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APPEAL - Homestead Group LLC Site Disturbance Permit issued September 15, 2025

1 message

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CHALETS ON THE CREEK HOMEOWNERS ASSOCIATION
104 EAST 600 SOUTH #843
HEBER CITY, UTAH 84032

October 14, 2025

Celeste Johnson, Mayor
75 North 100 West
Midway City, UT 84049

APPEAL – The Homestead Golf Course Improvements Site Disturbance Permit

Dear Mayor Johnson -

Chalets on the Creek HOA appeals the recent Site Disturbance Permit issued to the Homestead Group LLC by Michael Henke and Wes Johnson on September 15, 2025. Our understanding is that the Midway City Planning Department determined that a Site Disturbance Permit was the appropriate permitting instrument because it believes the golf course was a grandfathered nonconforming use. We appeal this determination because we have found no evidence that the planning department actually evaluated whether the golf course had been legally established in 1989 before issuing the permit last month. We are very surprised that the Homestead Group did not request such a certification before it applied for the site disturbance permit from Midway City since an original building permit for the golf course does not seem to exist. Also surprising is that the city did not require its own certification before issuing the permit or proclaiming to the public that the golf course was an existing use that was grandfathered in and couldn't be changed. It appears that making such a proclamation in the absence of an actual certification and not conducting public hearings could be seen as purposeful subterfuge to negate any accountability for placing a poorly designed golf course in what has become a densely populated residential zone (R-1-15). It has been used as an excuse to take no actions or set any conditions on the permit recently issued to protect the health and safety of citizens owning property adjacent to the golf course.

The way we see it, if the golf course was not legally established the Homestead Group would have been required to apply for a variance to the current zoning regulations. This would have required public hearings where the public could have formally provided input on what would be needed for the course to continue to operate safely in a residential zone. If approved, the city would have been required to issue a conditional use permit, again with public hearings, to redevelop the course where specific conditions could be set.

Because of this, we believe the Planning Department erred in issuing a site disturbance permit for a golf course since there appears to be significant evidence on the record that golf course was not legally established as a nonconforming use when first constructed in 1989 as follows:

1. Ordinance 87-4 (December 3,1987) was passed to create an R-5 zone to accommodate a golf course, but it was signed by the city Recorder rather than the Mayor invalidating the ordinance.
2. Ordinance 87-4 does not explicitly specify a golf course as a permitted, conditional or other use in the R-5 zone.
3. Ordinance 87-4 does not approve or include reference to a zoning map making it impossible to implement a construction permit for a specific location.
4. No evidence that the 1990 zoning map was approved by separate ordinance. Without an approved zoning map, a construction permit could not have been issued.
5. Ordinance 87-3 (April 3, 1987) does not list a golf course as a permitted, conditional or other use in the R-4 or R1-A zones.
6. The 1990 zoning map is dated January 1990 and the construction began in 1989 so it couldn't have been used for permitting purposes.
7. There is no evidence that a written building permit was issued by Midway City for the construction of the golf course.

Simply put, if the golf course was never legally established, it cannot be considered a nonconforming use now. Current zoning code prohibits golf courses in the R-1-15 zone. We request Midway City withdraw the current Site Disturbance Permit, suspend all work, and require that the Homestead Group apply for a variance to allow the golf course to be redeveloped within the current zoning. Once approved, the city should require that the course be permitted using a conditional use permit where the city will be required to conduct public hearings and establish conditions to mitigate the effects of operating a narrow golf course in a well-developed residential area where the use is prohibited because of the negative effects on people and property.

It should be noted that the Chalets on the Creek is in favor of the Golf Course Redevelopment, but we believe the owners should be held accountable for code violations during construction and take reasonable measures to protect the people and residential properties that are closely packed along it. We request that if legal counsel is required, that the City not use Gordon Law Group (Midway's usual city attorney), since the firm has exhibited a strong negative bias against Chalets on the Creek HOA president Norm Henderson. In addition, Mr. Henderson was told by Ben Shakespeare in February that he already had had several ex parte conversations with Corbin Gordon regarding the site disturbance permit without the planning department representatives in attendance.

Best Regards,

/s/ Norm Henderson
President, Chalets on the Creek HOA

/s/ John Reeves
Secretary/Treasurer, Chalets on the Creek HOA

APPEAL -- HOMESTEAD

INTRODUCTION

- Chalets on the Creek (Chalets) has filed an appeal of Midway City's site disturbance permit issued to the Homestead based on the following theory:
- "Our understanding is that the Midway City Planning Department determined that a Site Disturbance Permit was the appropriate permitting instrument because it believes the golf course was a grandfathered nonconforming use. We appeal this determination because we have found no evidence that the planning department actually evaluated whether the golf course had been legally established in 1989 before issuing the permit last month."
- THIS IS THE ONLY THEORY UPON WHICH THE APPEAL IS BASED
- Before addressing any of the substantive arguments there are numerous legal doctrines that apply to the situation, wherein neither Chalets nor Midway City may revisit an approval issued 38 years ago.

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THE APPEAL FAILS BECAUSE THE STATUTE OF LIMITATIONS HAS RUN

- There are three theories upon which a statute of limitations applies, and none work:
- **LUDMA**: Under the current version of the Utah Municipal Land Use, Development, and Management Act (LUDMA) — in particular § 10-9a-704 — a municipality must adopt an ordinance setting a "reasonable time" (but not less than 10 days) for an appeal of a written decision of a land-use authority. In the absence of such ordinance, the statute prescribes 10 calendar days to appeal.
    - No appeal of the decision was filed.

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- **Pre-LUDMA case law** → Even if the challenger argues LUDMA doesn't apply because the decision predates 2005 (the year LUDMA was enacted), Utah case law still applies and case law at the time still required prompt challenge.
- **Salt Lake County v. Board of Education of Salt Lake City, 740 P.2d 284 (Utah 1987)**
- **Holding:** The Utah Supreme Court held that when a statute or ordinance does not specify a time to appeal an administrative decision, the challenger must bring the action **"within a reasonable time"**—and that this requirement is **strict**.
- The Court stated:
- When no time limit is established by statute or ordinance, a challenge must be brought **within a reasonable time**, which is determined by the **need for finality in government decisions.**
- It was repeatedly cited in later zoning cases to justify **strict, prompt deadlines**. See **McDonald v. Price, 784 P.2d 311 (Utah 1989)** (decision directly interpreting the pre-1987 rule). This case came two years after 1987 and explicitly applied the "reasonable time" rule to **land-use decisions** where no appeal period existed.

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- **Fox v. Park City, 2008 UT 85**
- The court held that residents **cannot collaterally attack a long-final land-use decision** by repackaging it as a new legal theory.
- After the appeal period expires, **the decision is final, regardless of alleged illegality.**
- **Gillmor v. Summit County, 2010 UT 69**
- The Utah Supreme Court held that:
- A land-use decision becomes **final and unassailable** after the statutory time expires.
- **Collateral attacks years later are barred**, even if the original approval was wrongly issued.
- **Creer v. Spanish Fork, 2021 UT App 88**
- A resident tried to challenge a decades-old subdivision claim on illegality grounds. The court held:
- "Final land-use decisions are not subject to later attack, even if the challenger alleges the decision violated the law."

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THE APPEAL FAILS BECAUSE THE STATUTE OF LIMITATIONS HAS RUN

- **General statutes of limitation** → § 78B-2-302 requires cases brought against "counties, towns and cities" to be **within one year**. § 78B-2-310: Actions against public officers -- **Within six years**. An action by the state, an agency, or a public corporation against a public officer for malfeasance, misfeasance, or nonfeasance in office or against a crime insurance policy in relation to the public officer's duties may be brought within six years after the officer ceases to hold the office. § 78B-2-307. Within four years. An action may be brought **within four years**: for relief not otherwise provided for by law.
- **Doctrine of laches** → this bars stale claims even when no statute applies
- **Municipal reliance interests** → 30+ years of operation is exceptionally strong evidence of vested rights
- **Bottom line: No Utah court has ever allowed a challenge to a decades-old city land-use approval to proceed.**

Whether you use LUDMA, pre-LUDMA common law, or § 78B-2-302, the result is the same: the claim is barred.

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REVIEW OF APPEAL

Dear Mayor Johnson –

Chalets on the Creek HOA appeals the recent Site Disturbance Permit issued to the Homestead Group LLC by Michael Henke and Wes Johnson on September 15, 2025. Our understanding is that the Midway City Planning Department determined that a Site Disturbance Permit was the appropriate permitting instrument because it believes the golf course was a grandfathered nonconforming use. We appeal this determination because we have found no evidence that the planning department actually evaluated whether the golf course had been legally established in 1989 before issuing the permit last month.

Facts:

Homestead appeared before the City Council on October 5, 1987 and asked if they could file for a conditional use permit for a golf course under the Zones R-1-A and R-4.

The City Council found that the use of a golf course was similar to those allowed for conditional uses under the Zone and approved their request to file for a conditional use permit **under these zones**.

Homestead appeared on November 5, 1987 before the City Council asking for the Conditional Use Permit for the Golf Course and **was approved**.

December 3, 1987 the City Council approved the R-5 zone which allowed for condominiums around the golf course. THE GOLF COURSE WAS NOT APPROVED UNDER THIS ZONE.

April 17, 1988 the City Council amended the R-5 zone to add RV's and Trailers.

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We are very surprised that the Homestead Group did not request such a certification before it applied for the site disturbance permit from Midway City since an original building permit for the golf course does not seem to exist.

- Facts:
- There are no building permits issued for landscaping, which misses the point – the golf course was approved as a conditional use permit and Chalets has had in its possession all of the documents that were just cited and that clearly establish the golf course was in fact approved before it filed its appeal.

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- Also surprising is that the city did not require its own certification before issuing the permit or proclaiming to the public that the golf course was an existing use that was grandfathered in and couldn't be changed. It appears that making such a proclamation in the absence of an actual certification and not conducting public hearings **could be seen as purposeful subterfuge** to negate any accountability for placing a poorly designed golf course in what has become a densely populated residential zone (R-1-15). **It has been used as an excuse to take no actions or set any conditions on the permit recently issued to protect the health and safety of citizens owning property adjacent to the golf course**.
- Facts:
- If the Chalets are going to make these types of accusations against public servants it better have real and uncontrovertible evidence and bullet proof legal theories. IT HAS NEITHER!
- One of the most offensive parts of my job is to see people accuse public servants of wrong-doing without any basis in fact or law. It is even worse when those same individuals are in possession of facts that prove otherwise that they refuse to read and consider. No one in the Chalets HOA has any right to accuse this City or its employees of "purposeful subterfuge" and to do it baldly and publicly when the facts in their possession prove otherwise.

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- The way we see it, if the golf course was not legally established the Homestead Group would have been required to apply for a variance to the current zoning regulations. This would have required public hearings where the public could have formally provided input on what would be needed for the course to continue to operate safely in a residential zone. If approved, the city would have been required to issue a conditional use permit, again with public hearings, to redevelop the course where specific conditions could be set.
- Facts:
- This statement demonstrates the Chalets ignorance of municipal law and Midway City code. Even if the golf course wasn't legally established, we have established the time to appeal the approval has long since run, and even if it hadn't there is no such thing as a use variance. Variances are used to ask for exceptions to things like set-backs, height, etc.. There is no such thing as a variance for use. Either a use is permitted, or permitted with conditions (a conditional use permit), which clearly happened no less than 38 years ago.

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- Because of this, we believe the Planning Department erred in issuing a site disturbance permit for a golf course since there appears to be significant evidence on the record that golf course was not legally established as a nonconforming use when first constructed in 1989 follows:
- Facts:
- There is no evidence on the record that the golf course was not legally established. In fact, the Chalets has uncontrovertible evidence it was legally established, and has chosen to bring this appeal without any basis in law or fact.

- 1. Ordinance 87-4 (December 3,1987) was passed to create an R-5 zone to accommodate a golf course, but it was signed by the city Recorder rather than the Mayor invalidating the ordinance. Chalets cites to no legal authority that having the Recorder sign instead of the mayor invalidates the ordinance. There is nothing in the record that would suggest this is actual law or that after 37 years any court anywhere would find that the ordinance is invalid.
- 2. Ordinance 87-4 does not explicitly specify a golf course as a permitted, conditional or other use in the R-5 zone. It doesn't have to because the golf course was already approved under the prior zone.
- 3. Ordinance 87-4 does not approve or include reference to a zoning map making it impossible to implement a construction permit for a specific location. This ordinance was not the basis for the approval.
- 4. No evidence that the 1990 zoning map was approved by separate ordinance. Without an approved zoning map, a construction permit could not have been issued. Again, absolute conjecture without any basis or citation to law.

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- 5. Ordinance 87-3 (April 3, 1987) does not list a golf course as a permitted, conditional or other use in the R-4 or R1-A zones. The City Council specifically addressed this issue on October 5, 1987 and found that the golf course was similar enough to other conditional uses to be allowed to move forward with an application for a conditional use permit which was granted on November 5, 1987.
- 6. The 1990 zoning map is dated January 1990 and the construction began in 1989 so it couldn't have been used for permitting purposes. See below.
- 7. There is no evidence that a written building permit was issued by Midway City for the construction of the golf course. Building permits are not required for landscaping.

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- Simply put, if the golf course was never legally established, it cannot be considered a nonconforming use now. Current zoning code prohibits golf courses in the R-1-15 zone. We request Midway City withdraw the current Site Disturbance Permit, suspend all work, and require that the Homestead Group apply for a variance to allow the golf course to be redeveloped within the current zoning. Once approved, the city should require that the course be permitted using a conditional use permit where the city will be required to conduct public hearings and establish conditions to mitigate the effects of operating a narrow golf course in a well-developed residential area where the use is prohibited because of the negative effects on people and property.
- Facts:
- This is so ill-informed and non-sensical as to not require response. I have already shown how this has no basis in Utah Law or Midway City law.

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- We request that if legal counsel is required, that the City not use Gordon Law Group (Midway's usual city attorney), since the firm has exhibited a strong negative bias against Chalets on the Creek HOA president Norm Henderson. In addition, Mr. Henderson was told by Ben Shakespeare in February that he already had had several ex parte conversations with Corbin Gordon regarding the site disturbance permit without the planning department representatives in attendance.
- Facts:
- There is no conflict. First, Mr. Henderson has misrepresented his conversation with Mr. Ben Shakespeare regarding his conversation with him, and has done so for his own benefit. Mr. Shakespeare has never had a conversation with Mr. Gordon outside of meetings with Planning staff, and never told Mr. Henderson he did so. I won't call this an outright lie, but there is no basis for this allegation.
- Next, Mr. Gordon represented a party adverse to Mr. Henderson and did not show any negative bias towards Mr. Henderson beyond arguing forcefully against what he felt were weak and ill-formed legal arguments. Doing my job does not create a conflict.
- I would advise the counsel to make a finding that there is no conflict and move forward.

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- There is no basis is law or fact to grant this appeal
  - The appeal is untimely
  - Thee facts clearly show the golf course was approved legally

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