

MINUTES OF MIDWAY TOWN COUNCIL REGULAR MEETING HELD ON MARCH 5, 2018 AT 7:00 P.M. IN THE COUNCIL CHAMBER AT MIDWAY TOWN HALL, 426 GUMTREE ROAD, MIDWAY, NORTH CAROLINA

CALL TO ORDER

Councilor Robin Moon called the meeting to order and welcomed everyone present.

Councilor Robin Moon gave the invocation and led in the Pledge of Allegiance prior to the opening gavel.

Councilors present were: John Byrum, Mike McAlpine, Todd Nifong, Robin Moon, Keith Leonard and Jackie Edwards. Absent: None. Interim Town Manager/Town Clerk Linda Hunt, Town Attorney Jim Lanik, Davidson County Zoning Officer Lee Crook and Travis Swain with Davidson County Planning and Zoning Department were present. Absent: Deputy Clerk Tammy Robertson.

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

No members of press were in attendance.

APPROVAL OF MINUTES

On motion by Mayor Pro Tem Mike McAlpine, seconded by Councilor Jackie Edwards, Council voted unanimously to approve the minutes of the February 5, 2018 Town Council regular meeting as presented.

PUBLIC ADDRESS

There were none.

ADOPT AGENDA

On motion by Councilor Todd Nifong, seconded by Mayor Pro Tem Mike McAlpine, Council voted unanimously to adopt the agenda as presented.

PROCLAMATION

YOUTH ART MONTH

Mayor John Byrum proclaimed the month of March as Youth Art Month in the Town of Midway and encouraged all of its citizens to join him in this special observance.

TOWN OF MIDWAY
Proclamation
YOUTH ART MONTH

WHEREAS, the study of the arts is a viable factor in the total education curricula that develops citizens of a global society with a fuller, more meaningful life; and

WHEREAS, Art education provides substantial educational benefits to all elementary, middle and secondary students; and

WHEREAS, Art education develops students' creative potential and improves problem solving and critical-thinking skills by reinforcing and bringing to life what students learn in other academic subject areas; and

WHEREAS, Art education teaches sensitivity to beauty, order and expressive qualities, advances student mastery in art production, art history, art criticism and artistic literacy creating lifelong learners; and

WHEREAS, observance of Youth Art Month is carried out by volunteers throughout Davidson County, including art educators, parents, librarians, leaders of youth organizations, businesspeople and students; and

WHEREAS, **local agencies such as Arts Davidson County, Edward C. Smith Civic Center, Charity League of Lexington and the Lexington Youth Theater have joined together to promote this year's theme, "Building Community Through Art," by providing activities to promote artful education for the enjoyment of all citizens;**

now, therefore, be it resolved, that I, John Byrum, by the authority vested in me as Mayor of the Town of Midway, do hereby proclaim the month of March 2018 as

YOUTH ART MONTH

in the Town of Midway and encourage all citizens to promote art and art education and to support local art museums and civic organizations in their efforts to provide quality art programs for our youth.

ADOPTED this the 5th day of March, 2018.

REGULAR BUSINESS

STATUTE OF LIMITATIONS WITH REGARD TO ZONING VIOLATIONS – LEE CROOK, ZONING OFFICER WITH DAVIDSON COUNTY PLANNING AND ZONING

Mr. Lee Crook, Zoning Officer for Davidson County Planning and Zoning addressed Council in regards to the statute of limitations for developmental regulations. State Law 2017.10 was passed October 2017 and limits local governments to five years in bringing forward a lawsuit for any lingering zoning violations.

Mr. Crook stated that this law is retroactive and the Town would only have until October 1, 2018 to handle any outstanding zoning violations that the Town has had reasonable knowledge of for the past five years but not pursued. Typically, the Town has a passive enforcement policy (complaint driven enforcement) with respect to zoning issues. If the violations are not pursued within the five year window time frame, the violators can claim that the statute of limitations has run out and the Town cannot bring court action against them for that violation.

Mr. Crook asked for Council to inform him of any outstanding zoning issues that have not been pursued up to this point. Violators would have to have their case heard in court by October 1, 2018 so the defendant cannot raise the statute of limitations regarding the violation. Raising the statute of limitations would be an affirmative action that the defense would have to raise. If the defendant does not hire an attorney and they do not know about the violation, then the Town can still proceed by sending out notices of violation after October 1, 2018 and handle by administrative enforcement with liens and fines.

If the Town were to take a defendant to court, the defense could be successful. The defendant would have to raise the defense and nothing is really defined with respect to reasonable knowledge of the complaint. The case would probably have to be hashed out in court. Mr. Crook used an example of what could be considered reasonable knowledge such as aerial photos. He said it could be far reaching.

Mr. Crook stated that if Council wants to be more aggressive with zoning violations or uses that are not legal, the Town would need to be a little more aggressive until October 1 to have court cases filed against the violators. Otherwise, after October 1, the violators may not be able to be pursued for that violation.

Attorney Jim Lanik said that if Council knows of potential violations, to pass those along to him and if needed, it can be protected under the client/attorney privilege under N.C.G.S 143-318.11(a)(3).

For information only.

ENGINEERING SERVICES AGREEMENT FOR THE MIDWAY TOWN PARK TRAIL PROJECT – THE WOOTEN COMPANY

On February 8, 2018 Mayor Pro Tem Mike McAlpine met with John Grey with the Wooten Company regarding obtaining an erosion plan for sixteen acres of land designated for the walking trails for the Town Park.

A contract providing design for grading and permitting of the development for the Midway Town Park Trail and description of services and fees was presented to Council for consideration. Section 2.04 of the contract includes a fee summary as follows:

Description	Payment Method	Fee
Design and Permitting	Hourly	\$16,250.00
Bidding and Negotiation (Informal Bids)	Hourly	\$3,500.00
Construction Administration	Hourly	\$8,300.00
Construction Observation	Hourly	\$7,250.00
Total Project Fee		\$35,300.00

Mr. McAlpine recommended selecting only the Design and Permitting services at this time and adding the services of Bidding and Negotiations, Construction Administration and Construction Observation as ala carte items if needed.

Included in the Design Services are the following:

1. Hold such conferences with representatives of the Owner as may be necessary to obtain data for developing the design project. Project budget is based upon one (1) meeting.
2. Submit design drawings as the first stages for Owner review and approval: Permit and Quality Control Review (90%).
3. Prepare and furnish contract plans and specifications as necessary for the proper construction of the project and prepare all documents necessary for the taking of bids and letting of contracts for the proposed work. It is understood and agreed that the Engineer shall be permitted to insert in the Owner's construction contract documents, provisions for reimbursement for printing, binding, mailing and other costs incidental to issuing of said contract plans, specifications and documents.
4. Submit for approval of the plans and specifications proposed to the North Carolina Department of Environmental Quality including: Land Quality as may be required for construction of the improvements.

Town Attorney Jim Lanik said in order to avoid coming back to approve the entire contract each time an ala carte service is added, he recommended adding language in the original contract directing The Wooten Company to perform only those services in connection with the "Design and Permitting" and including a provision that in the event the Town wishes for The Wooten Company to perform additional services, the Town would provide such direction to The Wooten Company in writing.

On motion by Councilor Todd Nifong, seconded by Councilor Jackie Edwards, Council voted unanimously to proceed with the Service Project Agreement with the Wooten Company with modifications pending its review with Town Attorney Jim Lanik.

APPOINTMENTS/REAPPOINTMENTS TO PLANNING AND ZONING BOARD/BOARD OF ADJUSTMENT

Three members of the current Planning and Zoning Board/Board of Adjustment are eligible for reappointment. Their current term expires March 31, 2018. Those members are Jamie Hester, Charles Waddell and LeeAnn Thomas.

On motion by Councilor Jackie Edwards, seconded by Councilor Keith Leonard, Council voted unanimously to reappoint Jamie Hester to a three year term on the Planning and Zoning Board/Board of Adjustment. Her term will expire March 31, 2021.

On motion by Councilor Robin Moon, seconded by Councilor Todd Nifong, Council voted unanimously to reappoint Charles Waddell to a three year term on the Planning and Zoning Board/Board of Adjustment. His term will expire March 31, 2021.

On motion by Mayor Pro Tem Mike McAlpine, seconded by Councilor Robin Moon, Council voted unanimously to reappoint LeeAnn Thomas to a three year term on the Planning and Zoning Board/Board of Adjustment. Her term will expire March 31, 2021.

The oaths of office for the reappointed Planning and Zoning Board/Board of Adjustment members will be administered at the next meeting of the Planning and Zoning Board on March 27, 2018.

NEW FEE WAIVER PROVISION – ADMINISTRATIVE OFFICE OF THE COURTS-TOWN ATTORNEY – JIM LANIK

Town Attorney Jim Lanik advised Council that the General Assembly passed a statute that allows affected entities to be heard in the event that a fine or award of cost would be waived in a criminal case or infraction. Mr. Lanik said this happens frequently and the entities that get the fines and costs would be getting notices of potential waivers and create an administrative headache. The statute allows entities a standing objection or non-position one way or another so not to have to appear and be bothered.

Mr. Lanik went on to say that the Town has never received fines or proceeds from a fine that could have been waived at some point. He advised Council that it is not necessary to do anything at this point.

For information only.

TOWN MANAGERS REPORTS

MONTHLY FINANCIAL REPORT

Interim Town Manager/ Town Clerk Linda Hunt provided Council with monthly financial reports for February 28, 2018 as follows:

February 28, 2018

Total Income	\$1,052,597	71.0 % of overall budget
Total Expenses	\$587,581	53.4 % of overall budget

For information only.

SET DATE FOR BUDGET WORKSHOP

On motion by Councilor Keith Leonard, seconded by Councilor Jackie Edwards, Council voted unanimously to schedule a Budget Workshop for Monday, March 26, 2018 at 6:00 p.m. at Town Hall.

(Mayor Byrum called for a five minute recess)

RECESS TO CLOSED SESSION

On motion by Mayor Pro Tem Mike McAlpine, seconded by Councilor Todd Nifong, Council voted unanimously to recess to closed session in accordance with N.C.G.S. 143-318.11(a)(6) to discuss matters pertaining to personnel.

RECONVENE TO OPEN SESSION

On motion by Councilor Mayor Pro Tem Mike McAlpine, 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 9:00 p.m.

John E. Byrum, Mayor

Linda A. Hunt. Town Clerk

