value.
- Transient rental information should be provided to the County Assessor.

Council Member Orme explained that the County Assessor was being more stringent and required proof that a house was a primary residence.

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

Council Member Dougherty made the following comments:

- Did not agree with the provision in the General Plan that discouraged transient rentals.
- There was no evidence that transient rentals competed with long-term rentals.
- Someone would buy a house rather than rent because rental prices were so high.
- The amendment at Burgi Hill was denied because the property was isolated from the TROD.
- The boundary line for the TROD was manufactured.
- The surrounding neighbors did not protest the request.

Council Member Orme noted that the property had businesses on two sides.

Council Member Payne did not like spot zoning or a boundary that slowly expanded, but the request made sense because of the businesses on two sides.

Motion: Council Member Dougherty moved to approve Ordinance 2023-09, with all due difference to the Planning Commission and thankful for their work, to include parcel 00-0006-0157 located at 26 South 200 West in the transient rental overlay district as crafted in the meeting packet.

Second: Council Member Orme seconded the motion.

Discussion: None

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

Council Member Dougherty	Excused from the Meeting
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Excused from the Meeting

7. Malinka Subdivision / Preliminary & Final Approval (Peter and Emily Malinka – Approximately 45 minutes) – Discuss and possibly deny, continue, or grant preliminary and final approval for the Malinka Subdivision located at 150 North 100 East (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 request and reviewed the following items:

- Benefits of a density reduction subdivision
- Land use summary
- Location of the proposed development
- Existing site and utilities
- Email from the Engfers who owned property on the north boundary.
- Propose subdivision
- Proposed plat map
- Utility plan
- Discussion items
- Recommended water requirement
- Possible findings
- Proposed conditions

Mr. Henke also made the following comments:

- Both preliminary and final approvals were being sought.
- The plat map needed an easement for the pressurized irrigation line.
- The project included a portion of property that was recently subdivided. Because of this recent subdivision the fence not being on the property line was less of an issue.

- A portion of the existing irrigation ditch would be piped with an easement on the plat map.
- The proposed driveway was not required to be paved.
- The sewer line would be moved beneath the driveway.

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 retention ponds would have surface storage and sumps.
- The west pond could be used for snow storage.
- Just found out about the pressurized irrigation line and needed to know more about it.

Public Hearing

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

Doug Engfer

Mr. Engfer made the following comments:

- Supported the project because it did not have the maximum allowed density.
- Wanted to buy the fifth lot in the proposed development.
- The pressurized irrigation line ran between the sewer line and the west property line. It was 20 feet from the property line.
- The pressurized irrigation line was discussed in the planning commission meeting.
- The fence on the north side of lot #5 could not be easily moved because it was next to his sprinkler system. An easement would be needed, or the fence relocated. This was a civil matter. The issue would be resolved if he purchased the lot.

Corbin Gordon indicated that the locations of the pressurized irrigation line and Mr. Engfer's sprinkler system were civil matters. Council Member Dougherty indicated that the Midway Irrigation Company needed an easement for the irrigation line. He suggested that be addressed in the development agreement. He added that the easement for the irrigation line but not the sprinkler system could be shown on the plat map.

Wes Johnson noted that the sewer line on lot #5 was a private lateral.

Leslie Miller

Ms. Miller made the following comments:

- Thanked the City for the revised general plan and protecting open space.
- The proposed development would have an impact on the quiet in the area.
- Loved trees.

- Midway was a Tree City USA and cared for and fostered trees.
- Followed the process of the subdivision.
- The project would destroy a small grove of trees.
- One of the trees was a rare 200-year-old Inglewood Spruce. It should not be sacrificed for a driveway.
- The entrance should be moved to honor the area's rural character and preserve the tree. Could help pay for this engineering redesign.
- The lots should have building envelopes and greater setbacks.
- The larger lots could have large structures.
- Ten-foot rear setbacks were not sufficient.
- Requested voluntary adjustments to the setbacks.
- Would endure the construction and could plant landscaping along the property line.

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

Paul Berg, Berg Engineering Resource Group and representing the applicants, reviewed the following items:

- Survey drawings
- Lot line adjustment for the Engfers
- Warranty deed
- Property transfer to the Engfers

He also made the following additional comments:

- The project was a density reduction subdivision instead of a standard subdivision with eleven or twelve lots.
- The seller chose not to follow the fence line when they sold the property to the Engfers.
- A previous owner did a lot line agreement instead of following a fence.
- Would put the pressurized irrigation easement on the plat map.
- The easement for the irrigation ditch would be expanded.
- Other utilities would be put under the driveways.
- An older concept plan, which would have saved the trees, did not work for the existing house and house plans for the other lots.
- The trees were not protected by the City's code.
- The cul-de-sac could not be flipped because it would make lot #2 undevelopable.
- A smaller cul-de-sac was not allowed by the Municipal Code.
- The size requirements for cul-de-sacs had increased over time.
- The cul-de-sac could be replaced by a hammerhead turnaround.
- Wanted to preserve the trees but sometimes they had to be removed.
- The proposal met the City's code.

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

- The location of the sprinkler system was a private matter.
- The shutoff valve for the Engfers' irrigation system was south of the boundary line but north of the fence.
- More vehicles would have to back up if the cul-de-sac was smaller.
- The cul-de-sac could be moved ten feet to the west and be 10 feet smaller to protect the

large tree. The tree would still be in the right-of-way.

Motion: Council Member Dougherty moved to grant preliminary and final approval for the Malinka Density Reduction Subdivision with the following findings and conditions:

- The proposed lots met the minimum requirements for the R-1-15 zone.
- The proposal met the intent of the General Plan for the R-1-15 zone.
- The proposal complied with the requirements for the density reduction subdivision code.
- The subdivision helped comply with the vision stated in the General Plan to preserve open space and a country/rural atmosphere.
- The lots would be deed restricted so they could never be further subdivided.
- The duration of Preliminary/Final Approval would be for one year from the date of approval of the development by the City Council.
- The deed restrictions that would be recorded towards the lots would be submitted to the City for review and recorded immediately after the plat map was recorded.
- A note on the plat map was included with language that clearly stated that subdividing the lots was prohibited.
- A development agreement would be approved.
- Modifications be made to the design of the public cul-de-sac that would save the trees. The modifications would probably be a combination of relocating the cul-de-sac and reducing its size.
- An arborist would inspect the trees to see if all of them could be saved or just the large Inglewood Spruce.
- Any Midway Sanitation District or Midway Irrigation Company service lines, outside of public easements, would have easements shown on the plat map.

Second: Council Member Orme seconded the motion.

Discussion: Michael Henke indicated that the cul-de-sac would have to meet minimum fire standards. Council Member Dougherty responded that staff would ensure the design met the standards and the requirements of the motion.

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

Council Member Dougherty	Excused from the Meeting
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Excused from the Meeting

- 8. Resolution 2023-16 / Malinka Subdivision Development Agreement** (City Attorney – Approximately 5 minutes) – Discuss and possibly deny, continue, or approve Resolution 2023-16 adopting a development agreement for the Malinka Subdivision located at 150 North 100 East (Zoning is R-1-15).

Corbin Gordon indicated that he would make the following changes to the development agreement:

- Add easements for the Midway Irrigation Company and Midway Sanitation District.

- The cul-de-sac could be reduced from a diameter of 90 to 80 feet and be more symmetrical.
- Evidence would be provided of agreements for any private easement for the Engfers' property.

Motion: Council Member Dougherty moved to approve Resolution 2023-16, adopting a development agreement for the Malinka Density Reduction Subdivision, with the modifications specified by the City Attorney and authorized the Mayor to sign it.

Second: Council Member Payne seconded the motion.

Discussion: None

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

Council Member Dougherty	Excused from the Meeting
Council Member Drury	Aye
Council Member Orme	Aye
Council Member Payne	Aye
Council Member Simonsen	Excused from the Meeting

9. Policies and Procedures / TAP Funds (Mayor Johnson – Approximately 60 minutes) – Discuss amending the Midway City Policies and Procedures to include how revenue from the Trails, Arts, and Parks Tax is administered and distributed.

Mayor Johnson made the following comments regarding the proposal:

- Provided a simple form to the Council as a concept.
- The Council needed to determine how much of the tax revenue should be kept by the City and how much would be distributed to others.
- Park City, Wasatch County, and Heber City created committees to distribute the revenue, but they received more money than Midway.
- A committee would have members who supported certain interests. There would not be enough money to satisfy all interests.
- Recommended that the Council review the applications and determine how the money would be distributed.

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

- The Council would receive plenty of advice from the applicants.
- The revenue did not have to be spent in the year that it was received.
- A minimum amount should not be set for requests. This would give the Council greater flexibility.
- The Council could not anticipate every request that could be made.
- The number of people impacted should be considered.
- Applicants could be asked more questions.
- The distribution process could be tied to the budgeting process.
- Any requests needed to be for trails, arts, or parks.
- The Midway Boosters might ask for money or matching funds.

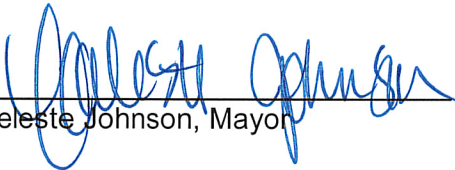
- Applications should be considered together and not separately.
- Good requests could be submitted at any time.
- The money should not go to just one requester.
- Some groups might argue that the City already budgeted for parks and trails so the money should be used for the arts.
- The decision process should be transparent.
- Special interest groups should not receive preference.
- The money should not reduce the need for impact fees.
- A list of criteria should be avoided to provide more flexibility.
- Applicants would want to know the deadlines.
- It should be made clear that money might not be awarded to anyone.
- Applications should be considered semiannually.
- Even city sponsored entities should have to submit an application.
- The application deadlines would be January 30th and July 30th.
- A policy should be placed on the next council meeting agenda.

The Council liked a simple application and submission process.

10. Adjournment

Motion: Council Member Dougherty moved to adjourn the meeting. Council Member Payne seconded the motion. The motion passed unanimously.

The meeting was adjourned at 8:57 p.m.



Celeste Johnson, Mayor



Brad Wilson, Recorder