

**MINUTES OF MIDWAY TOWN COUNCIL REGULAR MEETING HELD ON JUNE 5, 2017 AT 7:00 P.M. IN THE COUNCIL CHAMBER AT MIDWAY TOWN HALL, 426 GUMTREE ROAD, MIDWAY, NORTH CAROLINA**

**CALL TO ORDER**

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

Councilor Keith Leonard gave the invocation and led in the Pledge of Allegiance prior to the opening gavel.

Councilors present were: John Byrum, Jackie Edwards, Keith Leonard, Mike McAlpine and Todd Nifong. Absent: Robin Moon. Town Manager Gary Looper, Town Attorney Jim Lanik, Town Planning Consultant Richard Smith, Town Clerk Linda Hunt and Deputy Clerk Tammy Robertson were present.

Each Councilor had been furnished an agenda prior to the meeting.

No members of the press were in attendance.

**APPROVAL OF MINUTES**

The minutes from May 1, 2017 were amended as follows:

Under Regular Business – Proposed Contract Amendment For Cleaning Of Town Hall fourth paragraph, change wording from “the restroom supplies, hand towels, toilet tissue and hand soap will be invoiced with receipts attached and a reasonable delivery fee may be charged,” to “the restroom supplies, hand towels, toilet tissue and hand soap will be provided by the Town.”

On motion by Mayor Pro Tem Mike McAlpine, seconded by Councilor Todd Nifong, Council voted unanimously to approve the minutes of the May 1, 2017 Town Council regular meeting as amended.

**PUBLIC ADDRESS**

There were none.

**ADOPT AGENDA**

On motion by Councilor Keith Leonard, seconded by Councilor Todd Nifong, Council voted unanimously to adopt the agenda as presented.

**PUBLIC HEARINGS**

**A. PUBLIC HEARING TO ADOPT BUDGET ORDINANCE NO. 17-02**

At the Town Council regular meeting held on May 1, 2017, Town Manager Gary Looper presented his budget message and proposed budget for Fiscal Year 2017-2018, after which the Town Council called for a public hearing to be held on Monday, June 5, 2017, at 7:00 p.m. at Midway Town Hall to receive citizen input on the proposed budget.

Copies of the budget were made available for review at Town Hall and on the Town’s website at [www.midway-nc.gov](http://www.midway-nc.gov)

The public hearing was advertised in *The Dispatch* on May 19 and May 26, 2017.

Mayor Byrum opened the public hearing on the proposed Town of Midway Budget Ordinance for Fiscal Year 2017-2018.

There being no one desiring to speak on the Town of Midway proposed budget for fiscal year 2017-2018, Mayor Byrum closed the public hearing.

**B. ADOPTION OF TOWN OF MIDWAY BUDGET ORDINANCE FOR FISCAL YEAR 2017-2018 – ORDINANCE NO. 17-02**

On motion by Councilor Jackie Edwards, seconded by Mayor Pro Tem Mike McAlpine, Council voted unanimously to adopt the Town of Midway Budget Ordinance for Fiscal Year 2017-2018.

ORDINANCE NO. 17-02  
TOWN OF MIDWAY  
BUDGET ORDINANCE  
FISCAL YEAR 2017-2018

Be it ordained by the Town Council of the Town of Midway, North Carolina, at a regular meeting on the 5th day of June 2017 at 7:00 p.m. that the following departmental expenditures and anticipated fund revenues, together with certain restrictions, are adopted.

Section I

General Fund Appropriations

The following amounts are hereby appropriated in General Fund for operation of the Town Government and its activities for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Governing Board	43,450
Administration	399,288
Public Safety	80,000
Public Works	755,800
Planning & Zoning	36,172
Debt Service	67,599
Sewer Extension	100,000
<b>Total Appropriations</b>	<b>1,482,309</b>

Anticipated General Fund Revenues

The following revenues are estimated to be available in the General Fund for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Valorem Taxes	
Taxes-Ad Valorem -Current	\$155,000

Taxes-Ad Valorem-DMV	17,000
Taxes-Ad Valorem- Prior	3,700
Penalties & Interest	1,000
Refunds/Discounts	(900)
Sales Tax	925,000
Utility/Franchise Taxes	175,000
Solid Waste Tax	2,400
Investment Earnings	1,700
Planning Permits	500
Other	10,000
Fund Balance Appropriated	191,909
<b>Total General Fund Revenues</b>	<b>\$1,482,309</b>

Section III

Ad Valorem Taxes

It is estimated that the total valuation of property for the purpose of taxation is \$348,380,201 and the estimated collection rate is 96.33%. There is hereby levied a tax at the rate of five (.05) cents per one hundred dollars (\$100) valuation of property listed for taxes as of January 1, 2017 for the purpose of raising revenues listed as "Ad Valorem Tax, Current Year" in Section II, General Fund Revenues of this Ordinance.

Section IV

Finance Officer Transfer Authority

The Finance Officer is hereby authorized to transfer appropriations within a fund as contained herein under the following conditions:

- a. May transfer amounts up to \$5,000 between objects of expenditure within a department or between departments of the same fund with a report being submitted at the next regularly scheduled meeting of the Town Council.
- b. May not transfer any amount between fund accounts nor from contingency appropriations without prior approval of the Town Council.
- c. That the Town Council shall receive written request for authorization of funds to other agencies.
- d. That the Finance Officer provides a monthly report of expenditures and revenues.

Section V

Budget Ordinance Copies

Copies of the Budget Ordinance shall be furnished to the Finance Officer, the Budget Officer and the Tax Supervisor of this Town for their direction in carrying out of their duties.

Adopted this 5th day of June 2017.

**PUBLIC HEARING - TOWN OF MIDWAY ZONING ORDINANCE – ORDINANCE NO. 17-03**

At the Town Council regular meeting held on May 1, 2017, Council called for a public hearing to receive citizen input on the adoption of the Town of Midway Zoning Ordinance.

Copies of the ordinance were made available for review at Town Hall and on the Town's website at [www.midway-nc.gov](http://www.midway-nc.gov).

The notice of the public hearing was advertised in *The Dispatch* on May 19, 2017 and May 26, 2017 as required by law.

Mayor Byrum opened the public hearing.

There being no comments, Mayor Byrum closed the public hearing.

Mayor Pro Tem Mike McAlpine made a motion and Councilor Jackie Edwards seconded the motion to adopt the proposed Town of Midway Zoning Ordinance. Discussion followed.

Mayor Pro Tem Mike McAlpine said he had a few questions about some of the provisions in the proposed Zoning Ordinance he would like to direct to Town Planning Consultant Richard Smith.

Mr. McAlpine stated he has some reservations on some of the zoning districts where solar farms would be permitted as outlined in the Table of Permitted Uses, Article III, Page III-47, of the proposed Zoning Ordinance and he asked if the Town could be more restrictive on the locations. As written in the proposed ordinance, solar farms could be allowed by Special Use Permit upon approval by the Town Council in the following districts: Rural Agricultural (RA-1, RA-2, RA-3); Rural Commercial (RC); Office and Industrial (OI); Light Industrial (LI); and Heavy Industrial (HI). Mr. Smith replied that Council certainly has the option of restricting them further if Council wishes to do so. Mr. McAlpine said he had envisioned solar farms being on the backfields and not on the main corridors.

Councilor Todd Nifong said he agreed with Mr. McAlpine on further restricting locations for solar farms, adding that he has some reservations throughout the proposed ordinance as a whole but due to some personal circumstances in the last couple of months and in the interest of time, he would not go into all of those at this time.

Councilor Keith Leonard was in agreement with further restricting solar farms as well.

Councilor Jackie Edwards agreed with further restrictions and asked if solar farms could be kept out of the Town all together or if that would be harder to restrict. Mr. Smith replied that would be more difficult to do. Mr. McAlpine added that the Town would have to allow them in at least one district.

Mayor Pro Tem Mike McAlpine asked Davidson County Planning Director Guy Cornman if the County has had any issues with solar farms. Mr. Cornman replied that the County only had one major solar farm and that particular location was not right on the road but further back and the County has not had any issues with that particular farm. He did note that there was one issue in the beginning in that

the solar farm property abutted an older subdivision and were using those residential roads as potential access points but that issue was resolved.

Mr. Cornman pointed out that more than 85% of property in Davidson County is zoned Agricultural and that is why solar farms are offered in so many districts. Midway does not have nearly that amount.

Davidson County Planner Scott Leonard commented that the amount of land a developer would be looking at for solar farms are typically not zoned industrial because they are not that big. They would want residential because that is where the acreage is. Eliminating solar farms from residential districts is going to cut down heavily on the availability of those sites.

It was the consensus of Council to restrict solar farms to the LI and HI districts.

Mayor Byrum asked if Council had any more questions.

Councilor Jackie Edwards asked Town Planning Consultant Richard Smith if there are any tools the Town could use for Mixed Use zoning districts to have a better idea what the developer's plans are. Mr. Smith responded that the Mixed Use zoning districts are there as a mean to be able to have a mixture of residential and commercial uses. In the proposed Zoning Ordinance, the Mixed Use District is broken down into Mixed-Use Residential (MX-R) and Mixed-Use Commercial (MX-C). The MX-R District permits residential mixed use development (dwellings and permitted accessory uses and structures) on tracts that are no less than fifteen (15) acres and it allows for any use as indicated in the Table of Permitted Uses, provided that no more than fifteen percent (15%) of the total project acreage is dedicated for commercial uses. The MX-C District permits mixed use development on tracts of no less than twenty-five percent (25%) acres and allows for any use as indicated in the Table of Permitted Uses, provided that no more than fifteen percent (15%) of the total project acreage is dedicated for residential uses. Mr. Smith noted that under the current provisions in the County Zoning Ordinance call for the developer to identify the areas where they are going to have mixed use residential and mixed use and that is all which are very general and proud. Mr. Smith pointed out that currently the Town does not have any Mixed Use Districts so anyone wanting that type of zoning would have to go through the rezoning process.

Mr. Smith asked that if Council wanted to further solidify what type of product that goes with the Mixed Use districts, Council may want to consider adopting something along the lines of Conditional Zoning Districts which would allow the Council to approve the type of products that developers bring to the Town by reviewing the plan to see the final product up front. This type of zoning allows for more restrictions in Mixed Use Districts. Mr. Smith said it is more or less "legalized contract zoning." Conditional Zoning Districts are in addition to Mixed Use Districts and not a replacement. Conditional zoning is not provided in the County's current Zoning Ordinance.

Davidson County's current Zoning Ordinance does not include Conditional Zoning provisions; however, Davidson County Planning Director Guy Cornman told Council that the County is actually working toward going to conditional zoning for all zoning districts but is not there yet.

Mayor Pro Tem Mike McAlpine said he also has a question about the provision for nonconforming signs on Page VI-17, Subsection M of Section 6.05 in Article VI of the proposed Zoning Ordinance which provides: *Any nonconforming sign erected prior to the effective date of the Article shall be removed, changed, or altered to conform to the provisions of this ordinance within five (5) years of the effective date of this Article.* Mr. McAlpine asked how the County would plan to enforce that provision. Davidson County Planner Scott Leonard responded that the County had anticipated the Town's Zoning and nonconforming sign provision has been on the books for sometime but never really had action taken on this. Mr. Leonard said County staff would go ahead and identify any nonconforming signs

within the Town and send out the notices of noncompliance. Mr. Leonard noted that the Town allowing five years to bring the nonconforming signs into compliance is very generous.

Mr. McAlpine thanked the Planning Board members for all of their hard work in working through and helping Council in updating the ordinances.

Town Manager Gary Looper commented that the provision says “all nonconforming signs shall be identified and recorded at the effective date of the Article” so what if a nonconforming sign is noticed a year from now, does that mean the five year window starts at this point or are we hindered because it was not identified when the ordinance was adopted.

Councilor Todd Nifong asked Town Attorney Jim Lanik to give his thoughts on the wording in that provision. He said he would take the position that the lack of identification on the effective date would not hinder the removal after five years. Mr. Lanik said it says: *Any nonconforming sign erected prior to the effective date of this Article can be removed, changed, or altered to conform to the provisions of this ordinance within five (5) years of the effective date of this Article*” and then the next sentence says *All nonconforming signs shall be identified and recorded at the effective date of this Article*, which are two independent thoughts. Mr. Lanik said it would be a proof issue whether or not that nonconforming sign was erected prior to that effective date. If it can be proved that it was, the lack of identification of it as of the effective date would not hinder. The Town might just have a little harder time four and a half years from now proving that it was nonconforming four and a half years ago.

Councilor Todd Nifong said that was his interpretation but he just wanted to get the Town Attorney’s thoughts on that.

Mayor Pro Tem Mike McAlpine said that before taking the vote on the proposed ordinance, he would like to get a consensus from the Council on the wording of the nonconforming signs provision. He commented that whenever changes are considered for the Town, he thinks back to the Town’s original intent for incorporation which was the desire not to become a part of Winston and to somewhat be left alone. Mr. McAlpine commented that he just doesn’t want the Town to become too intrusive.

Councilor Nifong said the wording specifically on the nonconforming signs is okay with him; however, there are just some other things throughout the whole ordinance, whether it be additions, deletions or changes that raises a whole lot more questions, adding that if he had to vote on the ordinance as a whole tonight, he would have to vote against it.

Planning Consultant Richard Smith said for Council to keep in mind that provisions being referred to are actually in the Town’s current Sign Ordinance so the nonconforming signs provision is not new.

Davidson County Planner Scott Leonard interjected that when the County agreed to take on administering the Town’s ordinances, they realized that towns are routinely more restrictive than counties. Even though the County may not be as restrictive, they had anticipated that once the Town adopted the ordinance, the County would read those restrictions and, unless there is some other direction by Council, go out and make a list of the nonconforming signs, sending out the notices of noncompliance, and notifying violators that the County is enforcing the Town’s ordinance as of July 1, 2017. Mr. Leonard said that County anticipates in reading that language that would be the direction of the Town Council and if not, the County needs to know.

Town Manager Gary Looper posed two questions for thought. Is there an option to change the provision from five (5) years to ten (10) years? Is there an option to say nonconforming signs must be replaced if it is damaged beyond a certain value of the sign but not have a time limit.

Council Todd Nifong said his thoughts are that if the Town has an ordinance, it needs to be supported and enforced. Councilor Keith Leonard said he agreed wholeheartedly with that statement but he doesn't like to be too intrusive either. Mr. Leonard commented that the Town is giving them five years to come into compliance and that's generous.

Motion amended by Mayor Pro Tem Mike McAlpine, seconded by Jackie Edwards, Council voted to adopt the Town of Midway Zoning Ordinance by a 3-1 split vote with the following amendments:

- Table of Permitted Uses, Article III, Section 3.08 Page 47, **and** Article V, Section 5.08, Subsection (BB), Page 32, limiting solar farms to light and heavy industrial districts only, eliminating residential and commercial districts.
- Article VI, Section 6.04 (G) 3, Page 15, exempting rotating barber shop signs from the Standards of Signage.

Voting in favor of the Town of Midway Zoning Ordinance as amended were Councilors Mike McAlpine, Jackie Edwards and Keith Leonard. Voting against: Councilor Todd Nifong. The motion passed.

The Town of Midway Zoning Ordinance (Ordinance No. 17-03) is incorporated in these minutes by reference as if fully set forth herein.

A full and complete copy of the Town of Midway Zoning Ordinance is on file at Town Hall.

**PUBLIC HEARING – TOWN OF MIDWAY SOLID WASTE ORDINANCE - ORDINANCE NO. 17-01**

At the Town Council regular meeting held on May 1, 2017, Council called for a public hearing to receive citizen input on the adoption of the Town of Midway Solid Waste Ordinance. The Solid Waste Ordinance would allow County officials to begin enforcing issues relating to the removal of junk from property within the Town.

Copies of the ordinance were made available for review at Town Hall and on the Town's website at [www.midway-nc.gov](http://www.midway-nc.gov).

The notice of the public hearing was advertised in *The Dispatch* on May 19, 2017 and May 26, 2017 as required by law.

Mayor Byrum opened the public hearing.

There being no comments, Mayor Byrum closed the public hearing.

Councilor Todd Nifong asked Town Manager Gary Looper to speak on the appeals process in the proposed Solid Waste Ordinance. Mr. Looper responded by adopting the Solid Waste Ordinance, the Town would be adopting essentially what the County does. The owner or occupant may appeal the determination of the Planning Director to the General Court of Justice, Superior Court Division.

On motion by Councilor Todd Nifong, seconded by Councilor Jackie Edwards, Council voted unanimously to adopt the Town of Midway Solid Waste Ordinance as presented.

The Town of Midway Solid Waste Ordinance (Ordinance No. 17-01) is incorporated in these minutes by reference as if fully set forth herein.

A full and complete copy of the Town of Midway Solid Waste Ordinance is on file at Town Hall.

**PUBLIC HEARING – ADOPTION OF NOXIOUS GROWTH ORDINANCE - ORDINANCE NO. 17-04**

At the Town Council regular meeting held on May 1, 2017, Council called for a public hearing to receive citizen input on the adoption of the Town of Midway Noxious Growth Ordinance.

Copies of the ordinance were made available for review at Town Hall and on the Town's website at [www.midway-nc.gov](http://www.midway-nc.gov).

The notice of the public hearing was advertised in *The Dispatch* on May 26, 2017 as required by law.

Mayor Byrum opened the public hearing.

There being no comments, Mayor Byrum closed the public hearing.

Councilor Todd Nifong made a motion and Councilor Keith Leonard seconded the motion to adopt the Proposed Noxious Growth Ordinance. Discussion followed.

Town Manager Gary Looper said what the Council was presented last month basically eliminated the littering, accumulation of junk and solid waste portions of the current ordinance. The Noxious Growth provision has been rewritten and includes an appeals process to the Town Manager and Town Council before taking affirmative action.

Town Attorney Jim Lanik explained the reasoning behind the difference in the appeals process is because this is just a straight noxious growth ordinance. This is not a situation where the Town is actually going to go in and take anything from anybody but just entering on the land for purposes of mowing, weed eating and bush hogging.

Councilor Jackie Edwards questioned the need for the appeals process, saying that from what she understands that what is currently in place is working perfectly. Ms. Edwards asked Town Planning Consultant Richard Smith to elaborate. Mr. Smith responded that what the Town is doing now in response to valid noxious growth complaints is to issue letters of violation and give violators ten days to abate the nuisance. If they don't abate the nuisance after ten days, a contractor is hired to cut the grass and a lien is placed on the property.

Councilor Todd Nifong asked if the Town has had any appeals on noxious growth. Mr. Smith responded that there had been none. Town Manager Gary Looper added that the letters that are sent out do not include that option.

Councilor Jackie Edwards said that this is just about mowing grass and commented that by the time the appeals process is gone through, the grass would be two feet high.

Mayor Byrum called for a vote on the motion on the floor to adopt the Noxious Growth Ordinance. Council voted to adopt the Noxious Growth Ordinance as presented by a 3-2 split vote with Mayor Byrum casting the deciding vote in favor of the ordinance. The motion passed.

Voting in favor of the adoption of the Noxious Growth Ordinance: Councilors Todd Nifong, Keith Leonard and Mayor John Byrum. Voting against: Councilors Mike McAlpine and Jackie Edwards.

**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 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 premise 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 5<sup>th</sup> day of June 2017.

**REGULAR BUSINESS**

**DISCUSSION OF PROPOSED SUBDIVISION ORDINANCE – CALL FOR PUBLIC HEARING**

At their Planning Board meeting held on April 25, 2017, the Planning Board recommended to the Town Council adoption of the proposed Subdivision Ordinance with the following amendments:

1. Major and Minor Subdivisions will be approved at the Planning Board level.
2. Delete wording under Section 406.3 Stormwater and insert the following wording: Stormwater controls shall be enforced by the State, if deemed necessary.
3. Define Minor Subdivision as five (5) lots or less. Current County standard is ten (10) lots or less.

Mayor Pro Tem Mike McAlpine referred to the comparison between the County's and the Town's Subdivision Ordinances. In the County ordinance, minor subdivisions are approved at staff level leaving only major subdivisions or variances from regulations to be heard by the Planning Board." The

Town's Planning Board recommended approval authority for minor subdivisions to be handled at the Planning Board level.

Mr. McAlpine stated he felt that approval of minor subdivisions should be streamlined so that plats can be approved in a more timely manner. This was also the consensus of Council. Mr. McAlpine also pointed out that the County allows up to nine (9) lots to be considered a minor subdivision while the Planning Board recommended a minor subdivision be defined as five (5) lots or less.

Mr. Scott Leonard, Davidson County Planner, discussed the County's minor subdivision regulations. Mr. Leonard said if there is a private road and additional lots are to be added along that road, there are standards that have to be met. With the first four (4) lots on an existing private road, no improvements to the road have to be made. The fifth and sixth lots have to have a road maintenance agreement and a thirty foot easement established. The seventh lot requires road improvements to meet fire code standards so fire trucks are able to drive in and turn around which is typically eighteen feet of driving surface. The County caps minor subdivisions at nine (9) lots not allowing more on an existing private road.

In creating a new private road, the County will allow four (4) lots but the road has to have a forty-five foot right of way and a twenty foot driving surface and turn around for fire trucks.

Mr. McAlpine asked Mr. Leonard what the restrictions would be if the Town limits minor subdivisions to five (5) lots. Mr. Leonard stated that if Council retains a minor subdivision at five (5) lots it will automatically be sent back to the Planning Board for approval of any additional lots after five (5). With the County's Subdivision Ordinance, major subdivisions have to go to the Planning Board for approval with minor subdivisions being approved at the staff level. The County will allow up to nine (9) lots on staff level without having to be reviewed by the Planning Board.

Town Planning Consultant Richard Smith pointed out since the Town's Zoning Ordinance as adopted defines a minor subdivision as five (5) lots or less, and a major subdivision as more than five (5) lots. The ordinance would need to be amended if Council adopts changes to the definitions of minor and major subdivisions.

On motion by Councilor Todd Nifong, seconded by Mayor Pro Tem Mike McAlpine, Council voted unanimously to hold a special meeting to further discuss the proposed Subdivision Ordinance on Monday, June 26, at 6:00 p.m. located at Town Hall 426 Gumtree Road in Midway.

#### **CALL FOR PUBLIC HEARING – WATERSHED ORDINANCE**

The Planning Board reviewed the Watershed Ordinance at their April 25, 2017 Planning Board meeting but delayed recommendation to the Town Council until there was a better understanding of where the watershed area is located in Midway.

Town Manager Gary Looper stated that Town Attorney Jim Lanik recommended the Town adopting the County's Watershed Ordinance because it would be easier to enforce. Mr. Looper also stated that the Watershed map should also be adopted. Watersheds are not determined locally but by the State.

Mr. Looper noted a change to be made to Article 200, Section 202, (E) on page 3 of the Watershed Ordinance. It should read "All subdivision plats shall comply with the requirements of the Midway Subdivision Ordinance instead of Davidson County Subdivision Ordinance.

Mr. Looper said another consideration is whether to maintain a fifty foot or a one hundred foot buffer along the watershed area. The County maintains a fifty foot buffer. Mr. Scott Leonard, Davidson County Planner, stated that staying one hundred feet from a perennial stream could hurt development opportunities of the land, noting a one hundred foot buffer is pretty severe.

Mr. Leonard explained the difference between a floodplain and watershed area stating a floodplain is in danger of flooding which makes for restrictions on development. A watershed is an area of land that separates waters flowing to different streams and basins. For the Midway area, this would be Lake Thom a Lex.

On motion by Councilor Todd Nifong, seconded by Mayor Pro Tem Mike McAlpine, Council voted unanimously to call for a public hearing on the proposed Watershed Ordinance to be held on Monday, July 17, 2017, at 7:00 p.m. at Town Hall located at 426 Gumtree Road in Midway, North Carolina.

**CONSIDER ADOPTION OF RESOLUTION OF SUPPORT WITH KIMLEY-HORN FOR BREAK IN ACCESS AT US HIGHWAY 52 AT HICKORY TREE ROAD – RESOLUTION NO. 04-17**

Town Manager Gary Looper informed Council that Kimley-Horn, an engineering consulting firm, has completed the analysis of the Town's request for an access break on Hickory Tree Road at US Highway 52 which would allow for a connection for Hickory Tree Road and US Highway 52 for an improved development of the corridor with implementation of the interstate requirements for Highway 52 to become an interstate designation. Mr. Looper stated the report would now be sent to the North Carolina Department of Transportation (NCDOT) in Raleigh asking for the access break.

Mayor Pro Tem Mike McAlpine requested changes in language in the scope of services provided by Kimley-Horn as follows:

1. Hickory Tree Road at Fred Sink Road/Meadow Trail, and not at Hickory Tree Road at Bud Sink Road/Meadow Trail as written.
2. Change language on first page, second paragraph from:

*The subject analysis and associated requested control of access break is the initial phase to the development of a long-term mobility and development strategy for the Town of Midway. As currently envisioned, the control of access break would allow for the creation of a new public connector road, as depicted to the right, from the existing ramp terminal intersection with Hickory Tree Road to a new intersection with Gumtree Road. The creation of this new public roadway would allow for improved circulation between Gumtree Road and Hickory Tree Road. In addition, this roadway could allow for the creation of a new Town Center for the Town of Midway.*

To:

*The requested control of access break is associated with a long-term mobility and development strategy for the Town of Midway. As currently envisioned, the control of access break would allow for the creation of a new public road to Fred Sink Road and adjoining properties. The creation of this new public roadway would allow for improved circulation and could allow for the creation of a new Town Center for the Town of Midway.*

On motion by Mayor Pro Tem Mike McAlpine, seconded by Councilor Jackie Edwards, Council voted unanimously to adopt the Resolution of Support for a Break in Access at US Highway 52 at Hickory Tree Road.

**RESOLUTION NO. 04-17  
RESOLUTION OF SUPPORT  
FOR A BREAK IN ACCESS AT  
US HIGHWAY 52 AT HICKORY TREE ROAD**

**Whereas**, in May, 2013 the Town of Midway adopted its Community Transportation Evaluation (the "CTE") which includes a recommendation for a Break-in-Access as the first critical piece in developing a new, integrated roadway network, and

**Whereas**, the Town also has completed an engineering Technical Analysis in May 2017 to substantiate a Control of Access Break located at the northbound Exit Ramp of Highway US 52 in Midway, and

**Whereas**, both access ramps (southbound exit and northbound entrance) for US 52 are currently located on the south side of Hickory Tree Road, minimizing the need for a future northbound entry ramp on the north side of Hickory Tree Road, and

**Whereas**, the Highway US 52 Hickory Tree Road Interchange serves as the gateway into the town, and a break in access on the north side of Hickory Tree Road will allow for the creation of a fourth leg to the intersection and the basis for improved street network and circulation improvements needed for the future development of this entire area,

**NOW, Therefore**, based on recommendations in the Town of Midway Transportation Plan, and to enhance the Town's future street network and circulation improvements, the Town Council does hereby resolve to support the Town's request for, and to seek approval of, the Break in Access from the North Carolina Department of Transportation at the interchange of Highway US 52 and Hickory Tree Road as more fully set out in the CTE.

**Adopted** on this the 5<sup>th</sup> day of June, 2017.

**CONSIDER PAYMENT TO CAPITAL DEVELOPMENT SERVICES INC. FOR YMCA FEASIBILITY STUDY**

Council was provided a copy of an invoice from the J. Smith Young YMCA for \$10,326.85 for services rendered in providing a feasibility study pertaining to a potential YMCA to be built in Northern Davidson County.

Mayor Pro Tem Mike McAlpine stated he could support paying \$9,500 towards the invoice which takes into account deduction of the \$500 paid by the Northern Davidson County Chamber of Commerce toward the study per an email received from Gene Klump, CEO of the J. Smith Young YMCA.

Town Manager Gary Looper provided a statement that the J. Smith Young YMCA had agreed to pay some of the travel expenses associated with the study.

On motion by Mayor Pro Tem Mike McAlpine, seconded by Councilor Todd Nifong, Council voted unanimously to approve payment of \$9,500 to the J. Smith Young YMCA for charges incurred for the feasibility study for a potential YMCA to be built in Northern Davidson County.

**APPROVE CONTRACT WITH DAVIDSON COUNTY FOR ZONING SERVICES**

The proposed contract with the County for the administration of planning and zoning code enforcement services for the Town was presented to Council for approval. Town Attorney Jim Lanik has reviewed and approved the contract noting all the necessary changes have been made to the contract.

On motion by Councilor Todd Nifong, seconded by Councilor Keith Leonard, Council voted unanimously to approve the contract with Davidson County to provide planning and zoning code enforcement services to the Town of Midway at an annual cost of \$17,745, effective July 1, 2017.

COUNTY OF DAVIDSON

THIS AGREEMENT, made and entered into this 5<sup>th</sup> day of June 2017, by and between the Town of Midway, a municipal corporation hereinafter referred to as "Town of Midway," and Davidson County, a body politic and corporate of the State of North Carolina, hereinafter referred to as "Davidson County."

WITNESSETH:

**WHEREAS**, Midway has requested Davidson County to provide certain services relating to planning and zoning code enforcement; and

**WHEREAS**, Davidson County has expertise in such planning and zoning code enforcement and agrees to provide such services to Midway; and

**WHEREAS**, Midway and Davidson County desire to memorialize such Agreement for Services and to establish the respective obligations of the parties.

**NOW THEREFORE**, the Midway and Davidson County agrees as follows:

1. **SCOPE OF SERVICES:** Davidson County agrees to provide and perform for Midway all of those services stipulated in the Scope of Services attached to this contract and which is hereby incorporated as a part of this contract as if fully set forth herein (the "Services").
2. **COMPENSATION FOR SERVICES:** In providing the Services, Davidson County shall receive compensation at a rate of \$17,775.00 annually. This fee, along with any charges for additional hourly services provided by County to Midway, shall be paid to Davidson County in accordance with Section 3 below. Any different or additional Scope of Services will be approved and authorized by the parties and set out in a formally and mutually executed Contract Addendum.
3. **METHOD OF PAYMENT:** Midway will make payments to Davidson County on a quarterly basis of the compensation for service set out in Section 2 in equal quarterly installments of \$4,443.75 payable on July 1, October 1, January 1, and April 1 of each year; provided, however, that the first payment due under this contract will be payable within 10 days of the full execution of the contract by both parties and shall be for a prorated amount for the remaining calendar quarter. Davidson County shall invoice Midway for hourly services with such invoices payable within 30 days of receipt.
4. **TERMINATION OF AGREEMENT FOR CAUSE:** If a party to this Agreement shall fail to fulfill in a timely, professional and proper manner all obligations under this Agreement, or should such party violate any of the covenants, agreements, or stipulations of this Agreement, the other party shall have the right to terminate this Agreement immediately by giving written notice to breaching party of such termination and specifying the effective date thereof. In the event of such termination all finished or unfinished documents models, photographs and reports prepared by Davidson County under this Agreement shall, at the option of Midway, become the property of Midway, and Davidson County shall be entitled to receive just and equitable compensation for any work satisfactorily completed pursuant to this contract.

However, Midway shall not be obligated to pay any remaining charges for work satisfactorily completed where there exists a right in favor of Midway for refund, reimbursement, or offset in connection with any obligations arising from Davidson County to Midway. Notwithstanding anything in this Agreement to the contrary, either party may terminate this Agreement for any reason, or no reason, upon 30 days' written notice to the other party.

5. **NO HIRING:** Throughout the term of this Agreement, and for a period of one year after the termination or expiration of this Agreement, Midway and Davidson County agree not to employ, solicit or offer employment, either directly or indirectly (including without limitation, through the use of any third party) to any employee of the other, without the prior written consent of the other. Notwithstanding

anything in this Section 5 to the contrary, the hiring of an employee by a contractor of one of the parties hereto shall not in and of itself be a breach of the provisions of this Section 5.

6. LEGAL REMEDIES: Davidson County shall not be relieved of any liability to Midway for damages sustained by Midway by virtue of any breach of this Agreement by Davison County. It is specifically understood that Midway may withhold any payments to Davidson County for the purpose of offset until such time as the exact amount of damages due Midway from Davidson County is determined. Midway otherwise reserves all legal remedies as may be provided by law.

7. CHANGES: Midway may, from time to time, request changes in the Scope of Services to be performed by Davidson County. Such changes, including any increase or decrease in the amount of Davidson County's compensation which may be mutually agreed upon between the Midway and Davidson County, shall be incorporated in written amendments to this Agreement after appropriate authorization as called for in Section 2 herein.

8. EQUAL EMPLOYMENT OPPORTUNITY: Davidson County shall not discriminate against any employee or applicant for employment on account of race, color, religion, sex, national origin, age, because of handicapping condition, or qualified special disabled veterans, veterans of the Vietnam era and any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. Davidson County shall take affirmative action to ensure equal employment opportunity with respect to all of its employment practices

9. FEDERAL AND STATE COMPLIANCE: Davidson County acknowledges responsibility for compliance with any and all applicable corporate, partnership or individual taxation laws. Davidson County shall pay all applicable taxes and insurance premiums stipulated by applicable law and shall hold harmless Midway for the payment thereof. Davidson County acknowledges exemption from withholding of applicable taxes or other deductions from compensation agreed to in Section 2 of this contract. Davidson County agrees to furnish Federal Form W-9, upon execution of this contract and prior to issuance of any compensation from Midway. The personnel necessary for the performance by Davidson County hereunder shall be, and shall at all times remain during such performance, employees of Davidson.

10. INSURANCE: Davidson County shall maintain general liability insurance with policy limits of at least \$1,000,000.00 per incident/\$2,000,000.00 aggregate and shall maintain Worker's Compensation Insurance as required under North Carolina law. Insurance certificates will be provided to Midway before any work under this contract commences

11. E-VERIFY. The parties shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

12. ENTIRE AGREEMENT: This is the entire Agreement between the parties and there are no terms, conditions, representations or warranties relating to the work to be performed hereunder which are not specifically set forth herein.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

**ADOPT DAVIDSON COUNTY PLANNING AND ZONING DEPARTMENT SERVICES FEES SCHEDULE**

Council was presented a copy of the Davidson County Planning and Zoning Department fees schedule for review and adoption. Town Manager Gary Looper stated that there are only a few minor differences between the County and the Town's fees schedules.

On motion by Councilor Todd Nifong, seconded by Councilor Jackie Edwards, Council voted unanimously to adopt Davidson County Planning and Zoning Department Services fees schedule as the Town's fee schedule for planning and zoning services.

Davidson County Planning and Zoning Department Services Fee Schedule Effective  
September 6, 2005

Zoning Compliance Permits

Residential	\$25.00
Nonresidential	\$50.00
Signs (On Site)	\$20.00
Signs (Outdoor Advertising)	\$100.00
Wireless Communication Tower	\$500.00
Collocation	\$250.00

Zoning Map Amendments

Residential	\$200.00
Non-Residential (Standard)	\$350.00
Planned Developments	\$500.00
Conditional Use Residential	\$250.00
Conditional Use Non-Residential	\$400.00

Text Amendments

\$250.00

Special Use Permits

Class A SUP	\$350.00
Class B SUP	\$200.00

Variance Requests

Zoning Variances	\$200.00
Watershed Variances (70%)	\$200.00

Interpretations/Appeals

\$250.00

Vested Rights

\$250.00

Certification Letters

\$25.00

Subdivision Reviews

0-5 Lots (Minor)	Free
6-10 Lots (Minor)	\$100.00
11 -25 Lots (Major)	\$200.00
25 Lots+	\$200.00 Plus \$25.00/Lot Over 25

Ordinance & Plans

Zoning Ordinance	\$5.00
Subdivision Ordinance	\$2.00
Watershed Ordinance	\$2.00
Land Development Plan	\$10.00

**GIS MAP FEE SCHEDULE (AERIAL PHOTOS)**

E Size (44" X 34")	\$25.00
D Size (34" X 22")	\$20.00
C Size (22" X 17")	\$15.00
Tabloid (17" X 11")	\$3.00
Letter (11" X 8.5")	\$2.00

**TOWN MANAGERS REPORTS**

**STRATEGIC CONNECTIONS – AUDIO/VIDEO WARRANTY**

Town Manager presented to Council a warranty contract from Strategic Connections for the Town’s Audio Video system. The warranty contract is valid February 27, 2017 – February 26, 2018.

For information only.

**STREETLIGHTS – NORMAN SHOAF ROAD**

At their May 1, 2017 regular meeting, Council discussed adding street lights along Norman Shoaf Road to Riggins Lane. Town Manager Gary Looper stated that he met with a representative from Energy United two weeks ago to obtain cost estimates for the streetlights. Mr. Looper said he has not heard back from Energy United at this time.

For information only.

**MONTHLY FINANCIAL REPORT**

Town Manager Gary Looper provided Council with monthly financial reports for May, 2017 as follows:

<b>MAY 31, 2017</b>		
Total Income	\$1,269,322	79.1% of overall budget
Total Expenses	\$916,789	57.2% of overall budget

For information only.

(Mayor Byrum called for a ten minute recess)

**RECESS TO CLOSED SESSION**

On motion by Councilor Todd Nifong, seconded by Councilor Jackie Edwards, 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 Councilor Todd Nifong, seconded by Councilor Jackie Edwards, Council voted unanimously to reconvene to open session.

**ADJOURNMENT**

On motion by Councilor Jackie Edwards, seconded by Councilor Keith Leonard, Council voted unanimously to adjourn the meeting at 9:50 p.m.

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John E. Byrum, Mayor

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Tammy H. Robertson, Deputy Clerk