

Attendance: Mayor Kitts; Mayor Pro Tem John Crump; Councilmembers: Allen Burnette, Darren Hartsell and Rich Wise; Town Manager, Doug Paris; Town Clerk, Nancy E. Boyden, *CMC, NCCMC*; Finance Officer, Beverly Love; Town Attorney, Anthony Fox; Planning, Zoning & Subdivision Administrator, Kassie Watts, *AICP, CZO*; Town Engineer, Richard McMillan, *P.E.*; Cabarrus County Captain Nesbit; Midland Firefighter, Austin Cole.
Also Present: Cabarrus County Commissioner Lynn Shue.
Absent: None.
Late: None.
Guests: None.

All items are for discussion and possible action unless otherwise specified.

*SR denotes staff memo/report included

1. Invocation: Councilmember Hartsell pronounced the *Invocation*.
2. Open Meeting: Mayor Kitts opened the meeting at 6:00pm and called the room to order.
 - a. The room stood for the *Pledge of Allegiance*.
3. Announcements: Mayor Kitts gave the following announcements:
 - a. IPG is holding a job fair on Wednesday, January 11, 2017 from 9:00am to noon *and* 2:00pm to 4:00pm at the Cabarrus Business & Technology Center, 660 Concord Parkway North. Flyers are available at the front table.
 - b. The Board of Commissioners has scheduled a, “Soft Opening” of the Rob Wallace Park for Saturday, January 21, 2017 at 10:00 am. This will be a short informal ceremony to allow the Commissioners to officially open the park to the public. A more elaborate dedication ceremony will be scheduled for some time in April.
 - c. Midland Town Hall will be closed on Monday, January 16th in observance of Martin Luther King Jr. Day.
 - d. The calendar for the Midland Mobile Mondays is on the back table in the Chambers. The dates are highlighted in green. The Cabarrus County Library newsletter is available as well. The newsletter is also available online on the library site.
 - e. The, “Journeys” magazine, “Your guide to active living and learning in Cabarrus” is available at Town Hall. This magazine is for senior citizens living in the county. It holds a lot of different articles and events and published on a seasonal basis.
 - f. *Proclamation #2017-75* Recognizing January 22-28, 2017 as School Choice Week in Midland.

Mayor Kitts pronounced the following proclamations.

A Proclamation Commemorating Town of Midland School Choice Week

Proclamation #2017-75

WHEREAS, all children in the Town of Midland should have access to the highest-quality education possible; *and*

WHEREAS, the Town of Midland recognizes the important role that an effective education plays in preparing all students in Midland to be successful adults; *and*

WHEREAS, quality education is critically important to the economic vitality of the Town of Midland; *and*

WHEREAS, the Town of Midland is home to a multitude of excellent education options from which parents can choose for their children; *and*

WHEREAS, educational variety not only helps to diversify our economy, but also enhances the vibrancy of our community; **and**

WHEREAS, our area has many high-quality teaching professionals who are committed to educating our children; **and**

WHEREAS, School Choice Week is celebrated across the country by millions of students, parents, educators, schools and organizations to raise awareness of the need for effective educational options.

NOW, THEREFORE, I, Mayor Kathy Kitts hereby recognizes January 22-28, 2017 as the Town of Midland **SCHOOL CHOICE WEEK**, and I call this observance to the attention of all of our citizens.

g. **Proclamation #2017-76** Martin Luther King Jr. Day.

Proclamation #2017-76

WHEREAS, Dr. Martin Luther King, Jr. inspired millions of Americans to participate in non-violent protests to support the ideals of equality for all and was a motivating force behind a civil rights movement that had as its goal the creation of a society tolerant of all races, cultures and nationalities; **and**

WHEREAS, the ideals of Dr. King and of Midland's commitment to human rights are worthy of reflection and serve as a reminder that improving the quality of life for all members of our community is a responsibility of every citizen; **and**

WHEREAS, the celebration of Dr. King's birthday is intended as a time for all Americans to reaffirm their commitment to the basic principles that underlie our Constitution – equality and justice for all.

NOW, THEREFORE, I, Kathy Kitts, Mayor of The Town of Midland, do hereby proclaim Monday, January 16, 2017 as:

“DR. MARTIN LUTHER KING, JR. DAY”

In the Town of Midland and encourage all citizens to rededicate themselves to the principles of respect for human rights and freedom, of belief in non-violence, and of commitment to improving our community through community service and volunteerism.

AND FURTHERMORE, The Town of Midland will recognize Dr. Martin Luther King, Jr. Day annually.

4. Approval of Agenda:

Motion was made by Mayor Pro Tem Crump and seconded by Councilmember Wise to approve the Agenda with the noted change:

Delete: 10. c. Mayor's Comments. **Motion carried 4-0.**

5. Consent Agenda: Minutes: Regular Session 12-13-2016; Attorney Bills.

Motion was made by Councilmember Wise and seconded by Councilmember Burnette to approve the Consent Agenda as presented. **Motion carried 4-0.**

6. Public Comment: None forthcoming.

7. Public Safety:

- a. Police Report - Cabarrus County Sheriff for Midland

Captain Nesbit reported the following for the month of December, 2016:

681 Self-initiated calls for service- some of which were:

- 591 Security checks;
- 1 Suspicious subject;
- 11 Suspicious vehicles;
- 63 Traffic stops.

110 Dispatched calls for service- some of which were:

- 10 B/E of vehicles;
- 10 Burglar alarms;
- 4 Larcenies;
- 7 Suspicious subjects;
- 6 Suspicious vehicles;
- 14 Traffic accidents- property damage only.

b. Midland Volunteer Fire Department Report

Firefighter Austin Cole gave the Fire Department Report for December 2016:

- 4 Structure fires;
- 7 Residential fire alarms;
- 1 Commercial fire alarm;
- 1 Brush fire;
- 1 Vehicle fire;
- 4 Local alarms;
- 5 Motor vehicle accidents;
- 40 Medical calls.

Total calls for service: 63

8. Planning & Zoning/BOA Appointments: Planning, Zoning & Subdivision Administrator- *K. Watts*

Ms. Watts reported the following:

Re: Planning & Zoning/Board of Adjustment Appointments

BACKGROUND

The Town of Midland currently has two (2) seats on the Planning & Zoning/Board of Adjustment that need to be reappointed by Town Council. There are two sitting Board members that are willing to continue serving in this capacity:

1. Mr. Michael Aldridge
2. Ms. Ann Holland

The Town did not receive any new applications for these seats. Both of these seats need to be reappointed for three (3) year terms. We have two sitting Board members that are capable and willing to serve an additional three (3) year term.

Staff is recommending the Town Council approve the reappointment of both Mr. Michael Aldridge and Ms. Ann Holland, respectively, for a three (3) year term on the Planning & Zoning/Board of Adjustment.

- a. Mr. Michael Aldridge- reappoint for 3 year term
- b. Ms. Ann Holland- reappoint for 3 year term

Motion was made by Councilmember Hartsell and seconded by Councilmember Wise to reappoint Mr. Michael Aldridge and Ms. Ann Holland for 3 year terms each to the Planning and Zoning Commission/BOA beginning February, 2017 to February 2020. **Motion carried 4-0.**

9. **Planning**: Planning, Zoning & Subdivision Administrator- *K. Watts*

a. Planning Projects- Verbal Update

- Wydham Forest: laying storm drainage. It will be a slow process until winter passes;
- Brentwood subdivision: Still grading and will start laying sewer and some storm drainage in the near future. The developer met with Engineer, McMillan about the driveway connection to insure that stone isn't dragged by construction vehicles onto the highway;
- Banks Massey: Staff sent comments back to their engineers and are still waiting to hear back from them;
- Allen Mini Storage: They are almost finished grading. Next comes the site plan review and approval;
- Jordan Dental: The building is close to being finished. They are working on the exterior façade, landscaping, and interior improvements and paving the parking lot.

b. *SR Brentwood/601 tree buffer

Ms. Watts reviewed her staff report and used maps of the subdivision plan to explain how the perimeter buffer has been removed:

Re: Brentwood Subdivision Tree Buffer (Previously identified as Saddlebrook Ph.2)

BACKGROUND

The Town has received several complaints regarding the tree buffer/perimeter buffer requirement for the Brentwood Subdivision.

This project is currently in the process of grading and the noticeable removal of trees and vegetation on the site has piqued the interest of adjacent property owners and other citizens. In response to the removal of trees, inquiries have been made to the Town regarding the 50 ft. perimeter landscaped buffer shown on a previous version of the preliminary plat for this project. There was an expectation by adjacent property owners and others, that upon completion of the project, the 50 ft. perimeter landscaped buffer would be in place.

The preliminary plat for Saddlebrook Phases 1 and 2 was originally approved in 2007 for 288 lots. This preliminary plat showed a 50 ft. perimeter landscaped buffer around all exterior property lines in Phase 2. The preliminary plat was revised and approved in 2010 to amend lot layouts, phasing information and minor street alignments, however there was no change to the overall density or the buffering requirements. The 50 ft. perimeter buffer was still shown on the plat at that time.

In late 2013, the property owners petitioned the Town for a zoning map amendment to add the Traditional Neighborhood Development Overlay (TNDO) to a portion of Phase 1, and the entirety of Phase 2. The zoning map amendment was approved by the Town. Subsequently, the applicant submitted a revised preliminary plat under the TNDO development standards. The revised preliminary plat was approved in 2014. The revision to the preliminary plat included the removal of the 50 ft. perimeter buffer and an increase in the density. The minutes from the Town Council meeting where the TNDO was discussed and approved, did not include discussion related to the perimeter landscaping buffer.

The revised preliminary plat (approved 2014) that followed the TNDO approval (2013) did not go before the Town Council for approval. Preliminary plats are approved by the Technical Review Committee (TRC).

~~END~~

Discussion:

Councilmember Hartsell said at this point the damage is done. I would have wanted that buffer to remain and it's a shame this didn't come before Town Council.

Mayor Kitts: Was this captured in the TRC minutes?

Ms. Watts: I didn't see anything about the buffer removal but it was definitely removed from the plat in 2011 when it was revised in 2014.

Councilmember Hartsell: I don't know how it can be fixed going forward. This is of great concern that this was allowed to happen.

Ms. Watts: The Town may want to take that plat approval back to Town Council or at least the Planning and Zoning board- a formal board where action can be taken.

Mayor Kitts: I think this is something that has to be looked at.

Councilmember Wise: Can we talk to the developer and see if he can put the buffer back before Town Council takes formal action?

Councilmember Hartsell: Have they thought about a berm in back with some foliage? I don't know what the topography is and if that is going to interfere with natural flow.

Mr. McMillan: There will be a few trees kept because it doesn't make sense to remove them. The sloping varies along the back side. The question is, with the houses sitting 8' lower is there a need for a berm being on top?

Councilmember Wise: It really looks bad. I'd like to see if we can talk to the developer.

Mr. McMillan: The developer came by today and we had discussions about potential trees and some other ideas. He told us that he will take the information back and discuss something more formal.

10. Staff Reports:

- a. Finance Report- December, 2016 – **B. Love**

Ms. Love gave the following report on the cash accounts:

				Dec 31, 2016
Checking/Savings				
			1000 · CASH ON HAND	181.57
			1004 · GENERAL FUND	1,152,759.04
			1040 · UTILITY CAPITAL RESERVE FUNDS	2,095,031.97
			1050 · POWELL BILL FUNDS	189,405.12
			1060 · CDBG OLD MIDLAND SEWER PROJECT	42,338.78
Total Checking/Savings				3,479,716.48

- i. **Budget Amendment Ordinance #2017-207** Rent – Storage Unit

Motion was made by Councilmember Burnette and seconded by Councilmember Wise to adopt Budget Amendment **Ordinance #2017-207**. **Motion carried 4-0.**

Councilmember Wise extended special thanks to the fire department for their help putting up and taking down the Town Christmas tree.

Mayor Pro Tem Crump said that this is a larger sized unit that can hold more items.

Town of Midland Ordinance #2017-207 FY 2016-2017				
Section 1. To Amend the Midland Budget 2016-2017 for new storage unit to house the				
Christmas Tree. The town needed a larger storage unit.				
	Current			Amended
Description	Budget	Increase	Decrease	Budget
Rent Expense	45,120.00	\$ 1,117.00	\$ -	\$ 46,237.00
GF Fund Balance Appropriation	34,765.00	\$ 1,117.00	\$ -	\$ 35,882.00
Section 2. Copies of this budget amendment shall be furnished to the Clerk to the Governing Board and to the				
Finance Officer for their direction.				

Ms. Love added that the LGC approved the FY 2016 Annual Audit.

b. Manager Comments- *D. Paris*

i. RFP for Sanitation

Mr. Paris said he is putting finishing touches on the RFP. He also received a letter today from AD where they are offering the 2 year extension without any additional costs of the landfill fees that were previously discussed. AD is requesting an answer to the letter by January 24th so a decision doesn't have to be made tonight. He said he would like to discuss the letter with Attorney Fox and the existing language in the current contract. This item may come back before Town Council during a special meeting.

ii. February Town Council Retreat

Mr. Paris asked Council to set a date for the Annual Retreat. Last year Council set 5 goals for the Town and developed a mission statement.

He recommended that the retreat be done a little differently this year. Council can take some time talking about last year's goals but the bulk of the retreat would be gathering thoughts and advice on the Town Center development. There should also be information available on the FOML goal setting piece. Some of last year's goals have been accomplished and can come off the list leaving room for new goals.

Councilmember Hartsell asked if there will be an outside facilitator this year.

Mr. Paris said he and the mayor discussed this and both believe that this year he would facilitate the retreat because of the time needed to discuss some existing goals and the Town Center piece.

Council agreed to hold the 2017 Annual Retreat on Saturday February 18th from 9:00 am to 12:00 pm.

Members of the public are welcome to attend to listen.

iii. Patrol vehicle- *Update*

Mr. Paris informed Council that the new patrol vehicle was delivered last Friday. It's now at the county shop being outfitted. It should be ready in approximately 2-3 weeks.

iv. Court of Appeals Ruling- Bethel Glen Roads- *A. Fox*

Attorney Fox said the Town recently received notice from the NC Court of Appeals ruling favorably for the Town, unanimously, 3-0. This is important because Harrell (petitioner) doesn't have an automatic right to appeal to the NC Supreme Court because of the 3-0 decision. In order for the petitioner to seek further review, they would have to petition the Supreme Court for a, "discretionary review" and while the Supreme Court hears hundreds of thousands of these on an annual basis, the number that they actually decide to hear is very few. This is called an unpublished decision which means it doesn't have any precedential value in terms of similar communities with similar type issues. It suggests that the issue was clear cut and not of major significance. The Court in its ruling largely dismissed the argument the petitioner made, because they failed to establish the necessary factual evidence to support their claim.

The petitioner will have approximately a 30-45 day period to petition for the, "discretionary review" if they choose to. If they don't do anything further, that ends the case as it relates to the determination of the Midland Board of Adjustment.

Mayor Kitts asked how many more tactics or appeals they have to drag this on more.

Attorney Fox said that the only thing they can do is petition the NC Supreme Court for the, "discretionary review".

The petitioner would be required to prepare the brief to the NC Supreme Court and then that brief would be served upon Midland. Midland would then file its brief of the issues deemed relevant. The Court would decide whether it will go for oral argument. At this point, the waiting period begins again.

Mr. Fox added that this is an uphill battle due to the decision of the NC Court of Appeals.

Councilmember Wise asked if the petitioner doesn't go to the NC Supreme Court, what would be the Town's next step be to process getting the roads taken care of.

Mr. Fox said he didn't want to talk legal strategy in a public format.

v. Other Comments

Mr. Paris said there are a lot of citizens interested in the Bethel Glen roads case. He will make himself available to talk to and take questions from the public and Bethel Glen residents on the January 20th at 10:00 am. Attorney Fox has offered to attend via phone.

Mr. Paris reported that Midland had its 1st Mobile Monday Library last evening. The FOML was also in attendance along with library staff. Library services were held from 4-7 pm and approximately 35-40 people visited. The next Mobile Monday will be on January 23rd.

Lastly Mr. Paris said that the radar trailer has been put up for the winter in the new Town storage unit.

c. Anti-Panhandling Ordinance - *Attorney Fox*

Mr. Fox explained this ordinance is to regulate panhandling/begging at the intersection of NC Hwy. 24/27 and US Hwy. 601.

The ordinance began as a draft that Clerk Boyden prepared. The ordinance before Council incorporated the Fourth Circuit decision with regard panhandling ordinances of this type. It requires that these ordinances be narrowly tailored as possible. Therefore this ordinance is specific to a certain location.

The ordinance does incorporate prohibitions against panhandling and defines panhandling and begging. It can be spoken, printed or in written words. It is also intended for individuals holding signs in the intersection asking for

money. It regulates the highways, median, sidewalks and shoulders and travel lanes. The enforcement of a violation is a misdemeanor which would allow for the Midland police to enforce it with civil penalties.

Mayor Pro Tem Crump asked if the ordinance includes the fire departments MDA boot drive.

Attorney Fox said that the ordinance is written broadly to prohibit the behavior. It doesn't discriminate based upon the actor. It's the conduct that's being regulated so it prohibits solicitation by anyone seeking to use the intersection.

Mr. Paris added that the Town has only had issues when panhandling was done in an unsafe manner. This would be our continued enforcement strategy.

Motion was made by Councilmember Wise and seconded by Councilmember Hartsell to adopt **Ordinance #2017-208**, Regulating Panhandling or Begging at the Intersection of NC Hwy. 24/27 and US Hwy. 601 in the Town of Midland. **Motion carried 4-0.**

**AN ORDINANCE REGULATING PANHANDLING OR BEGGING
AT THE INTERSECTION OF N.C. HIGHWAY 24/27 AND U.S. HIGHWAY 601
IN THE TOWN OF MIDLAND**

Ordinance #2017-208

WHEREAS, North Carolina General Statute 160A-179 authorizes the Town of Midland ("Town") to regulate begging or otherwise canvassing the public for contributions for the private benefit of the solicitor or any other person; **and**

WHEREAS, North Carolina General Statute 160A-296 provides the Town with the authority and control over all public streets, sidewalks, alleys, and other public passage ways within the Town limits, except to the extent such authority and control is vested in the Board of Transportation, including the authority to keep such public passage ways open for travel and free from unnecessary obstructions, and to regulate the use of such public passage ways; **and**

WHEREAS, Town Staff and Town Officials have observed an increase in the amount of panhandling or begging by beggars/solicitors holding buckets asking for money and standing at and moving around intersections and roadways within the Town municipal limits; **and**

WHEREAS, specifically, Town Staff and Town Officials have observed a significant amount of panhandling or begging by beggars/solicitors standing at the highly-trafficked intersection of N.C. Highway 24/27 and U.S. Highway 601; **and**

WHEREAS, Town Staff and Town Officials have observed 8 or more beggars/solicitors panhandling or begging at one time, and moving or weaving in between lanes of traffic and approaching moving and stationary vehicles at the intersection of N.C. Highway 24/27 and U.S. Highway 601, at which there is a four-way traffic light directing traffic in all four directions; **and**

WHEREAS, beggars/solicitors standing in the median of the highly-trafficked intersection of N.C. Highway 24/27 and U.S. Highway 601 who panhandle or beg place themselves and the motoring public in danger by potentially causing motor vehicle accidents; **and**

WHEREAS, the Cabarrus County Sheriff's Department is limited in its response to complaints about beggars/solicitors at the intersection of N.C. Highway 24/27 and U.S. Highway 601 because of the absence of any ordinance regulating panhandling or begging within the Town's municipal limits; **and**

WHEREAS, it is in the interests of public health and safety that beggars/solicitors not be allowed to panhandle or beg on any highways at or near the intersection of N.C. Highway 24/27 and U.S. Highway 601.

NOW THEREFORE, be it ordained by the Town Council of the Town of Midland that the following ordinance be adopted:

Section 1. Panhandling or Begging Prohibited.

It shall be unlawful for any person to panhandle, ask, beg, solicit or otherwise canvass for money, alms, or contributions on any highway located at or near the intersection of N.C. Highway 24/27 and U.S. Highway 601.

Section 2. Definitions.

- (a) For purposes of this Ordinance, the terms “panhandle”, “ask”, “beg”, “canvass”, or “solicit” shall include, without limitation, the spoken, printed or written word or other such acts as are conducted in furtherance of the purpose of obtaining money, alms or contributions.
- (b) For purposes of this Ordinance, the term “highway” shall include any road, street, highway, median, shoulder, or any other area between the travel lane and the back of the curb.

Section 3. Enforcement.

A violation of any provision of this Ordinance shall be enforced pursuant to procedure and requirements provided for in the Town’s General Penalties Ordinance and shall constitute either a misdemeanor or, at the election of the Town, shall subject the offender to a civil penalty in the amount of Fifty Dollars (\$50.00) upon the issuance of a citation for said violation.

Section 4. Further remedies.

The procedure set forth in this ordinance shall be in addition to any other remedies that may now or hereafter exist under law for the regulation of panhandling, begging, soliciting, or otherwise canvassing the public for contributions for the private benefit of the beggar/solicitor or any other person.

Section 5. Effective Date.

This Ordinance shall be in full force and effect from and after the date of its adoption.

Duly adopted this the 10th day of January, 2017.

11. Executive Session:

- a. [N.C.G.S. 143-318.11(a)(3)] Consult with the Attorney to Protect the Attorney-Client Privilege.

Motion was made by Councilmember Wise and seconded by Mayor Pro Tem Crump to enter [N.C.G.S. 143-318.11 (a)(3)] inviting Town Attorney Fox, Manager Paris, Town Clerk Boyden, Planner Watts and Engineer McMillan. **Motion carried 4-0.**

Council and guests entered at 6:48 pm.

Motion was made by Councilmember Wise and seconded by Mayor Pro Tem Crump to re-enter Regular Session. **Motion carried 4-0.**

Minutes Tuesday, January 10, 2017
Regular Meeting of Town Council
6:00pm, 4293-B Hwy. 24/27 E. Midland, NC 28107

Council re-entered at 7:08 pm.

12. Adjournment:

Motion was made by Councilmember Wise and seconded by Mayor Pro Tem Crump to adjourn the meeting.
Motion carried 4-0.

Council adjourned at 7:09 pm.

Attest/Seal

Mayor Kitts

Nancy E. Boyden, *CMC, NCCMCT* Town Clerk