



322 E Gateway Drive Suite 201 • Heber City, Utah 84032
P 435-657-0984 • F 435-657-0984
WWW.GORDONLAWGROUPUTAH.COM

December 16, 2025

Midway City Council
Sitting in its capacity as a Quasi-Judicial Appeal Board
Via Email: bwilson@midwaycityut.gov

Re: Objection to Non-Responsive Communication and Request to Strike

To Whom It May Concern:

On December 2, 2025 this Council sat in a quasi-judicial capacity and heard an administrative appeal of a decision of the Planning Department filed by Chalets on the Creek.

Due to claims made on the record that the Chalets had not received the City's presentation prior to the hearing, the Council allowed the appellant 10 days to submit a response to the substantive items raised in the City's presentation.

It was subsequently discovered that the City's presentation was sent to Norm Henderson, president of the Chalets on the Creek HOA three days prior to the hearing, and that his representations to the Council regarding this matter were not factual. *See email attached as Exhibit A.*

Further, instead of filing the allowed substantive response, Chalets on the Creek submitted the attached email to Brad Wilson, City Recorder, asking Mr. Wilson to provide him with information regarding this case and attempting to raise issues that are non-responsive to the City's presentation. *See Exhibit B.* This correspondence is not responsive, goes beyond the granted scope of the purpose of the response, contains new and novel arguments not included in its appeal or raised at the hearing, and should be stricken from the record under Midway City Code 16.26.60: The adversely affected party shall be required to present in its written appeal every theory of relief that the adversely affected party can raise in district court.

Should the City choose to consider the email submission from Chalets as the allowed response, the City responds to the items raised in the email as follows:

1. Objection to Hearing Protocols:

- a. The same hearing protocols have been used in the City for the past 7 years. *See Exhibit C for the public record for the Watts appeal on December 13, 2017 wherein the almost identical Appeal Process was read into the record by then Mayor Colleen Bonner.* These protocols were not created on the fly, follow Midway City and State Code, and comply with due process.
- b. Chalets was provided the email attached as Exhibit D outlining the appeal process, which follows the protocols set forth at the beginning of the hearing.
- c. There is no basis for a claim of a violation of Due Process.

2. Objection to Mr. Gordon representing both the City Planner and the City Council:

- a. Mr. Gordon does not serve as counsel to the City Council in administrative appeals. The City Council sits in its capacity as a Quasi-Judicial Board and is required to make its own findings and own decisions. It does not have appointed legal counsel for the appeal, just as a judge does not have appointed legal counsel in a court. The Council takes argument and makes a decision. There is no violation of Due Process.

3. Objection that the Hearing was De Novo:

- a. The standard of review is contained in Midway Code – something the appellant has the obligation to understand and that was presented accurately in the way the hearing was conducted.

16.26.60 **Appeal Authority**

Except as provided in this Section, the City Council shall be the appeal authority of all non-variance land use decisions in which the City Council has not first acted as the land use authority. Only a decision in which a land use authority has applied a land use regulation to a particular land use application, person, or parcel may be appealed to an appeal authority. Appeal of such administrative decisions shall be made in writing to the City Council within 30 days of the administrative decision being issued in writing. **The adversely affected party shall be required to present in its written appeal every theory of relief that the adversely affected party can raise in district court. The appellant has the burden of proving that the land use authority erred. The standard of review by the City Council shall be de novo.** An adverse decision by the City Council acting as appeal authority may be appealed to district court pursuant to Utah law.

4. Objection to the Council allowing Chalets 10 additional days to respond in writing:

- a. This accommodation was made based on the representation that the Chalets had not received the City's presentation and had sufficient time to review it, which turned out not to be accurate. It was made to assure Chalets did not have a due process claim.

The Chalets now twists this accommodation into a violation of Due Process because the Council gave it more time to respond in writing which it has chosen not to do?

- b. Further, the response is filed in contradiction to the accommodation provided to the Appellant that it would have ten additional days to respond to the substantive arguments made by the City. The response contains not one substantive argument in response to the City's presentation, instead raising new and novel arguments not contained in its appeal, which violates 16.26.60 and the Council's agreement to allow ten days to file a substantive response.

4. Objection to the Council deliberating in closed session:

- a. The Council can proceed as it chooses, but given this concern, the City has no problem with the Council conducting its deliberations in public to avoid any appearance of unfairness.

CONCLUSION: The Appellant was given time to respond to the arguments made in the City's presentation and has chosen not to do so – raising not one substantive argument, instead looking to procedural claims that have no basis in law or fact. The concerns raised are baseless, and have no bearing on the issues before the Council on appeal. The City requests that the appeal be submitted based on the record and denied.

Sincerely,

Corbin B. Gordon

EXHIBIT A



Corbin Gordon <cgordon@gordonlawgroup.utah.com>

FW: Information for Midway City Council Meeting

1 message

Brad Wilson <bwilson@midwaycityut.gov>
To: Corbin Gordon <cgordon@utglg.com>

Tue, Dec 16, 2025 at 3:09 PM

**Midway****Brad Wilson**

Recorder

H: Mon-Thurs 7:30-5:30
P: 435-654-3223 ext 118
E: bwilson@midwaycityut.gov

75 N 100 W – P.O. Box 277
Midway, UT 84049

www.midwaycityut.gov

From: Brad Wilson
Sent: Friday, November 28, 2025 1:39 PM
To: Norm Henderson <nhenderson2179@gmail.com>
Subject: Information for Midway City Council Meeting

Norm,

You have item(s) on the agenda for the 2 December 2025 city council regular meeting. The regular meeting will be held at **5:00 p.m.** in the Midway Community Center (160 West Main Street, Midway) and using Zoom. There will not be a work meeting.

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/85737675998>

Or One tap mobile :

US: +17193594580,,89422596859# or +12532050468,,89422596859#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 719 359 4580 or +1 253 205 0468 or +1 253 215 8782 or +1 346 248 7799 or +1 669 444 9171 or +1 669 900 6833 or +1 689 278 1000 or +1 929 436 2866 or +1 301 715 8592 or +1 305 224 1968 or +1 309 205 3325 or +1 312 626 6799 or +1 360 209 5623 or +1 386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 646 931 3860

Webinar ID: 894 2259 6859

International numbers available: <https://us02web.zoom.us/j/85737675998>

The agendas and supplemental information, which were provided to the City Council, are available at <https://www.midwaycityut.gov/the-latest/calendar/>.

If you have a presentation, please provide it to me no later than the day before the meeting.

Please contact me if you have any questions.

Have a good day



Midway

Brad Wilson

Recorder

H: Mon-Thurs 7:30-5:30

P: 435-654-3223 ext 118

E: bwilson@midwaycityut.gov

75 N 100 W – P.O. Box 277

Midway, UT 84049

www.midwaycityut.gov

EXHIBIT B



Corbin Gordon <cgordon@gordonlawgroup.utah.com>

FW: Violation of due process

1 message

Brad Wilson <bwilson@midwaycityut.gov>
To: Corbin Gordon <cgordon@utglg.com>

Mon, Dec 15, 2025 at 2:44 PM

Corbin,

See below.

**Brad Wilson**

Recorder

H: Mon-Thurs 7:30-5:30
P: 435-654-3223 ext 118
E: bwilson@midwaycityut.gov

75 N 100 W – P.O. Box 277
Midway, UT 84049

www.midwaycityut.gov

From: Norm Henderson <nhenderson2179@gmail.com>
Sent: Monday, December 15, 2025 2:39 PM
To: Brad Wilson <bwilson@midwaycityut.gov>
Cc: John Reeves <mtnpadmidway@gmail.com>
Subject: Violation of due process

CAUTION: This email originated from outside of the organization. Do not reply, click links or open attachments unless you recognize the sender's email address and know the content is safe.

Hi Brad, could you let us know the identity of the person providing legal advice to the city council regarding our appeal of the site disturbance permit issued by the planning

department on 9/15/2025. We believe an independent counsel is absolutely required for our appeal to proceed and be fairly and impartially reviewed by the city council. We need to know when that person stepped into that role and whether that person was involved with the development of the hearing protocols that you submitted to us on 10/28 and the last minute amended procedures announced by the mayor at our 12/2 hearing.

The public hearing on 12/2, showed clearly that Mr. Gordon is the legal counsel for the city planning department. His presentation was aggressively adverse to our position that the golf course had not been legally established in 1989. He also came across as clearly biased against Mr. Henderson, personally. Having a position that is adverse to us and even heavily biased against Mr. Henderson is fine when he is representing the planning department, but there is a clear conflict of interest if he is also theoretically advising the city council who is supposed to be a neutral arbiter in the matter. Mr. Gordon, providing legal counsel to the city council to modify the hearing protocols on the fly during the actual hearing proceedings is a clear conflict of interest and a violation of our due process rights to a fair and impartial hearing before the city council. Further, it would seem that a neutral legal advisor would be cautioning the city council not to deliberate outside the public hearing.

As you know, at the beginning of the 12/2 hearing, the mayor announced two key changes to the hearing protocols that you had established and submitted to us on 10/28. These changes were memorialized in the "Overview of Appeal Process" that, I assume, was produced by the city council and announced by mayor Johnson at the beginning of the hearing. The city council must have had some kind of counsel to produce an overview document that was changed from what was originally given to us by you. As you know, the mayor announced the new policy at the meeting, without explaining to the public why the city council made the changes. Specifically, the mayor announced at the meeting that the hearing format was now de novo rather than on the record, a significant change that totally benefitted Mr. Gordon as counsel for the planning department allowing him to bring in new arguments rather than just rebutting our argument. The new procedures also extended the allowable time for the presentations and changed the rebuttal protocol (from verbal to written) also benefiting the defense. Further, there is no indication that the city council was asked to review and approve these new last minute appeal procedures. Since there was no vote or discussion, it appeared to us that the decision must have been made by the mayor/city council outside the public hearing which seems to be a serious violation of the Utah Open and Public Meetings Act. If Mr. Gordon was serving as counsel for both the defendant (planning department) and the judge in the matter (the city council) that is a serious violation of our due process rights.

Before we go any further with our appeal, we'd like to put this due process and open meetings law violations to rest. We are not trying to be difficult, but the aforementioned

issues are certainly concerning. We'd like to get your take on what we should do with the concerns expressed above. Let me know if you have any questions

Best,

Norm Henderson

John Reeves

EXHIBIT C

Midway City Corporation



Mayor: Colleen Bonner
City Council Members:
Kenneth VanWagoner • Karl Dodge •
W. Kent Kohler • Bob Probst • Lisa Christen

75 North 100 West
P.O. Box 277
Midway, Utah 84049
Phone: 435-654-3223
Fax: 435-654-4120
midwaycityut.org

December 13, 2017

ADMINISTRATIVE APPEAL

Overview of Appeal Process:

I. Call meeting to order:

Narrative: It is 7:00 pm on December 13, 2017. We are assembled in the Midway City Council chambers for an Administrative Appeal. This is an administrative appeal from a final land use decision rendered by Mr. Michael Henkie, Midway City Planner relating to the proposed Midway Springs Subdivision in Midway, Utah.

The issue that is being appeal involves the interpretation of Section 16.14.9 (C) of the Midway City Code.

Mr. Henkie issued his final ruling on the code interpretation in a letter dated October 24, 2017, which is made a part of the official record of these proceedings.

The Appellant disagrees with the Administrative Decision rendered by Mr. Henkie, and as requested this appeal. The Midway City Code provides that the Appellant can appeal and Administrative Decision within thirty (30) days of the final decision. The Appellant in this case requested this appeal on November 2, 2017, so the appeal is timely.

According to the Midway City Code, the City Council shall be the appeal authority of all non-variance land use decisions in which the City Council has not first acted as the land use authority. This is a non-variance land use decision, and the City Council did not act as the land use authority in this matter. Therefore, the City Council is properly acting as the appeal authority. As mayor, I'm here to conduct the appeal but will not participate in the deliberations or decision. That decision will be made by the Council.

The Standard of Review that the City Council shall use in this appeal is *de novo*. That is a legal term meaning "anew" or "afresh". In other words, the City Council does not favor one side or the other, but takes an unbiased and impartial look at the evidence presented by each side, and then issues a ruling. However, the burden of proof in this matter is on the Appellant. In other words, the Appellant has the burden of proving that the Administrative Decision is incorrect.

The City Council, as the Appeal Authority, is required to interpret and apply existing ordinances to the facts of the case to determine if the Administrative Decision was correct or incorrect.

The City Council is making a record of these proceedings. That means that the proceedings will be recorded and transcribed. All properly submitted materials from both sides for tonight's hearing will also be made a part of the record. In addition, the following are also made a part of this record:

Documents Already Part of the Record.

1. Application documents for the Midway Springs Subdivision.
2. Letter from Paul Berg on behalf of Appellant dated 9/29/17.
3. Final Administrative Decision in the form of a letter from Michael Henkie dated 10/24/17.
4. Letter requesting appeal from Mr. Berg, dated 11/2/17.
5. Letter acknowledging receipt of appeal from Mr. Henkie dated 11/6/17.

6. Letter mailed to Appellant setting forth the process for the Appeal, dated 11/20/17.

7. Transcripts of prior public hearings on this matter.

8. The existing Midway City Code is also a part of the record.

This is not a public hearing. The City Council does not take public comment during this appeal. It is a public meeting, but audience members shall refrain from interrupting in any way the proceedings.

The standard process of appellate boards and courts will be generally followed. Written materials have been submitted to the Midway City Council and to the opposing party. That was required to be done by December 6, 2017 at 5:00 pm. I note that the written materials were to include a brief summary of the argument, along with any documents or other evidence that the party intends to present at the hearing tonight. The parties may have also included additional written materials, including letters, affidavits, or transcripts of prior hearings, but all materials received by the Appeal Authority must be relevant to the subject of the appeal, which is the interpretation of a specific section of the Midway City Code and the intent thereof.

Additional written materials that were not included in the submittals due on December 6, 2017, shall not be allowed to be presented at the hearing. Please do not refer to or quote materials that were not included in the packet.

The hearing shall be conducted as follows:

The Appellant shall have thirty (30) minutes to make its initial presentation. The presentation may be made by the Appellant or by legal counsel.

The Appellee (Midway City) shall then have thirty (30) minutes to make its presentation. The presentation may be made by the Appellee or by legal counsel.

The Appellant shall then have five (5) minutes to make a final summation.

The Appellee shall then have five (5) minutes to make a final summation.

The Appeal Authority may ask questions of the speakers. Questions and answers shall be included in the time allowances discussed above. Please keep questions short and to the point to allow the speaker as much time as possible to make their presentation.

A presenter may use less than their allotted time, but may not go over time.

The hearing shall be conducted in an orderly and respectful manner. No public comment will be taken, and no outbursts, comments or statements from the public will be allowed. Signs are not allowed in the hearing room.

The Administrative Appeal has appointed a timer _____. The Timer will keep time for each presentation, and shall indicate to the presenter when they have five (5) minutes left, when they have one (1) minute left, and when time is up. Presenters shall complete their presentation promptly on time.

Following the hearing, the Administrative Appeals Board may issue a ruling at the hearing, or may take the matter under advisement and issue a ruling within a reasonable time.

Generally, the administrative ruling will either uphold the final decision of the administrative officer (the Midway City Planner) or will overturn the final decision of the administrative officer. If the Administrative Appeals Board decision is to overturn the administrative officer, the matter would normally be sent back to the Planning office for processing consistent with the Appeals Board decision.

A letter setting forth the rules I have just read was sent to both parties and we did not receive any questions or objections. Therefore, we will proceed accordingly.

II. Proceed with Hearing

Appellant's Presentation (maximum 30 minutes)

Appellee's Presentation (maximum 30 minutes)

Appellant's Summation (maximum 5 minutes)

Appellee's Summation (maximum 5 minutes)

III. RECESS FOR DELIBERATION

EXHIBIT D



Corbin Gordon <cgordon@gordonlawgroup.utah.com>

RE: APPEAL

1 message

Brad Wilson <bwilson@midwaycityut.gov>
To: Norm Henderson <nhenderson2179@gmail.com>
Cc: Corbin Gordon <cgordon@utglg.com>

Tue, Oct 28, 2025 at 8:10 AM

Norm,

Your administrative appeal is scheduled for consideration before the City Council on December 2nd at 5:00 p.m. The hearing will be conducted as part of our regular City Council meeting. Your argument is limited to the written materials that you have already submitted. No argument or materials not included in your appeal will be allowed. You will have 15 minutes to make your presentation. The City will have 15 minutes to respond. You will be given a five-minute rebuttal. The Council will have the opportunity to ask questions and then will deliberate and may take the decision under advisement or come back and issue a decision at that time. Understand that the Council sits in a quasi-judicial role for this hearing and as such you are not allowed to have any direct communication with them beyond your appeal documents. Any attempt to communicate with any Council member directly by email or otherwise will be considered ex-parte communication and may result in your appeal being dismissed. The hearing will be recorded for purposes of creating a record for appeal.

Have good day

**Midway**

Brad Wilson

Recorder

H: Mon-Thurs 7:30-5:30
P: 435-654-3223 ext 118
E: bwilson@midwaycityut.gov

75 N 100 W – P.O. Box 277
Midway, UT 84049

www.midwaycityut.gov