

MINUTES OF THE MIDWAY CITY COUNCIL (Meeting)

Friday, 7 August 2020, 8:00 a.m.
Midway City Office Building, Upstairs Conference Room
75 North 100 West, 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

Mayor Johnson called the meeting to order at 8:07 a.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
Brad Wilson, Recorder/Financial Officer

2. Closed Meeting to Discuss Pending or Reasonably Imminent Litigation (Approximately 30 Minutes)

Motion: Council Member Dougherty moved to go into a closed meeting for litigation regarding the transmission line permit.

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: 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 Dougherty	Nay
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 10:00 a.m. She reconvened the meeting at 10:07 a.m.

- 3. Special Bond Election / Authorizing Resolution** (City Attorney – Approximately 30 minutes) – Discuss and possibly decide a dollar amount for the bond and to approve the preparation of an authorizing resolution, for a special bond election, related to the burial of the proposed transmission line along 970 South, Stringtown Road, and Wards Lane.

Corbin Gordon reviewed the options before the Council. He indicated that the cost to prepare the resolution would be \$1,500. He explained the timeline for passing the resolution.

Mayor Johnson made the following comments:

- This was the most difficult decision faced by this council.
- Did not want to divide or burden the community.
- The poll conducted by the City was for specific options which were not being considered at that time.
- The general opinion was that the terms of the conditional use permit, for the transmission line, should be upheld.

Council Member Dougherty made the following comments:

- The state statute governing burying transmission lines favored the utility companies.
- The City was in a position that it could negotiate with the utility companies.
- The Council was considering bonding, to finance all or part of the burial, to facilitate the negotiations.
- The City should not pay more for the project than the amount of the bond.
- Wanted the line to be buried without exacerbating any community divisions and risking resources for other services.

Council Member Orme made the following comments:

- Opposed bonding until all the facts were known.
- The amount to bury the line was unknown.
- Did not know if the dip poles could be moved away from Hwy 113.
- Would every property owner donate the easements needed for the project?
- The dip poles should not be next to Hwy 113.
- Times were uncertain because of the pandemic.
- The City was funding an appeal that it might not win.
- It would cost \$23,000 to put a bond on the ballot.
- The bonds may not be issued even if they were approved by the voters.
- Burying the line would set precedence and open the door for residents to want other lines buried.
- The issue was dividing the community.

Council Member Drury made the following comments:

- The Council was defining what the residents would vote on and helping them make an informed decision.
- The proposal would bury less than a mile of transmission line with the rest still being overhead.
- The issue could lead people to believe that the entire line would be buried.
- By law, the City could not advocate either way for a bond on the ballot.
- The residents needed to know what they were voting for.
- If the bonds were approved, there was still a lot that needed to be done to begin the project.
- Was concerned that the issue could be properly defined for the election.

Motion: Council Member Orme moved to not put the bond issuance on the ballot until the outstanding questions were answered, including getting a definitive cost for the project, so a responsible decision could be made. She added the following findings:

- Putting the issue on the ballot that year was too soon.
- The City was not prepared.
- Two weeks was not enough time to prepare the authorizing resolution and ballot language.

Second: The motion did not receive a second.

Council Member Dougherty suggested a bond amount of \$3.5 million for the following reasons:

- It might be approved by the voters.
- It was enough to get the utility companies to seriously negotiate with the City.
- It was not based on the actual cost to bury the line.
- The City would not pay any more than that amount for the project.
- The HL&P Board could impose a utility charge for any costs above the \$3.5 million.
- The risk would be put on the utility companies.
- Whether the bonds were on the ballot depended upon the negotiations.
- Was open to the amount being modified when the authorizing resolution was considered.

Council Member Payne noted that the HL&P Board was independent of Midway City.

Motion: Council Member Dougherty moved to approve putting a bond on the ballot in November of 2020 for an amount not to exceed \$3.5 million to be used to pay a portion of the incremental cost to Rocky Mountain Power and Heber Light & Power ("Utilities") incurred to bury their proposed transmission line from the Fish Hatchery to a location at least 500 feet beyond the City limits at the end of Ward's Lane, and to immediately retain bond counsel to draft a resolution to be presented to the City Council on August 18, 2020 for approval. He moved that the resolution include the following provisions:

- a. This authority to prepare to put a bond proposition on the 2020 general election ballot was conditioned upon the Utilities' stated willingness to engage in negotiations by no later than August 17, 2020 (i) to settle and dismiss the pending litigation and appeal, and (ii) to agree that Midway City would never be obligated to contribute more than the maximum bond amount to such incremental burial costs.
- b. The agreement would require the voter authorization of the above bond in the 2020 general election and the Utilities' decision to go forward with the burial of the line would be provided above by no later than 2 business days following the canvas of the election. If the Utilities decided to proceed with burial, the litigation would be dismissed. If the bond did not pass or if the Utilities were unwilling to fund¹ the balance of any incremental burial costs, the litigation would proceed with the stay of the Utility Facility Review Board continuing in effect.
- c. If agreement for the Utilities to fund such incremental costs in excess of the amount of the voter approved bond was not reached by the time stated in paragraph b above, the City would not issue a bond or dismiss the litigation and appeal and the City would continue such efforts to challenge the Review Board's decisions in the litigation.
- d. To the extent any provisions of this motion were inconsistent with the terms of the Conditional Use Permit granted the Utilities, such terms would be deemed amended.

¹ "Funding" may mean that HL&P funded the costs and imposed an additional utility charge on Midway meters to recoup such costs over a period not less than 20 years.

Second: Council Member Payne seconded the motion.

Discussion: Council Member Dougherty indicated that his motion did not waive any consistent conditions of the conditional use permit (CUP).

Council Member Drury indicated that the motion should authorize preparing a bond resolution and not actually put the bond on the ballot. Council Member Dougherty agreed and amended his motion accordingly.

Council Member Drury opposed putting additional costs on rate payers. Council Member Simonsen also opposed consenting to costs above the bond amount.

Council Member Simonsen made the following comments:

- The motion would amend and override the CUP.
- The CUP was a compromise that addressed a challenging and divisive issue.
- It was the only reason the issue had reached this point.

- VOLT and private citizens were willing to fundraise which would help bring down the cost.

Council Member Dougherty clarified that any private donations would be appreciated but were not a condition of the project moving forward. He amended his motion to state that HL&P “could” instead of “may” impose an additional utility charge.

Council Member Payne asked that the footnote be for disclosure only.

Amended Motion: Council Member Dougherty moved to approve preparations to put a bond on the ballot in November of 2020 for an amount not to exceed \$3.5 million to be used to pay a portion of the incremental cost to Rocky Mountain Power and Heber Light & Power (“Utilities”) incurred to bury their proposed transmission line from the Fish Hatchery to a location at least 500 feet beyond the City limits at the end of Ward’s Lane, and to immediately retain bond counsel to draft a resolution to be presented to the City Council on August 18, 2020 for approval. He moved that the resolution include the following provisions:

- a. This authority to prepare to put a bond proposition on the 2020 general election ballot was conditioned upon the Utilities’ stated willingness to engage in negotiations by no later than August 17, 2020 (i) to settle and dismiss the pending litigation and appeal, and (ii) to agree that Midway City would never be obligated to contribute more than the maximum bond amount to such incremental burial costs.
- b. The agreement would require the voter authorization of the above bond in the 2020 general election and the Utilities’ decision to go forward with the burial of the line as provided above by no later than 2 business days following the canvas of the election. If the Utilities decided to proceed with burial, the litigation would be dismissed. If the bond did not pass or if the Utilities were unwilling to fund¹ the balance of any incremental burial costs, the litigation would proceed with the stay of the Utility Facility Review Board continuing in effect.
- c. If agreement for the Utilities to fund such incremental costs in excess of the amount of the voter approved bond was not reached by the time stated in paragraph b above, the City would not issue a bond or dismiss the litigation and appeal and the City would continue such efforts to challenge the Review Board’s decisions in the litigation.
- d. To the extent any provisions of this motion were inconsistent with the terms of the Conditional Use Permit granted the Utilities, such terms would be deemed amended.

¹ For purposes of disclosure only, “funding” could mean that HL&P funded the costs and imposed an additional utility charge on Midway meters to recoup such costs over a period not less than 20 years.

Second: Council Member Payne seconded the amended motion.

Discussion: Council Member Simonsen was concerned that the resolution did not set any parameters. He did not want to authorize unrestricted overruns. Council Member Payne responded that the Council did not control what the HL&P Board charged its rate payers. Council Member Simonsen indicated that the City had a role in determining the costs and how they were imposed.

Council Member Drury pointed out that HL&P had already raised its rates for the project. He worried that voters would not understand that the project would further increase their rates.

Council Member Dougherty responded that was disclosed in the motion.

Vote: The motion was not approved with the Council voting as follows:

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

Council Member Simonsen proposed the following changes to the motion:

- Amending the first line and footnote as previously discussed.
- The amount should not exceed \$4 million.
- Negotiations should be required.
- Midway City should never be obligated to contribute more than the maximum amount of the incremental cost.
- Concerned that it did not specify when the line could be buried. It should be after an agreement was reached with the utility companies and not after the election.
- Section “d” should be struck.

Council Member Orme asked if the CUP could be altered. Mr. Gordon responded that RMP was vested.

Council Member Dougherty indicated that if there were any inconsistency with the CUP that the motion would govern.

Council Member Simonsen indicated that the CUP did not obligate VOLT but acknowledged its contribution. He thought that the City could amend the conditions it placed upon itself.

Mr. Gordon advised that amending the CUP would have to be a formal agenda item.

Motion: Council Member Simonsen moved to authorize staff to prepare to put a bond on the ballot in November of 2020 for an amount not to exceed \$4 million to be used to pay a portion of the incremental cost to Rocky Mountain Power and Heber Light & Power (“Utilities”) incurred to bury their proposed transmission line from the Fish Hatchery to a location at least 500 feet beyond the City limits at the end of Ward’s Lane, and to immediately retain bond counsel to draft a resolution to be presented to the City Council on August 18, 2020 for approval. He moved that the resolution include the following provisions:

- a. This authority to prepare to put a bond proposition on the 2020 general election ballot was conditioned upon the Utilities’ stated willingness to engage in negotiations by no later than August 17, 2020 (i) to settle and dismiss the pending litigation and appeal, and (ii) to agree that Midway City would never be obligated to contribute more than the maximum bond amount to such incremental burial costs.
- b. The agreement would require the voter authorization of the above bond in the 2020 general election and the Utilities’ decision to go forward with the burial of the line was provided above by no later than 2 business days following the canvas of the election. If the Utilities decide to proceed with burial, the litigation would be dismissed. If the bond did not pass or if the Utilities were unwilling to fund¹ the balance of any

incremental burial costs, the litigation would proceed with the stay of the Utility Facility Review Board continuing in effect.

- c. If agreement for the Utilities to fund such incremental costs in excess of the amount of the voter approved bond was not reached by the time stated in paragraph b above, the City would not issue a bond or dismiss the litigation and appeal and the City would continue such efforts to challenge the Review Board's decisions in the litigation.

¹ For purposes of disclosure only, "funding" could mean that HL&P funded the costs and imposed an additional utility charge on Midway meters to recoup such costs over a period not less than 20 years.

Second: Council Member Payne seconded the motion.

Discussion: Council Member Dougherty stated that he would not vote for a resolution if the utility companies were not willing to negotiate.

Council Member Drury did not want to change the conditions of the CUP to move the process along.

Council member Drury was concerned about a project cost that would exceed the bond amount. Council Member Dougherty responded that would be the utility companies' problem. Mayor Johnson said that cost concerns would be addressed in the payment agreement.

Council Member Dougherty again pointed out that the bonds did not have to be issued even if they were approved by the voters. Council Member Payne added that the bonds should not be issued until a payment agreement was in place.

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

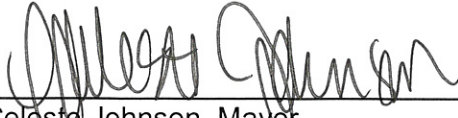
Council Member Dougherty	Aye
Council Member Drury	Nay
Council Member Orme	Nay
Council Member Payne	Aye
Council Member Simonsen	Aye

Council Member Drury asked that the draft resolution be provided to the Council as soon as possible.

4. Adjournment

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

The meeting was adjourned at 11:33 a.m.


Celeste Johnson, Mayor
Brad Wilson, Recorder