

**MINUTES OF MIDWAY TOWN COUNCIL SPECIAL MEETING HELD ON JUNE 26, 2017
AT 6:00 P.M. IN THE COUNCIL CHAMBERS AT TOWN HALL, 426 GUMTREE ROAD,
MIDWAY, NORTH CAROLINA**

CALL TO ORDER

Mayor John Byrum called the meeting to order and welcomed everyone present.

Councilors present were: Mike McAlpine, Keith Leonard, Todd Nifong, Robin Moon and Jackie Edwards. Absent: None. Town Manager Gary Looper, Town Clerk Linda Hunt, and Deputy Clerk Tammy Robertson were present. Davidson County Planning and Zoning Director Guy Cornman arrived at 6:40.

No members of press were in attendance.

DISCUSSION ITEMS

DISCUSSION OF PROPOSED SUBDIVISION ORDINANCE

At their June 5, 2017 regular meeting, it was the consensus of Council to hold a special meeting to discuss the proposed Subdivision Ordinance that was recommended to Council for adoption by the Planning Board at their Planning Board meeting held on April 25, 2017.

Mayor Pro Tem Mike McAlpine opened the discussion with key differences between the Town of Midway and Davidson County Subdivision Ordinances with Council approving the following:

1. Minor Subdivisions will be approved at staff level leaving only major subdivisions or variances from the regulations to be heard by the Town Planning Board.
2. Minor Subdivisions will not have to go through the plat process, but instead can be attached and recorded with the deed.
3. Flag lots shall be allowed in major or minor subdivisions.
4. Lots can be created along existing private easements and driveways. No longer will all lots have to abut public streets.
5. Private roads will be able to serve up to four (4) lots without having to be built to state standards. Private roads will need a driveway permit from the NCDOT and must have at least forty-five (45) feet of right of way, twenty (20) feet of all-weather driving surface, and must supply a turn-around for emergency vehicles.
6. Driveway permits are required for major subdivisions and new proposed private roads.
7. Sidewalks will no longer be required inside major subdivisions.
8. All wire utilities, such as electric, telephone, and cable television, shall be installed underground.
9. Stormwater controls shall be enforced by the State, if deemed necessary.
10. Proposed easements will allow two (2) lots to be served, unless the easement is proposed as a private road whereby four (4) lots can be served. Existing easements already serving multiple properties may have additional properties added in lieu of improvements being made to the roadway.

Additionally, define minor subdivision as ten (10) lots or less, and major subdivision as greater than ten

(10) lots.

Action on the proposed Town of Midway Subdivision Ordinance will be determined at the next regular Town Council meeting to be held on July 17, 2017 at 7:00 p.m. located at Town Hall 426 Gumtree Road in Midway.

DISCUSSION OF NOXIOUS GROWTH ORDINANCE

At their April 25, 2017 Planning Board meeting, the Planning Board recommended to the Town Council adoption of the proposed amendment to the Town's Littering, Noxious Growth and Unpermitted Junkyards Ordinance for the control of noxious growth within the Town to eliminate the sections on littering and excessive accumulations of junk, solid waste and refuse.

At their June 5, 2017 regular meeting, Council adopted the Town of Midway Control of Noxious Growth Ordinance (Ordinance no. 17-04)

**ORDINANCE NO. 17-04
TOWN OF MIDWAY
NOXIOUS GROWTH ORDINANCE**

NOXIOUS GROWTH PROHIBITED

§_.01 APPLICABILITY.

This Chapter does not apply to structures or conditions which are reasonably related to the operation of a bona fide farm, as that term is defined by the Town's Zoning Ordinance in effect at the time of the inspection. The provisions of this Chapter are in addition to, and not in lieu of, any of the Town's rights and remedies by ordinance, statute, by rule, at law, or at equity, including but not limited to the provisions of N.C.G.S. § 19-1 et seq.; N.C.G.S. § 160A-174; N.C.G.S. § 160A-193; N.C.G.S. § 160A-303.2; N.C.G.S. § 160A-426, et seq.; N.C.G.S. § 160A-439; and N.C.G.S. § 160A-441.

§_.02 PUBLIC NUISANCES.

The existence of any of the following conditions on any vacant lot or other parcel of land within the municipal limits of the Town is hereby declared to be dangerous and prejudicial to the public health, safety, or welfare and to constitute a public nuisance.

(A) The uncontrolled growth of grass, plant material, or noxious weeds on any residential, business or vacant lot, on the average, to a height in excess of 12 inches or which attracts or is likely to attract mosquitoes, rats, mice, snakes, or vermin of any kind.

§_.03 COMPLAINT AND INVESTIGATION, NOTICE OF ABATEMENT.

(A) Whenever it appears to a designated enforcement officer that there may exist a nuisance as provided in this ordinance, or when a designated enforcement officer receives a complaint of same, the officer shall undertake a preliminary investigation

(B) Upon determination that conditions constituting a public nuisance exist, the Town shall notify the owner(s) of the premises, in writing, of the specific violations and order abatement of the nuisances specified in the notice within 10 days from delivery of such written notice. Written notices to property owners stating abatement findings and orders shall be sent by first class mail to the owner(s) of record as listed by the Davidson County Tax Assessor.

§_.04 APPEALS.

(A) At any time before expiration of the 10 day abatement period, the property owner may request a hearing

before the Town Manager to appeal the finding of the investigator that a public nuisance exists. The Town Manager shall consider the evidence presented at such hearing and shall either revoke the initial order, issue a final order which differs from the initial order, or reinstate the initial order as a final abatement order.

(B) Any request for a hearing must be in writing and delivered to the Town Clerk at Town Hall and must be received by the Town prior to the expiration of the 10 day abatement period. Failure to deliver the request for a hearing such that it is timely received by the Town shall be considered a waiver of the owner's(s') right to appeal and the initial abatement order shall be deemed a final abatement order. The Town Manager shall fix a time for a hearing and the initial abatement order shall be temporarily suspended pending such hearing. The Town Manager will provide written notice of the hearing to the requesting party(ies) not later than 7 days prior to the date set for the hearing. The hearing must be held by the Town Manager within 30 days following timely receipt of the request for such hearing and will be conducted in the Town Hall. At the hearing, the owner(s) shall be given the opportunity to present evidence to refute the findings which supported the initial abatement order or the removal of the nuisance condition. The Town Manager shall issue a written decision of the appeal not later than 5 business days following the conclusion of the hearing. Notice of the written decision shall be provided in the manner set out in Section 04(8).

(C) After the issuance of the Town Manager's written decision as set out in the immediately preceding section, the owner may appeal from the order to the Town Council by giving notice of appeal in writing to the Town Manager and to the Town Clerk so as to be received not later than ten (10) days following the date of issuance of the Town Manager's written decision. In the absence of an appeal to the Town Council within the prescribed time, the written decision of the Town Manager shall be final. The Town Council shall hear appeals within a reasonable time after receipt of the notice of appeal and it may modify, affirm, or revoke the Town Manager's written decision.

§ .05 FAILURE TO COMPLY; ABATEMENT BY TOWN.

(A) If the owner(s) of the premises fails, neglects, or refuses to abate the conditions constituting the nuisance, as set out in the abatement order, within the 10 day abatement period, the Town Manager may have the conditions abated by either Town employees or by a contractor under the supervision of the Town. Under this chapter, Town employees or a contractor under the supervision of the Town shall have the authority to enter said premises for the express and sole purpose of abating the public nuisance identified in the abatement order.

§ .06 OWNER LIABLE FOR COSTS; CHARGES BECOME A LIEN.

(A) The property owner will be liable for all costs incurred by the Town for abatement actions pursuant to the immediately preceding section. Such costs may include an administrative fee not to exceed \$100 per order issued. The Town Finance Officer shall send via first class mail a statement of such costs to the owner(s). Such costs shall be due and payable within 30 days from the date such statement is mailed.

(B) All costs incurred by the Town in connection with the abatement of a nuisance shall be a lien upon the land or premises where the nuisance occurred. Such shall have a lien priority in the nature of ad valorem taxes and may be collected in the same manner as unpaid ad valorem taxes. See N.C.G.S. § 160A-193.

(C) All costs incurred by the Town in connection with the abatement of a nuisance is also a lien on any other real property owned by the person in default within the city limits or within one mile of the city limits, except for the person's primary residence. Such lien is inferior to all prior liens and shall be collected as a money judgment. The lien in this subsection (C) shall not apply if the person in default can show that the nuisance was created solely by the actions of another. See N.C.G.S. § 160A-193.

Adopted on this the 5th day of June 2017

Councilor Jackie Edwards stated that when Council adopted the Control of Noxious Growth Ordinance (Ordinance No. 17-04) it was her understanding that what was being adopted was the Town's previous Control of Noxious Growth Ordinance along with Town Attorney Jim Lanik's rewrite of the ordinance that

includes an appeals process, and not adopting just the rewrite as was adopted. Ms. Edwards said that the previous Control of Noxious Growth Ordinance describes all of the Town's noxious weeds, undeveloped land and wooded lots that Council had worked on for a long time and now is not a part of the Town's Noxious Growth Ordinance.

**CONTROL OF NOXIOUS GROWTH
(PREVIOUS ORDINANCE)**

- (a) No person may permit on premises under his control any growth of weeds, grasses, or other plants or bushes that becomes or threatens to become a fire hazard or a harboring place for rats, mice, snakes, or other vermin or otherwise poses a danger to public health or safety.
- (b) The existence of grass or weeds that exceed the height of twelve (12) inches over a large portion of the property shall be prima facie evidence of violation of this ordinance. If multiple adjacent parcels under singular ownership are found to be in violation of this ordinance, then each parcel shall be counted as an individual violation.
- (c) Undeveloped parcels of one acre or smaller and adjacent to improved property shall be cut in their entirety at least three times per year, as required during the mowing season of April through September (wooded lots exempt).
- (d) Undeveloped parcels larger than one acre and adjacent to improved property shall be cut within 100 feet of such improved property and shall be cut at least three times per year, as required during the mowing season of April through September (wooded lots exempt).
- (e) This subsection of the ordinance shall not apply to a farm, as that term is defined by the Zoning Ordinance of the Town of Midway in effect on the date of adoption hereof. Further, this subsection of the ordinance shall not apply to the bona fide raising of hay or other plants as animal fodder.
- (f) The owner of a property that is in violation of this ordinance shall be notified by first class mail of the violation of this ordinance. The property owner will have a maximum of ten (10) days from the date postmarked on the notification to correct the violation.
- (g) The Town of Midway may, upon excessive delay in correcting the violation, contract with a private firm to correct the violation. In such a circumstance, the owner of the property will be responsible for paying the costs associated with correcting the violation in addition to an administrative fee. A late fee will be applied to the total if the bill for such work has not been paid after thirty (30) days of receipt.
- (h) In addition to any other penalty or fee allowed by law and this ordinance, the town may impose a civil penalty of \$100.00 upon in subsequent violations involving the same parcel, owner, and mowing

Town Manager Gary Looper stated that Town Attorney Jim Lanik intended for the newly adopted Noxious Growth Ordinance (Ordinance No. 17-04) to be a rewrite that supersedes all previous noxious growth ordinances. What was presented to the Planning Board and to the Town Council was the Town's Control of Littering, Noxious Growth and Unpermitted Junkyards that eliminated the littering and junk aspect of the ordinance leaving only the noxious weed portion of the ordinance. When Mr. Lanik read the Solid Waste Ordinance that included the appeals process that goes to the Board of Adjustment and Superior Court he first wanted to include the appeals process for noxious weeds but changed the process to Town Council then to Manager instead of going to Superior Court. Mr. Lanik felt since the Solid Waste Ordinance had appeals, the Noxious Growth Ordinance also needed appeals.

At their May 1, 2017 regular meeting, Council called for a public hearing on the proposed Noxious Growth Ordinance to be held on June 5, 2017. Mayor Pro Tem Mike McAlpine stated that he thought Council was

calling a public hearing on the Control of Noxious Growth Ordinance that was already in place. When he was presented with the Noxious Growth Ordinance (Ordinance No. 17-04) he voted against it because it was rewritten without some of the language that was in the previous Noxious Growth Ordinance. Mr. McAlpine stated the previous Control of Growth Ordinance was working well without adding the appeals process. Adding the appeals process would add extra days of excessive growth without the Town being able to take care of the issue.

After further discussion, it was the consensus of Council to revisit the Noxious Growth Ordinance (Ordinance No. 17-04) and receive Town Attorney Jim Lanik's input on the appeals process with the Noxious Growth Ordinance at their next regular meeting to be held on July 17, 2017 at 7:00 p.m. at Town Hall located at 426 Gumtree Road.

RECESS TO CLOSED SESSION

On motion by Councilor Jackie Edwards, seconded by Mayor Pro Tem Mike McAlpine, Council voted unanimously to recess to closed session in accordance to N.C.G.S. 143-318.11(a)(4) to discuss matters pertaining to economic development.

RECONVENE TO OPEN SESSION

On motion by Mayor Pro Tem Mike McAlpine, seconded by Councilor Robin Moon, Council voted unanimously to reconvene to open session.

ADJOURNMENT

On motion by Councilor Keith Leonard, seconded by Councilor Todd Nifong, Council voted unanimously to adjourn the meeting at 9:35 p.m.

John E. Byrum, Mayor

Tammy H. Robertson, Deputy Clerk