

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

**Tuesday, 1 December 2020, 5:00 p.m.
Electronic Meeting**

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 5:02 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 (Arrived at 6:30 p.m.)
Brad Wilson, Recorder/Financial Officer

Mayor Johnson led the Council and meeting attendees in the pledge of allegiance. Council Member Simonsen gave the prayer and/or inspirational message.

2. Consent Calendar

- a. Agenda for the 1 December 2020 City Council Regular Meeting
- b. Warrants
- c. Minutes of the 10 November 2020 City Council Work Meeting
- d. Minutes of the 17 November 2020 City Council Regular Meeting

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

Brad Wilson reviewed a correction to the meeting minutes requested by Council Member Payne. Council Member Simonsen asked about a warrant to the Wasatch County Special Service District #1. Mr. Wilson explained that it was a lease payment for M&I water.

Motion: Council Member Orme moved to approve the consent calendar with the correction to the minutes.

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

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. No comments were offered.

4. Department Reports

Community Center / Renovation

Council Member Orme reported on the renovation of the Community Center. She indicated that new carpet would be laid beginning December 17th. She would also finalize paying the painters.

2021 State Legislative Session / School Impact Fees / Noise from OHVs

Mayor Johnson wanted state legislators to allow school impact fees and address noise from off-highway vehicles. She said this should be done at their next legislative session.

Tree City USA

Council Member Simonsen reported on the process for Midway to be a Tree City USA.

Town Square / Alpenhof Park / Redesign

Council Member Simonsen reviewed the process to redesign the Town Square and the Alpenhof Park.

Dutch Fields Trails / Update

Council Member Simonsen reported on the rebuilding of the Dutch Fields Trail along River Road.

Street Parking / Winter

Council Member Dougherty reminded residents not to park on the streets during the winter so that the snow could be plowed.

HVRR / North Pole Express / Trail

Mayor Johnson reported that the Heber Valley Railroad (HVRR) sold out its North Pole Express and the trail to Deer Creek had been funded.

HVSSD / Growth Study / Budget

Mayor Johnson reported that the Heber Valley Special Service District (HVSSD) was preparing a growth study and its next budget.

MSD / Update

Mayor Johnson reported that the Midway Sanitation District was running well.

Pandemic Update

Mayor Johnson gave an update on the pandemic. She asked everyone to be vigilant. She noted that any vaccine would be optional.

Ice Rink / Opening

Council Member Drury reported that the ice rink opened the previous Friday and would follow all recommendations by the Wasatch County Health Department for the pandemic.

- 5. Resolution 2020-32 / Law Enforcement Agreement** (City Attorney – Approximately 45 minutes) – Discuss and possibly approve Resolution 2020-32 adopting a law enforcement agreement between Midway City and the Wasatch County Sheriff's Department.

Mayor Johnson indicated that the agreement would be tabled for several issues to be resolved.

- 6. Resolution 2020-38 / Gardner Legacy Preserve** (Wendy Fisher – Approximately 15 minutes) – Discuss and possibly approve Resolution 2020-38 demonstrating the intention of Midway City to preserve open space, located at approximately 1300 South on the east side of State Highway 113, to be known as the Gardner Legacy Preserve.

Wendy Fisher, Utah Open Lands Executive Director, gave a presentation regarding the matter and reviewed the following items:

- Location of the property
- Public access and use

Ms. Fisher also made the following comments:

- The resolution would be for the parcel along State Highway 113.
- It would complete the donation.
- Was working to finalize the conservation easement. Wanted this to happen by the end of the year.
- The property would continue to be owned by Kem Gardner, but the development rights would be removed.
- The \$1 million, requested for the donation, would be given back to the City to build public infrastructure on the property.
- The property would continue to be used for agriculture.
- The City would not be a party to the conservation easement.

Motion: Council Member Drury moved to adopt Resolution 2020-38 for the Gardner Legacy Preserve with no conditions or changes.

Second: Council Member Dougherty 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

7. Albert Kohler Legacy Farm / Letter of Commitment (Wendy Fisher – Approximately 15 minutes) – Discuss and possibly approve a letter committing open space funds for the preservation of the Albert Kohler Legacy Farm located at River Road and Burgi Lane.

Note: Council Member Orme recused herself from consideration of the issue.

Wendy Fisher, Utah Open Lands Executive Director, gave a presentation regarding the matter and reviewed the following items:

- Legacy of the Farm

Ms. Fisher also made the following comments:

- The project would anchor agriculture in the area.
- Federal funds had been approved for the preservation project.
- The landowner family was contributing 30% of the cost.

- Needed to close by the end of the year.
- The project included significant fundraising.
- \$221,500 might be needed from the City as a backstop. This should not affect the fundraising.
- The previous letter for support from the City had reservations but showed it was committed to the project.

Council Member Drury made the following comments:

- Two letters had been prepared for that evening. The second letter would increase the City's financial contribution.
- Annexing the property was discussed when the previous letter for support was approved.
- Annexation was the intent of the process.
- A letter of commitment could be approved that evening with a separate timeline for potential annexation being established in a memorandum of understanding between the landowner and the City. This memo should not delay the open space funding.

Ms. Fisher made the following additional comments:

- Annexation should be separate and apart from the open space funding.
- There was no quid pro quo between annexation and the funding.
- Utah Open Lands should not be involved in the annexation.

Motion: Council Member Drury made the following motion:

- Adopt the first letter, prepared for that evening, committing \$1 million for the preservation of open space in the Albert Kohler Legacy Farm.
- If needed, based on private fundraising goals, additionally adopt and approve the second letter committing to pay up to and not to exceed an additional \$221,500 beyond the initial \$1 million commitment stated in letter number one.
- Adopt the five findings on both letters highlighting specifically that the project and the funding requests were consistent with the vision of the open space element of the Midway City General Plan, the project was located along one of the three major entry corridors into Midway and preserving its use as agriculture and agrarian fit the purpose of the open space bond to preserve Midway's rural roots.
- Anticipated that funds would be transferred prior to December 31, 2020.
- In a separate and completely independent timeline, the City Attorney, Mayor, and the Albert Kohler Legacy Farm would draft a memorandum of understanding (MOU) regarding annexation. This would be a completely independent timeline that would not affect the funding that was mentioned previously in letters one and two.
- The MOU would outline the annexation of the Grant Kohler properties along the upper and lower peninsulas as shown in the packet and outline possible conditions of an annexation across all or some of that property.
- Possible conditions in the MOU would be: all properties that were not within the conservation easement would enter Midway with an RA-1-43 zoning; the lot dedicated to the commercial operation of the dairy would have all land use allowed in the existing county zoning or if any future code was created by Midway City, that allowed for additional uses, that the applicant or the Albert Kohler Legacy Farm would be able to

choose whichever land use they would like to follow; hunting and agricultural rights would remain as currently permitted on the properties; Midway City would waive any and all annexation fees if there was an annexation; Midway City would pay for surveys or any other items related to annexation. These were suggested items that would be included in the MOU, if there were any other items as determined by the applicant or Midway City those could be added to it.

- Authorize the Mayor to make the two edits to the letters regarding the comma in the number 1,000,000 and adding \$500 to the amount of \$221,000.

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	Recused
Council Member Payne	Aye
Council Member Simonsen	Aye

- 8. Huntleigh Woods Subdivision / Final Approval** (David Johnson – Approximately 15 minutes) – Discuss and possibly grant final approval to the Huntleigh Woods Subdivision located at 885 North Pine Canyon Road (Zoning is R-1-15). Recommended with conditions by the Midway City Planning Commission.

The item was not considered.

- 9. Resolution 2020-36 / Huntleigh Woods Subdivision Development Agreement** (City Attorney – Approximately 5 minutes) – Discuss and possibly approve Resolution 2020-36 adopting a development agreement for the Huntleigh Woods Subdivision located at 885 North Pine Canyon Road (Zoning is R-1-15).

The item was not considered.

Public Comment (Continued)

Mayor Johnson asked if there were any comments from the public for items not on the agenda. No comments were offered.

- 10. The Reserve at Midway Subdivision, Phase 1 / Final Approval** (Berg Engineering – Approximately 30 minutes) – Discuss and possibly grant final approval to Phase 1 of The Reserve at Midway Subdivision (Formerly Midway Vistas) located at 285 Luzern Road (Zoning is RA-1-43). Recommended without conditions by the Midway City Planning Commission.

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

- Land use summary
- Proposed location of the project
- Sensitive lands map
- Master plan
- Phasing plan
- Phase one trails and street plan
- Proposed plat map
- Landscaping plan
- Dumpsters and their location
- Water board recommendation
- Planning commission recommendation
- Findings
- Proposed conditions

Mr. Henke also made the following comments:

- The applicant wanted to eliminate one of the redundant trails and replace it with a ten-foot-wide backcountry trail from the Interlaken pump house to the project's southwest corner. The cost would be minimal.

Note: Wes Johnson arrived at 6:30 p.m.

- The trails were private but would have public use easements and built to the City's standards. The HOA would pay the City for their maintenance. The applicant proposed that the HOA maintain them and the City enforce their use.
- The trail along River Road and the Dutch Fields PUD was public but maintained by an HOA.
- Lucerne Road was a public road and could be used for biking.
- The areas not irrigated would be noted on the plat map.
- A tank would be built next to lot forty-six to supply irrigation water to each lot. There would be a water meter at the tank.
- There should be pressurized irrigation (PI) meters for each lot.
- The PI line along the south needed to be relocated.

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

Mike Kohler, Midway Irrigation Company, made the following comments:

- The project was high enough on the hill that it would be difficult to provide enough pressure in the PI system. The resolution for this issue would be a model for the future.
- The Irrigation Company should not maintain a lot of small pumps.
- The PI system was already stressed in that area.
- The applicant had previous experience with this issue.
- The PI line to the south and through the Valais PUD would immediately flood homes if it broke. It should be moved into a road or into a public easement and better pipe used.

- State law may not require that each lot have a PI meter.

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

- The PI pipe on the north would be moved into a road.
- The north to south trail in the middle of the project would not be removed.
- There would be one meter into the tank and the rest of the PI system would be private. The HOA should determine how it policed the water usage.
- The Irrigation Company approved the plat maps for the Valais PUD and did not mention the PI line needing to be moved and upgraded.

Russ Watts, applicant, made the following comments:

- Did not know if he could obtain an easement to move the PI line.
- Was not told over the years that the line was a problem.
- Solving the problem should be a joint effort between the Irrigation Company, City, and himself.
- He should not be responsible for the full expense of moving the line.

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

- The trail obligations needed to be clear and enforceable. The obligations should be in the development agreement and the CC&Rs. Mr. Watts agreed.
- Steve Farrell, Midway Irrigation Company President, approved of one meter for the PI system and the HOA monitoring the individual usage. However, that responsibility should not come back to the Irrigation Company or the City in the future. A similar situation with Lake Creek Farms became a problem.
- There was a concern with the PI system not being individually metered and having areas in the project that would not be irrigated.
- The state law regarding PI meters for each lot needed to be verified.
- A pipeline company had the power of eminent domain.
- The Irrigation Company had signed each of the plat maps for Valais which included the PI line going to the project.
- The applicant and the Irrigation Company needed to resolve the issue of the PI line. This could be a condition of recording the plat map for the proposed project.

Mr. Kohler stated that the Irrigation Company did discuss with Mr. Watts the need to improve the PI line in Valais, which was also one of his developments. Steve Farrell added that it was also the intention of the Irrigation Company that the line be replaced because it was made of agricultural pipe.

Mr. Watts indicated that each lot would have a PI meter. Mr. Farrell requested that there still be a master meter at the tank.

Motion: Council Member Simonsen moved to grant final approval for The Reserve at Midway Subdivision, Phase 1 with the following findings and conditions:

- Accepting the Water Board recommendation and that it be carried out.

- The proposal complied with the requirements of the Municipal Code for standard subdivisions.
- The proposal met the vision of the area as described in the General Plan for the RA-1-43 zone.
- The public trails would be built by the developer and would be an amenity to the entire community.
- The developer would pay the cost of building a 300-foot section of trail along Homestead Drive. This section would take the place of the trail that the City built along Burgi Lane that was originally required of the developer. Payment was required before the phase one plat would be recorded.
- All approved non-irrigated areas would be noted on the plat maps.
- Private roads and sidewalks in the development would have a public access easement which would be noted on the plat maps and in the development agreement.
- Approve a development agreement that would spell out the City's ability to monitor and correct trails issues with the legal authority to manage. If the HOA did not maintain them then the City could.
- The trails system would be changed to take off a previously approved trail and record an easement for a backcountry trail.
- There would be a ten-foot easement along the entire backcountry trail.
- There would be public access easements noted on the plat map for all roads, trails, and sidewalks.
- All non-irrigated areas would be noted on the plat map.
- An agreement being reached between the Midway Irrigation Company and the developer regarding the safety and flow of the pipes related to the changes discussed for this development. This approval would be void if an agreement were not reached. The agreement had to be finalized before the plat map could be recorded.
- The City believed that all developments should have individual PI meters as required by state law. The developer intended to do that.
- The tank for the PI system would have a master meter.
- The development agreement had to be finalized before the plat map could be recorded.

Second: Council Member Dougherty 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

11. Resolution 2020-35 / The Reserve at Midway Subdivision, Phase 1 Development Agreement (City Attorney – Approximately 5 minutes) – Discuss and possibly approve Resolution 2020-35 adopting a development agreement for Phase 1 of The Reserve at Midway Subdivision (Formerly Midway Vistas) located at 285 Luzern Road (Zoning is RA-1-43).

Corbin Gordon read the proposed language for the maintenance of the trails in the project and

made the following comments:

- The language regarding the PI meters would be included.
- The HOA would have 30 days to fix a problem with the trails once the City gave it written notice.
- Some additional minor edits would be made.
- A payment agreement, mediation, or a lawsuit could be used if the HOA did not make the required repairs.
- These requirements could be included in the CC&Rs for the project.

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

- The City should reach out to the HOA before a trails issue become a problem.
- The agreement should not indicate who installed the PI meters. That issue should be decided by the developer and the Irrigation Company.

Motion: Council Member Simonsen moved to approve Resolution 2020-35 adopting a development agreement for The Reserve, Phase 1 with the following conditions:

- The changes requested that evening.
- Including the language read by the City Attorney regarding the maintenance of the trails. This language would be included in the CC&Rs for the project.
- The developer and the Irrigation Company would decide who installed the PI meters.
- Final approval for the phase was subject to the agreement being finalized.

Second: Council Member Dougherty 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

12. Resolution 2020-33 / Settlement Agreement (City Attorney – Approximately 10 minutes) – Discuss and possibly approve Resolution 2020-33 adopting a settlement agreement between Midway City, Rocky Mountain Power, and Heber Light & Power Company.

Corbin Gordon made a presentation regarding the agreement and made the following comments:

- Made the changes requested by the City Council. Heber Light & Power Company (HL&P) and Rocky Mountain Power (RMP) accepted all the changes and other edits.
- Drawings, sufficient for the City to seek its own cost estimates, was a requirement in the agreement.

- Could not get more restrictive terms.
- The applicant needed to show significant impairment to install an emergency transmission line.
- The 18-month notice period was not required if the City approved more developments than what the current transmission lines could service.

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

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

- A will serve letter should be required from HL&P for each development.
- International standards had to be used when determining if a new transmission line was needed.
- The City had responded to the public regarding the agreement and no further public comments would be allowed.
- Only distribution and communications lines would be buried.

Motion: Council Member Drury moved as follows: "I move that we accept the terms of the settlement agreement proposed with RMP & HL&P as drafted subject to the edits set forth in the presentation made by staff to paragraphs 2.a.ii and 2.b.iv., and direct the Mayor to sign the Agreement once the Settlement Agreement has been accepted by all other parties involved."

We accept the staff report.

We accept the following findings:

- The proposed amendment is discretionary and should only be approved if it reduces the impact of the Transmission Line on Midway City and its residents.
- The proposal reduces the size and number of poles initially approved in the Conditional Use Permit, thus reducing the impact of the transmission line on both the neighborhood it runs through and Midway City citizens generally.
- The distribution lines will be buried to help declutter the current transmission line situation, and reduce the weight being carried by the poles, thus reducing poles in the area.
- The proposal will create a second point of power access that will benefit the residents of the valley.
- The proposal will allow more power to enter the valley that will benefit the entire community by meeting community needs.
- The proposal provides Midway City with sufficient notice to possibly bond to bury a future line if one is ever proposed.

- Midway City Council chose not to put a bond up for election in 2020 and presently has no capacity to pay to bury the dual circuit line approved under the terms of the original CUP.
- The proposed amendment is a reasonable way to resolve pending litigation regarding the CUP and saves the City from additional attorney's fees defending the appeal currently pending before the Appellate Court.

Second: Council Member Dougherty seconded the motion.

Discussion: None

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

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

13. 970 South Transmission Line / Conditional Use Permit Amendment (City Attorney – Approximately 5 minutes) – Discuss and possibly approve an amendment to the existing conditional use permit for the transmission line along 970 South, Stringtown Road, and Wards Lane.

Council Member Dougherty asked if additional language was needed for the conditional use permit (CUP) beyond what was included in the settlement agreement. Corbin Gordon responded that he did not want confusion between the two and no additional language was needed.

Council Member Simonsen wanted to ensure that nothing important from the old arrangement had been omitted. Mr. Gordon responded that nothing important had been omitted.

Motion: Council Member Simonsen moved as follows: I move that we amend the Conditional Use Permit granted to HL&P and RMP on December 17, 2019, as follows:

- a) The terms of the Conditional Use Permit shall be as set forth in Paragraph 2, 3, 4, and 5 of the Settlement Agreement entered into between Midway City, HL&P and RMP.
- b) The intent is to replace all of the language in the original Conditional Use Permit with the paragraphs stated above.
- c) In making this motion I also move to adopt the findings and conclusions of staff.
- d) The amendment of the Conditional Use Permit is subject to all parties entering into the Settlement Agreement approved previously by the City Council.

We accept the staff report.

We accept the following findings:

- The proposed amendment is discretionary and should only be approved if it reduces the impact of the Transmission Line on Midway City and its residents.

- The proposal reduces the size and number of poles initially approved in the Conditional Use Permit, thus reducing the impact of the transmission line on both the neighborhood it runs through and Midway City citizens generally.
- The distribution lines will be buried to help declutter the current transmission line situation, and reduce the weight being carried by the poles, thus reducing poles in the area.
- The proposal will create a second point of power access that will benefit the residents of the valley.
- The proposal will allow more power to enter the valley that will benefit the entire community by meeting community needs.
- The proposal provides Midway City with sufficient notice to possibly bond to bury a future line if one is ever proposed.
- Midway City Council chose not to put a bond up for election in 2020 and presently has no capacity to pay to bury the dual circuit line approved under the terms of the original CUP.
- The proposed amendment is a reasonable way to resolve pending litigation regarding the CUP and saves the City from additional attorney's fees defending the appeal currently pending before the Appellate Court.

The CUP now reads as follows (paragraphs 2 through 5 respectively of the Settlement Agreement):

1. Obligations.

a. HL&P shall:

- i. Install Single Circuit Transmission Line. Install or cause to be installed a single circuit 138 kV transmission line (the "**Single Circuit Transmission Line**") from approximately the Midway City Public Works property, located at 280 East 850 South just east of the fish hatchery, to the Midway substation, located near the intersection of 500 South and 773 West adjacent to the Midway City Cemetery, along approximately the route set forth in **Exhibit B** at HL&P's sole cost and expense, in any manner preferred by HL&P, and in accordance with the following specifications:

1. Wooden poles with an approximate diameter of two (2) to three (3) feet and a maximum height from finished grade of 80 feet, designed to carry only the single 138 kV circuit (three separate conductors), lightning protection equipment and two communication lines, and burying underground any electrical distribution lines and providing underground conduit suitable for any existing third-party communication lines. HL&P agrees to install the wooden poles in a fashion that minimizes the total number of poles needed, and agrees that regardless of design,

there will not be more wooden poles than currently exists within the easement.

2. Three (3) rust-colored corner poles composed entirely of metal substantially similar in size to the corner pole currently in place at the northeast corner of the Prestige II Senior Apartments in Heber City but with a rust color (each a “**Rust Colored Metal Corner Pole**”), with an approximate diameter of three (3) to four (4) feet at the base of the poles and an approximate height of 80 feet from finished grade. HL&P will consider installing wooden corner poles that could be guyed instead of Rust Colored Metal Corner Poles subject to property owner approval.
3. The Parties agree that HL&P is proposing a pole for pole replacement within the Midway City boundaries of the existing line that does not alter its present alignment. As part of the amendment to the Existing CUP Midway City may allow alteration of the present alignment along 970 South to accommodate future growth, which may require up to four additional metal angle poles. The angle poles may be composed entirely of metal substantially similar to a Rust Colored Metal Corner Poles. The parties agree that the angle poles will be installed with the smallest poles possible needed to meet industry standards. Installation of the angle poles in conjunction with improvements to 970 South is hereby approved by Midway City and will not require any additional approval to proceed.
4. The Parties acknowledge that there may be a need for metal poles around the fish hatchery and going into the Midway substation, and that this agreement is not designed to dictate design methods outside of the City limits of Midway, except for the agreement that HL&P will use reasonable efforts to install a pole substantially similar to a Rust Colored Metal Corner Pole between Highway 113 and the fish hatchery.
5. HL&P agrees that it will bury all existing electrical distribution lines along 970 South, and on both sides of Stringtown Road and Ward’s Lane within current Midway City limits.
6. HL&P will install conduit along 970 South and on one side of Stringtown Road and Ward’s line. In placing conduit for communication lines, HL&P agrees to coordinate with Midway City, as it coordinates with the communication companies, to assure the conduit is located in a size and location reasonably sufficient to meet the communication company needs. The parties acknowledge that HL&P is not able to prevent the communication companies from attaching to its poles under applicable laws and regulations and nothing in this Agreement should be construed to require HL&P to prevent such lawful activity.

7. HL&P shall obtain all necessary easements needed to install the Single Circuit Transmission Line prior to commencement of construction.
 8. The Parties acknowledge that there will be fiber installed on the top of the poles but there will be no underhanging communication lines on the Single Circuit Transmission Line during the initial construction and operation, except as may be required by applicable law or regulation. Underhanging communication lines shall be defined as any lines that would be hung below the lowest strand of the 138 kV line.
- ii. Restriction on Additional Transmission Line CUP. HL&P agrees it will not submit a conditional use permit to Midway City for either an additional transmission line along the same route as the Single Circuit Transmission Line or along the existing 500 South HL&P transmission line corridor within the Midway City limits as existing as of the date of this Agreement, or a conditional use permit that would increase the diameter, height or number of power poles on the Single Circuit Transmission Line for a period of 10 years after execution of this agreement. For 25 years after execution of this Agreement, HL&P also agrees that it will give Midway City written notice (with preliminary drawings sufficient to enable Midway City to seek its own cost estimate, and a good faith estimate from HL&P to build the line above ground and also to bury it) of its intent to file a conditional use permit to alter, upgrade or add to the existing Single Circuit Transmission Line 18 months in advance of formal application, so that Midway City will have the time and opportunity to pass a bond to potentially bury the line.
 1. The preceding Subsection 2.a.ii. shall not apply to the Single Circuit Transmission Line or to any other electrical infrastructure owned or used by HL&P if the need for new or modified electrical infrastructure is caused by an action or decision by Midway City, including but not limited to approvals of new subdivisions, public road expansions or realignments, development approvals, and issuance of building permits.
 2. The preceding Subsection 2.a.ii. shall not apply to any infrastructure or activity by HL&P that does not require a conditional use permit under the ordinance of Midway City in effect at that time.
 - iii. HL&P agrees to submit the Existing CUP with Midway City to be amended in accordance with the terms set forth above.

b. RMP shall:

- i. Amendment of Existing CUP: RMP agrees to support the proposed amendment to the Existing CUP, as set forth above.
- ii. CUP Withdrawal. RMP agrees that it will withdraw its name from the Existing CUP, but shall only be obligated to do so if the proposed

amendment to the Existing CUP as contemplated by this Agreement is approved by the Midway City Council. The parties agree that the approval of the amendment to the Existing CUP and the withdrawal of RMP from the Existing CUP will occur simultaneously, without the need for additional action by or approval from RMP.

- iii. Restriction on Additional Transmission Line CUP. For 10 years after execution of this Agreement RMP agrees it will not submit a conditional use permit application to Midway City for either an additional transmission line along the same route as the Single Circuit Transmission Line or along the existing 500 South HL&P transmission line corridor within the Midway City limits as existing as of the date of this Agreement, or a conditional use permit that would increase the number of conductors, or the diameter, height, or number of power poles on the Single Circuit Transmission Line. The Parties specifically agree that reconductoring or other modifications to the Single Circuit Transmission Line that do not increase the number of conductors, or alter the overall height, overall diameter, or number of poles for the Single Circuit Transmission Line do not require a conditional use permit and do not fall within the restriction described in this Subsection iii.
- iv. Notice Prior to Application for Future CUP. For 25 years after execution of this Agreement, RMP also agrees that it will give Midway City written notice (with preliminary drawings sufficient to enable Midway City to seek its own cost estimate, and a good faith estimate from RMP to build the line above ground and also to bury it) of its intent to file a future application for a conditional use permit to alter, upgrade, or add to the existing Single Circuit Transmission Line to be built under this agreement at least 18 months in advance of formal application, so that Midway City will have the time and opportunity to pass a bond to potentially bury the line. This requirement shall only be waived if a conditional use permit is necessary to meet an urgent and immediate need as provided in the North American Electric Reliability Corporation or other applicable industry standard, and in such a case, RMP will provide notice to Midway City as soon as possible in the process.
- v. Dismissal of Pending Appeal and Utah Facility Review Board. Upon execution of this Settlement Agreement by all parties, RMP shall withdraw its appeal before the Utah Court of Appeals and stipulate to its dismissal with prejudice and submit a notice to the Utah Facility Review Board that the matter has been settled.

c. Midway City shall:

- i. Lines Easement. On or before January 1, 2021 and without cost to HL&P, grant an express easement as set forth in **Exhibit C** across the Public Works Yard located at 280 East 850 South just east of the fish hatchery to run the Single Circuit Transmission Line.
- ii. Other Easements. On or before January 1, 2021 and without cost to HL&P, grant to HL&P other easements as reasonably necessary for

construction and operation of the Single Circuit Transmission Line over any real property owned by Midway.

- iii. Existing CUP Amendment. On or before January 1, 2021, obtain the Midway City Council's consideration and approval of the amendment to the Existing CUP in accordance with the terms set forth in this Agreement ("**Existing CUP Amendment**"). The Parties acknowledge that the granting of a new conditional use permit reflecting the same terms as the Existing CUP Amendment would also be acceptable; provided, however, that such new conditional use permit must likewise be granted on or before January 1, 2021.
- iv. Appeal Withdrawal. Upon approval of the Existing CUP Amendment, withdraw the Appellate Case and stipulate to its dismissal with prejudice.
- v. Cooperation with Wasatch County. Support HL&P in any request, application, or similar action to Wasatch County or any other governmental entity reasonably necessary to construct the Single Circuit Transmission Line.

2. Representations and Warranties.

a. Midway City represents and warrants that:

- i. Midway City, including management and staff, will support the construction of the Single Circuit Transmission Line and will take all actions reasonably necessary to enable the construction of the Single Circuit Transmission Line.
- ii. Midway City, including management and staff, will accept the existence and use of HL&P's existing prescriptive easement rights for the construction and operation of the Single Circuit Transmission Line.

3. Third-party Infrastructure. Midway City agrees and acknowledges that HL&P's obligation as to communication lines and other infrastructure owned or operated by third-parties in the vicinity of the Single Circuit Transmission Line is limited to the installation of underground conduit along the route of the Single Circuit Transmission Line in accordance with standard HL&P practices and that HL&P has no ability to install, or cause to be installed, such third-party infrastructure within the underground conduit.

4. Operation of Single Circuit Transmission Line. The Parties agree and acknowledge that this Agreement places no restrictions on the construction, ownership, or operation of the Single Circuit Transmission Line except as explicitly set forth herein.

Second: Council Member Dougherty seconded the motion.

Discussion: None

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

Council Member Payne

Nay

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

Mayor Johnson explained that the City held multiple public hearings on the issue including one at its last meeting. He added that the comments from those meetings had been addressed.

14. Ordinance 2020-25 / Cannabis Production Establishments (City Planner – Approximately 30 minutes) – Discuss and possibly adopt Ordinance 2020-25 amending Title 16 (Land Use) of the Midway City Municipal Code regarding cannabis production establishments. Recommended by the Midway City Planning Commission. **Public Hearing**

Mayor Johnson indicated that the proposed ordinance would be considered in January.

Motion: Without objection, Mayor Johnson recessed the meeting at 8:18 p.m. She reconvened the meeting at 8:28 p.m.

15. Probst Farm Rural Preservation Subdivision / Preliminary and Final Approval (Derek Kohler – Approximately 20 minutes) – Discuss and possibly grant preliminary and final approval for the Probst Farm Rural Preservation Subdivision located at 496 North Center Street (Zoning is R-1-15). Recommended with conditions by the Midway City Planning Commission. **Public Hearing**

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

- Land use summary
- Proposed location
- Access
- Sensitive lands
- Proposed plat map
- Water board recommendation
- Possible findings
- Terms of the deed restriction

Mr. Henke also made the following comments:

- The project was on the Central Mound with some protected areas.
- An access agreement was needed.
- The access was not part of the plat map.
- The access was through property owned by the applicant's cousin.
- The north setback was part of an agreement with the Farm Springs HOA.

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

Randal Probst, applicant, made the following comments:

- The property had been in is family for years.
- The access easement existed for years but needed to be widened.
- The access agreement had been signed and may have already been recorded.

Public Hearing

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

Julie Button

Ms. Button appreciated the proposal and thought that it would look nice.

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

Council Member Payne commended Mr. Probst and thought that the proposal would help keep Midway rural.

Motion: Council Member Payne moved to approve the Probst Farm Rural Preservation Subdivision located at 496 North Center Street (Zoning was R-1-15) with the following findings and conditions:

- The proposed lot met the minimum requirements for the R-1-15 zoning district.
- The proposal met the intent of the General Plan for the R-1-15 zoning district.
- The proposal complied with the requirements for the rural preservation subdivision code.
- The subdivision helped comply with the vision stated in the General Plan to preserve open space and a rural atmosphere.
- The lot would be deed restricted so that it could never be further subdivided.
- The deed restriction that would be recorded towards the lot would be submitted to the City for review and recorded immediately after the plat was recorded.
- A note on the plat would include language that clearly stated that subdividing the lot was prohibited.
- The driveway easement document would be submitted to the City for review and recorded before the plat could be recorded.
- 13.7-acre feet of water would be tendered to the City before the plat would be recorded.

Second: Council Member Orme 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

16. Resolution 2020-37 / Probst Farm Rural Preservation Subdivision Development Agreement (City Attorney – Approximately 5 minutes) – Discuss and possibly approve Resolution 2020-37 adopting a development agreement for the Probst Farm Rural Preservation Subdivision located at 496 North Center Street (Zoning is R-1-15).

Corbin Gordon indicated that the agreement included the terms and conditions of approval for the project.

Motion: Council Member Payne moved to approve Resolution 2020-37 adopting the Probst Farm Rural Preservation Subdivision development agreement.

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

17. Scotch Fields PUD, Phase 2 / Plat Map Amendment (Berg Engineering – Approximately 45 minutes) – Discuss and possibly approve an amendment to the plat map for Phase 2 of the Scotch Fields PUD located at 330 West Canyon View Lane (Zoning is RA-1-43). Recommended with conditions by the Midway City Planning Commission. **Public Hearing**

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

- Overview
- Proposed location
- Affected phase
- Locations of easements
- Areas outside of the City
- Recommended trail alignment in the common area
- Land use map
- Zoning for the Clark property
- Items to consider
- Planning commission recommendation
- Possible findings
- Zoning in Wasatch County

- Springs and stream
- Wetlands

Mr. Henke also made the following comments:

- The request was discretionary.
- The Council had broad discretion in annexing the areas outside of the City.
- Was concerned about the trails crossing the proposed road at an angle.
- The HOA would shortly take control of the landscaping, etc.
- The proposed road and access would allow greater development on the Clark property to the north.
- A large portion of the Clark property was undevelopable because of the slope which was greater than 25%. The County had a slope limit of 30%.
- High density development was allowed in the resort zone.
- The Clark property would be limited to eleven lots/units if it had just one access. A second access would allow for more lot/units.
- If the proposed access was just an easement, then the road could not be dedicated to the City.
- Scotch Fields would not have the required amount of open space if the access were built. Some land from the Clark property would have to be transferred to Scotch Fields to solve this problem. The property should be contiguous.
- 30 lots might be allowed by the County on a cul-de-sac.
- If the Clark property was developed at a low density, then the access should be from Scotch Fields instead of Pine Canyon Road. This would limit access off collector roads.
- The Clark property had the size and value to force in the Morgan lot as part of an annexation.
- The access could not be on the southeast corner of the Clark Property because it would not fit with the most north phase of Scotch Fields.
- A member of the Planning Commission recommended against the request because a decision should not be made on speculation.

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

Paul Berg, Berg Engineering Resource Group and representing the applicants, said that there was not adequate space for the access though the most northern phase of Scotch Fields.

Public Hearing

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

PCG (Username, Name Unknown)

Made the following comments using the Zoom chat feature:

- Lived in Scotch Fields.
- Opposed the proposal because it would not benefit the residents of Scotch Fields.

- It would also lower the value of the units in Scotch Fields.
- Had an impact study been done on the proposal?

Isaac and Julie Button

Mr. and Ms. Button made the following comments:

- The common area in Scotch Fields was owned by the HOA which was a separate entity from the developer. The developer was president of the HOA.
- The proposal benefited the developer but not the residents.
- Common area was proposed to be used to benefit just the developer.
- The CC&R's required a vote of all members to turn over common area.

Erin Malan

Ms. Malan was concerned about the timing of the request just before the HOA would assume some of the responsibilities of the developer.

Scott Clark

Mr. Clark made the following comments:

- Owned the property to the north that would be accessed by the proposal. Had owned it for 45 years.
- The benefits of the second access would be far into the future.
- Asked Bill Probst, one of the developers of Scotch Fields, to help him get a second access.
- Never discussed Mr. Probst purchasing the property.
- Several people were looking at the property for a single house up to high density.
- Did not want a lot of traffic through Scotch Fields.
- The access would allow an emergency access for fire, etc.
- Previously asked for the property to be annexed. At that time, the Council determined that the Morgan property did not need to be part of the annexation because all the property to the west was still in the County.

Mr. Henke indicated that State Code prohibited unincorporated peninsulas.

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:

- Potential buyers of the Clark property approached Mr. Probst three months earlier.
- Mr. Probst wanted to be comfortable with any development on the property. He also wanted to know if the Council would approve and what its conditions might be.
- A future buyer might not use the access.

- Mr. Probst wanted to get the Council's opinion before he spoke to the HOA.
- Mr. Probst had to build two public roads and extend utilities. The access would reimburse him for some of those costs.
- Additional open space would be needed for Scotch Fields if the request were granted.

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

- Annexation was an opportunity for the City to know what would happen to a property. The City should know how the Clark property would be developed before it decided on the requested access.
- The Clark property was on the outskirts of the City and should be a lower density.
- Potential buyers would not know what they could do until they knew if the second access would be granted. The Council should at least give an indication of the conditions to grant the access.
- The State Code required good cause to approve a plat amendment. This should be a benefit for the neighborhood not just the developer.
- The Council should not give an opinion until it had all the facts.
- The Clark property could be a resort area according to the General Plan. If the City wanted to promote resorts, then it should grant the second access.
- The proposal that evening was not to discuss a resort but simply for the Council to commit or not commit to the access.
- The access should be requested as part of a development application.
- A vote should be held by the HOA before the Council decided.
- The timing of the proposal was a concern.
- An approval would help Mr. Probst negotiate in good faith. The owner of the Clark property had to please him.
- There were a lot of unknowns with the proposal.
- The item should be tabled until a development plan could be brought before the Council.

Motion: Council Member Drury moved to table the issue for a period not to exceed 24 months with the following findings and conditions:

- The request would automatically be denied if not acted upon within the 24 months.
- The Council had full discretion with this type of an amendment.
- Before the request would be reconsidered, the loss of open space below the required 50% should be resolved and included in a development proposal.
- Before the request would be reconsidered, evidence needed to be provided that the HOA held a vote and its policies had been followed.
- A plan was presented showing how the easement would be used and how the Clark Property would be developed.

Second: Council Member Orme seconded the motion.

Discussion: Council Member Dougherty was concerned that the Planning Commission recommended the proposal without the information that the Council was requesting. He recommended that it go back to the Planning Commission as part of a logical process. He agreed that it should not be considered again until a vote had been held by the HOA.

Council Member Dougherty asked if the owner of the Clark property needed to first request

annexation. Council Member Payne agreed that the next step would be annexation. He also agreed that the issue should go back to the Planning Commission.

Council Member Simonsen questioned why a concept plan could not be brought directly to the Council. Mr. Henke noted that Doug Dance brought a concept plan to the Council to determine if he wanted to annex the associated property.

Council Member Simonsen questioned tabling the item and worried that a future council would not follow through.

Council Member Drury indicated that even a good concept plan, brought back to the Council, would require more staff time. He wanted to reduce the staff's time on the proposal.

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

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

Motion: Council Member Dougherty moved to deny the request without prejudice and that the applicant take whatever guidance they could from the discussion.

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

18. Resolution 2020-34 / FY 2021 Budget Amendment (City Recorder – Approximately 15 minutes) – Discuss and possibly approve Resolution 2020-34 amending the Midway City FY 2021 Budget. **Public Hearing**

Brad Wilson gave a presentation on the proposed amended and review the following specific changes to the budget:

- Hiring an additional planner.
- Funding design work for the Town Square and Alpenhof Park.
- Funding the staffing and inventory of the souvenir shop.
- Reducing the CARES Act revenue to match the amount received.
- Transferring all CARES Act expenditures into one account.
- The CARES Act expenditures would still be within the budgeted amount.

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

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

- The planner should have at least five years of experience to reduce the amount of training. Their wage should also be enough that they could live in the Heber Valley.
- All the CARES Act money had been spent.

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 Resolution 2020-34 amending the FY 2021 budget as described.

Second: Council Member Dougherty 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: Council Member Orme moved to consider the next item on the agenda beyond 10:00 p.m.

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

19. Closed Meeting to Discuss Pending or Reasonably Imminent Litigation

Motion: Council Member Drury moved to go into a closed meeting to discuss pending or reasonably imminent litigation.

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

Note: Closed meeting minutes are sealed and strictly confidential. Access to such minutes must be obtained through a court of law.

Motion: Council Member Orme moved to go out of the closed meeting.

Second: Council Member Payne seconded the motion.

Discussion: None

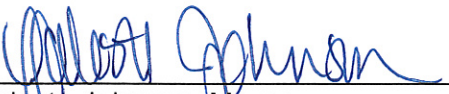
Vote: The motion was approved with the Council voting as follows:

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

20. Adjournment

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

The meeting was adjourned at 10:34 p.m.


Celeste Johnson, Mayor


Brad Wilson, Recorder