

**MINUTES OF MIDWAY TOWN COUNCIL REGULAR MEETING HELD ON AUGUST 3, 2020
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.

Mayor Pro Tem Mike McAlpine gave the invocation and led in the Pledge of Allegiance prior to the opening gavel.

Councilors present were: John Byrum, Mike McAlpine, Jackie Edwards, Keith Leonard and Berkley Alcorn. Absent: Robin Moon. Town Manager Tammy Michael, Town Clerk Linda Hunt, Town Attorney Jim Lanik, Deputy Clerk Tammy Robertson, Davidson County Zoning Officers Lee Crook and Travis Swain were present.

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

No members of the press were in attendance.

APPROVAL OF MINUTES

On motion by Councilor Jackie Edwards, seconded by Councilor Keith Leonard, Council voted unanimously to approve the minutes of the July 13, 2020 Town Council Regular meeting as presented.

PUBLIC ADDRESS

Ms. Suzanne Dellinger of 1712 Norman Shoaf Road stated that she spoke at a Town Council meeting approximately three years ago about the condition of Norman Shoaf Road. Ms. Dellinger counted six potholes in the road on the way to Town Hall. School traffic will continue to be an issue when schools open for the school year and the road's shoulder is in bad condition. A few years back a school bus wrecked on Norman Shoaf Road which caused the bus to roll down a hill. There are also a couple of tractor trailer drivers that park their rig along Norman Shoaf Road. Ms. Dellinger also mentioned that the wait for her daughter to pull out of their driveway to go to school can be as much as twenty-five minutes due to the amount of traffic on the road. Ms. Dellinger expressed to Town Council the need to have improvements made to Norman Shoaf Road.

ADOPT AGENDA

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

PUBLIC HEARING

PUBLIC HEARING – REZONING REQUEST BY FELIPE DE JESUS MENDOZA PINA AND MARIA TERESA VILLAGOMEZ GONZALEZ TO REZONE .69 ACRES IN MIDWAY TOWNSHIP FROM RA-3 TO CU-RC

At the Town Council Regular meeting held on July 13, 2020, Council voted unanimously to postpone a public hearing to rezone a portion of Lot 67 containing .69 acres more or less in Midway Township, Tax Map 6, from Rural Agricultural District (RA-3) to Conditional Use Rural Commercial District (CU-RC) by Felipe De Jesus Mendoza Pina and Maria Teresa Villagomez Gonzalez due to an error in the letters mailed to the adjoining property owners, and the legal advertisement, that incorrectly referenced Dublin Drive, whereas it should have been Dover Road, to be held on Monday, August 3, 2020 at 7:00 p.m. at Town Hall.

The public hearing was advertised in *The Dispatch* on July 17, 2020 and July 24, 2020 as required by law.

Mayor Byrum opened the public hearing.

Deputy Clerk Tammy Robertson swore in Davidson County Zoning Officer Lee Crook, Felipe De Jesus Mendoza Pina and Maria Teresa Villagomez Gonzalez.

Davidson County Zoning Officer Lee Crook presented the rezoning request by Felipe De Jesus Mendoza Pina and Maria Teresa Villagomez Gonzalez to rezone property in Midway Township, Tax Map 6, Tax Lot 67 containing .69 acres more or less. Said property is located on the north side of Gumtree Road approximately 400 feet west of the Dover Road intersection. Rezoning is requested to change from RA-3, Rural Agricultural District to that of CU-RC, Conditional Use Rural Commercial District.

Mr. Crook stated that there are approximately eight non-residential lots in the immediate area of the property, some directly across the street from the property that is proposing to be rezoned. The land has been surveyed by Brad Coe Forestry and Surveying legally separating the front .69 acre and has been recorded with the Davidson County Register of Deeds office.

The applicants have proposed the following list of conditions to the rezoning request:

1. The property will be used for a Tire Service Center now and perhaps add an automobile sales lot and automobile repair facility in the future.
2. Hours of operation will be Monday through Saturday from 8:30 a.m. till 6:00 p.m.
3. Air compressor will be enclosed to reduce the noise.
4. Per the site plan, the applicants plan to construct a 40'x120' building to conduct business.
5. No outside storage of inventory (tires or junk).
6. Landscaping will be presentable and well kept and will comply with any rules or laws within the Town limits.
7. Lighting will be motion detected and directed onto owner's property to reduce glare or light pollution on any neighbor's property.
8. Agreed to plant giant green arborvitae along the eastern property line and 50' on the northern property line. Amended July 28, 2020.

The giant green arborvitae will create a screening between the attached property and will be opaque in nature.

A type D planting yard which requires a five-foot minimum width will be required around the rest of the property. The landscaping that the applicants have agreed to for the property is over and above what the ordinance requires.

Mrs. Mendoza shared with Council how she and her husband became small business owners in 2012 when they purchased the current tire shop from the previous owner. The tire shop is in a residential neighborhood along High Point Road, a very dangerous road to operate a business. The current building was built in the 1900's and is very outdated. The two-story building has limited space and a small car lift inside, but the lift is still not tall enough for the cars. There is no room to expand the business at its current location. The spring and summer hours for the business are Monday through Saturday 8:30 a.m. till 6:00 p.m. During the fall and winter months, the business closes at 5:00 p.m. because it gets dark earlier and it is not safe to be out along the road working. Many of the neighbors are customers of the tire shop and often drop their cars off and walk back to pick them up later in the day. Mrs. Mendoza said that they have never had a complaint from the neighbors about operating the business in that location. In fact, the previous owner lives across the street from the shop. They receive exceptional reviews from their

customers for great customer service. They do not store any materials outside. The fire department routinely inspects the property and all inspections have passed.

Mrs. Mendoza said that she and her husband bought the new property on Gumtree Road in 2017 in hopes of building their business on the property. There is commercial property along Gumtree Road and with that, the Mendozas felt they could get the land rezoned from Rural Agricultural to Rural Commercial. They would like to build their business on the front part of the land and build a house on the back part of the land. The Mendozas love the community and their daughters attend the local schools, where they would like to remain. The proposed property would allow for a safer working environment and allow their daughters to come home after school instead of going to daycare.

The Mendozas expect to build a 40'x 60' metal building with three bays, and in the future expand the building to 40'x 120' adding an additional two bays. The additional space would allow extra services such as maintenance and small automobile repairs.

Mrs. Mendoza stated that no business would be conducted after hours because she and her husband value family time.

Mr. Mendoza said one of the reasons that he and his wife bought the property on Gumtree Road was because it is five minutes from where they currently live. Their daughters go to school in the community and they want to remain here. Mr. Mendoza said that he has lived here most of his life, mainly in the Midway community.

The land on Gumtree Road is near commercial properties and he felt like they would have a good chance of rezoning the property to commercial use. The traffic on Gumtree Road would be conducive to the type of business that he owns. Mr. Mendoza said that his tire shop would benefit people in the community by providing a needed service. Having small businesses in the Town would create more traffic and draw interest from larger businesses wanting to locate in the area. He said that Wallburg has numerous businesses in the area and those businesses generate a lot of revenue for Wallburg. Union Cross has also seen growth in recent years generating revenue for the community. Midway needs the same type growth and a way of generating the needed traffic to attract larger businesses is to offer the services of small, local businesses.

Mr. Mendoza said that if he was denied the request to rezone the property for his tire business, he would have to look at plan B which would possibly be to add mobile homes to the property. He would rather have his tire business there because it would generate revenue and be more beneficial to the community.

Councilor Berkley Alcorn asked Mr. Mendoza how many customers he sees per week in the tire shop. Mr. Mendoza said that his shop is small and they usually services fifty to sixty customers per week.

Mayor Pro Tem Mike McAlpine inquired as to what other automobile services. Mr. Mendoza plans to add to the tire shop. Mr. Mendoza said that he plans to add brakes, changing out starters and alternators and as the business grows, maintenance and small repairs.

Betty Nifong, owner of the adjoining property at 183 Dublin Drive for fifty-three years spoke in opposition to the rezoning request. Mrs. Nifong said that the area of Gumtree Road in question is a residential district and her neighborhood, Canterbury Farms which is a part of the residential district, was established in 1966. She stated that the proposed new business would have a negative impact on property values and quality of life in for the community.

There are twelve driveways leading into Gumtree Road from Dover Road and Bobby Willard Road. The proposed business would add a thirteenth driveway to an already busy part of road. There is a curve at Bobby Willard onto Gumtree Road that blocks the view when pulling out. Gumtree Road serves as a commuter road to Interstate 285. There are several school bus stops in this area of road.

There would be an environmental impact on the Nifong property because their water supply comes from a well, and water runoff from the back of the proposed property would contaminate her water supply from Leak Creek. She also stated that noise from the metal building could not be contained and would echo throughout the neighborhood.

Suzanne Dellinger of 1712 Norman Shoaf Road also spoke against the rezoning and asked for Council to uphold the Planning Board's recommendation to deny the rezoning of the property. She stated that there are commercial businesses in the area, but they are passive businesses with the exception of Competition Karting that is opened limited hours. Having a business in the area with office hours of 8:30 a.m. till 6:00 p.m. six days per week is not in line with the residential nature of the ordinance. The Town's Land Use Plan is currently under review. The current plan as written, does not promote non-residential development in the Gumtree Road corridor. There is a lot of traffic on Gumtree Road connecting Gumtree Road to Highway 52.

Ms. Dellinger said that the home prices in the area where the current tire shop sits is \$77,000-\$85,000 and the average home prices in the area of the proposed site is \$150,000-\$250,000. The tire shop will have a negative impact on the Gumtree Road property values. It is not a good use of the property. Wallburg has their commercial business in the Core Commercial District. They are not developing along Highway 109 with exception of Town Hall and the Park.

Mr. Mendoza referenced Ms. Dellinger's comment regarding Wallburg only having commercial businesses in the Core Commercial District. He said that Wallburg has a lot of small businesses in the outlying area of the Town. His new tire shop would look much nicer than the rundown commercial property along Gumtree Road. The driveway that was questioned by Mrs. Nifong will be put in regardless of whether the property is rezoned or not. There have not been any traffic issues along that stretch of Gumtree Road. Mr. Mendoza will not let the property sit idly. The land will either be used for the tire shop if the land is rezoned or Mr. Mendoza will consider adding mobile homes on the land if the land is not approved for the rezoning. Large companies are not going to come to an area if there is not enough traffic flow to generate the revenue that is needed to survive. Mr. Mendoza said that you have to start with small businesses and generate the traffic to get the attention of larger companies.

Mr. Crook said that if the rezoning is approved, the applicants would have to apply with North Carolina Department of Transportation (NCDOT) for a commercial driveway permit to approve the driveway connection. Secondly, the property would need to be perked again due to the land being split and .69 acre of the land being used for the tire shop building. If either of the two requirements are not approved, the building cannot be built. With respect to water runoff, Mr. Crook spoke with the Davidson County Inspections Department regarding permits issued for the county. Every permit card states that soil and erosion control requirements per North Carolina General Statute 113A-61 *"No owner, contractor or developer is responsible to comply with all rules that is applicable to land disturbing activities. Civil penalties up to \$5,000 for violations."*

Mr. Crook stated that even though Midway's Land Use Plan is under review, the current 2010-2020 plan is still in effect and what the Town operates by for its land use decisions. Midway currently has four commercial nodes:

1. Urban Core
2. East on Gumtree Road
3. County Line Road coming into the Town from Forsyth County
4. South on Old US Hwy 52 from Eller Road to Midway Methodist Church

There are already commercial businesses in these districts. They are general zoning districts. There are no regulations that mandate current businesses remain in the state they are in at this time, but the list of permitted uses in these areas are wide open. Currently, there is Rural Commercial (RC), Community Shopping (CS) and Limited Industrial (LI) Districts in these areas. The RC zoning that the applicants are applying for is the correct zoning for the area. These areas were zoned with the County in 1973. Zoning is a tiered system now. Highway Commercial (HC) zoning should be at interstates at major arterial roads. Community Shopping (CS) districts should be located at major collector roads at intersections with arterial roads. North Carolina Highway 109 and Old US Highway 52 are examples of this. Gumtree Road is classified as a major collector road. Rural Commercial (RC) zoning is designated to provide local service-oriented businesses. An example of RC zoning is automobile body shops, automobile sales, departmentalized storage, car washes, automobile maintenance and repair and retail trade of durable and nondurable goods. Uses get larger with Highway Commercial (HC) and Community Shopping (CS) districts with printing businesses, parcel delivery services, hotels, hospitals, and bus passenger terminals locating in these districts.

Mr. Crook submitted the following staff analysis and recommendation regarding the request to rezone property in the Midway Township:

The applicant is requesting to rezone a portion of a parcel of land containing .69 acre more or less from that of RA-3, Rural Agricultural District, to that of CU-RC, Conditional Use Rural Commercial District. Said property is located on the north side of Gumtree Road approximately 400 feet west of the Dover Road intersection. The proposed use of the property is for a tire service center to be located inside of a 40 x 120-foot building. The proposed rezoning will only include the front .69 acre of the total 2.06-acre tract. The applicant also intends to have parking and landscaping on site.

The back of the 2.06- acre tract will remain as currently zoned, RA-3 Rural Agricultural District. The applicant plans to build a house on the rear portion of the 2.06- acre tract. With only the front portion of the 2.06-acre tract proposed to be rezoned, protection will continue to be offered to the Canterbury Park Subdivision located to the rear of the property. Should the rezoning request be approved, the applicant would apply for a commercial driveway permit from the NCDOT.

Gumtree Road is a two lane, State maintained roadway that would be classified as a heavily traveled collector road. There is a wide diversity of uses located in the immediate proximity of the proposed rezoning. Directly across the road from the subject property are RC, Rural Commercial District; CS, Community Shopping District; and LI, Limited Industrial District uses that create a small nonresidential node along this portion of Gumtree Road. On the same side of the road as the rezoning request are multiple LI zoning uses just one tract to the west. This creates a varied mixture of uses with everything from single wide manufactured homes to well established commercial and industrial buildings in the area.

Staff realizes that the Town of Midway Land Development Plan, "Future Land Use Map" that was adopted in 2006 does not promote non-residential development along the Gumtree Road corridor. While the state and the judicial system want jurisdictions to follow their adopted plans, there is room to deviate from them if the public benefit is served. In the Town of Midway's Zoning Ordinance, Article 7, Section

7.10, Amendments, Paragraph (B) Purpose, the Town is allowed “To extend the boundary of an existing zoning district” if it so chooses.

Staff feels that this rezoning is reasonable due to the mixed character of the area and the conditions that help this use minimize its impact on surrounding residential properties. The “RC” zoning classification is designed to provide services to the “local” area and therefore would not be located in the Town’s center. Staff would like to recognize the fact that there are new houses being built on the adjoining tracts to the east and would like to see the applicant submit a condition that would require the planting and maintenance of an opaque screening yard along the eastern property line of the rezoning.

With the addition of the screening requirement to protect the residential lots to the east, Staff would recommend for the approval of this request based on it being contiguous and in close proximity to non-residential zoning districts.

Mr. Crook advised Council on their options of approving or denying the rezoning request. Council could deviate from Midway’s Land Use Plan and approve the rezoning with a valid reason for doing so. The deviation from the Plan would have to provide a public benefit and provide a service to the community. A second option for Council would be to deny the rezoning request by following the current Land Use Plan and not allow anything but residential growth for the area and promote all commercial growth in the Core Commercial District.

Mayor Pro Tem Mike McAlpine asked what could be put on the proposed land if it remained zoned as Rural Agricultural. Mr. Crook stated that single and double wide homes, duplexes, modular homes, and stick-built homes could be put on the land.

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

Mayor Pro Tem thanked everyone for presenting their case for and against the rezoning. He said that everyone did a great job.

Town Attorney Jim Lanik cited that since part of the hearing is quasi-judicial in nature, Council’s decision will need to be based solely on the evidence presented. Mr. Lanik said the parties did a good job in addressing the issues.

On motion by Mayor Pro Tem Mike McAlpine, seconded by Councilor Berkley Alcorn, Council voted unanimously to postpone a decision on the rezoning request until the next regularly scheduled meeting on September 8, 2020 at 7:00 p.m. at Town Hall.

REGULAR BUSINESS

There was none.

TOWN MANAGER’S REPORTS

TOWN PARK UPDATE

Town Manager Tammy Michael had no update on the Town Park except that the playground is still not allowed to open due to Covid-19 and Governor Roy Cooper’s decision for North Carolina to remain in Phase II, which mandates playgrounds to remain closed.

NORTH CAROLINA 2020 CENSUS SELF RESPONSE WEEKLY HIGHLIGHTS

Town Manager Tammy Michael provided current response rates as of July 28, 2020 for the North Carolina Census. Midway's response rate is 68.9%. Current North Carolina response rates are 58.6% and the National self-response rate is 62.4%.

FINANCIAL REPORT

Town Manager Tammy Michael provided Council with monthly financial reports for July 31, 2020 as follows:

JULY 31, 2020		
Total Income	\$ 103,219	7.3 % of overall budget
Total Expenses	\$ 114,072	4.2 % of overall budget

For information only.

REMINDER: TOWN HALL WILL BE CLOSED ON MONDAY SEPTEMBER 7, 2020 IN OBSERVANCE OF LABOR DAY

Town Manager Tammy Michael reminded Town Council that Town Hall will be closed on Monday September 7, 2020 in observance of Labor Day.

NEXT TOWN COUNCIL MEETING – TUESDAY SEPTEMBER 8, 2020

Due to the Labor Day Holiday falling on a Monday, the next Town Council meeting will be held on Tuesday, September 8, 2020.

ADJOURNMENT

On motion by Councilor Jackie Edwards, seconded by Mayor Pro Tem Mike McAlpine, Council voted unanimously to adjourn the meeting at 8:48 p.m.

John E. Byrum, Mayor

Tammy H. Robertson, Deputy Clerk